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Alaska Department of Environmental Conservation

Oil & Hazardous Substance Release Response Fund

ANNUAL REPORT

FISCAL YEAR 1993

July 1, 1992 — June 30, 1993

Presented to the Second Session of the Eighteenth Alaska Legislature

March 1994 • Walter J. Hickel, Governor • John A. Sandor, Commissioner

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
FISCAL YEAR 1993 ANNUAL REPORT
(JULY 1, 1992 through JUNE 30, 1993)

John A. Sandor, Commissioner

March 1994

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
FISCAL YEAR 1993 ANNUAL REPORT

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OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
FISCAL YEAR 1993 ANNUAL REPORT

Section I. Introduction

The Oil and Hazardous Substance Release Response Fund, referred to as the "Response Fund", was created by the Legislature in 1986 to provide adequate funding to investigate, evaluate, respond to and mitigate releases of oil and hazardous substances. Alaska Statute 46.08.030 says: "It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or hazardous substance will always be available." (§ 1 ch 59 SLA 1986)

Section II provides a brief history of the Response Fund, a description of the mechanics of the Response Fund, and answers to commonly asked questions. Some concepts, for example the conservation surcharge imposition and suspension mechanism, are complex and require a fair amount of explanation. This section will help clarify some common misperceptions surrounding the Fund.

Sections III and V include financial statements, information on Response Fund Legislative appropriations made during FY93, actual expenditures, conservation surcharge tax collected, mitigation account appropriations to the Response Fund, contractual payments made exceeding $20,000 and purchases exceeding $10,000. An outline of the Division of Spill Prevention and Response's primary responsibilities, goals and accomplishments are presented in Section IV.

Section VI outlines other agency appropriations and expenditures during the fiscal year. The remainder of the report focuses on specific site summaries on which more than $1,000 have been expended.

Section II. What is the "Response Fund"?

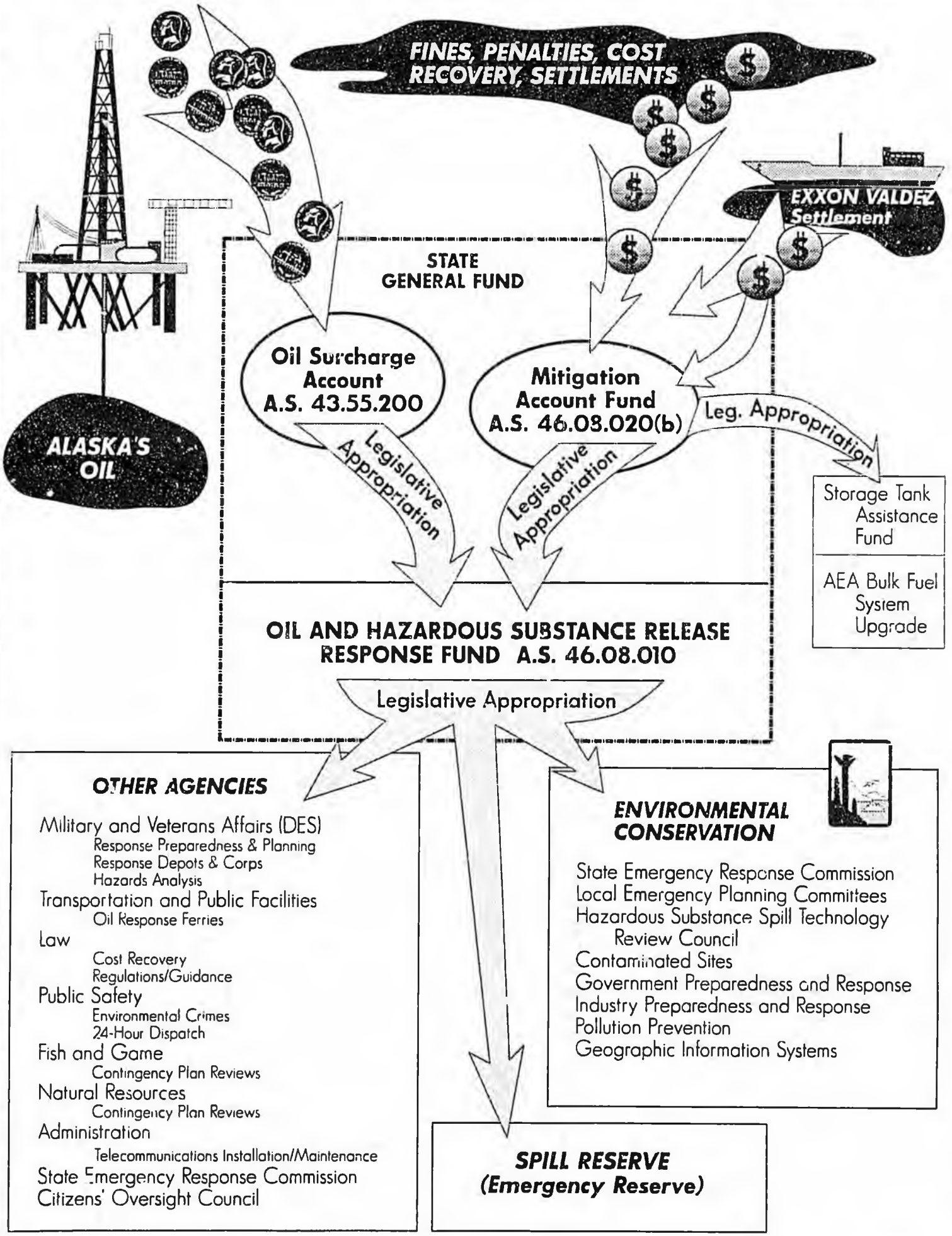
The Oil and Hazardous Release Response Fund (Response Fund) was created in 1986 with the passage of House Bill 470. The original intent was to provide a readily available source to pay expenses incurred by the State in the protection of the environment from the release of oil or other hazardous substances. It was the intent of the Legislature and public policy of the State, that funds be available for the abatement of a release, be it oil or a hazardous substance.

As it stands today, the Response Fund receives money from the Oil Conservation Surcharge which is a five cent surcharge imposed on each taxable barrel of oil produced in the State. During FY92, a total of $26,142,600 was collected by the State in surcharge dollars. Each year, the Legislatures appropriates money from this "Oil Surcharge Account" established under 43.55.200 to the Response Fund. The Legislature can also appropriate money from the State General Fund (as it has done in the past) or from the "Mitigation Account" established under 46.08.020(b). The Mitigation Account consists of fines, penalties, cost recovery and settlement payments collected by the State for violations of Alaska's oil and hazardous substance pollution statutes. Please refer to the chart on the following page for a pictorial representation of these accounts within the State General Fund and their relationship to the Response Fund.

The Legislature then appropriates money from the Response Fund to support the State's spill prevention and response programs, industry and government preparedness programs, the State Emergency Response Commission and the contaminated sites program. These programs are all within the Department of Environmental Conservation (DEC). Other state agencies receive response funds as well, as some are mandated by state statute to participate in contingency plan review or the State Emergency Response Commission, for example.

The balance remaining after appropriations are made from the Response Fund is what is commonly referred to as the "Spill Reserve". The Spill Reserve has grown over the past few years, from $9,000,000 in FY90 to more than $37,400,000 today! The spill reserve is the emergency reserve that DEC may use to fund emergency responses to spills of oil or other hazardous substances. Historically, the total amount spent each year out of the spill reserve (not including Exxon Valdez project expenditures) is less than $300,000.

DEC is only authorized to expend money from the Spill Reserve without specific Legislative appropriation in the case of a release or imminent and substantial threat of a release that poses a threat to human health or the environment. All other expenditures from the Response Fund are based on a specific Legislative appropriation (AS 46.08.040(b)).



Alaska's Oil and Hazardous Substance Release Response Fund

Prepared by ADEC 4/93

The conservation surcharge is suspended when the total expenditures from the Response Fund exceed the total dollar amount of surcharge nickels collected by $50,000,000. It would seem that since the balance of the Response Fund is approaching $50,000,000 that the surcharge would soon be suspended. Because there have been other deposits to the Response Fund totalling more than $70,000,000 from the General Fund, the total amount of expenditures exceeds total surcharge revenues collected. However, when you compare total expenditures against all revenues deposited to the Response Fund, you come up with a balance of approximately $37,400,000.

Authorized uses of the Response Fund are listed under AS 46.08.040, Purposes of the Fund. Changes have been made to this section of the law to allow for Legislative appropriations to fund a state response vessel and to accommodate new programs that were created in the wake of the Exxon Valdez Oil Spill. For a complete legislative history of the Response Fund, please contact the Department.

At the end of each fiscal year, the amount of money that is left in the spill reserve, or Response Fund balance, lapses back to the Response Fund and is available for future year appropriations.

Section III. FY93 ALLOCATIONS

	Authorized
DEC	
Spill prevention planning and management	6,021.2
State Emergency Response Commission	350.8
Local emergency planning committees	1,200.0
Spill Response Office	1,318.1
Division of Emergency Services/Response Depots and Corps	800.0
Hazards Analysis	177.3
Geographic Information System	689.3
Contaminated Sites Program	3,528.6
Exxon Valdez Litigation	2,968.0
Exxon Valdez Clean-up and Cost Recovery	350.0
Arctic Marine Resources Commission	100.0
Spill Reserve	23,656.7
Near Shore Strike Team Demonstration Projects	1,200.0
Hazardous Substance Spill Technology Review Council	420.0
Extend to FY 93 the FY 92 Allocation for Site Investigation, Safety, Cleanup, and Cost Recovery	Balance
DEC Subtotal:	42,780.0
Other Agency	
Citizens' Oversight Council on Oil and Other Hazardous Substances	237.3
Alaska Marine Highway System Vessel Replacement Fund	7,500.0
Mt. Edgecumbe - Contaminated Site Cleanup	430.0
Peninsula Greenhouse, Soldotna - Contaminated Site Cleanup	178.0
Forward Pad - Contaminated Site Cleanup	490.0
Childs Pad - Contaminated Site Cleanup	300.0
Tok River Campground - Contaminated Site Cleanup	38.0
Boniface/Northern Lights, DeBarr Contaminated Site Assessment	250.0
DOT/PF Maintenance Station, Soldotna - Contaminated Site Cleanup	157.0
Chatham Strait Fish Company, New Chenega - Contaminated Site Ceanup	30.0
University of Alaska, Anchorage, Soldotna Fire Training - Contaminated Site Cleanup	320.0
Extend to FY 96 the FY 92 Appropriation for Ferries with Oil Spill Response Capability	Balance
Other Agency Subtotal:	9,930.3
Total SLA 93 Appropriations:	52,710.3

Section IV. Division of Spill Prevention and Response

Primary Responsibilities

* Serve as the State's lead agency for the prevention, control, containment, and cleanup from the release of oil or hazardous substances to the air, land, or water.

* Oversee the cleanup of oil and hazardous substance spills by the responsible party to ensure an adequate cleanup is completed.

* Maintain term contracts with professional response action contractors to control, contain or cleanup spills in cases where there is no responsible party or the cleanup is inadequate.

* Certify that companies producing, storing, or transporting large volumes of oil have demonstrated the financial ability to respond in damages from a spill.

* Certify industry spill prevention and response plans and register response action contractors listed in the plans .

* Conduct drills and inspections to test approved industry spill prevention and response plans.

* Register all commercial underground fuel storage tanks and ensure they are tested for leaks.

* Provide financial assistance to owners and operators seeking to upgrade their underground storage tanks.

* Investigate sites contaminated with oil or hazardous substances by past poor practices to determine their potential threat to public health and the environment and determine the priority in which they should be cleaned by the responsible party.

* Prepare and drill the State and Regional Master Plans for State government response to oil and hazardous substance releases.

* Provide technical and financial assistance to local communities for oil and hazardous substance spill prevention and response.

DIVISION OF SPILL PREVENTION AND RESPONSE

WHAT KIND OF SPILLS?

* The actual or imminent uncontrolled release of oil or hazardous substances to Alaska's air, water, land or groundwater.

* The immediate release of all or some of the contents of a storage tank, pipeline, vessel, or cylinder.

* The ongoing release from a leaking storage tank, pipeline, vessel or cylinder.

* An emergency where an actual or imminent discharge of oil or hazardous substance poses an immediate threat presents an imminent or present threat to the public health or welfare, or the environment.

EXAMPLES:

* A slow, ongoing leak from an underground fuel storage tank used for gasoline or home heating oil.

* A site where drums of hazardous substances have been buried.

* An immediate release from a chlorine gas cylinder at a community sewage treatment plant.

* A release of diesel fuel from a sinking fishing vessel.

* A long-forgotten burial pit for low level radioactive waste.

* A release of PCB from leaking transformers found at a remote military site.

* A site contaminated with lead from past industrial activities.

* A release of methanol from a railroad car that has rolled off its track.

* A release of crude oil from a supertanker run aground on Bligh Reef in Prince William Sound.

DIVISION OF SPILL PREVENTION AND RESPONSE
HOW ARE SPILLS PREVENTED?

* Educating facility and vessel operators on methods for reducing the risks of an uncontrolled release from a facility producing, transporting or storing oil or hazardous substances.

* Reviewing facility operation plans to identify where the possibility of spills can be reduced and how best to prepare for stopping a spill and limiting its spread.

* Enforcing standards for the design, construction, operation and maintenance of facilities and vessels which have been proven to prevent, or reduce the amount of an oil or hazardous substance release.

* Responding to reports of imminent threats of pollution before the spill occurs to ensure action is taken to remove or reduce the threat.

EXAMPLES:

* Testing underground tanks for leaks and providing financial assistance to upgrade underground storage tanks to national spill containment and leak detection standards.

* Reviewing and approving industry oil discharge prevention and response plans.

* Requiring secondary containment structures around above ground storage tanks, containment booms around tankers during oil cargo transfers, and leak detection and system shut-down measures for pipelines.

* Inspecting the structural integrity of facilities that produce, transport, or store oil or hazardous substances.

* Conducting response drills to practice who will do what in the event of a spill.

* Conducting hazards analysis to measure the risk of oil and hazardous substance releases to local communities.

* Requiring crude oil tankers in Prince William Sound to be escorted by emergency assistance vessels.

* Removing abandoned drums of hazardous substances found alongside of roadways or other properties without the owners knowledge or consent.

DIVISION OF SPILL PREVENTION AND RESPONSE
WHAT DOES RESPONSE MEAN?

- Stopping and containing an ongoing release of oil or hazardous substance.
- Investigating the cause of the spill and identifying the responsible party for the spill.
- Ensuring responsible parties adequately stop, contain and clean up spills.
- Monitoring the adequacy of containment, cleanup and disposal by the responsible party.
- Ensuring that cleanup operations are initiated in cases where there is no responsible party or the responsible party's cleanup actions are inadequate.
- Determining the volume of oil or hazardous substance spilled and collecting samples to determine what was spilled.
- Measuring the extent of contamination to the air, land or water.
- Pursuing cost recovery actions against the responsible party to reimburse the State's response expenses and damages to State resources.

EXAMPLES:

- Providing technical and financial assistance to the owner of a gasoline station to cleanup soil contaminated from a leaking underground storage tank.
- Contracting with a professional response action contractor to cleanup contamination from a hazardous substance spill that happened in the past, or for the proper containment and disposal of leaking containers or drums when the responsible party can not be found.
- Participating with other State and federal agencies, and the responsible party in the Incident Command System to manage response operations carried out by the responsible party.
- Overseeing the Department of Defense cleanup of contamination on military bases.
- Providing technical and financial assistance to a local fire department that is responding to an emergency release of Chlorine from a municipal sewage treatment plant.

INDUSTRY PREPAREDNESS PROGRAM

GOALS AND SERVICES

GOALS

Increase industry prevention efforts and ensure industry response capabilities.

SERVICES

- Review and approve spill prevention and response contingency plans for oil facilities and vessels.
- Coordinate with appropriate state and federal agencies to ensure complimentary rather than duplicative review policies and procedures.
- Take enforcement action on regulated vessels or facilities operating without an approved plan.
- Register qualified Response Action Contractors listed in spill prevention and response contingency plans.
- Conduct announced or unannounced spill drills to test, evaluate and improve approved spill response contingency plans.
- Inspect facilities and vessels to verify compliance with approved spill prevention and response contingency plans.
- Review financial responsibility applications and issue certificates of financial responsibility.
- Track all operator accounts to verify timely submission of applications, renewals, and affidavits.
- Take corrective or enforcement action as necessary to ensure that no regulated vessel or facility operates without approved proof of financial responsibility.

INDUSTRY PREPAREDNESS PROGRAM

ACCOMPLISHMENTS

- Every regulated operation -- nearly 400 vessels, facilities, and pipelines -- received technical assistance in complying with new spill prevention and contingency planning regulatory requirements.

- Every regulated operation in the State submitted revised spill prevention and response plans demonstrating upgraded prevention practices and response capability.

- Over 30 enforcement actions have been taken to ensure compliance with the stricter standards.

- Spill prevention and response plans for approximately 20% (35) of the highest-risk operations in the State have been approved. Of the remaining plans approximately 73% (102) are nearing approval, and 27% (39) are awaiting operator completion of missing information.

- Financial Responsibility Certificates have been issued for every regulated operation in the State.

- Regulations implementing a State registration program for oil spill primary response action contractors took effect September 25, 1993.

- 50 vessel and 150 facility inspections were conducted to verify compliance with spill prevention and response requirements. 64 discharge exercises were conducted to ensure the preparedness of regulated operators and their ability to implement their prevention and response plan.

- Signed an agreement with California, Oregon, Washington and British Columbia to form an Oil Spill Task Force for working on West Coast spill prevention and response issues.

- Resolved a number of oil pollution prevention and response regulatory issues, including plan format, noncrude response planning standards, temporary storage tank and tank inspector requirements, effective storage capacity criteria, and prevention credits.

CONTAMINATED SITES REMEDIATION PROGRAM

GOALS AND SERVICES

GOALS

Reduce risk to public health and the environment from hazards posed by sites contaminated by past improper disposal or discharges of hazardous substances.

Pursue cost effective solutions to contaminated site problems which will give the greatest overall reduction in risk for each dollar spent.

SERVICES

- Identify and assess sites to determine their potential threat to public health and the environment and rank sites to determine the priority in which they should be addressed.

- Adopt regulations for the assessment and cleanup of contaminated sites.

- Perform preliminary site assessments on contamina ites to determine if no further action is necessary or establish the priority for urther site assessment and cleanup activities.

- Ensure that contaminated sites undergo investigation and clean up in a priority order.

- Conduct responsible party searches and notifications on contaminated sites as necessary prior to expending Response Fund dollars.

- Maintain a current list of high priority orphan and responsible party contaminated sites to be assessed or cleaned up using DEC term contractors.

- Issue and maintain term contracts for contaminated site cleanup or assessment work.

- Prepare scopes of work and provide project oversight for orphaned site cleanups or site assessments.

- Provide oversight and document review for responsible party cleanups.

- Prepare community agreements to allow consideration of community values in the prioritization of contaminated site work and sharing of site cleanup information.

CONTAMINATED SITES REMEDIATION PROGRAM

ACCOMPLISHMENTS

- Provided oversight and technical assistance for assessment and/or cleanup of over 600 responsible party contaminated sites.

- Completed cleanup at the Alaska Battery Enterprises Superfund site.

- Convened an advisory working group of public and private stakeholders to develop program regulations that will define the remediation process, establish cleanup goals, and provide incentives for voluntarily cleanup.

- Established guidance to ensure that potentially responsible parties associated with high priority contaminated sites are contacted and asked to take responsibility for cleanup of contamination prior to expending the Response Fund.

- A total of 150 sites have been closed and unlisted from the database inventory. 1051 sites remain in the database inventory.

- Provided technical and contracting assistance to four State agencies participating in cleanup of 33 contaminated sites on State-owned lands.

- Prepared FY 94 and FY 95 budget proposals to clean up high priority contaminated sites which have no owners willing to assume cleanup responsibilities. In FY 94, $900,000 was allocated to address 11 sites and for FY 95 a proposed budget of $900,000 was submitted for eight sites.

- Maintained term contracts with private contractors for assessment and cleanup of contaminated sites which have no owners willing to assume cleanup responsibilities.

- Completed negotiations for a three party interagency agreement between the EPA, Department of Defense and the Department for Naval Air Station on Adak and Elmendorf Air Force Base, and began negotiations for Fort Richardson. These agreements ensure that contamination problems other than Superfund sites will be addressed.

- A "no further action" status was given to 23 federal facility sites that were determined to not need further investigation. Removal or remedial actions reduced the threat to human health and the environment at 47 federal facility sites. 15 Public Meetings were held to encourage public involvement in federal facility cleanup activities.

GOVERNMENT PREPAREDNESS AND RESPONSE PROGRAM
GOALS AND SERVICES

GOALS

Carry out the State's responsibilities to protect public health and the environment from the potential impacts of oil and hazardous substance releases.

SERVICES

- Establish minimum safety and technical training standards for DEC response team members and schedule safety training courses to comply with OSHA and the Department's minimum safety standards.

- Investigate all significant spills to determine the cause, responsible party, extent of contamination and impact on public health or the environment.

- Monitor the responsible party's response and ensure cleanup either through the responsible party or through Department contractors is carried out to the Department's satisfaction.

- Recover state costs for responding to oil and hazardous substance spills.

- Develop effective local, regional and statewide response plans which direct a coordinated governmental response to oil and hazardous substance releases.

- Prepare agreements with other State, federal and local agencies necessary to implement State, regional and local contingency plans.

- Schedule, plan, design, execute and evaluate drills to practice operating the State, regional and local contingency plans.

- Maintain a DEC spill response equipment inventory and database, with procedures for acquisition, management, and maintenance.

- Maintain an up-to-date spill response directory and 24 hour spill response number.

- Issue and maintain term contracts for oil and hazardous substance spill cleanup work.

- Take appropriate enforcement actions in consultation with the Attorney General's office on civil and criminal penalties.

- Maintain a statewide spills database to analyze spill data, trends and causes.

GOVERNMENT PREPAREDNESS AND RESPONSE PROGRAM

ACCOMPLISHMENTS

- During FY 93, received 2,185 oil spill reports and 411 reports of hazardous substance spills.

- Responded to 724 oil spills and 85 hazardous substance spills.

- Completed the State Master Plan for oil and hazardous substance spill response which was approved by the State Emergency Response Commission.

- Established and maintained spill response resources:

    * Awarded term contracts to VRCA, Northwest Enviroservice and Martec for emergency oil spill response services.
    * Maintained, calibrated, inventoried and kept all response equipment ready for deployment on a 24 hour emergency basis.
    * Developed a statewide Department equipment database to inventory and track the status of all response gear.
    * Developed a draft response agreement with Alaska Clean Seas to be used as prototype with other spill response cooperatives in Alaska.
    * Maintained an updated statewide Callout List of State and federal agency spill response personnel, for use by the Alaska State Trooper dispatchers who operate an emergency 24 hour spill notification telephone number.

- Awarded a contract to North Slope Telecom to develop a statewide telecommunications plan for emergency response to oil and hazardous substance releases.

- Completed an OSHA required Safety and Training Program for Department response staff.

- Awarded a contract to demonstrate nearshore spill response strategies utilizing State equipment and local volunteers.

- Developed a draft Local Response Agreement for reimbursing municipalities who assist the State On Scene Coordinator in the containment, control and cleanup of oil and hazardous substance releases.

- Designed a command and control system as part of a new Alaska Marine Highway vessel for use in responding to major offshore oil spills.

Table A
FY93 EXPENDITURES AND OBLIGATIONS

CURRENT YEAR AUTHORIZATION	Authorized	Expended	Obligated	Total Expended & Obligated
DEC				
Spill prevention planning and management	6,021.2	4 964.2	1,026.4	5,990.6
State Emergency Response Commission	350.8	177.5	170.8	348.3
Local emergency planning committees	1,200.0	833.4	152.5	985.9
Spill Response Office	1,318.1	1,122.4	195.7	1,318.1
Division of Emergency Services/Response Depots and Corps	800.0	156.0	644.3	800.3
Hazards Analysis	177.3	0.0	177.3	177.3
Geographic Information System	689.3	91.6	595.2	686.8
Contaminated Sites Program	3,528.6	1,919.2	1,352.0	3,271.2
Exxon Valdez Litigation	2,968.0	1,968.0	0.0	1,968.0
Exxon Valdez Clean-up and Cost Recovery	350.0	243.0	83.0	326.0
Arctic Marine Resources Commission	100.0	90.0	10.0	100.0
Spill Reserve	23,656.7	209.4	86.8	296.2
Nearshore Strike Team Demonstration Projects	1,200.0	3.3	1,193.6	1,196.9
Hazardous Substance Spill Technology Review Council	420.0	269.2	76.6	345.8
Extend to FY 93 the FY 92 Allocation for Site Investigation, Safety, Cleanup, and Cost Recovery	Balance	785.0	433.1	1,218.1
Other Agency				
Citizens' Oversight Council on Oil and Other Hazardous Substar	237.3	88.3	6.6	94.9
Mt. Edgecumbe - Contaminated Site Cleanup	430.0	109.0	3.0	112.0
Peninsula Greenhouse, Soldotna - Contaminated Site Cleanup	178.0	61.8	38.9	100.7
Forward Pad - Contaminated Site Cleanup	490.0	22.7	2.0	24.7
Childs Pad - Contaminated Site Cleanup	300.0	16.7	1.1	17.8
Tok River Campground - Contaminated Site Cleanup	38.0	0.7		0.7
Boniface/Northern Lights, DeBarr Contaminated Site Assessmen	250.0	0.0	15.4	15.4
DOT/PF Maintenance Station, Soldotna - Contaminated Site Cle	157.0	11.6		11.6
Chatham Strait Fish Company, New Chenega - Contaminated Si	30.0	0.0	30.0	30.0
University of Alaska, Anchorage, Soldotna Fire Training - Contan	320.0	88.4		88.4
Ferries with Oil Spill Response Ability	500.0	1.5		1.5
Fund Transfer to AMHS Vessel Replacement Fund	7,500.0	7,500.0		7,500.0
Subtotal	53,210.3	20,732.9	6,294.3	19,527.2
PRIOR YEAR AUTHORIZATION				
DEC				
State and Regional Contingency Planning		49.7		49.7
Spill Prevention, Response, Planning, Safety, Cleanup et.al.		421.6		421.6
State Emergency Response Commission		8.7		8.7
Local Emergency Planning Committees		206.3	84.6	290.9
Response Office, Depots, and Corps		1,384.6		1,384.6
Hazardous Substance Spill Technology Review Council		6.1		6.1
Kenai Cleanup Project		177.9		177.9
Exxon Valdez-Spill Cleanup		249.6		249.6
Exxon Valdez-Assessment and Restoration		47.4		47.4
Exxon Valdez-Litigation		735.5		735.5
Spill Reserve		59.1		59.1
Prince William Sound Regional Citizens' Advisory Council		10.2	98.4	108.6
Oil Spill Contingency Plans/Requirements		15.0		15.0
State & Regional Contingency Plan		5.0		5.0
Spill Response, Containment, et.al.		71.0		71.0
Exxon Valdez Project			309.4	309.4
Other Agency				
Natural Resource Damage Assessment		59.4		
Exxon Valdez - Assessment & Restoration		359.6		
Subtotal		3,866.7	492.4	4,359.1
Grand Total FY 93	53,210.3	24,599.1	6,786.7	31,385.8

Table B
OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
Balance Sheet
June 30, 1993

	June 30, 1993	June 30, 1992
Assets		
Cash	36,447,489.35	33,062,827.01
Accounts Receivable	2,338,795.44	2,339,939.90
Advance-Univ. of Alaska	6,633.49	0.00
Total Assets	38,792,918.28	35,402,766.91
Liabilities		
Accrued Payable	265,023.23	1,082,600.16
Warrants Outstanding	130,329.39	275,408.17
Total Liabilities	395,352.62	1,358,008.33
Fund Balance		
Reserve for Encumbrances	6,786,808.10	13,911,537.91
Reserve for PY Authorizations	2,187,788.18	1,822,446.72
Reserve for Restricted Revenue	0.00	(5,641,109.99)
Unreserved	29,422,969.38	23,951,883.94
Total Fund Balance	38,397,565.66	34,044,758.58
Total Liabilities and Fund Equity	38,792,918.28	35,402,766.91

The Response Fund also has equipment assets which have a total purchase value of $1,313,305.

Note, the Unreserved Balance, minus the Accounts Receivable, represents the cash balance available for appropriation.

Table C
Summary of OHSRRF Funding Sources and Deposits to Oil Surcharge Account
1986-1993
(In Thousands)

Response Fund Source of Funding

Fiscal Year	General Fund Program Receipts	General Fund Mitigation Revenue	Oil Surcharge Revenue	Other General Fund	Total
FY 87		158.7		522.0	680.7
FY 88		304.3		825.0	1,129.3
FY 89	10,000.0	136.5		10,500.0	20,636.5
FY 90	20,000.0	197.6		32,600.0	52,797.6
FY 91		1,696.1	27,000.0		28,696.1
FY 92		30.1	28,500.0		28,530.1
FY 93		1,823.3	27,000.0		28,823.3
FY 94		697.0	26,700.0		27,387.0
Total:	30,000.0	5,033.6	109,200.0	44,447.0	188,680.6

Revenue Collected Oil Surcharge Account

FY 90	26,932.4
FY 91	27,965.2
FY 92	28,669.0
FY 93	26,142.6
Total:	109,709.2

TABLE D

FY 93 Mitigation Account Summary
(In Thousands)

Summary of Revenue by Type

Site	Cost Recovery	Penalty	Settlement	Interest	Total
Alaska Pulp Corporation (Sitka Pulp Mill)		2.9			2.9
Anchor Point - Cost Recovery	28.5				28.5
Anchorage Clean Sweep			3.8		3.8
Arco Swanson River Settlement			7.3		7.3
Chevron Kenai Pipeline Oil Spill	34.9		54.9		89.8
Chilbo San #6 Settlement				93.0	93.0
Cook's Sterling Tesoro Settlement			9.0		9.0
East Sound (NPLF)	13.3				13.3
Exxon Valdez Settlement			12,314.9		12,314.9
F/V Terminator/Comet			12.0		12.0
Hyundai #12	11.2		3.0		14.2
K&W Trucking	8.1				8.1
Klawock Cannery			17.5		17.5
Poppy Lane Gravel Pit	19.1				19.1
Poppy Lane Treatment Facility (Marathon) Fine		60.0			60.0
Sitka Air Monitoring (APC) Cost Recovery	55.5		7.4		62.9
Southcentral Communications	0.1				0.1
Swan Lake - Cost Recovery	0.9				0.9
T/V Arco Juneau - Settlement			5.0		5.0
T/V Arco Sag River - Settlement			5.0		5.0
Unisea Facility Fine		11.2			11.2
Total	171.6	74.1	12,439.8	93.0	12,778.5

Note that although the above deposits have been made to the Mitigation Account, they may not have been appropriated in total to the Response Fund. For amounts appropriated to the Response Fund, please see Table C.

Table E
OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
Summary of FY 94 Appropriations

Appropriations to the Fund:

From General Fund	26,700.0
July 1, 1993 Balance of Mitigation Account Fund	687.0
Total Appropriated to the Fund for FY 1994	27,387.0

Appropriations from the Fund:

Agency	Description	Authorized
ADEC	Administrative Services	740.6
ADEC	Environmental Quality Director's Office	123.0
ADEC	Environmental Quality Monitoring & Lab Support	186.5
ADEC	Spill Prevention & Response Director's Office	976.3
ADEC	Spill Prevention & Response Contaminated Sites	2,839.7
ADEC	Spill Prevention & Response Storage Tank Asst. Prog.	108.0
ADEC	Spill Prevention & Response Industry Preparedness	2,311.1
ADEC	Spill Prevention & Response Gov't. Preparedness	4,082.3
ADEC	Spill Prevention & Response - Response Fund Admin.	2,569.4
ADEC	Spill Reserve (Note 1)	34,066.1
	ADEC Subtotal:	48,003.0
DMVA	Emergency Operation Center Enhancements	430.0
DMVA	Emergency Operations Center Enhancements	648.0
DNR	Childs Pad, Deadhorse Contaminated Site Cleanup/Assessment	290.0
DNR	Forward Pad, Deadhorse Contaminated Site Cleanup/Assessment	200.0
DNR	Soldotna, Peninsula Greenhouse Contaminated Site Cleanup/Assessment	41.0
DNR	McGrath Airport Fuel/Retardant Facility Contaminated Site Assessment	123.0
DOT/PF	Kodiak Airport Contaminated Site Cleanup	107.0
DOT/PF	Unalaska Airport Contaminated Site Assessment	92.0
DOT/PF	Aniak Airport Contaminated Site Cleanup	127.0
DOT/PF	Tudor Road Maintenance Complex Contamination Assessment/Cleanup	117.0
DOT/PF	St. Mary's Maintenance Station Contamination Assessment & Cleanup	47.0
DOT/PF	Peger Road Maintenance Station Contamination Assessment & Cleanup	170.0
DOT/PF	Thompson Pass Maintenance Facility Contamination Assess. & Cleanup	60.0
DOT/PF	Juneau Maintenance Station Contamination Assessment & Cleanup	22.0
UAF	UAF-Contaminated Site Assessment and Cleanup	300.0
	Other Agency Subtotal:	2,774.0
	Total Appropriated from the Fund for FY 1994:	50,777.0

Note 1: The appropriation for spill reserve was established prior to the end of the reappropriation period. As a result, the authorization was based on an estimate.

Table F
Oil & Substance Release Response Fund
Summary of Community Involvement
Fiscal Year 1993

		1993 Expenditures
Local Emergency Planning Commission Payments:		
City & Borough of Sitka		75,001.00
Ketchikan Gateway Borough		75,000.00
Kenai Peninsula Borough		80,000.00
Municipality of Anchorage		9,813.00
City of Kodiak		60,000.00
City of Valdez		9,800.00
Aleutians East Borough		50,000.00
City of Haines		62,797.00
City & Borough of Yakutat		45,000.00
Denali Borough		21,500.00
City & Borough of Juneau		75,000.00
City of Thorne Bay		11,250.00
Matanuska Susitna Borough		68,640.00
City of Unalaska		38,250.00
Northwest Arctic Borough		33,250.00
City of Petersburg		57,604.00
City of Haines		7,203.00
Lake & Peninsula Borough		49,000.00
Copper River Emergency Medical		7,052.73
	Total:	836,160.73
GIS Geographic Information Systems Payments:		
B.C. Ministry		2,501.30
Operating Related MOU's:		
Chenega Corporation		4,000.00
Prince William Sound Science Center		49,500.00
	Total:	53,500.00

Table G
FY93 Contractual Payments Exceeding $20,000

Contractor	FY 93 Payments	Purpose
Direct OHSRRF Contractual Payments:		
IPA John Defina	62,219.53	N.J. Dept of Env Protection
Ecology & Environment	27,916.00	Cabin Lake Road Abandoned Drums
Martech USA	153,231.25	Dresser Atlas
Martech USA	44,113.84	Aniak Sewer Spill
Martech USA	28,786.46	Klawock Chlorine Spill
Northwest Enviroservice	159,166.92	Forward Pad Site Cleanup
Shannon & Wilson	97,185.11	Coastal Drilling Assess. Phase II
Arctic Marine	90,000.00	Arctic Marine Resources Commission
Arthur D. Little	88,242.87	Hazardous Analysis of Cook Inlet
Environmental Health Science	118,394.69	Anchorage Air Monitoring
Environmental Management	120,367.86	Prudhoe Bay HAZ Analysis
Exxon Contractual Payments:		
Richard Podolsky, PHD	41,495.00	Remote Sensing Marbled Murrelet
AIDEA Lease	30,614.49	OSRO Office Lease
Operating Contractual Payments:		
Belmar Management Services	21,128.61	Structural Integrity Crude Oil/Cook Inlet

Oil & Hazardous Substance Release Response Fund
Summary of Payments Over $10,000.00
Fiscal Year 1993

Vendor	FY 93 Expenditures	Purpose
Direct OHSRRF		
City of Aniak	10,266.40	Equipment Rental for Hazardous Waste Response
Environics	11,450.00	Computerized Multigas Calibrator
Analytical Resources	18,785.00	Laboratory testing for Neka Bay
City of Klawock	13,562.45	Expenditure reimbursement for Klawock Cannery cleanup
Graseby Nutech	25,264.36	Automated Cryogenic Concentrator
Bristol Bay Borough	16,290.52	King Salmon Orphan Drum Site
Mark V. Zodiaz	18,300.00	Boat Repairs/Exxon Valdez
Kenwyn George	16,110.00	Software
Operating		
Office Place	15,000.00	Herman Miller Panels
Microage Computer	13,690.00	Data Processing Equipment
Computerland	23,228.90	12 Compaq Computers
Eagle Enterprises Co.	17,250.00	Gas monitor combustible full enclosure suit w/hood

Table I
PERSONAL SERVICES EXPENDITURES
FY93 Summary

Site Investigation, Safety & Cleanup	4,242.87
Contaminated Sites Program	1,225,736.70
Exxon Valdez Clean up & Cost Recover	150,847.06
Spill Reserve	13,106.28
Administrative Services	637,054.05
SPAR Directors Office	570,496.67
Spill Response Office	10,899.28
Spill Prevention, Planning & Mgmt.	3,858,363.71
	6,470,746.62

Please see the following pages for a detailed listing.

PCN	JOB TITLE	AMOUNT
18-7417S	Environmental Lab	3,406.88
18N615	Graduate Untem II	835.99
18-7010	Environmental Conservation Manage:	8,525.03
18-7310	Environmental Conservation Manc	42,259.17
18-7400	Environmental Specialist I	29,537.67
18-7412	Environmental Specialist	850.97
18-7454	Administrative Assistant III	2,004.18
18-7470	Environmental Specilaist	21,188.91
18-7475	Environmental Engineer Asst. I	77.66
18-7485	Environmental Engineer Asst. I	2,890.68
18-7498	Environmental Specialist	5,212.91
18-7668	Environmental Specialist	539.44
18-7006	Environmental Engineer Assoc.	(106.44)
18-7360	Environmental Specialist	(262.50)
18-7524	Environmental Specialist	(98.12)
18-7607	Environmental Specialist II	12,593.08
18-7625	Clerk Typist III	6,048.85
18-N116	Radio Dispatcher	3,740.80
18-N157	Environmental Technician IV	19,698.59
18-N222	Environmental Specialist III	43,606.44
18-N225	Environmental Specialist	18,764.95
18-N309	Environmental Specialist	27,190.12
18-N315	Environmental Specialist I	1,391.50
18-X012	Restoration Specialist	8,743.34
18-X014	Analyst Programmer	318.6[illegible]
18N143	Environmental Specialist	(4,002.83)
18N208	Environmental Technician	1,687.88
18N335	Environmental Specialist	13,622.[illegible]7
18X013	Publication Information	(2,289.49)
18-7626	Investigator III	2,446.26
18-7465	Environmental Conservation Manc	3,199.37
18-7585	Environmental Specialist	142.72
18-7585	Environmental Specialist	141.41
18-7579	Environmental Specialist	480.48
10-9195	Forester I	1,392.36
18-7572	Environmental Specialist	2,031.77
18-7580	Environmental Specialist	1,638.44
18-7606	Clerk Typist III	12.26
18-7658	Risk Mgmt. Officer	1,592.03
18-7470	Environmental Specilaist	29.18
18-7433	Management Analyst	463.32
18-7035	Division Director	21,343.21
18-7035	Division Director	1,856.14
18-7046	Information Officer	864.07
18-7052	Publications Specialist	9,953.00
18-7053	Personnel Specialist I	17,167.05
18-7054	Accounting Clerk III	12,932.63
18-7055	Secretary II	8,755.97
18-7062	Procurement Specialist	17,620.77
18-7086	Accounting Technician II	15,916.72
18-7117	Accounting Technician II	14,617.82
18-7149	Analyst Programmer	13,726.89
18-7162	Accounting Supervisor II	22,871.37
18-7195	Accounting Technician II	13,236.94
18-7221	Mail Clerk Carrier	13,877.74

PCN	JOB TITLE	AMOUNT
18-7226	Analyst Programmer	9,161.50
18-7258	Analyst Programmer	20,508.20
18-7331	Personnel Specialist	(218.07)
18-7339	Analyst Programmer	23,042.65
18-7404	Personnel Assistant I	14,239.77
18-7406	Administrative Officer	28,110.72
18-7410	Clerk Typist III	282.53
18-7410	Clerk Typist III	10,567.07
18-7440	Accounting Clerk III	12,700.01
18-7462	Humane Resources Manager	25,503.18
18-7471	Analyst Programmer	19,448.87
18-7481	Environmental Specialist	21,109.10
18-7495	Procurement Specialist	17,607.57
18-7500	Accounting Clerk II	11,687.75
18-7539	Personnel Assistant I	15,803.05
18-7542	Clerk III	7,616.36
18-7543	Analyst Programmer	18,400.36
18-7547	Accounting Technician I	14,201.32
18-7553	Accounting Technician II	45,841.15
18-7628	Personnel Assistant I	8,973.26
18-7643	Accounting Technician III	19,933.53
18-7646	Accountant III	20,833.32
18-7657	Admimistrative Asst. II	15,653.36
18-7659	Publications Specialist	24,425.89
18-N617	Clerk Typist III	4,184.34
18-N622	Student Intern I	1,993.36
18-N631	Personnel Assistant I	2,229.37
18-N634	Secretary II	5,328.68
25-0074	Asst. Dir./Financial Manager	31,887.16
18-7620	Administrative Officer I	195.00
18-7055	Secretary	10.22
18-7331	Personnel Specialist	25.83
18-7408	Risk Management Officer	43,179.81
18-7435	Division Director	61,142.71
18-7455	Administraitive Asstitant I	18,287.00
18-7455	Administrative Assistant I	17,679.29
18-7519	Administrative Assistant II	37,525.41
18-7524	Environmental Specialist	55,795.71
18-7545	Environmental Conservation Manc	55,825.73
18-7552	Administrative Officer	64,866.44
18-7554	Administrative Assistant III	45,152.08
18-7595	Environmental Specialist	(310.00)
18-7596	Analyst Programer	19,055.48
18-7596	Analyst Programmer	26,707.71
18-7632	Administrative Assistant I	22,411.[illegible]1
18-7634	Secretary I	18,104.21
18-N623	Student Intren III	6,801.78
18-N624	Analyst Programmer	23,163.97
18-7347	Internal Auditor I	16,032.09
18-7620	Administrative Officer I	39,040.06
187525	Environmental Specialist	(11.70)
18-7526	Environmental Specialist	2,514.98
18-7527	Environmental Specialist	3,311.64
18-7532	Environmental Specialist	2,781.30
18-7533	Environmental Specialist III	2,303.06

PCN	JOB TITLE	AMOUNT
18-7026	Environmental Specialist	46,986.77
18-7043	Clerk Typist III	2,818.74
18-7051	Environmental Conservation Manager	0.60
18-7080	Environmental Conservation Manc	21,332.15
18-7138	Environmental Engineer Assoc.	2,989.78
18-7139	Environmental Conservation Manc	14,682.08
18-7147	Environmental Specialist	1,265.36
18-7203	Field Office Asst.	6,706.65
18-7232	Field Office Asst.	7,063.76
18-7286	Clerk Typist III	5,221.45
18-7292	Environmental Specialist	2,322.44
18-7317	Environmental Conservation Manc	13,429.71
18-7321	Environmental Specialist	9,329.66
18-7427	Environmental Specialist	56,197.72
18-7465	Environmental Conservation Manc	16,327.41
18-7473	Environmental Technician	6,564.09
18-7479	Environmental Conservation Manc	3,361.16
18-7486	Environmental Specialist	10,834.32
18-7527	Environmental Specialist	80,042.31
18-7578	Environmental Specialist	26,610.79
18-7579	Environmental Specialist	52,896.94
18-7582	Environmental Specialist	57,200.23
18-7624	Investigator III	750.95
18-7626	Investigator III	2,328.25
18-7652	Administartive Assistant II	11,571.70
18-7005	Environmental Conservation Manc	27,198.34
18-7064	Administrative Asst. III	13,559.07
18-7075	Environmental Specialist	57.23
18-7081	Environmental Specialist	60,513.38
18-7108	Environmental Specialist	21,116.22
18-7133	Environmental Conservation Manc	19,299.53
18-7137	Environmental Conservation Manc	15,348.63
18-7140	Environmental Conservation Manc	22,013.22
18-7142	Environmental Specialist III	7,418.11
18-7155	Planner III	25,636.09
18-7156	Environmental Specialist	408.74
18-7157	Environmental Engineer Assoc.	15,379.89
18-7158	Environmental Specialist	321.10
18-7178	Clerk Typist III	15,575.81
18-7180	Field Office Assistant	8,600.43
18-7181	Clerk Typist II	1,135.13
18-7183	Document Processor	113.59
18-7186	Clerk Typist II	13,807.36
18-7186	Clerk Typist II	7,379.41
18-7186	Clerk Typist II	4,101.54
18-7201	Clerk Typist III	5,469.75
18-7219	Environmental Health Officer	61.76
18-7250	Clerk Typist III	594.52
18-7252	Accounting Clerk III	11,460.53
18-7324	Environmental Engineer I	8,080.59
18-7327	Environmental Engineer Assistant I	763.80
18-7329	Environmental Angineer Asst. I	318.28
18-7331	Personnel Specialist	138.99
18-7352	Environmental Engineer I	7,350.05
18-7354	Environmental Engineer Assoc.	1,945.58
18-7355	Clerk Typist III	3,140.34
18-7356	Environmental Specialist I	1,316.51
18-7366	Environmental Specialist	875.60
18-7368	Clerk Typist III	4,300.07
18-7389	Environmental Engineer Asst. I	590.76
18-7396	Environmental Specialist	2,663.51
18-7415	Environmental Specialist	542.76
18-7439	Clerk Typist III	2,703.94
18-7444	Hydrologist II	2,258.64
18-7457	Information Officer	1,617.55
18-7459	Environmental Specialist	2,009.87
18-7461	Environmental Engineer Asst.	4,491.30
18-7472	Environmental Specialist	59,581.73
18-7476	Environmental Engineer Assoc.	1,395.84
18-7487	Supply Technician	23,101.30
18-7489	Environmental Engineer	13,702.68
18-7491	Environmental Specialist	17,903.12
18-7491	Environmental Specialist	19,345.08
18-7492	Environmental Specialist	17,765.62
18-7493	Environmental Specialist	1,183.31
18-7533	Environmental Specialist III	37,465.14
18-7541	Environmental Specialist	65.94
18-7541	Environmental Specialist	95.50
18-7546	Administrative Assistant I	1,838.27
18-7551	Administrative Assistant II	11,078.53
18-7569	Environmental Specialist I	53,065.63
18-7571	Environmental Specialist	56,422.21
18-7572	Environmental Specialist	49,724.70
18-7574	Environmental Specialist	61,117.09
18-7575	Environmental Specialist	59,518.21
18-7580	Environmental Specialist	41,254.82
18-7582	Environmental Specialist	1,576.88
18-7583	Environmental Specialist	53,319.68
18-7585	Environmental Specialist	49,673.63
18-7606	Clerk Typist III	19,042.50
18-7606	Clerk Typist III	7,018.39
18-7607	Environmental Specialist II	58,806.85
18-7609	Environmental Specialist	74,350.45
18-7614	Environmental Specialist	6,210.47
18-7626	Investigator III	53,465.04
18-7662	Environmental Engineer Assoc.	106.44
18-N580	Student Intern III	9,706.96
18N549	College Intern III	94.24
18-7010	Environmental Conservation Manager	(537.68)
18-7063	Clerk Typist III	7,672.15
18-7113	Environmental Conservation Manager	17,706.98
18-7134	Clerk Typist III	2,798.20
18-7134	Clerk Typist III	496.36
18-7208	Administrative Assistant III	10,273.62
18-7227	Clerk Typist III	3,017.47
18-7264	Environmental Specialist	63,393.93
18-7271	Environmental Engineer I	469.70
18-7279	Clerk Typist II	3,112.53
18-7310	Environmental Conservation Manc	6,834.80
18-7318	Clerk Typist III	1,215.22
18-7319	Clerk Typist III	3,916.86
18-7330	Environmental Engineer Assoc.	10,824.03
18-7331	Personnel Specialist	99.33
18-7358	Clerk Typist III	3,466.90
18-7400	Environmental Specialist I	20,947.34

PCN	JOB TITLE	AMOUNT
18-7431	Environmental Specialist III	469.66
18-7454	Administrative Assistant III	4,767.51
18-7470	Environmental Specilaist	26,344.26
18-7485	Environmental Engineer Asst. I	1,260.05
18-7497	Environmental Engineer Asst I	17,555.85
18-7498	Environmental Specialist	2,006.57
18-7528	Environmental Specialist	455.22
18-7532	Environmental Specialist	60,148.68
18-7566	Environmental Specialist	69,550.88
18-7568	Environmental Specialist	62,895.69
18-7573	Environmental Specialist	49,776.10
18-7599	Environmental Engineer Assoc.	62,659.42
18-7605	Clerk Typist III	32,467.63
18-7624	Investigator III	14,188.84
187293	Environmental Specialist	286.03
18-7121	Environmental Engineer	12,583.42
18-7125	Environmental Engineer I	2,863.64
18-7159	Clerk Typist II	7,357.07
18-7178	Clerk Typist III	1,600.97
18-7183	Document Processor	338.58
18-7331	Personnel Specialist	180.80
18-7375	Environmental Specialist	10,451.66
18-7425	Hydrologist III	1,245.88
18-7434	Clerk Typist III	8,790.46
18-7438	Environmental Engineer Asst.	2,101.90
18-7467	Administartive Assistant III	18,025.86
18-7482	Environmental Technician	17,295.02
18-7526	Environmental Specialist	64,701.12
18-7531	Environmental Conservation Manc	42,251.22
18-7540	Environmental Conservation Manager	58,630.95
18-7551	Administrative Assistant II	17,791.92
18-7570	Environmental Specialist	60,422.03
18-7576	Environmental Specialist	3,768.53
18-7577	Environmental Specialist	59,037.91
18-7587	Environmental Specialist	57,612.01
18-7595	Environmental Specialist	1,126.05
18-7598	Environmental Specialist III	49,306.74
18-7602	Environmental Specialist	49,590.38
18-7625	Clerk Typist III	2,581.80
18-7655	Environmental Conservation Manc	696.01
18N562	Student Intern III	645.42
18-7517	Environmental Specialist	9,888.46
18-7593	Environmental Specialist	49,326.36
18-7595	Environmental Specialist	13,791.93
18-7595	Environmental Specialist	10,842.22
18-7604	Clerk Typist III	21,271.19
18-7604	Clerk Typist III	1,609.16
18-7604	Clerk Typist III	669.57
18N632	Clerk Typist III	1,749.99
18-7395	Environmental Conservation Manager	2,878.26
18-7396	Environmental Specialist	21,687.40
18-7272	Project Coordinator	64,364.37
18-7331	Personnel Specialist	99.33
18-7442	Environmental Specialist	60,481.72
18-7514	Clerk Typist III	33,930.65

PCN	JOB TITLE	AMOUNT
18-7581	Environmental Specialist III	51,781.10
18-7588	Environmental Specialist III	60,542.86
18-7591	Environmental Conservation Manc	72,217.65
18-7595	Environmental Specialist	(589.50)
18-7597	Environmental Specialist	68,708.75
18N632	Clerk Typist III	2,949.44
18-7075	Environmental Specialist	7,973.08
18-7395	Environmental Conservation Manager	39,608.47
18-7396	Environmental Specialist	41,158.16
18-7517	Environmental Specialist	39,936.47
18-7521	Environmental Specialist	29,144.11
18-7565	Environmental Specialist	2,214.57
18-7601	Environmental Specialist	12,410.94
18-7604	Clerk Typist III	1,489.58
18-7604	Clerk Typist III	595.19
18-7604	Clerk Typist III	243.83
18-N630	Environmental Specialist I	16,995.05
18N632	Clerk Typist III	1,973.36
18-7075	Environmental Specialist	49,475.49
18-7161	Environmental Specialist	75,538.87
18-7331	Personnel Specialist	99.33
18-7395	Environmental Conservation Manager	13,966.62
18-7517	Environmental Specialist	4,286.81
18-7520	Clerk Typist III	35,363.28
18-7565	Environmental Specialist	60,665.66
18-7593	Environmental Specialist	2,586.20
18-7595	Environmental Specialist	2,903.71
18-7601	Environmental Specialist	47,326.87
18-7604	Clerk Typist III	259.47
18-7658	Risk Mgmt. Officer	53,001.41
18-7051	Environmental Conservation Manager	59.49
18-7138	Environmental Engineer Assoc.	213.10
18-7139	Environmental Conservation Manc	10,537.60
18-7203	Field Office Asst.	2,789.89
18-7232	Field Office Asst.	296.84
18-7286	Clerk Typist III	2,048.97
18-7317	Environmental Conservation Manc	1,312.64
18-7465	Environmental Conservation Manc	2,508.23
18-7473	Environmental Technician	2,871.98
18-7477	Environmental Specialist	45,942.73
18-7486	Environmental Specialist	1,922.24
18-7579	Environmental Specialist	1,490.11
18-7652	Administartive Assistant II	3,140.29
18-7005	Environmental Conservation Manc	12,186.59
18-7064	Administrative Asst. III	9,802.35
18-7108	Environmental Specialist	556.16
18-7133	Environmental Conservation Manc	3,333.91
18-7137	Environmental Conservation Manc	7,418.30
18-7140	Environmental Conservation Manc	6,245.52
18-7155	Planner III	3,270.64
18-7157	Environmental Engineer Assoc.	2,201.59
18-7178	Clerk Typist III	202.23
18-7180	Field Office Assistant	3,278.39
18-7181	Clerk Typist II	1,252.67
18-7183	Document Processor	1,830.51

PCN	JOB TITLE	AMOUNT
18-7186	Clerk Typist II	1,327.92
18-7186	Clerk Typist II	3,803.28
18-7201	Clerk Typist III	3,560.92
18-7250	Clerk Typist III	7,826.30
18-7252	Accounting Clerk III	9,582.02
18-7331	Personnel Specialist	195.85
18-7352	Environmental Engineer I	3,917.57
18-7354	Environmental Engineer Assoc.	13,499.43
18-7355	Clerk Typist III	2,412.26
18-7368	Clerk Typist III	2,447.81
18-7379	Environmental Engineer I	9,534.55
18-7424	Environmental Specialist	36,163.48
18-7439	Clerk Typist III	22,858.99
18-7444	Hydrologist II	26,944.38
18-7459	Environmental Specialist	6,906.70
18-7460	Environmental Engineer Asst I	7,144.19
18-7461	Environmental Engineer Asst.	5,276.50
18-7476	Environmental Engineer Assoc.	63,689.46
18-7487	Supply Technician	3,558.09
18-7489	Environmental Engineer	399.05
18-7491	Environmental Specialist	1,147.09
18-7492	Environmental Specilaist	1,230.83
18-7493	Environmental Specialist	455.12
18-7533	Environmental Specialist III	5,135.71
18-7541	Administrative Assistant I	182.89
18-7541	Environmental Specialist	492.50
18-7550	Environmental Specialist	1,524.51
18-7551	Administrative Assistant II	1,221.77
18-7561	Environmental Specialist	44,046.41
18-7562	Environmental Specialist	1,233.28
18-7626	Investigator III	8,154.23
18-7662	Environmental Engineer Assoc.	33,204.76
18-N453	Student Intern II	1,777.32
18-N580	Student Intern III	833.12
18N549	College Intern III	1,821.00
18-7140	Environmental Conservation Manc	312.30
18-7180	Field Office Assistant	6,620.35
18-7186	Clerk Typist II	2,121.76
18-7379	Environmental Engineer I	23,938.36
18-7459	Environmental Specialist	28,518.15
18-7460	Environmental Engineer Asst I	36,195.28
18-7461	Environmental Engineer Asst.	49,373.23
18-7533	Environmental Specialist III	17,168.25
18-7580	Environmental Specialist	88.97
18-7585	Environmental Specialist	387.88
18-N453	Student Intern II	9,474.85
18-7010	Environmental Conservation Manager	(1,688.00)
18-7113	Environmental Conservation Manager	9,777.83
18-7134	Clerk Typist III	1,477.03
18-7134	Clerk Typist III	396.64
18-7191	Environmental Specialist	23,848.06
18-7208	Administrative Assistant III	4,616.99
18-7227	Clerk Typist III	1,838.47
18-7271	Environmental Engineer I	302.62
18-7298	Environmental Specialist	4,526.01
18-7310	Environmental Conservation Manc	9,761.44
18-7318	Clerk Typist III	106.06
18-7318	Clerk Typist III	506.00
18-7330	Environmental Engineer Assoc.	10,789.31
18-7331	Personnel Specialist	99.33
18-7400	Environmental Specialist I	4,310.30
18-7430	Environmental Engineer I	1,756.15
18-7431	Environmental Specialist III	2,300.51
18-7452	Environmental Engineer Assoc.	22,540.26
18-7454	Administrative Assistant III	678.09
18-7470	Environmental Specilaist	2,587.61
18-7475	Environmental Engineer Asst. I	21,204.65
18-7485	Environmental Engineer Asst. I	1,231.25
18-7497	Environmental Engineer Asst I	646.37
18-7498	Environmental Specialist	3,241.68
18-7560	Environmental Specialist II	49,308.77
18-7624	Investigator III	7,218.12
18-7668	Environmental Specialist	161.82
18-7108	Environmental Specialist	103.34
18-7121	Environmental Engineer	10,207.32
18-7159	Clerk Typist II	857.44
18-7265	Environmental Specialist	62,459.86
18-7375	Environmental Specialist	950.07
18-7425	Hydrologist III	9,858.41
18-7434	Clerk Typist III	3,974.78
18-7467	Administartive Assistant III	3,207.48
18-7526	Environmental Specialist	77.39
18-7531	Environmental Conservation Manc	372.88
18-7540	Environmental Conservation Manager	16,942.28
18-7551	Administrative Assistant II	733.61
18-7576	Environmental Specialist	2,894.06
18-7577	Environmental Specialist	87.42
18-7625	Clerk Typist III	298.95
18-7331	Personnel Specialist	99.33
18-7383	Environmental Specialist	25,365.81
18-7432	Clerk Typist III	16,386.44
18-7515	Environmental Conservation Manc	33,614.03
18-7559	Environmental Specialist	52,227.58
18-7564	Accounting Clerk I	18,526.70
18N615	Graduate Untern II	2,792.36
18-7393	Clerk Typist III	32,147.53

Section VI. Other Agency Expenditures

The Legislature appropriates Response Funds to other State Agencies for work on contingency plan reviews, participation in the State Emergency Response Commission, state and regional planning just to name a few programs. DEC is a pass through agency for these other agency appropriations. Following are descriptions of these allocations.

Department of Fish and Game

The Alaska Department of Fish and Game (F&G) received Response Fund support to perform three projects, as follows:

1. State Emergency Response Commission:

F&G participated in all but one quarterly meeting of the SERC. RSA support provided travel reimbursement for participation on the SERC. Actual expense totaled $944.50. No personal services were reimbursed.

2. Industry Contingency Planning:

F&G implemented internal contingency plan review procedures, reviewed and submitted comments on most oil spill contingency plans referred to the agency by DEC, provided technical assistance to plan holders regarding fish and wildlife protection as specified under the RSA, and made recommendations to DEC regarding implementation of contingency plan improvements. As specified under the RSA, F&G staff attended and participated in six response exercises to test detailed provisions of industry contingency plans. F&G staff conducted site inspections at five facilities.

F&G participated in several major planning forums: the Prince William Sound Steering Committee, Cook Inlet Spill Prevention and Response committees, and the Prince William Sound and Cook Inlet Regional Citizens' Advisory Councils.

Personal Services were paid as follows:

Habitat Biologist	PCN 11-6102	$50,840.00
Habitat Biologist	PCN 11-6064	29,588.00
Habitat Biologist	PCN 11-B260	21,978.00
Habitat Biologist	PCN 11-6081	9,388.00
Habitat Biologist	PCN 11-6088	902.00
Habitat Biologist	PCN 11-6009	489.00
Reg. Supervisor	PCN 11-6010	77.00
Total		$113,262.00

Total reimbursement for actual expense related to this project was $125,947.00.

3. State and Regional Contingency Planning:

F&G authored most of the environmental section of the Southeast Area Contingency Plan and began work on the Prince William Sound and Aleutians plans. F&G represented the State's fish and wildlife trustee interests on the federal Alaska Regional Response Team (ARRT) working groups related to wildlife protection and response technology. F&G submitted comments on the proposed test of PES-51 on oiled areas of Prince William Sound and on the proposed pre-approval of dispersant use in the Gulf of Alaska. F&G worked with the Department of Interior to update the ARRT Wildlife Protection Guidelines.

Personal Services were paid as follows:

Habitat Biologist	PCN 11-6008	$14,725.00
Habitat Biologist	PCN 11-6081	16,076.00
Habitat Biologist	PCN 11-6064	10,312.00
Habitat Biologist	PCN 11-6118	6,723.00
Habitat Biologist	PCN 11-6051	4,398.00
Habitat Biologist	PCN 11-6119	2,765.00
Habitat Biologist	PCN 11-6133	1,106.00
Total		$ 56,105.00

Total reimbursement for actual expense related to this project was $59,236.50.

Department of Natural Resources

The Alaska Department of Natural Resources (DNR) received Response Fund support to perform tasks under two projects, as follows:

1. State Emergency Response Commission:

DNR participated in all quarterly meetings of the SERC and its committees. DNR presented a report to the commission on hazards caused by spruce bark beetle infestation. DNR staff contributed effort to the Southeast Regional Plan. RSA support provided travel reimbursement for participation on the SERC and oil spill conference attendance. Actual expense totaled $3,566.52. No personal services were reimbursed.

2. Industry Contingency Planning:

DNR developed standard procedures for review of industry contingency plans, focusing on oil industry exploration and development projects and on protection or cleanup of historic, archeological or cultural sites. Plan reviews involved, at a minimum, staff from three divisions within DNR. The individual division's responses were then combined into one set and forwarded to DEC. Although not specified under the RSA, DNR staff attended and participated in four response exercises and meetings of several major planning groups, including the Regional Citizens' Advisory Councils for Cook Inlet and Prince William Sound, and several private cleanup organizations.

Personal Services were paid as follows:

Deputy Hist. Pres. Officer	PCN 10-5234	$4,791.73
Archaeologist	PCN 10-5242	828.71
Clerk	PCN 10-N214	1,466.94
Total		$7,087.38

Total reimbursement for actual expenses related to this project was $7,193.23.

Department of Military and Veterans Affairs

During FY93 $600,000 was provided to the DMVA, Division of Emergency Services (DES). DES utilized the funds to support the incident command center emergency preparation and planning support to state, federal and local government.

DES received the funds and operated under a general workplan. They participated on the State Emergency Response Commission; attended Alaska Regional Response Team and Regional Citizen's Advisory Councils; and assisted local governments with the development of Emergency Operations Plans. While DES may have maintained the "incident command center", FY93 accomplishments did not directly support the Department of Environmental Conservation in any spill response activities.

PCNs partly or wholly supported by this RSA:

09-0050
0056
0054
0220
0218
0219
0124

0059
0185
0061
0130
0233
0112
0237
0136
0217
0232

It did not appear from the quarterly reports received by SPAR that there were any purchases of equipment greater than $10.0 or contracts greater than $20.0.

Department of Law

A total allocation of $550,000 was made available to the Department of Law (DOL) in FY93 for a variety of response fund related legal matters. Actual expenditures of $498,906 were made for more than 140 response fund related matters. Legal support services include expert and consultant services required for cost recovery efforts for contaminated site and spill cleanups, litigation efforts, and policy assistance relating to the state's oil and hazardous pollution control statutes. Five and a half positions within the DOL are involved in response fund work. These are attorney PCNs 030090, 030235, 030259, 030263 and legal secretary PCNs 030268, and 030269.

In addition, during FY93, the DOL received $1,968,000 for Exxon Valdez Litigation support. This funding provided for the services of outside legal council necessary for the state to pursue its civil claims against Exxon and Alyeska. No monies were expended for personal services or for purchases over $10,000.

Contracts over $20,000

Preston Thorgrimson	Litigation	$1,968,000

State Emergency Response Commission

DEC had Reimbursable Services Agreements (RSAs) with member agencies of the SERC. Those member agencies include the Departments of Community and Regional Affairs, Labor, Health and Social Services, Fish and Game and Natural Resources.

The funding provided is used for travel and per diem costs associated with attending quarterly SERC meetings. Additional funding was provided to agencies to offset the costs of their participation on the SERC's five committees. Agency representatives represent agency views and contribute agency expertise in developing policy

recommendations to the SERC.

There were neither equipment purchases over $10,000 made nor contractual payments over $20,000 made by the SERC. Additionally, no personal services were charged to the RSAs, only travel and per diem expenditures.

Hazardous Substance Spill Technology Review Council (HSSTRC)

During FY 93, the Council held four quarterly meetings and two conference calls. The Council selected three priority research topics; remote sensing, nearshore "vessel-of-opportunity" response systems and soil remediation. Workshops were held on remote sensing and nearshore "vessel-of-opportunity" response systems prior to the Council's quarterly meetings. The Council funded three research projects relating to oil spill response. The results anticipated from the projects are intended to benefit the State of Alaska, Alaska Regional Response Team and Response Cooperatives.

FY 93 HSSTRC BUDGET Total= $420,000.00

DEC Staff Support= $100,000.00

Council Non-Operating Budget= 320,000.00

- National Institute of Standards and Technology (NIST)= $75,000.00
  (Smoke Plume Characterization and Analysis from In-Situ Burning of Alaskan Crude Oils)

- Tesoro Alaska Petroleum Company= $ 100,000.00
  (PES-51 Demonstration of Subsurface Shoreline Cleanup of Weathered Exxon Valdez Oil)

- University of Washington= $ 50,000.00
  (Aerial Data Collecting and Smoke Plume Analysis from the Newfoundland In-Situ Burning of an oil spill)

Section VII. Information on Threats to Public Health

Appendices A and B contain site summaries of spills and contaminated sites for which Response Fund dollars have been expended in an effort to contain, cleanup or take corrective action to mitigate or eliminate threats to public health or the environment. The primary tool used by the Contaminated Sites program to prioritize the case load of sites is the Alaska Hazard Ranking Model. The ranking model works in concert with the Contaminated Sites database to evaluate the relative exposure risk posed by a site from the air, water and soil pathways. Although the ranking model is considered to be our primary tool for prioritization of site work, there are also other valid criteria that are appropriately factored in on a case-by-case basis. Criteria that may elevate a site in importance in addition to the ranking model score may include unusual contaminants that are not otherwise addressed by the model or valid socioeconomic factors, such as potential interruption of public works projects. The spill sites also have information available that address the public health threats.

This information is available by contacting the Department.

Appendix A

SPILL RESPONSE SUMMARIES

This appendix includes detailed explanations of hazardous substance releases, including oil spills, on which $1,000 or more was spent form the Response Fund during FY93 for response control, containment, safety, cleanup, and cost recovery. Some of these expenditures are made from the Spill Reserve. When only operating, or personnel services, resources are expended, those are funded out of the Department's operating budget.

The DEC State On Scene Coordinator (generally, the Regional Administrator) is responsible for ensuring appropriate actions are taken to control, contain, and cleanup hazardous substance releases, and recover Response Fund expenditures.

Title:	Kake Tribal Logging
Location:	Kake
Site ID:	93-1-2-1-097-1
DEC Region:	Southeast
Ledger Code:	49444
Project Manager:	Ron Flinn, Southeast Region, Juneau, 465-5357

Situation: An oil spill in December 1992 was reported to the Sitka District Office in April, 1993 at Kake Tribal Logging (KTL). Upon investigation numerous other violations were discovered.

FY93 Actions: The Attorney General's Office was notified and a DEC investigator was assigned to assist the investigation. A Notice of Violation (NOV) and Compliance Order by Consent was issued to KTL; the site is currently being remediated in accordance with these orders. Cost recovery is currently being pursued by the Department of Law.

FY93 Expenditures: $ 9,906.97

Title: Klawock Cannery Chlorine Release

Location: Klawock, Prince of Wales Island, SE Alaska

Site ID: 93-1-3-9-295-01

DEC Region: Southeast

Ledger Code: 49250

Project Managers: Dick Stokes, Regional Administrator, Southeast Region, 465-5355
Barry Hogarty, Ketchikan District Office, 225-6200

Situation: On October 21, 1993, employees of the Klawock IRA Council, working in or around the Klawock Cannery, noticed a strong smell of chlorine and notified the Ketchikan District Office (KDO) of DEC. The problem was initially identified as seven old, leaking, chlorine cylinders that were stored in an area of the cannery along with two drums of unknown solvents and two unlabeled 55 gallon drums, old batteries and battery acids. KDO coordinated a response with the Klawock Heenya Corporation, the Klawock Fire and Police Departments, and the US Coast Guard. Klawock officials did not feel they had sufficiently trained personnel to effect a response inside the cannery.

FY93 Actions: DEC was asked to effect a response and correct the problem. A level "A" response was required due to the fact that "unknowns" were involved in this situation. SERO mobilized one of the departments response contractors (MARTECH) to assist in conducting the response. In addition, the Coast Guard, acting as the EPA representative, activated part of their Pacific Strike Team to assist in the response efforts. All response elements mobilized and personnel and equipment moved to Klawock.

Klawock weather conditions were identified as winds at 7 to 8 mph, gusts to 20 mph, and expected to remain at that level for the next few days. A safety zone of 3 miles downwind, and 900 feet up wind was established around the cannery. People within that safety zone were evacuated by the Klawock Police and Fire Departments, to a safe location.

A total of twelve level "A" entries were made into the cannery during this 3 1/2 day response, in order to initially assess the situation, identify the potential hazards, and correct the problem. In addition to the materials identified above, two 300 pound anhydrous ammonia, 25-30 55 gallon drums of unidentified materials, old transfers, a 30 pound drum of granular chlorine (HTH) with its contents spilling onto the floor, substantial quantities of grease, paints, solvents, caustics, and miscellaneous other chemicals were found to be stacked around the seven chlorine cylinders.

Initial entries were made to verify the potential hazards in the cannery. Once the hazards

were identified, additional entries were made to located the suspected cylinders, isolated the leaking cylinders, stabilized those cylinders, moved in caustic soda and set up a neutralization station to neutralize the chlorine in the seven cylinders, and started the neutralization process. Level "A" entries were continued until all of the chlorine cylinders had been emptied into and fully neutralized by the caustic solution, and the entire cannery was surveyed with monitoring equipment and found to have no additional chlorine vapors present.

Once the immediate threat was eliminated, the state's response contractor conducted a complete inventory of all the known and unknown chemicals remaining in the cannery. At the same time the responders fully briefed the cannery operators and the Klawock Fire Department on what had been accomplished as well as what tasks remained. The owners of the cannery ensured the removal and proper disposal of all of the materials.

A settlement for $35,036.26 in cost recovery was reached with the responsible party.

FY93 Expenditures: $ 51,981.87

Title: Klawock Cannery Ammonia Release

Location: Klawock, Prince of Wales Island

Site ID: 93-1-3-9-126-1

DEC Region: Southeast

Ledger Code: 49188

Project Managers: Dick Stokes, Regional Administrator, Southeast Region, 465-5355
Barry Hogarty, Ketchikan District Office, 225-6200

Situation: The Klawock Cannery, which has been closed for some time and was recently purchased by a new company, was undergoing a major cleanup and renovation. Part of the renovation process was the removal of faulty or un-necessary equipment and piping within the cannery. On the morning of May 6, two workers were working on or around part of the cannery,s old freezer system when a pipe, under pressure, broke and discharged an unknown amount of ammonia, onto them and in their immediate area.

The discharging ammonia caused the evacuation of everyone in or around the cannery, as well as the nearby boat harbor and residential area. Reports to the Ketchikan District Office (KDO) and at the Southeast Regional Office (SERO) of DEC, stated that at least two people were hospitalized as a result of coming into contact with the Ammonia. The Klawock Fire Department responded to the incident and requested assistance from DEC in assessing the situation and correcting the problem.

FY93 Actions: Two DEC personnel, one from KDO and one from SERO, were sent to Klawock to assist. Staff worked with the Klawock Cannery manager and the Klawock Fire Dept. to test surrounding areas for potential hazard levels, establish safety zones, assisted in determining an appropriate survey of the cannery itself and establish response teams to conduct inside surveys. Staff analyzed the results from surveys conducted inside the cannery and, once the initial emergency was over, assisted the responsible party (RP) in identifying what safeguards should be taken to insure that similar problems would not occur again.

FY93 Expenditures: $ 1,746.19

Title: Donna's Sunchaser

Location: Ketchikan

Site ID: 92-1-3-1-224-1

DEC Region: Southeast

Ledger Code: 49274

Project Manager: Barry Hogarty, Ketchikan District Office, 225-6200

Situation: On August 11, 1992 the Ketchikan District Office (KDO) was notified by the Ketchikan Fire Department of a spill with very strong diesel odors affecting a business in downtown Ketchikan. Personnel from KDO responded to the site, located the spill, and followed the flow of the product back to its source, a delivery fuel line connection between the fuel tank and the furnace in the home. The property owner was later identified.

KDO attempted to contact the property owners, but were unable to do so. It was reported that the owner had been living out of state for some time. The occupants of the property identified another individual as the property manager. KDO contacted that individual, who agreed to have the leaking connection fixed, but declined to take any responsibility for the spill.

A Type A Emergency was declared by the Southeast Regional Office (SERO), requesting up to $ 10,000.00 to collect and cleanup the spilled oil.

FY93 Actions: With the approval of the Type A Emergency, personnel from KDO hired a local contractor to dig interceptor trenches and place absorbent materials along the length of the spill in order to contain and collect the diesel fuel. Saturated soils were collected and removed to an approved local disposal site.

KDO was finally able to make contact with the property owner. Once the situation was explained to the responsible party, along with his responsibilities by state law as the property owner, he opted to take over the spill cleanup. All costs for the contractor and equipment were fully paid for through the end of the spill cleanup by the responsible party.

The State has recovered $2,000.00 of the costs incurred by DEC in state response efforts.

FY93 Expenditures: $ 3,906.20

Title: Thane Road Bunker

Location: Juneau

Site ID: 90-1-1-1-116-1

DEC Region: Southeast

Ledger Code: 49297

Project Manager: Al Kegler, Juneau District Office, Juneau, 465-5348

Situation: A privately owned bulk fuel storage tank on Thane Road was discharging bunker C fuel.

FY93 Actions: Emergency repairs were made to the tank to abate the release. Additional work is scheduled for the site. The Department has USCG approved access to the federal fund under the Oil Pollution Act (OPA) of 1990 to remove the threat which the tank poses to the environment and public health.

The Department is seeking reimbursements for costs through the National Pollution Fund Center under OPA. Cost recovery is not likely from the responsible party as they are in bankruptcy.

FY93 Expenditures: $ 6,210.06

Title: Little Rabbit Creek

Location: Anchorage

Site ID: 93-2-1-9-138-1

DEC Region: Southcentral

Ledger Code: 49779

Project Manager: John Bauer, Anchorage District Office, Anchorage, 349-7755

Situation: Two drums were abandoned along the Old Seward Highway in Anchorage. The drums were located down a steep embankment approximately 40 feet from Little Rabbit Creek. The drums were adjacent to the Anchorage Coastal Wildlife Refuge (Potter Marsh) which is prime waterfowl habitat and an anadromous stream. Little Rabbit Creek drains into the marsh. One drum was full and was suspected to contain waste oil and possibly solvents and/or gasoline. The second drum spilled what appeared to be waste oil as it tumbled down the embankment and contaminated leaves and soil.

FY93 Actions: DEC inspected the site and photographed the abandoned drums and contaminated soil. The situation appeared to be the result of a willful dumping of the drums. A DEC criminal investigator inspected the site. A spill response contractor removed the drums and contaminated soil and disposed of the materials.

The responsible party has not been identified. The case is in inactive status. DEC will not be pursuing cost recovery since the responsible party has not been identified.

FY93 Expenditures: $ 766.43 An encumbrance of $ 2,133.00 was made in FY93.

Title: Aniak Lift Station

Location: Aniak

Site ID: 92-2-5-9-176-1

Ledger Code 49277

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: Persons unknown spilled hazardous chemicals containing Methylene Di-isocyanates and aviation gasoline into the sanitary sewer in Aniak Alaska. This created an extremely hazardous and possible life threatening situation due to a potential explosion and toxic gas hazard to the community. DEC staff immediately responded and secured the site and hired a contractor who cleaned up the lift station and sewer.

FY93 Actions: Investigation is continuing. Enforcement options will be considered.

FY93 Expenditures: $ 61,809.97

Title: Seward Soils Site

Location: Seward

Site ID: 92-2-3-1-287-1, 92-2-3-1-294-2

DEC Region: Southcentral

Ledger Code: 49253

Project Manager: A. Mark Sienkiewicz, Kenai District Office, 262-5210

Situation: In September of 1992, soil contaminated with petroleum products was allegedly transported intentionally from a spill remedial action site to a unoccupied property in the City of Seward. The case is currently under investigation by the District Attorney's Office.

FY93 Actions: DEC collected soil samples and submitted them to a laboratory for analysis. The contaminated soils at the site was removed in accordance with an DEC approved workplan and remediated via a cold asphalt emulsion process. The investigation by the DA's office is reportedly continuing and information is attorney/client privileged.

FY93 Expenditures: $ 2,217.19

Title: Neelon Street Site

Location: Kasilof

Site ID: 91-2-3-9-112-1

DEC Region: Southcentral

Ledger Code: 49256

Project Manager: A. Mark Sienkiewicz, Kenai District Office, 262-5210

Situation: A citizen complaint was filed at the DEC Kenai District Office alleging the presence of a hazardous waste dump on a property in Kasilof, Alaska. DEC field staff conducted a site inspection in 1991 and observed several hundred drums of petroleum materials stored in a field. The drums were causing a discharge of unknown oil substances to the land. DEC attempted several times to contact the property owner and was successful in March of 1992. No actions were taken by the property owner to clean up the discharges.

FY93 Actions: In late 1992, in association with an investigation conducted by the District Attorney's Office and the Alaska State Troopers, the DEC contracted with Ecology and Environment, Inc. to collect samples of wastes from the drums. The samples were analyzed and the results identified the materials as oils and oil sludges from unknown origin, possibly crude oil storage tank cleanings.

In early 1993, the District Attorney's Office filed felony and misdemeanor charges against the property owner for violations of State oil pollution statutes and regulations. A motion to suppress the evidence was filed by the defense and the presiding judge denied the motion. However, on appeal the judge overturned his decision and ruled the evidence inadmissible. Criminal charges against the property owner were dismissed by the DA's Office.

The case has been referred to the Attorney General's Office and additional information is attorney/client privileged at this time.

FY93 Expenditures: $ 14,291.49

Title: Cabin Lake Road Site

Location: Nikiski

Site ID: 92-2-3-9-175-3

DEC Region: Southcentral

Ledger Code: 49275

Project Manager: A. Mark Sienkiewicz, Kenai District Office, 262-5210

Situation: On June 23, 1992, the DEC Kenai District Office received a report of abandoned oil drums located near Cabin Lake Road, Nikiski. Upon investigation, it was determined that approximately 40 drums had been illegally dumped on private property. A few days later, the Division of Forestry reported a second abandoned drum site in close proximity to the first, off of the Nikiski Escape Road.

FY93 Actions: In late 1992, in association with an investigation conducted by the District Attorney's Office and the Alaska State Troopers, the DEC contracted with Ecology and Environment, Inc to collect samples of wastes from the drums. The samples were analyzed and results identified the materials as oils and oil sludges from unknown origin, possibly crude oil storage tank cleanings.

In early 1993, the District Attorney's Office filed felony and misdemeanor charges against a Kasilof man for violations of State oil pollution statutes and regulations. A motion to suppress the evidence was filed by the defense and the presiding judge denied the motion. However, on appeal the judge overturned his decision and ruled the evidence inadmissible. Criminal charges against the defendant were dismissed by the DA's Office.

The case has been referred to the Attorney General's Office and additional information is attorney/client privileged information at this time.

FY93 Expenditures: $ 29,461.18

Title: McDowell Sterling Property

Location: Sterling

Site ID: 89-2-3-0-137-1

DEC Region: Southcentral

Ledger Code: 49594

Project Manager: Paul Horwath, Kenai District Office, Soldotna, 262-5210

Situation: The Department of Transportation and Public Facilities identified petroleum contaminated soil and groundwater at the Cook's Tesoro service station in 1989, while investigating right-of-way properties as part of the Sterling Highway road improvement project. As a result, the DEC implemented an investigation that confirmed that groundwater contamination had migrated onto neighboring properties which are dependent upon groundwater for domestic water supplies. One of the neighboring property owners informed the Department of Law that he was prepared to file a lawsuit against the State. The Department of Law consequently requested that the DEC conduct some additional assessment work in order to better delineate the extent of groundwater contamination on the private parties' property.

FY93 Actions: DEC retained an environmental consultant, Gilfilian Engineering, Inc., to conduct the work requested by the Department of Law. Three groundwater monitoring wells were installed, soil and water samples were collected, and well locations and water table elevations were surveyed. A report was provided to DEC by Gilfilian Engineering, Inc.

FY93 Expenditures: $ 13,954.69 An encumbrance of $5,221.31 was made in FY93.

Title: Noyes Slough

Location: Fairbanks

Site ID: N/A

DEC Region: Northern

Ledger Code: 49134

Project Manager: Larry Katkin, Northern Region, Fairbanks, 451-2127

Situation: One 55 gallon drum containing an unknown substance was abandoned in the Noyes Slough located in Fairbanks.

FY93 Actions: DEC performed oversight of the drum removal by a contractor. The responsible party is unknown, thus there have been no civil or criminal assessments.

FY93 Expenditures: $ 1,447.05

Title: Umiat Staging Area

Location: North Bank of the Colville River

Site ID: 89-3-6-9-252-5

DEC Region: Northern

Ledger Code: 49255

Project Managers: Bob Couch, Fairbanks, 451-2192
Laura Noland, Fairbanks, 451-2139

Situation: Transformers, approximately 500 full drums, and large amounts of solid wastes are present at this site. Many of the transformers were open and leaking PCB's. Landfilled material is eroding due to the close proximity to the drainage area. The U.S. Army Corps of Engineers responded to a Notice of Violation and stated that no funding was available for removal actions.

FY93 Actions: The State hired a contractor to containerize the leaking transformers. There has been no cost recovery to date.

FY93 Expenditures: $13,403.72

Title: Rifle Range Drums

Location: Fairbanks North Star Borough

Site ID: 93-3-1-9-039-1

DEC Region: Northern

Ledger Code: 49157

Project Manager: Kristen Goodwin, Northern Region, Fairbanks, 451-2131

Situation: Two 55-gallon drums were recently abandoned near the FNSB Rifle Range.

FY93 Actions: The drum contents were sampled by Departmental and University of Alaska Fairbanks Hazmat personnel. Samples analyzed by the lab were determined to be hazardous waste. Investigation by DEC revealed that the drums were abandoned by military personnel. Although the responsible military unit was identified, there was insufficient evidence to prosecute. Cost recovery from the military is not likely, however, military incurred the disposal costs.

FY93 Expenditures: $ 7,685.34

Title: North Pole Meter Spill

Location: North Pole

Site ID: 93-7-3-1-152-1

DEC Region: Pipeline Corridor

Ledger Code: 49451

Project Manager: Robert Watkins, Pipeline Corridor Region, Anchorage, 278-8595

Situation: On June 1, 1993, during a corrosion survey, contaminated soils were found along a six inch pipeline that returns residual oil product from the MAPCO Refinery to the Alyeska pipeline. Alyeska Pipeline Service Company accepted responsibility for the contamination and upon excavation of the soils around the line discovered a dripping leak from a buried valve flange associated with the line.

FY93 Actions: PCRO field personnel monitored Alyeska's clean-up of the contaminated soils, provided technical assistance to Alyeska and its contractors, and assisted Alyeska in notifying local homeowners concerning potential groundwater contamination. A groundwater sampling program conducted by Alyeska did not reveal contamination of neighboring water wells. Monitoring wells have been installed to ensure the continued safety of local drinking water supplies. Contaminated soils were taken to Pump Station 8 for temporary storage. Recovered contaminated water was hauled to the Fairbanks wastewater treatment plant and commingled with the waste stream.

FY93 Expenditures: $1,082.16

Title: K&W Trucking Spill/Mile Post 248, Dalton Highway

Location: Mile Post 248 Dalton Highway- Atigun Pass

Site ID: 92-7-3-1-272-1

DEC Region: Pipeline Corridor

Ledger Code: 49251

Project Manager: Dick McKean, Pipeline Corridor Office, Anchroage, 278-8595

Situation: On September 27, 1992, a K&W tractor trailer carrying 8,500 gallons of arctic diesel fuel slid off the Dalton Highway at MilePost 248 and rolled over into a road side ditch. All fuel was lost with approximately 7500 gallons moving through a road culvert and down a ravine on the west side of the road.

FY93 Actions: K&W Trucking assumed responsibility for the spill and hired a contractor to undertake the clean-up. DEC had a representative on site to oversee clean-up activities and provided backup support during the 10 day initial clean-up. In-situ burning and mechanical removal of contaminated snow and soils were response methodologies used during the clean-up. Following the initial response, DEC staff met with the responsible party and the contractor to review site assessment plans and schedules.

The responsible party has reimbursed the Department for costs incurred by the State during the initial response.

FY93 Expenditures: $1,961.77

Title: Village of Wainwright

Location: Wainwright, Eskimos Inc. Bulk Fuel Facility

Site ID: N/A

DEC Region: Northern

Ledger Code: 49717

Project Manager: Larry Katkin, Northern Region Office, Fairbanks, 451-2127

Situation: The bulk fuel facility located in the Village of Wainwright, and operated by the Joint Venture of the Olgoonik Corporation and Eskimos, Inc. poses a threat of an oil release due to its substandard condition.

FY93 Actions: DEC has made several inspections to the site to insure strict prevention measures and spill response capabilities are in place until this facility is permanently closed in September of 1994.

Eskimos Inc. has signed a compliance order in which they have agreed to reimburse DEC for its cost expenditures.

FY93 Expenditures: $ 3,223.31

Title: Chevron Pipeline Spill, Kenai

Location: Nikiski, Rig Tenders Dock, Cook Inlet

Site ID: 92-2-3-1-004-1

DEC Region: Southcentral

Ledger Code: 49315

Project Manager: Joe Sautner, Southcentral Regional Office, Anchorage, 563-6529

Situation: On the morning of January 4, 1992 workers on Rig Tenders Dock in Nikiski reported a large amount of crude oil on the surface waters of Cook Inlet. The source of the product was later attributed to a ruptured ballast water line located approximately midway on the Kenai Pipeline Company (KPL) dock. The cause has been attributed to the freezing and expansion of ballast water that was left in the pipeline. KPL assumed responsibility for the spill and estimated the release at 400 barrels. The spill was later downgraded to 31 barrels by KPL. KPL initiated a response to the spill utilizing the resources of Cook Inlet Spill Prevention and Response, Inc. (CISPRI).

FY93 Actions: Cleanup on this spill was completed in FY 92. All costs incurred during FY 93 were primarily for personnel services related to cost recovery. The case was closed out on February 10, 1993. The Department recovered $89,894 from KPL of which $54,946 was a civil assessment for the spill and $34,948 was for costs expended by the Department of Environmental Conservation.

FY93 Expenditures: $ 9,785.89

Title: Kotlik Electric Tank Farm

Location: Kotlik

Site ID: 93-2-5-1-097-1

DEC Region: Southcentral

Ledger Code: 49432

Project Manager: Dennis Lundine, Western District Office, Anchorage, 349-7755

Situation: The Western District office was notified by the local village electric association that the village was about to run out of fuel. When questioned as to why, the individual had said that a contractor working for PHS had hit a fuel line with a snow blower. When questioned as to the amount in the tanks it was learned that the village could not account for 15,000 gallons of diesel fuel from the tank farm. (later this figure was revised to 7,000 gallons). The caller was asked the question, "Are they going to hire a cleanup contractor?" the reply was, " No! because they had only enough money to buy fuel to get them through the remainder of winter". A call was placed to the Department of Emergency Services for assistance. DEC/Bethel Field Officer Manager responded to Kotlik to investigate the release. Weather conditions on site were -40 degrees, no contractors were available to respond due to weather conditions. Bill Rieth and the villagers were able to recover +6000 gallons using 5 gallon buckets, dipping them from a sump area down gradient from the tank farm. The cause of the release was later determined to be a snowmobiler that may have hit a 2" gate valve.

FY93 Action: DEC provided oversight and technical assistance. Cost recovery potential is low. The responsible party is the City of Kotlik.

FY93 Expenditures: $ 1,794.43

Title: Bethel BIA Oil Spill

Location: Bethel

Site ID: 93-2-5-1-106-2

DEC Region: Western District Office

Ledger Code: 49472

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: On 4/15/93 the Bethel Field Office received a report from a bird hunter that there was fuel coming from the Bureau of Indian Affairs (BIA) Bethel Bulk Fuel Facility Site. Bill Rieth, Bethel Field Office Manager, accompanied the hunter back to the area where the hunter had encountered the fuel. Bill Rieth's initial investigation discovered product running under the varying depths of snow and on top of the frozen ground surface. It appeared that the product had flowed downhill from the BIA tank farm a distance of approximately 1.3 miles. Further investigations by DEC revealed that 107,000 gallons had been lost. The cause was a cracked 2" pipe elbow. The Bethel BIA was contacted,and they hired a contractor to start recovery operations. An incident command post was established and manned by EPA, USCG, BIA, BLM and DEC personnel. Recovery operations were terminated September of '93 due to the weather conditions. The total amount of diesel fuel recovered was 67,800 gallons. In addition to the fuel, other hazardous materials were discovered on site which required immediate attention. DEC has requested Site Remediation Plans by letter through the Attorney General's Office. As of 11/26/93, these have not been received. At this time, the case remains open. Communications with the BIA are currently through the Attorney General's office.

FY93 Action: Enforcement action is pending and cost recovery is anticipated.

FY93 Expenditures: $ 61,335.52 An encumbrance of $72.37 was made in FY93.

Title: Anchorage Barrels Phase II

Location: Anchorage

Site ID: 92-2-1-1-132-1

DEC Region: Southcentral

Ledger Code: 49262

Project Manager: Bill Lamoreaux, Anchorage District Office, Anchorage, 349-7755

Situation: Drums containing waste oil and/or hazardous materials were abandoned at various locations in Anchorage. Several drums were leaking or the contents were dumped on the ground.

FY93 Actions: DEC inspected and photographed the sites. The situation appeared to be the result of a willful dumping of the drums and DEC requested a crime scene report from the Anchorage Police Department and the Alaska State Troopers. The police gathered evidence at the scene. DEC analyzed the drum contents to determine if the drums contained hazardous materials. Lab analysis determined that the drums contained waste oil and hazardous waste. The investigation identified one of the drum dumpers.

The state filed charges in state district court against the abandoned drum dumper. The court found the dumper guilty of illegal disposal of oil and hazardous wastes. The court sentenced the dumper to jail time, community service time and required the dumper to reimburse the state for their investigation costs. The court directed the state to cleanup the contaminated site and restore the area, and the court required the dumper to reimburse the state for the cleanup and restoration costs.

FY93 Expenditures: $ 11,586.15

Title: Peninsula Circle

Location: Anchorage

Site ID: 93-2-1-1-106-2

DEC Region: Southcentral

Ledger Code: 49458

Project Manager: John Bauer, Anchorage District Office, 349-7755

Situation: One drum was abandoned along an Anchorage street.

FY93 Actions: DEC inspected the site and photographed the drum. The situation appeared to be the result of a willful dumping of the drum and DEC requested a crime scene report from the Anchorage Police Department. The police gathered evidence at the scene. DEC analyzed the drum contents to determine if the drum contained hazardous material. Lab analysis determined that the waste oil was not hazardous waste.

The responsible party has not been identified. The case is in inactive status.

DEC will be not be pursuing cost recovery since the responsible party has not been identified.

FY93 Expenditures: $ 1,559.37

Title: 79th and Hartzell Drum

Location: Anchorage

Site ID: 93-2-1-1-106-3

DEC Region: Southcentral

Ledger Code: 49460

Project Manager: John Bauer, Anchorage District Office, 349-7755

Situation: Four drums were abandoned along an Anchorage street. The drums were damaged and leaking what appeared to be waste oil and possibly solvents and/or gasoline.

FY93 Actions: DEC inspected the site and photographed the leaking drums. The situation appeared to be the result of a willful dumping of the drums and DEC requested a crime scene report from the Alaska State Police. The police gathered evidence at the scene. DEC analyzed the drums contents to determine if the drums contained hazardous material. Lab analysis determined that the waste oil was not hazardous.

The responsible party has not been identified. The case is in inactive status.

DEC will be not be pursuing cost recovery since the responsible party has not been identified.

FY93 Expenditures: $ 2,748.79

Title: Alaska Railroad, Eklutna

Location: Birchwood

Site ID: 93-2-1-1-036-1

DEC Region: Southcentral

Ledger Code: 49100

Project Manager: John Bauer, Anchorage District Office, Anchorage, 349-7755

Situation: On February 5, 1993 an Alaska Railroad three-unit train derailed near Birchwood. The derailment damaged the engines and fuel tanks. The spilled material flowed on ice, snow, and frozen ground within the railroad right of way and onto the Susitna River flats. Total spill volumes were 3,766 gallons of diesel fuel, 99 gallons of motor oil, 38 gallons of hydraulic fluid, and 1.5 gallons of battery acid.

FY93 Actions: DEC responded to the field and provided technical assistance and spill oversight. Recovery efforts included manual removal of contaminated snow, pumping of spilled fuel and contaminated overflow. Cleanup is completed.

The responsible party is the Alaska Railroad. DEC will be pursuing cost recovery with the Alaska Railroad.

FY93 Expenditures: $ 3,563.00

Title: Cinnabar

Location: Anchorage

Site ID: 92-2-1-9-127-2

DEC Region: Southcentral

Ledger Code: 49282

Project Manager: Doreen Sullivan-Garcia, Anchorage District Office, 349-7755

Situation: Fifteen drums in poor condition with unknown contents, a crate of potentially hazardous materials and area of stained soil were observed at an abandoned site. The landowner was unresponsive. Hazards to health and safety of the public and neighboring workers were considered severe enough to warrant a DEC response in June of 1992 to secure the leaking drums and containers.

FY93 Actions: DEC is continuing to investigate the circumstances of the abandonment. The responsible party, an oil spill cleanup firm that left Alaska in 1988, was identified. A workplan to cleanup the site and characterize the wastes, primarily dispersants, wastes oils and oil spill cleanup wastes was prepared by the responsible party. DEC is monitoring the work to insure disposal and cleanup is in accordance with applicable local, state and federal regulations. The landowner will be responsible to reimburse the state for the response and oversight costs.

FY93 Expenditures: $2,608.27

Title: Neka Bay Fish Kill

Location: Hoonah

Site ID: 92-1-1-0-166-1

DEC Region: Southeast

Ledger Code: 49278

Project Manager: Steve Haavig, Southeast Region, Juneau, 465-5356

Situation: A fish kill, estimated in the tens of thousands of fish, was reported in Neka Bay, 12 miles southwest of Hoonah on June 14, 1992.

FY93 Actions: Initial field investigations by regional staff did not reveal a cause. Concern for subsistence resources and commercial harvests prompted an expansion of the investigation to include water and sediment analysis. Tissue analysis on important commercial and subsistence resources was also conducted in order to determine if fish and shellfish were safe to eat. A consultant was hired to carry out the study. DEC investigators interviewed local residents to reconstruct the timing of events as there was concern that the incident was caused during the repairs of an ocean going barge that was pulled into Neka Bay for emergency repairs prior to the fish kill. The investigations did not pinpoint the cause of the fishkill. No significant measurable quantities of any man-made toxins were found. Some high paralytic shellfish poison (PSP) levels were found in the dungenese crab guts. Mostly likely the fish kill was caused by a natural phenomenon and the killing agent of agents could not be determined because they rapidly dissipated.

No responsible party has been identified in this incident, no cost recovery, criminal or civil assessments have been made.

FY93 Expenditures: $ 50,169.56

Title: Mile Post 285 Parks Highway

Location: Mile Post 285, Parks Highway

Site ID: 92-3-1-1-147-7

DEC Region: Northern

Ledger Code: 49503

Project Manager: Larry Katkin, Northern Region Office, Fairbanks, 451-2181

Situation: Fifteen 55 gallon drums containing an unknown substance were abandoned along the Parks Highway.

FY93 Actions: DEC performed oversight of the drum removal by a contractor. The responsible party is unknown, thus there have been no civil or criminal assessments.

FY93 Expenditures: $7,029.55

Title: Talkeetna (Chase) Train Derailment

Location: Chase/Talkeetna

Site ID: 93-2-2-1-117-1

DEC Region: Southcentral

Ledger Code: 49469

Project Manager: Mike Krieber, Mat-Su District Office, Wasilla, 376-5038

Situation: Derailment of an Alaska Railroad Corporation train resulted in the spilling of approximately 2,400 gallons of diesel fuel into the rail bed ballast material. This spill occurred adjacent to the Susitna River. Also, a boxcar of acid barrels overturned into the Susitna River, but no leakage was reported.

FY93 Actions: Initial efforts were focused on uprighting and retrieving the upended acid boxcar from the river, prior to any damage from spring breakup of the Susitna River, which could have resulted in a significant spillage of acid. At the same time as attempting to retrieve the acid boxcar, a cleanup crew performed booming and fuel mopping from the river and drainage ditches. After completion of the acid boxcar retrieval, efforts focused on excavation of the contaminated soil.

FY93 Expenses: $ 6,720.06

Title: Saltz General Contractors

Location: Soldotna

Site ID: 93-2-3-1-075-1

DEC Region: Southcentral

Ledger Code: 49165

Project Manager: Gary Folley, Kenai District Office, Soldotna, 262-5210

Situation: Sometime during the winter of 1992-93 there was a release of No. 1 diesel fuel from a fuel truck located at Saltz General Contractors equipment yard. The spill was discovered in the spring of 1993 and action was taken to remove the visibly contaminated snow and soil.

FY93 Update: An engineering consultant was retained by Saltz General Contractors. A field investigation was conducted and 130 cubic yards of contaminated soil was excavated and stockpiled on site. A Corrective Action Report was submitted to the DEC. Approval has been granted to landspread a portion of the soils and thermally treat the remainder. Reimbursement will be requested for oversight expenses.

FY93 Expenditures: $ 1,033.08

Title: 100th Martin

Location: Anchorage

Site ID: N/A

DEC Region: Southcentral

Ledger Code: 49107

Project Manager: John Bauer, Anchorage District Office, 349-7755

Situation: The Anchorage District Office is investigating possible illegal discharge of oil and/or hazardous materials. The case is currently under investigation, and the information is enforcement sensitive.

FY93 Actions: DEC investigated possible illegal discharges of oil and/or hazardous materials. The case is currently under investigation, and the information is enforcement sensitive.

FY93 Expenditures: $ 2,776.94

Title: Spyglass

Location: Anchorage

Site ID: 92-2-1-1-132-1

DEC Region: Southcentral

Ledger Code: 49453

Project Manager: John Bauer, Anchorage District Office, 349-7755

Situation: Drums containing waste oil and/or hazardous materials were abandoned at various locations in Anchorage. Several drums were leaking or the contents were dumped on the ground. DEC and police officials investigated the incident and identified the abandoned drum dumper. The Spyglass site was an extension of activities (primarily clean-up) of the investigations identified under Anchorage Barrels Phase II.

As identified under the case titled Anchorage Barrels Phase II, the state filed charges in state district court against the abandoned drum dumper. The court found the dumper guilty of illegal disposal of oil and hazardous wastes. The court sentenced the dumper to jail time, community service time and required the dumper to reimburse the state for their investigation costs. The court directed the state to cleanup the contaminated site and restore the area, and the court required the dumper to reimburse the state for the cleanup and restoration costs.

FY93 Actions: DEC contracted with an environmental company to cleanup and restore the site. DEC directed the contractors cleanup and restoration activities. All site work was completed.

The abandoned drum dumper will reimburse the state for the cleanup and restoration costs in accordance with the district court sentencing.

FY93 Expenditures: $ 551.99 An encumbrance of $13,675.00 was made in FY93.

Appendix B

CONTAMINATED SITE SUMMARIES

This appendix includes detailed explanations of sites on which $1,000 or more was spent from the Response fund during FY92 for contaminated site investigation, safety, cleanup and cost recovery.

The Director of the Division of Spill Prevention and Response has been delegated authority by the Commissioner's Office to expend Response Funds on a specific site investigation or remediation project. A Project Manager is assigned to each project as the site is discovered and manages all activities pertaining to investigation and cleanup of the site, including cost tracking, approval of all project fund expenditures and cost recovery.

Title: Oriental Crane

Location: Nikiski

Site ID: 88-2-3-1-347-1

DEC Region: Southcentral

Ledger Code: 49509

Project Manager: Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: On December 12, 1988, 171 barrels of bunker fuel oil (IBF 180) was released into Cook Inlet at the Kenai Pipe Line (KPL) dock at Nikiski. The responsible party was the motor vessel, "Oriental Crane". The spill occurred when the ship's fender system was damaged during winter storm wave action. The dock punctured the vessel hull. Oil was carried to shore by onshore winds, contaminating a 2-3 mile length of sand and gravel beach adjacent to the KPL dock. The petroleum contaminated soils were excavated and stored at the Chevron Refinery.

FY93 Actions: The contaminated soils were remediated using a thermal treatment unit. Total remediated soil volume was approximately 20,000 yards. The remediated soils were used as diking material for the tank farm at the Kenai Pipeline Facility.

FY93 Expenditures: $ 4,4094.92

Title: Project Chariot Radioactive Contamination Cleanup

Location: Cape Thompson (30 miles south of Point Hope)

Site ID: 92-3-6-9-239-1

DEC Region: Northern

Ledger Code: 49132

Project Manager: Doug Dasher, Fairbanks, 451-2172

Situation: Burial of radionuclides occurred near Cape Thompson at the Chariot site. From 1958 to 1963, scientific studies were conducted to evaluate the environmental impact of proposed nuclear detonations on the environment. The purpose of the nuclear detonations was to create a deep-water harbor. In 1962 an experiment was conducted at the site to evaluate the migration of the radionuclides through the soil. The radionuclides were applied to the soil plots and Snowbank Creek. Water was sprayed over each soil plot,and runoff was sampled and measured for each of the radionuclides. Upon completion of the experiments, the contaminated soil used was moved to a disposal site, buried, and covered with clean soil. Due to public concerns, the Project Chariot nuclear detonations never took place.

In 1992, a researcher brought to public attention documents detailing the burial of the radionuclides. Residents in Point Hope and Kivalina feared that the nuclear wastes in the disposal site may have caused cancers in their villages. For this reason, on September 15, 1992, Governor Walter Hickel and Senator Frank Murkowski visited Point Hope. They promised that the residual waste would be removed and the site cleaned up.

FY93 Actions: DEC's role has been to review and evaluate DOE operations to assure they are in the best interest of the state. The department has reviewed historical documents pertaining to the Project Chariot studies; applied for DOE security clearance to review any remaining documents that may be classified; applied and received a DOE grant to fund the departments oversight and reimburse past response fund expenditures; provided information to the local communities; held interagency and community meetings; provided logistical assistance to DOE; provided funds for community on-site representatives to be medically monitored and receive 40-hour hazardous waste operators training; reviewed and approved DOE's site remediation plan; and conducted field oversight of DOE activities during remedial actions, including photo/video documentation and sampling and monitoring activities to assure compliance with the approved plan. It is important to note that the preliminary data indicates that the radionuclides left at the site never represented a health hazard to the local communities.

Completion of our involvement will involve completing a report on the field activities and

monitoring results, review and comment on the DOE report presentation of the reports to the local communities, limited participation in the development of follow up health studies, development and implementation of a airborne radionuclide monitoring station in Pt. Hope and to finally revisit the site in order to assess the revegetation efforts.

All DEC expenditures on Project Chariot will be reimbursed and/or paid for by a federal grant.

FY93 Expenditures: $162,581.52

Title: Kenai Pipeline Facility

Location: Nikiski

Site ID: 92-2-3-1-002-1

DEC Region: Southcentral

Ledger Code: 49170

Project Manager: Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: The Kenai Pipeline Facility (KPL) has crude oil contamination in several large areas around the facility due to past industrial practices, leaks and spills that have occurred since the 1960s. There are three open, unlined lagoons and a filled-in lagoon that were used for oil/water separation. The lagoons are situated in the wetlands next to Bernice Creek. There are impacts to vegetation, wildlife and groundwater in the area. There are several large areas of crude oil contamination in the soil where pipeline leaks have occurred under buildings and along pipeline corridors.

FY93 Actions: KPL has conducted a site assessment to determine the amount and location of petroleum contamination at the facility. The results of the first phase of the site assessment were submitted to DEC on Feb. 27, 1992. Additional site assessment activities in areas requiring further investigation were conducted during the summer of 1993. At the same time, a risk assessment was drafted to determine the hazards to the environment, and to the people in the area.

FY93 Expenditures: $ 2,348.66

Title: Wasilla Machine Shop

Location: Wasilla

Site ID: 90-2-2-1-239-1

DEC Region: Southcentral

Ledger Code: 49133

Project Manager: Mike Krieber, Mat-Su District Office, Wasilla, 376-5038

Situation: Contaminated (petroleum) materials appear to have been disposed of by being poured down wastewater drains. Contamination entered the soil via a broken sewer pipe and was initially noted in 1990. The owner reports lack of financial resources to address site evaluation and cleanup.

FY93 Actions: Sampling of the effluent stream was conducted by the DEC. Department Resource Conservation and Recovery Act staff also performed an inspection. District Office staff has been coordinating with the regional and central office on listing the site for state-lead cleanup. The owner has been informed of cost recovery procedures.

FY93 Expenditures: $2,934.89 An encumbrance of $10,000 was made in FY93.

Title: Gambell Tankfarm & Pipeline Site Assessment

Location: Gambell

Site ID: 93-3-2-9-039-1

DEC Region: Northern

Ledger Code: 49787

Project Manager: Randy Romenesko, Nome District Office, 443-2600

Situation: Site is the location of long term poor fuel storage and piping practices. Contaminates of concern are gasoline and diesel (heating fuel #1). The elementary school well has been contaminated by benzene as a result of the spills. It is unknown who spilled what products, nor is there an accurate estimate of the quantity of contaminates spilled.

FY93 Actions: The contract for performing the Site Assessment was signed by DEC and the contractor (Shannon & Wilson, Inc.) was signed on 30 June, 1993. Thus, there was little activity on this project in FY93.

It is reasonable to believe that many Responsible Parties have contributed to the contamination problem. It has been recommended that cost recovery is not feasible for the site assessment under the present circumstances.

FY93 Expenditures: $333.62 An encumbrance of $82,000 was made in FY93.

Title: McGrath Airport Retardant Ramp - Phase I Assessment

Location: McGrath

Site ID: 91-2-2-0-016-1

DEC Region: Southcentral

Ledger Code: 49131

Project Manager: John Halverson, Southcentral Region, Anchorage, 563-6529

Situation: The McGrath Airport retardant ramp site has been used by several different state and federal agencies, including the Department of Defense (DOD), over the past 50 years. Complaints indicate the DOD may have buried numerous drums beneath the runway or the retardant ramp prior to transferring the property to the State.

Additionally, petroleum contaminated soil was discovered at the retardant ramp during the removal of two 5,000 gallon underground storage tanks (USTs). Contaminated soil was documented from the ground surface to the watertable.

The retardant ramp is currently owned by the State of Alaska. The Bureau of Land Management (BLM) leased the land from 1973-1998 for use in fire control. The USTs were installed in about 1978. In the mid to late 1980s, the Alaska Department of Natural Resources (DNR) entered into a sub-lease of the retardant ramp and has operated it since that time. DNR removed the USTs in 1991, discovered the contamination and reported it to the DEC. However, DNR did not have funding available to follow through with a site investigation and cleanup.

Based on the high Alaska Hazard Ranking Score, the numerous potentially responsible parties (PRP), proposed future airport improvements and the lack of a commitment from any PRPs to investigate and cleanup the site, the DEC initiated a Phase I investigation under the state lead program.

FY93 Actions: A Phase I Field Investigation was conducted to check for the presence of buried drums and evaluate the extent of petroleum contamination associated with the former USTs. No large areas of buried drums or metal were identified. High concentrations of gasoline contamination were documented in the soil and groundwater adjacent to the former tanks, however, the impacts appear to be localized. DNR nominated the site for inclusion in the state Memorandum of Agreement and has since received funding for conducting remedial action. Cost recovery options will be evaluated.

FY93 Expenditures: $13,651.23 An encumbrance of $41,707.62 was made during FY93.

Title: King Salmon Orphan Drums

Location: King Salmon

Site ID: 92-2-5-0-9-193-1

DEC Region: Southcentral

Ledger Code: 49257

Project Manager: Ron Klein, Southcentral Regional Office, 563-6529

Situation: Abandoned drums were discovered in an Alaska Department of Transportation and Public Facilities (DOT&PF) right-of-way during installation of a sewer line in King Salmon for the Bristol Bay Borough. The Village Safe Water program was providing technical assistance and funding for the project.

Potentially responsible parties were contacted to take responsibility for the site at the time it was encountered. All parties refused. The Bristol Bay Borough undertook initial screening activities at the site in consultation with the department to determine if the sewer installation could proceed. The initial screening indicated no significant contamination, and so the Bristol Bay Borough was given approval to excavate through the buried drum site. Approximately 1,250 cubic yards of soil and drums were excavated from the trench and placed on a visqueen liner. The bottom of the trench was tested and no contamination was detected or evident. The trench was then lined with visqueen, and the line placed on and covered with clean fill. The visqueen was used to allow for easy identification of the drum zone in future remediation or excavation, and to inhibit any contamination moving from the drum into the sewer line corridor.

The Air Force agreed to and did dispose of the drums removed from the excavation. They were conducting a barrel disposal operation in the area, and were able to accommodate these drums at little or no additional cost. The Air Force did not admit responsibility for the drums or for the dump site.

FY93 Actions: The Bristol Bay Borough requested from the Department reimbursement for $18,416.20 incurred costs due to the incident. The Regional Administrator determined that the reimbursement request - with the exception of $2,125.68 for costs associated with delays in the sewer installation due to the incident, would be eligible for reimbursement. The Borough's request was found to be in compliance with the Department's April 13, 1992 policy statement on Municipal and Village Reimbursements and Grants. Insufficient evidence as to origin of the drums exist to support a cost recovery action against the potentially responsible parties.

FY93 Expenditures: $16,290.52

Title: Nikiski Air Quality Monitoring

Location: Nikiski Industrial Complex

Site ID: N/A

DEC Region: Southcentral

Ledger Code: 49293

Project Manager: Gerry Guay, Air Quality Management, Juneau, 465-5100

Situation: Based on complaints from local residents, the Air Quality Program initiated an air quality monitoring program in Nikiski in 1988. The actual Nikiski monitoring site was established a year later to monitor ammonia emissions from Unocal Chemical to determine compliance with the State's air quality standards. This site was part of the joint monitoring network establish between Unocal, Tesoro and the Department. At conclusion of the joint monitoring project, Unocal and the State continued to evaluate ambient ammonia concentrations at the monitoring site across from Phillips Petroleum. The State's continued involvement was more an oversight role designed to evaluate comparability between systems and validate monitoring methodologies for the recently adopted, State air quality ammonia standard.

FY93 Actions: Air quality monitoring was conducted at this site from July 1992 through September 1992 and from May 1993 through June 1993 to monitor instrument operation and standards compliance. Monitoring conducted in 1993 was supported by a technician from the Kenai District Office which greatly improved the quality and reliability of collected data. A recent audit of both monitoring systems has shown that little differences remain between both systems. Monitoring at this site is no longer required, but relocation to another site downwind of the Unocal facility may be required in the future.

Cost recovery was not pursued for this project as the facility had already spent a considerable amount on the joint monitoring effort and was currently operating an ammonia monitoring site at that location. All of these expenses and their cooperation were taken into account in determining if it was reasonable to require cost recovery.

FY93 Expenditures: $33,098.16 An encumbrance of $11,025.31 was made in FY93.

Title: Skagway Groundwater

Location: Skagway

Site ID: 88-1-1-9-363-1

DEC Region: Southeast

Ledger Code: 49600

Project Manager: Randy Rice, Southeast Region, 465-5338

Situation: Trichlorethylene (TCE), a known carcinogen, was found to be present in the groundwater and municipal wells of Skagway. The source of the contamination is still under investigation.

FY93 Actions: DEC has conducted quarterly monitoring of groundwater monitoring wells. Data is being compiled for assessment and compared to monitoring being conducted by the Corp of Engineers and Whitepass, a potentially responsible party. Preliminary risk assessment screening is being conducted.

Costs are being tracked in the event a responsible party is clearly identified.

FY93 Expenditures: $20,965.20

Title: Rabbit Run Drum Site

Location: Soldotna

Site ID: 88-2-3-1-304-5

DEC Region: Southcentral

Ledger Code: 49325

Project Manager: Gary Folley, Kenai District Office, Soldotna, 262-5210

Situation: DEC involvement with the Rabbit Run Drum Site began in 1988 when a citizen complained about oil leaking from drums. DEC representatives observed 14 drums on the property, approximately half of which contained liquids. Dark brown, stained soils were observed in a 15 foot radius around the drums.

A contractor was hired using Response Fund funds because the property owner of record refused to cooperate in the cleanup of this site. Leaking drums were placed in overpacks, oil on the ground was removed as much as possible with absorbent pads, and absorbent boom was placed across the runoff pathway. The contents of the drums were sampled and analyzed; two of the drums were found to contain high levels of halogens. In June 1992, all of the drums were removed from the site and incinerated by the contractor.

FY93 Action: Contaminated soil remains at the site where the drums were staged. If these soils are contaminated with halogens or if the depth of contamination is great enough to impact groundwater, failure to take remedial action could pose an unacceptable threat to neighboring drinking water wells. An owner of neighboring property has expressed concern.

A site assessment is needed to determine the extent and chemical nature of the contamination on this property. If the site assessment indicates the presence of halogenated compounds in the soil or if the depth of contamination is great enough that groundwater is threatened, remediation of the contaminated soils will be necessary. A FY94 proposed work plan and cost estimate has been developed. The project is proposed as a state lead site for FY94.

FY93 Expenditures: $1,780.30

Title: Denali Fuel/NYE, 5th Avenue

Location: Anchorage

Site ID: 90-2-1-1-338-1

DEC Region: Southcentral

Ledger Code: 49135

Project Manager: Robert Weimer, Anchorage District Office, Anchorage, 349-7755

Situation: Historic fuel spills discovered at the site in 1990 have resulted in extensive surface and subsurface soil contamination. Site investigation and corrective action activities are being conducted by the responsible parties.

FY93 Actions: DEC staff provided oversight for site investigation and corrective action.

The responsible parties are Denali Fuel and NYE. The project will be reviewed for cost recovery in accordance with department policy.

FY93 Expenditures: $ 2,783.42

Title: Alaska Oil Sales Diesel Spill

Location: Homer

Site ID: 92-2-3-1-290-4

DEC Region: Southcentral

Ledger Code: 49169

Project Manager: Gary Folley, Kenai District Office, Soldotna, 262-5210

Situation: On October 16, 1992, approximately 70 gallons of No. 1 diesel were accidently spilled by an Alaska Oil Sales truck operator while filling a tank at the Laidlaw Transit Inc. bus terminal in Homer.

FY93 Actions: Thirty cubic yards of contaminated soil was excavated and transported to the Alaska Environmental Specialists facility in Nikiski to be recycled as asphalt treated base. The project will be reviewed for reimbursement in accordance with department policy.

FY93 Expenditures: $1,059.11

Title: Dresser Atlas

Location: Nikiski

Site ID: 86-2-3-0-140-1

DEC Region: Southcentral

Ledger Code: 49710

Project Manager: Monica English, Kenai District Office, Soldotna, 262-5210

Situation: This site is currently the location for the Atlas Wireline Services business and is located at approximately mile 22.5 of the North Kenai Road between the towns of Kenai and Nikiski.

In 1986, employees of the Atlas Wireline business complained of a gasoline taste in their drinking water. DEC analyzed water samples for the drinking water well and found benzene and xylene contamination. A new well was drilled in the deeper confined aquifer in 1988. It was determined that a possible source of contamination in the original well was from a former gasoline service station and general merchandise store that was previously located on the site. The underground storage tanks (UST) were drained and removed in June 1988. DEC conducted assessment work in 1988, 1989 and 1990. This assessment work indicates that a dissolved benzene, toluene, ethylbenzene, and xylene (BTEX) plume extends from the pump island/former UST excavation area.

Site remediation actions that have occurred to date include the installation and operation of a vapor extraction/air sparging system.

The property was formally owned by the State of Alaska. According to the Department's site investigation, it appears that the majority of contamination occurred prior to conveyance to its current owner, the Kenai Peninsula Borough. It would be very difficult, if not impossible to prove that any contamination occurred after the borough took title of the property from the State. No attempt will be made to recover cleanup costs.

FY93 Actions: During FY93, continued operation of the vapor extraction/air sparging system occurred to facilitate continued reductions to the levels of petroleum hydrocarbon contamination in the soils and groundwater at this site.

FY93 Expenditures: $156,603.41 An encumbrance of $90,121.50 was made in FY93.

Title: Poppy Lane Gravel Pit

Location: Kenai Peninsula Borough

Site ID: 86-2-3-1-151-1

DEC Region: Southcentral

Ledger Code: 49770

Project Manager: Paul Horwath, Kenai District Office, Soldotna, 262-5210

Situation: Poppy Lane gravel pit occupies approximately 40 acres of an 80 acre tract on West Poppy Lane near Soldotna, Alaska. The site is owned by Union Oil Company of California (UNOCAL), Marathon Oil Company, Chevron USA and ARCO Alaska Inc. and has been in existence since the mid 1960's. The current site operator is Marathon Oil Company. From 1965 to 1985, the Poppy Lane gravel pit was used as a disposal site, with unrestricted access, for unknown quantities of construction materials, drums, drilling muds, petroleum waste products and residential refuse. The privately owned adjacent properties, down gradient of the pit, have experienced groundwater contamination.

A Compliance Order By Consent has been signed for this project. The State received $275,000 for costs and damages.

FY93 Actions: Monitor wells were installed and sampled around the Poppy Lane Gravel Pit. A fence was installed around the gravel pit to limit access to the site. A large (10 acre) bio-remediation cell was constructed on land adjacent to the gravel pit. Aman Environmental, Inc. is the primary contractor for Marathon on this project. DEC inspections during construction of the cell determined that the base liner for the cell had been improperly installed. An agreement was reached stating conditions whereby DEC would accept and allow continued use of the cell without re-building the entire cell. A $60,000.00 penalty and the installation and sampling of monitor wells around the treatment cell were part of the agreement.

Soils from the gravel pit were moved into the cell and soil remediation begun. Mechanical soil tilling was conducted until October 1992, when it was discontinued for the winter. Inspections in early October, 1992, by Aman Environmental identified evidence of a torn liner. Marathon and DEC were not formally notified of the possibility of a liner breach by the contractor, Aman Environmental, Inc., until April, 1993. The incident is under investigation. No remediation activities were conducted for the remainder of FY93. The department is being reimbursed for oversight expenses on a quarterly basis.

FY93 Expenditures: $5,559.91

Title: Soldotna Chlorine Release

Location: Soldotna Waste Water Treatment Plant

Site ID: 92-2-3-9-030-1

DEC Region: Southcentral

Ledger Code: 49312

Project Manager: Janice Adair, Regional Administrator, Anchorage, 563-6529

Situation: Failure of a plastic pipe resulted in the release of chlorine gas from the Soldotna Waste Water Treatment Plant on January 30, 1992. Local residents were evacuated until it could be confirmed that the gas cloud had dispersed. DEC staff led the effort to screen areas and homes in close proximity to the release for the presence of chlorine gas.

Following the initial response to the incident, substantial DEC effort was put into determining likely causes of the release as well as investigating issues related to the operation of the facility, which became apparent during the course of the chlorine release investigation. Cost recovery will be sought in FY 93 against the City of Soldotna, Owner of the facility.

FY93 Actions: Cost recovery negotiations were initiated and continue between the City of Soldotna, DEC, and the Attorney General's Office for recovery of all costs associated with the release. Tentative settlement has been reached to reimburse only those costs from the Response Fund -- $5,019.98.

FY93 Expenditures: $5,724.79

Title: Peters Creek Ph. II

Location: Anchorage

Site ID: 86-2-1-1-062-1

DEC Region: Southcentral

Ledger Code: 49726

Project Manager: Bill Lamoreaux, Anchorage District Office, 349-7755

Situation: Gasoline contamination was discovered in the groundwater supplying a Peters Creek subdivision in 1986. The source of the spill was determined to be the Peters Creek Tesoro station. After an extensive investigation, a recovery effort was initiated to remove free product from the groundwater and to measure the extent of the contaminated plume.

A civil settlement was reached whereby the State received $600,000 and assumed the recovery efforts. Phase II work is a continuation of assessment of the contamination and will ultimately lead toward a risk assessment. Information collected to date suggests that the contaminated plume is continuing to move into areas previously uncontaminated and might someday threaten public or private wells to the Northwest.

FY93 Actions: DEC is continuing to investigate whether additional cleanup is needed at the site and whether the contaminated groundwater plume threatens other water wells in the area. Monies expended to date are from the original $600,000 .

FY93 Expenditures: $13,809.64 An encumbrance of $84,555.00 was made in FY93.

Title: Marshall Groundwater

Location: Marshall

Site ID: 90-2-5-1-351-1

DEC Region: Southcentral

Ledger Code: 49441

Project Manager: Ray Dronenburg, Southcentral Region, Unalaska, 581-1822

Situation: In December 1990, the Marshall drinking water supply was contaminated by gasoline as a result of a buried leaking petroleum transfer line adjacent to the Marshall tank farm. Accessible contaminated soils were removed from the spill site at the Marshall tank farm in August 1992. Remediation of the soils has been in progress since then under two 90-day EPA Emergency Hazardous Waste Management Facility permits issued on June 22, 1992, and on June 28, 1993. The Department, City of Marshall and the Maserculiq Corporation, were joint permittees for the emergency hazardous waste management facility.

FY93 Action: June 1993 sampling of soils at the EPA-permitted Homesite Road facility, Marshall (EPA I.D. No. AKD 98307 5391) showed that benzene levels have dropped to the extent that soils are no longer classified as RCRA-regulated hazardous waste. At the end of FY93 preparation of a closure plan was in progress for the facility.

FY93 Expenditures: $ 8,635.17

Title: Coastal Drilling

Location: Soldotna

Site ID: 88-2-3-9-183-3

DEC Region: Southcentral

Ledger Cod 49329

Project Manager: Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: This site was occupied by Coastal Drilling, a former oil field drilling company. Coastal Drilling is no longer in business and the company owners have all passed away. The current property owner has refused to initiate cleanup action, causing the site to revert to a state-lead project. The contamination on the site is largely associated with two disposal pits where oil field wastes from the Coastal Drilling Co. were disposed. There are many contaminants in the pits including heavy metals, petroleum fuels, solvents and PCBs. There is a class A public drinking water well within 50 feet of the pits. In addition to the pits, there is also petroleum and heavy metal contamination located where an old shop used to exist.

FY93 Actions: The Department has drilled monitor wells around the pits and the drain. Soil contamination has been documented, but groundwater contamination has not. For FY93, the Department has hired an environmental consultant to investigate remediation options and the associated costs.

FY93 Expenditures: $ 6, 683.96 An encumbrance of $ 79,886.48 was made in FY93.

Title: Kenai Pipeline Facility

Location: Nikiski

Site ID: 92-2-3-1-002-1

DEC Region: Southcentral

Ledger Code: 49170

Project Manager: Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: The Kenai Pipeline Facility (KPL) has crude oil contamination in several large areas around the facility due to past industrial practices, leaks and spills that have occurred since the 1960s. There are three open unlined lagoons and one filled in lagoon that were used for oil/water separation. The lagoons are situated in the wetlands next to Bernice Creek. There are impacts to vegetation, wildlife and groundwater in the area. There are several large areas of crude oil contamination in the soil where pipeline leaks have occurred under buildings and along pipeline corridors.

FY93 Actions: KPL has conducted a site assessment to determine the amount and location of petroleum contamination at the facility. The results of the first phase of the site assessment were submitted to the Department on Feb. 27, 1992. Additional site assessment activities in areas requiring further investigation were conducted during the summer of 1993. At the same time, a risk assessment was drafted to determine the hazards to the environment, and to the people in the area.

FY93 Expenditures: $ 2,348.66

Title: McGahan/Nikiski Water

Location: Nikiski

Site ID: 88-2-3-9-355-1

DEC Region: Southcentral

Ledger Code: 49556

Project Manager: Paul Horwath, Kenai District Office, Soldotna, 262-5210

Situation: In the fall of 1988, DEC identified chlorinated solvents (tetrachloroethylene and 1,1,1-trichloroethane) in the McGahan Public Utilities water supply system. The tetrachloroethylene exceeded State and Federal drinking water standards for public water supply systems. In the spring of 1989, DEC funded an investigation that identified a defunct drycleaning/laundry business as the source of the tetrachloroethylene contaminating the groundwater and the utility's public water supply wells. During this investigation, groundwater monitoring wells were installed in order to determine groundwater flow characteristics, and to monitor groundwater contaminant concentrations.

FY93 Actions: DEC retained an environmental consultant, Hart Crowser, Inc., to collect groundwater samples from groundwater monitoring wells, and to resurvey the monitoring wells and groundwater elevations in order to track both contaminant concentrations, and groundwater flow characteristics. One of the groundwater monitoring wells is positioned directly between the source of contamination and the public water supply wells, and serves as an early warning detector for contamination migrating toward the public water supply wells.

Upon completion of the field work, the consultant prepared a report for the DEC, documenting their findings and interpretations of the data.

FY93 Expenditures: $ 4,934.35

Title: Dalton Highway Drums

Location: Dalton Highway, Mile Post 7.7

Site ID: 93-4-6-9-116-1

DEC Region: Southcentral

Ledger Code: 49649

Project Manager: Dick McKean, Pipeline Corridor Regional Office, 278-8595

Situation: On April 26, 1993, two drums were found on the embankment of the Dalton Highway at Mile Post 7.7. The drums were marked as isocyanate and appeared to have fallen off a truck or to have been illegally dumped. A small amount of product appeared to have leaked from one of the drums.

FY93 Actions: Subsequent to a site inspection, DEC personnel hired a response contractor to contain, remove and dispose of the two drums and associated contaminated soils.

Efforts to recover costs were dropped because the Department was unable to determine who owned or who was transporting the drums.

FY93 Expenditures: $ 4,370.23 An encumbrance of $3782.12 was made during FY93.

Title: UAA/MAPS

Location: Soldotna

Site ID: 88-2-3-1-301-6

DEC Region: Southcentral

Ledger Code: 49455

Project Manager: Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: This site is the former fire training area used by the University of Alaska, Anchorage/Mining and Petroleum Science. Petroleum fuels, such as diesel and gasoline, were discharged onto the ground surface, ignited and then extinguished. A portion of the fuel would infiltrate into the ground. Petroleum contamination of soil and groundwater is present over most of the site.

FY93 Actions: The contaminated soils and sludge from the bottom of a lagoon and an underground fuel storage tank were excavated and placed in two bioremediation cells. UAA is presently seeking an environmental contractor to help them bioremediate the contaminated soils in the bioremediation cells and to install and operate an in-situ bioremediation system to remediate contaminated soils which were not excavated, and the contaminated groundwater.

FY93 Expenditures: $ 1,383.63

Title:	Marathon/Trading Bay
Location:	West Foreland Point on the west side of Cook Inlet
Site ID:	91-2-3-1-053-2
DEC Region:	Southcentral
Ledger Code:	49563
Project Manager:	Bryson Twidwell, Kenai District Office, Soldotna, 262-5210

Situation: The Marathon/Trading Bay facility has petroleum contaminated soil and groundwater under much of the facility. Dissolved petroleum contaminants in the groundwater are exiting the base of the bluff into Cook Inlet. The petroleum contamination is the result of multiple spills, leaks and past industrial practices that were not cleaned up since the start-up of this facility in the 1960s.

FY93 Actions: This site has many contaminated areas that are being addressed. Multiple site assessments and localized site remediations have taken place during FY93. One site remediation was an excavation of over 11,000 cubic yards to search for and remove buried lead batteries. Five hundred cubic yards of gasoline contaminated soils are presently being bioremediated in a lined treatment cell. Two other spills totalling 500 cubic yards of contaminated soil, one of gas condensate and another of crude oil were excavated and stockpiled where they will be shipped out in the spring to a soil incinerator. The results from the facility-wide site assessment for the summer 1993 work season is scheduled to be delivered to the Department on March 31, 1994. Marathon is currently researching the best technologies available to capture the petroleum contamination leaking from the bluff.

FY93 Expenditures: $ 9,299.14

Title: Anchorage Clean Sweep

Location: Willow

Site ID: N/A

DEC Region: Southcentral

Ledger Code: 49179

Project Manager: Rich Sundet, Southcentral Region, Anchorage, 273-4272

Situation: This case involved a DEC investigation into the improper handling and storage of thirty barrels of sludge material removed from underground waste oil tanks at the Anchorage Clean Sweep facility.

FY93 Actions: An enforcement action was undertaken by Environmental Section of the Alaska Attorney General's Office. As part of the settlement of the enforcement action, Anchorage Clean Sweep properly disposed of the waste at an EPA-permitted facility and paid a civil assessment which included reimbursement of the State's cost.

The case is now closed.

FY93 Expenditures: $ 2,632.20

Title:	Eyak Corporation Violation
Location:	Cordova
Site ID:	90-2-4-1-095-4
DEC Region:	Southcentral
Ledger Code:	49437
Project Managers:	Dan Lawn, Valdez Field Office, Valdez, 835-4698 John Halverson, Southcentral, Anchorage, 563-6529

Situation: This site is the same as the Copper River Railroad site. It was identified when Eyak Corporation was excavating soil in preparation for a construction project near the former Copper River Railroad roundhouse. The contamination was reported and a Ledger Code was established to track Department expenditures. As additional information was developed, it became apparent the main source of contamination appeared to be from the former railroad facility. A new site name, "Copper River Railroad", and ledger code were assigned.

FY93 Actions: See Copper River Railroad site

FY93 Expenditures: $ 2,899.70

Title:	Copper River Railroad
Location:	Cordova
Site ID:	90-2-4-2-095-4
DEC Region:	Southcentral
Ledger Code:	49394
Project Managers:	Dan Lawn, Valdez Field Office, Valdez, 835-4698 John Halverson, Southcentral Region, Anchorage, 563-6529

Situation: In the early 1900s the Copper River and Northwest Railroad was constructed from Cordova to the Kennecott Mines and the Cordova Airport. A roundhouse was built in Cordova for train maintenance. The War Department (now Department of Defense) condemned the land and operated the railroad during the 1940s. It reportedly destroyed the buildings and leveled the site following use of the facilities.

In 1990, heavy petroleum product was identified in soil and groundwater at the former roundhouse site. The contamination was identified during construction activities undertaken by the current land owner. The type and extent of contamination was not known.

FY93 Actions: Staff worked with the Department of Law to identify and contact potential responsible parties (PRPs). Several PRPs, including the Department of Defense, were notified of the contamination and requested to respond. British Petroleum America (BPA) agreed to initiate the initial investigation and submitted a work plan to assess the type and extent of contamination. The work plan was reviewed and approved. A public meeting was held by BPA to discuss the proposed work. The field work was implemented during the summer of 1993.

Additionally, the Corps of Engineers (COE) completed an Inventory Project Report and submitted it to the DOD in order for the site to be approved for funding as a Formerly Used Defense site. The site has been approved and a potential responsible party investigation has been initiated by the COE.

The Department intends to cost recover expenditures incurred during this investigation and any future corrective action.

FY93 Expenditures: $ 1,256.88

Title: Orca Cannery

Location: Cordova

Site ID: 92-2-4-1-157-1

DEC Region: Southcentral

Ledger Code: 49281

Project Manager: Dan Lawn, Mat-Su District Office, Valdez Field Office, 835-4698

Situation: For many years a fish processing plant operated at the Orca site near Cordova. The cannery was owned by a Canadian company and later by a Chugach Alaska Inc, subsidiary, Chugach Fisheries, Inc. Large scale petroleum contamination occurred at the facility in 1969 and 1977. Residual contamination remains and is leaching into the bay. The site has poorly maintained above ground petroleum storage tanks, a used oil tank, and barrels of potentially hazardous substances stored on-site. Bankruptcy prevented Chugach Fisheries from undertaking corrective action to address the environmental problems and make the property attractive to potential purchasers. The cannery equipment was liquidated to help pay creditors.

FY93 Actions: DEC and Department of Law staff negotiated a Compliance Order by Consent with Chugach Fisheries to enable Chugach Fisheries or the subsequent purchaser to undertake site investigation and cleanup over a period of time. The Compliance Order was signed in October 1993 and the real property subsequently sold to a private party who will take responsibility for corrective action. Because of the timing of the bankruptcy DEC was unable to recover costs.

FY93 Expenditures: $ 6,484.66

Title: Illinois-Minnie Site

Location: Railroad Industrial Area, Fairbanks

Site ID: N/A

DEC Region: Northern

Ledger Code: 49103

Project Managers: Ben Thomas, Fairbanks, 451-2163
Kalu Kalu, Fairbanks, 451-2181

Situation: The Illinois-Minnie Site is a collection of 15 individual contaminated sites in close juxtaposition that are suspected to be hydraulically connected, and suspected to have a number of co-mingling plumes. The area covers 300 acres of industrial property and includes contamination at bulk tank farms, service stations, shipping companies, a gold processing plant and other commercial operations. Contamination consists of diesel fuel, gasoline and an estimated small amount of solvents.

FY93 Actions: DEC was granted $200,000 to conduct a comprehensive site assessment, but later negotiated with a newly-formed coalition to allow for a private investigation. The coalition, the Minnie Street Land Users Group (MSLUG) has done an adequate job of developing and implementing an area-wide investigation, a draft copy of which will be available for review.

FY93 Expenditures: $4,336.8

Title: Nikiski Airstrip

Location: Nikiski

Site ID: 89-2-3-9-591-2

DEC Region: Southcentral

Ledger Code: 49496

Project Manager: Don Seagren, Kenai District Office, Soldotna 262-5210

Situation: The property being studied is formerly owned by the State of Alaska. The current owner is the Kenai Peninsula Borough. The Department has designated this as a State lead site due to lack of potentially responsible parties. Access is limited to crossing Offshore Systems-Kenai, Inc. (OSK) property prior to reaching the site. The area investigated is adjacent to an abandoned airstrip west of Nikishka road, near the OSK dock. The investigation focuses on a disposal pit located off the west side of the airstrip.

The site was used as an airstrip during the 1960's through the early 1980's. There were two separate areas adjacent to the airstrip which were used as solid waste disposal sites for many years. In or about 1980, one of the pits was used to dispose of bunker C fuel or other weathered petroleum products. The pits were subsequently covered over.

It was suspected that possible soil and or groundwater contamination resulted from the improper disposal of the bunker C fuel.

Site remediation that has been completed to date includes removal of the majority of the solid waste and removal of free standing petroleum product using vac-trucks. A portion of the oil and contaminated soil removed from the pit was land-farmed along the airstrip.

FY93 Actions: The following work was accomplished during FY93 to delineate the lateral extent of contamination and obtain the direction of flow of the groundwater. The investigation is designed to evaluate the potential for off-site migration of petroleum contaminants. Four new monitoring wells were installed, for a total of five. Field screening and soil sampling of the four new monitor wells was conducted as they were drilled as well as groundwater sampling of all five monitor wells. Groundwater elevations were surveyed in the monitor wells to obtain groundwater gradient and direction of flow.

Additionally, five 20 foot soil borings were drilled and sampled to further delineate the bunker C disposal pit and determine the limits of any contamination remaining at the site.

FY93 Expenditures: $6,775.89 An encumbrance of $112,587.25 was made during FY93.

Title: Manley Hot Springs Gravel Pit

Location: 3/4 Mile from downtown Manley Hot Springs on Elliot Hwy.

Site ID: 86-3-1-9-115-1

DEC Region: Northern

Ledger Code: 49780

Project Manager: Benjamin Thomas, Northern District Office, Fairbanks, 451-2163

Situation: Drums of dioxin-contaminated pesticides were dumped and spilled at an old gravel pit sometime in the past. In 1988-89, DEC over-packed the drums and removed some impacted soils, and stored them on-site in a secure trailer.

FY93 Actions: DEC hired two term contractors. One contractor to inventory, transport, and dispose of the drums of dioxin wastes and associated materials. Wastes were shipped to Kansas to the only dioxin-incinerator in the US. The other term contractor conducted a site assessment to determine the amount of residual dioxin contamination at the spill site. Results are pending.

There has never been sufficient evidence to determine who was responsible for the dumping.

FY93 Expenditures: $ 1,005.87 An encumbrance of $180,038 was made in FY93.

Title: Unocal Swanson River Investigation

Location: Swanson River Oil Production Field, Sterling, Alaska.

Site ID: 93-2-3-1-481-4

DEC Region: Southcentral

Ledger Code: 49158

Project Manager: A. Mark Sienkiewicz, Kenai District Office, 262-5210

Situation: A contingency plan inspection was conducted at the Unocal Swanson River Facility on February 17, 1993. During the inspection, several oil discharges and other alleged violations were documented.

FY93 Actions: DEC investigated the violations and conducted subsequent inspection of the facility to ensure that spills were remediated. Cost recovery will be conducted. Civil action will be referred to the Attorney General's Office.

FY93 Expenditures: $ 2,563.48

Title:	Government Hill
Location:	Anchorage
Site ID:	N/A
DEC Region:	Southcentral
Ledger Code:	49280
Project Manager:	Gerry Guay, Air Quality Management, Juneau, 465-5100

Situation: The Government Hill air quality monitoring project was initiated in response to public concern regarding the health effects of ambient emissions of volatile organic compounds (VOC), especially benzene. In FY93 a joint monitoring project between the Municipality of Anchorage and the Department was initiated to conduct VOC sampling of the ambient air in Anchorage with a special focus on the Government Hill community. Delays in contractor procurement and monitoring method development have caused this project to extend through March 1994.

FY93 Actions: The Department continues to take the lead on the project by working with the Municipality's Air Pollution Control Agency and industries located in the vicinity of Government Hill. Preliminary data collected during the Spring of 1993 have detected elevated Benzene levels along the hillside over looking the Port of Anchorage. Although it is to early to draw firm conclusions, this data does not appear to suggest exposure level which would pose significant health threats (based on the results of previous studies). A full evaluation will be made at the conclusion of the monitoring project next year.

The Municipality of Anchorage initiated their VOC canister sampling program in April 1993. Their initial results are slightly higher than those detected by the State, but the relative magnitude of the data is consistent. A more comprehensive interpretation of the data will be made once the database becomes larger.

Cost recovery is not being pursued for this project at this time since there is no evidence of a violation.

FY93 Expenditures: $ 316,401.81 An encumbrance of $101,867 was made during FY93.

Title:	Forward Pad
Location:	Deadhorse
Site ID:	89-4-9-0-180-1
DEC Region:	Pipeline Corridor
Ledger Code:	49467
Project Manager:	Mehrdad Nadem, Pipeline Regional Office, Anchorage, 451-2766

Situation: The Forward Pad is a gravel service pad administered by DNR, located adjacent to the drinking water reservoir in Deadhorse. Over 800 drums, tanks, compressed gas cylinders, and containers were abandoned on site. EPA contractors screened the abandoned drums and identified hazardous wastes and hazardous substances. Incompatible substances were improperly stored together. EPA concluded the drums posed an imminent threat to the drinking water supply of Deadhorse.

In April, 1992, a DEC remediation ractor was selected to sample, composite, and dispose of the wastes on site.

FY93 Actions: The contractor mobilized to the site in July, 1993. All containers were sampled, and wastes were consolidated into compatible waste streams for disposal. All wastes were removed from the Forward Pad by September, 1993. All of the wastes were remediated or disposed at an approved hazardous waste facility in Seattle, Washington.

FY93 Expenditures: $ 164,963.99

Title: Arco, Swanson River

Location: Kenai

Site ID: 92-2-3-1-844-9

DEC Region: Southcentral

Ledger Code: 49120

Project Manager: A. Mark Sienkiewicz, Kenai District Office, 262-5210

Situation: This site, the Swanson River facility, involved seven small spills. The spills ranged in size from one gallon to 30 gallons of petroleum product.

FY93 Actions: Arco was charged with various failures to clean-up or report the spills. A civil fine was assessed which the responsible party paid. Arco also sent specified employees to a DEC-approved spill reporting and clean-up training class.

FY93 Expenditures: $ 1,080.70

Title:	Skagway Uplands
Location:	Skagway
Site ID:	88-1-1-9-299-1
DEC Region:	Southeast
Ledger Code:	49603
Project Manager:	Randy Rice, Southeast Region, Juneau, 465-5338

Situation: Between 1988 and 1991 several responsible parties and the State conducted an extensive cleanup of soils contaminated with lead and minor amounts of other hazardous constituents. The lead had been spilled during handling of lead ore concentrates. That handling had commenced in 1969 and was ongoing until the summer of 1993.

Some of the responsible parties have participated in the cleanup.

FY93 Actions: The Department of Law has been participating in negotiations with the responsible parties to recover DEC expenditures on the site. Litigation is pending.

FY93 Expenditures: $ 248.84 An encumbrance of $5,000 was made during FY93.

Title: All Alaskan

Location: St. Paul

Site ID: 87-2-1-1-078-1

DEC Region: Southcentral

Ledger Code: 49657

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: In March 1987 the fish processing vessel All Alaskan went aground on St. Paul Island. It had 141,000 gallons of diesel on board. The owners stated that they had no intention of removing the oil or recovering the vessel. The spill was federalized by the United States Coast Guard and 97,750 gallons were recovered. The vessel remained aground with many hazardous substances on board along with toxic gases from the rotting cargo.

FY93 Action: The insurance company hired a contractor who removed the hazardous materials from the vessel and the vessel itself from the island. Cost recovery is being pursued and should be completed this fiscal year.

FY93 Expenditures: $ 7,687.54

Title: Kodiak Small Boat Harbor

Location: Kodiak

Site ID: 89-2-5-0-193-1

Ledger Code: 49481

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: A return line and underground storage tank serving a generator at Krafts Store leaked and contaminated the small boat harbor in Kodiak. DEC hired a contractor to locate the source of the spill and to maintain the oil recovery operation in the small boat harbor until the source was located.

FY93 Actions: The responsible party, O'Kraft and Son, has signed a Compliance Order and accepted responsibility. Cost recovery has begun under a payment plan negotiated by the Department of Law.

FY93 Expenditures: $ 17,479.53

Title: Red Top Retort Site

Location: Aleknagik

Site I.D.: 92-2-5-9-286-1

Ledger Code: 49139

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: Mercury contamination is present at the site caused by a 1945 mining operation. There is also some Bunker C oil contamination on site. The Bureau of Land Management (BLM) is the land owner and responsible party. They have assumed responsibility and have obtained a contractor for the clean-up of the site.

FY93 Actions: The site was evaluated and secured by DEC and BLM. The final site assessment and clean-up is expected to occur in early FY94. Cost recovery is anticipated.

FY93 Expenditures: $ 1,655.27

Title: Chil Bo San #6

Location: Unalaska Island

Site ID: 89-2-5-1-011-1

DEC Region: Southcentral

Ledger Code: 49533

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: The vessel Chil Bo San #6, a reefer ship, ran aground at Unalaska Island on January 11, 1989 after breaking a propeller shaft. The vessel spilled 47,000 gallons of diesel fuel and left additional hazardous substances on the ship.

FY93 Actions: Through negotiations, an agreement was reached with the owners of the vessel. All hazardous materials were removed from the vessel and the shoreline. In addition, the responsible party paid departmental costs and civil penalties totalling $94,000. The case has been closed.

FY93 Expenditures: $ 2,129.30

Title: SERO Hazardous Waste Collection

Location: Southeast

Site ID: N/A

DEC Region: Southeast

Ledger Code: 49164

Project Manager: Al Kegler, Juneau District Office, Juneau, 465-5348

Situation: Upon completion of the 1992 oil and hazardous substance barge collection servicing Hoonah, Skagway, Gustavus, Pelican, Elfin Cove, Tenakee and Yakutat, approximately 20,000 gallons of waste oil and 70 drums of hazardous wastes were collected and removed from the communities.

FY93 Actions: Wastes collected from the communities were disposed of properly.

FY93 Expenditures: $ 24,011.99

Title:	Vern Dunham
Location:	Anchorage
Site ID:	89-2-1-0-109-1
DEC Region:	Southcentral
Ledger Code:	49534
Project Manager:	Eileen Olson, Anchorage District Office, 349-7755

Situation: Vern's Asphalt Maintenance's (a/k/a Vern's Pollution Solution) waste oil operation was located in south Anchorage approximately 12 miles from downtown, at numbers 3400 - 3540 on E. 112th Ave., between Cange Street and Jerome Street, to the south of O'Malley Road, and to the north of O'Malley airstrip and Klatt Road. DEC inspectors found seven underground storage tanks and two pulled tanks at the site. Up to 70,000 gallons of waste oil may be in the nine 10,000-gallon tanks; the seven underground tanks were full and the two pulled tanks were partially full. There is evidence of surface spillage of waste oil at the site but it is unknown whether the underground tanks have leaked. The residents of the area are concerned about potential well water contamination. The department does not have permission to enter the property. Investigation of property ownership is ongoing, and to date has not been conclusive. Property ownership issues will need to be resolved prior to site entry.

FY93 Actions: Department legal counsel began an investigation of property ownership and began reviewing and summarizing federal investigatory files and federal district court files pertaining to the activities of the owner(s) and operator(s). The UST Financial Assistance Program sent Dunham a letter on February 5, 1993 outlining the defects in his grant application and setting a 45 day response deadline. (The LUST grant was later denied as the tanks had never been in compliance with state law).

FY93 Expenditures: $ 2,075.80

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5000
Fax: (907) 465-5070

March 24, 1994

The Honorable Ramona Barnes
Speaker
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

Dear Representative Barnes:

Today I am transmitting to you the fiscal year 1993 Annual Report on the Oil and Hazardous Release Response Fund, also known as the "Response Fund," pursuant to AS 46.08.060.

The Department has significantly improved management of the Response Fund. This past year DEC implemented a new procedure to process other agency Response Fund requests for inclusion in the Governor's budget. The Office of Management and Budget has also benefited from the streamlining of this process which makes evaluating requests and establishing funding levels a uniform process. Further, we are working to include future improvements on reporting efforts of expenditures by other agencies in the Response Fund legislation which is being considered this year. Additionally, Departmental cost recovery efforts are being shifted into full gear. Tracking of personal services time alone has increased 300 per cent. Statewide implementation of cost recovery policy and procedures should be completed by the fall.

Please contact me if you have any questions or require additional information regarding the Department's management of the Response Fund. Thank you.

Sincerely,

John A. Sandor
Commissioner

CU/cu

Enclosure: OHSRRF Annual Report

cc: All Members of the House w/enclosure



Audit Report

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number:

18-4463-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than $5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 10, 1994

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number

18-4463-94

The objective of the audit was to review policy issues relating to the Oil and Hazardous Substance Release Response Fund within the Department of Environmental Conservation.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology beginning on page one.

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted a review of policy issues relating to the Oil and Hazardous Substance Release Response Fund (Response Fund) administered by the Department of Environmental Conservation (DEC).

Objectives

The objective of the review was to gain an understanding of policy issues relating to the Response Fund. Specific objectives of the review were to:

1. Review the history of the Response Fund; including the original purposes of the fund, the reasons for establishing a 5¢ per barrel of oil surcharge, and the current purposes of the Response Fund.

2. Determine the criteria DEC uses in its decisions to fund certain projects and whether the criteria is consistent from project to project.

3. Determine what accounting procedures are currently in place that allow the legislature to track where and how Response Funds are being spent.

4. Recommend possible statutory changes that will clarify how Response Fund monies should be administered by agencies outside of DEC.

Scope

We focused our examination on the legislative history of the Response Fund, the budgeting process for FY 91 through FY 94, and FY 92 and FY 93 expenditures that were related to selected projects.

Methodology

Our evaluation of policy issues relating to the Response Fund involved review and analysis of the following documents:

1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.

2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, SLA 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13, SLA 1989.

4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29, SLA 1989.

5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 39, SLA 1989.

6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90, SLA 1989.

7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112, SLA 1989.

8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113, SLA 1989.

9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190, SLA 1990.

10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191, SLA 1990.

11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199, SLA 1990.

12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48, SLA 1991.

13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83, SLA 1991.

14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.

15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.

16. Response Fund Annual Reports for FY 87 through FY 93.

17. DEC Policy Statements on the Response Fund.

18. Attorney General Opinions and memorandums on the Response Fund.

19. Industry contingency plans and corresponding documentation maintained at DEC.

20. Documents pertaining to DEC spill responses through November 8, 1993.

21. DEC database information and other documentation related to contaminated sites.

22. Oil Spill Commission Final Report.

23. A pamphlet put out by the Prince William Sound Regional Citizens' Advisory Council entitled *"Then and Now: Changes Since the Exxon Valdez Oil Spill."*

24. Newspaper coverage regarding the Response Fund and its usage.

Additionally, we interviewed the following:

1. Staff within DEC.

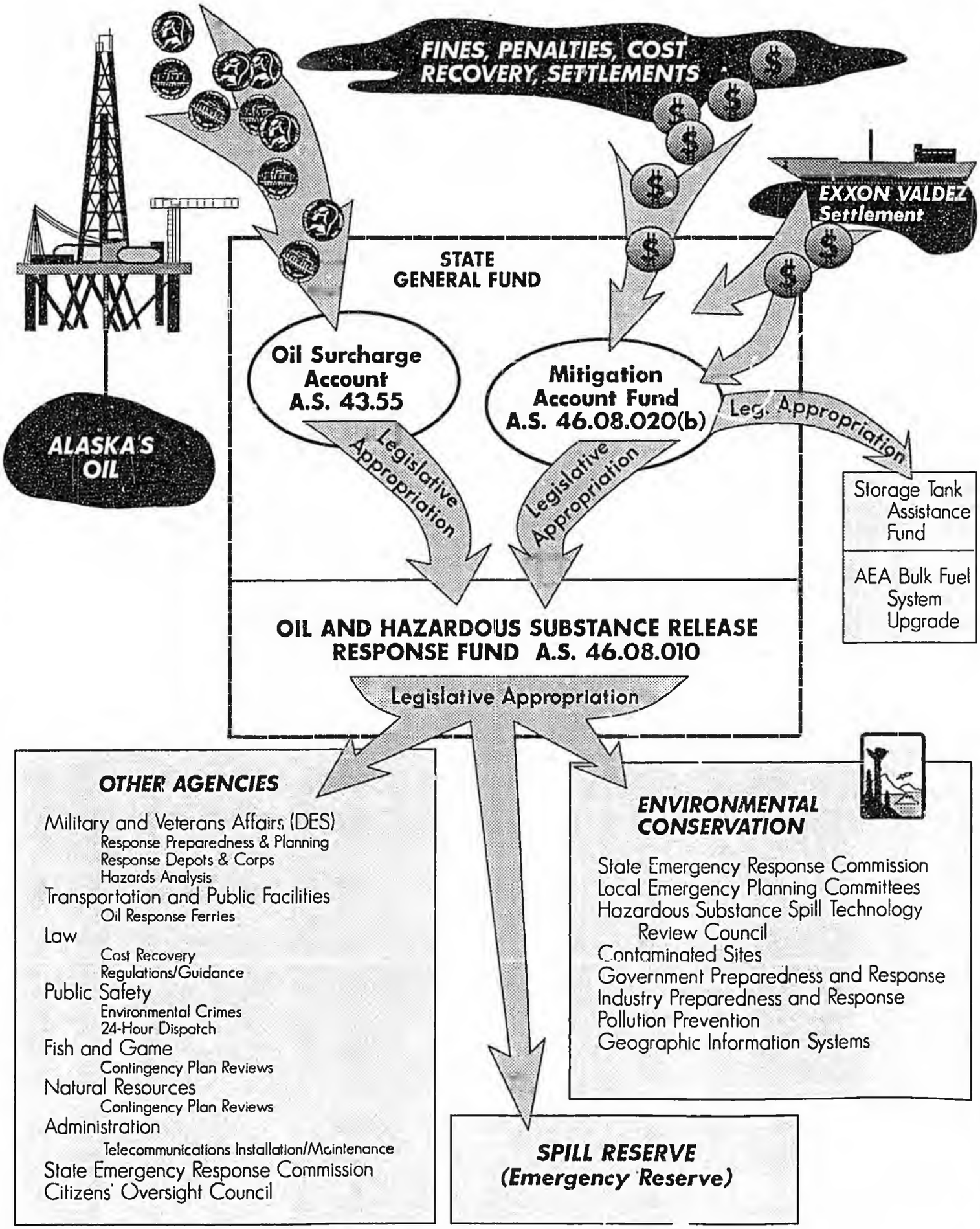
2. Staff within Department of Military and Veterans Affairs.

3. Staff within Division of Legislative Finance.

4. Staff of Office of the Governor, Office of Management and Budget.

5. Staff within Division of Legal Services.

6. Chairman of the former Alaska Oil Spill Commission and current chairman of Hazardous Substance Technology Review Council.



Alaska's Oil and Hazardous Substance Release Response Fund

Prepared by ADEC 4/93

ORGANIZATION AND FUNCTION

The 1986 Alaska State Legislature passed House Bill (HB) 470 [Ch 59, SLA 86], a bill relating to the release of oil and hazardous substances. This legislation established an Oil and Hazardous Substance Release Response Fund (Response Fund) on July 1, 1986 with appropriations from three different sources totalling $680,666; $158,677 from the balance of the Oil Spill Mitigation Account, $221,989 from the balance of the Oil Spill Expense Reserve, and a $300,000 FY 87 capital budget appropriation. The facing page illustrates flows into and out of the Response Fund.

Between 1986 and 1989, deposits into the Response Fund were made from general fund appropriations and from the Oil and Hazardous Substance Release Mitigation Account (mitigation account). This account is composed of money recovered from parties responsible for oil and hazardous substance spills through cost recovery and fines, penalties, or damages. Money in the mitigation account may be appropriated each year to the Response Fund. In the past, the legislature has also appropriated money from the mitigation account into the storage tank assistance fund and to the Alaska Energy Authority's program directed at upgrading bulk fuel storage systems.

In 1989, the legislature enacted statutes which levied a surcharge of 5¢ per barrel of taxable oil produced from each lease or property in the State. The commissioner of the Department of Administration accounts for the money in a separate general fund account, which is commonly called the Oil Surcharge Account (surcharge account). As explained on page 13 in Background Information, the surcharge is subject to suspension and reimposition if certain criteria are met. Between FY 87 and FY 94, a total of $109,200,000 has been appropriated to the Response Fund from the surcharge account and $5,033,600 has been appropriated from the mitigation account. In addition, the legislature has appropriated in excess of $74,000,000 from the general fund to the Response Fund through FY 93.

Money left over in the Response Fund after all appropriations have been made to agencies for their operating costs has been appropriated to the spill reserve. The spill reserve may be accessed by the Department of Environmental Conservation (DEC) only for costs necessary to investigate, evaluate, contain, clean up, and take other necessary action to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. DEC does not budget for "response" to releases of oil or other hazardous substances, so all spill reserve expenditures are unbudgeted response activities.

DEC can only make expenditures out of the Response Fund with specific legislative appropriation, except for emergency releases of oil or hazardous substances paid out of the spill reserve. Each year the legislature determines what projects and activities will be paid for out of the Response Fund. In addition to DEC, twelve state agencies have been funded with monies from the Response Fund. These agencies have been active in contingency plan review, state master and regional contingency planning, and working with the State Emergency Response Commission.

Spill Prevention and Response Division

Within DEC, the primary user of the Response Fund is the Spill Prevention and Response Division (SPAR). SPAR was created in July 1991 for the purpose of preventing and responding to negative impacts to public health and the environment caused by oil and hazardous substance spills. The division administers four programs:

1. The Government Preparedness and Response Program (GPRP) was developed to protect public health and the environment by ensuring a planned and safe response to releases or threatened releases of oil or hazardous substances. The emphasis of this program is on the State's ability to prevent and respond to spills. The program is responsible for facilitating local, regional, and statewide response preparedness. To achieve this, GPRP prepares, reviews, and revises state and regional prevention and response plans for oil and hazardous discharge. An integral part in the planning process is the State Emergency Response Commission (SERC).

   GPRP provides staff support to SERC. SERC evolved from the federal Superfund Amendments and Reauthorization Act (1986). This legislation required the State to minimize the impact on human health and the environment from oil and hazardous substance releases by facilitating local, regional, and statewide response planning. SERC was established by executive order in 1987 but did not become operational until FY 91.

   The commission is comprised of the commissioners or their designees of eight state agencies, the adjutant general or his designee, and seven public members appointed by the governor. To the extent practicable, public members have expertise in the emergency response field. The main duties of the group are to designate Local Emergency Planning Districts, appoint the membership of Local Emergency Planning Committees (LEPCs), comment on local emergency plans, provide technical assistance to LEPCs, and receive and process information requests from the public.

2. The Industry Preparedness Program (IPP) focuses on the oil industry's ability to prevent and respond to releases or threatened releases of oil. Statute requires the industry to submit proof they have both the financial ability and physical ability to respond to releases. Their physical ability is demonstrated by a contingency plan which must be approved before obtaining a permit to operate. Contingency plan requirements apply to oil tank vessels, barges, crude oil pipelines, and onshore and offshore oil exploration and production facilities. In addition, oil terminal facilities that contain an amount of product specified in statute must have a contingency plan. IPP is responsible for reviewing, approving, and testing contingency plans as well as ensuring operators meet the financial responsibility requirements set out in statute.

3. The Contaminated Sites Remediation program was created to abate threats to public health and the environment posed by sites contaminated by improper disposal or discharges of hazardous substances. The number of contaminated sites is large and ever increasing. The program attempts to identify and assess contaminated sites and

ascertain their potential threat to public health and the environment. With this information, contaminated sites can be prioritized so those sites posing the greatest threat are addressed first. The method by which the program addresses a contaminated site depends on the identity of the party responsible for the contamination. Cooperative agreements are in place with the federal government to clean up sites where the federal government is the responsible party. A memorandum of agreement exists between several state departments to address those sites where the State is the responsible party. For sites where a responsible party is willing to help clean up, the program provides oversight. If a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead cleanup efforts.

4. The Underground Storage Tank program assists owners and operators in meeting federal regulations. These regulations require new underground storage tank installations to meet national standards and tanks already in operation phase-in to meet those standards. Federal law also requires each facility to demonstrate financial responsibility in the event of a spill. In Alaska, a Storage Tank Assistance Fund was established which offers grants and loans to owners and operators to test, clean up, upgrade, or close their facilities. The Storage Tank Assistance Fund receives monies from the mitigation account thereby reducing funding that flows from the mitigation account into the Response Fund.

These four programs are developed and managed by the director of SPAR. Program managers are centralized in SPAR's central office and their role is to develop policy and provide technical guidance to the four regions of DEC so that programs are implemented in an effective and consistent manner across regions.

DEC has been divided into Northern Region, Southcentral Region, Southeast Region, and Pipeline Corridor Region. Regional managers report directly to the commissioner and are responsible for making sure SPAR program objectives, as well as other divisions' program objectives, are accomplished. Regional offices assume line authority of district and field office staffs. Actual work on contaminated sites, spill response, spill drill and inspections, and review of contingency plans is accomplished primarily by district offices with support from their region.

PURPOSES OF THE RESPONSE FUND
AS 46.08.040

Senate Bill 25 [Ch 83, SLA 91]	(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to
Senate Bill 261 [Ch 90, SLA 89]	(1) investigate and evaluate the release or threatened release of oil or a hazardous substance and
House Bill 470 [Ch 59, SLA 86]	contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;
Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]	(2) pay all costs incurred to (A) establish and maintain the oil and hazardous substance response office;
House Bill 567 [Ch 191, SLA 90]	(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030; (C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and (D) to verify or establish proof of financial responsibility required by AS 46.04.040;
Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]	(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

House Bill 470 [Ch 59, SLA 86]	(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); (5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;
Senate Bill 261 [Ch 90, SLA 89]	(6) prepare, review, and revise (A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and (B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and (7) restore the environment by addressing the effects of an oil or hazardous substance release.
House Bill 566 [Ch 190, SLA 90]	(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency. (c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)--(7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.
House Bill 578 [Ch 199, SLA 90]	(d) Upon request from (1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and
Senate Bill 165 [Ch 48, SLA 91]	(2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

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BACKGROUND INFORMATION

The Response Fund was established with the passage of House Bill 470 in 1986 [Ch 59, SLA 86] by the legislature and the governor signing the bill into law. The bill, which was sponsored by Representative Mike Davis, created the Response Fund in the state general fund. The legislature set out their reason for establishing the Response Fund in the Purpose, AS 46.08.005. In that stated purpose, they declared the release of oil or hazardous substances presents a substantial threat to public health, to the environment, and to the economy of the State. The Response Fund was to provide a readily available fund for the payment of expenses incurred by DEC in protecting the environment from oil and hazardous substances releases.

Original uses of the Response Fund

The commissioner of DEC was named the Response Fund administrator and was authorized to use the fund for three distinct purposes:

1. Contain and clean up, which includes monitoring, assessing, investigating, and evaluating, the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.

2. Provide matching funds for participation in federal oil discharge cleanup activities.

3. Recover the cost to the State or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

Alaska Statute 46.08.010 specifically disallowed using the fund for capital improvements.[1] During meetings of the House Special Committee on Oil and Gas, the commissioner of DEC explained that he did not want the fund to be viewed only as a means to deal with future spills, but also "*to investigate and deal with sites where poor management of waste disposal may have occurred in the past.*"

Original methods to finance the Response Fund

The legislature could appropriate money received from federal, state, or other sources into the Response Fund. Money recovered from parties responsible for the containment and cleanup at a specific site and fines, penalties, or damages recovered because of an oil or hazardous release would be deposited in the general fund into a special account called the mitigation account. The legislature could annually appropriate to the Response Fund a sum

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[1] "Capital improvement" is defined in AS 46.08 to mean "*construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall.*"

equal to the amount received in the mitigation account during the calendar year preceding that legislative session.

Legislature reacts to *Exxon Valdez* grounding

No new legislation was introduced or passed regarding the Response Fund between June 1, 1986, the effective date of the original legislation, and March 24, 1989 when the *Exxon Valdez* hit Bligh Reef in Prince William Sound. After that incident, six bills were enacted in 1989 that affected the Response Fund. The current purposes of the fund with annotation of the bill and date of each section change can be found on pages 8 and 9. Senate Bill 247 [Ch 13, SLA 89] went into effect just 20 days after the *Exxon Valdez* oil spill and was to cover expenditures necessitated by the state response. The legislature appropriated $20 million to the Response Fund, of which $10 million came from the general fund and $10 million came from general fund program receipts, which were to be reimbursement of cleanup costs from Exxon.

Senate Bill (SB) 256 [Ch 29, SLA 89], while being approved by the governor on May 11, 1989, was made retroactive so that the effective date was March 24, the day of the grounding. The bill amended AS 46.08.070 so cost recovery had to be immediately sought by DEC for money expended to contain or clean up oil or a hazardous substance. Previously the statute had allowed DEC to [illegible] cost recovery, but did not require the department to do so. Senate Bill 256 also permitted DEC to reimburse a municipality for actual expenses incurred in the abatement of a release if the municipality entered into an agreement with DEC.[2]

House Bill 68 [Ch 39, SLA 89], which had an effective date of May 13, 1989, provided for strict liability for the release of a hazardous substance. A new section was added to AS 46.08 to allow the State to place a lien for expenditures by the State from the Response Fund against all property owned by a person who is determined by the commissioner to be liable for the expenditures.

The authorized uses of the fund were expanded with the passage and signing into law Senate Bills 261 [Ch 90, SLA 89] and 264 [Ch 113, SLA 89]. From testimony at public hearings, it was apparent that residents of the State did not trust the oil industry to live up to their responsibilities identified in contingency plans. Residents discussed the need for oil facilities to be inspected and for unannounced drills to test industry's ability to implement their contingency plans. Residents also expressed that DEC needed to be adequately funded to upgrade monitoring and response efforts. Many residents voiced support for the oil industry to be held strictly liable for their spills, but at the same time have an independent state response capability. The two senate bills recognized this concern by containing identical Findings and Purpose, which included, "*the March 24, 1989, oil spill disaster in the Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability.*"

---

[2]Prior to the statute amendment, the municipality could only be reimbursed if the agreement had been entered into before the expenses were incurred.

Senate Bill 261 added a state master plan and regional master plans to the duties of DEC. The State Master Plan, which was to be addressed in AS 46.04.200, included requiring or scheduling unannounced oil spill drills to test the sufficiency of an oil terminal facility discharge prevention and contingency plan. The preparation, review, and revision of the state master plan and regional master plans were added as the fourth authorized use of the fund. In addition, the first use of the fund was amended to include investigate and evaluate as well as the contain and clean up previously allowed. A fifth purpose allowed the Response Fund to be used to restore the environment by addressing the effects of an oil or hazardous substance release.

Senate Bill 264 established an oil and hazardous substance response office in DEC. That office was authorized to establish emergency response depots, which would be staffed and equipped in areas of the state determined to be potential sites of releases of oil or hazardous substances. The response office was authorized to establish response corps, which were to be in the Department of Military and Veterans' Affairs (DMVA), Division of Emergency Services (DES). The corps would consist of volunteers who register with the office and are trained by the office in techniques for containment and cleanup. The costs for the response office, depots, and corps were included as a purpose of the Response Fund.

Imposition of a 5¢ per barrel conservation surcharge

The passage of SB 260 [Ch 112, SLA 89], which was sponsored by Senator Jalmar Kerttula and co-sponsored by Senator Mike Szymanski, levied a 5¢ per barrel surcharge on crude oil. The sponsor statement dated April 11, 1989 said the intent of the legislation was that revenues from this additional tax would provide a continuing source of funding for the Response Fund. This would ensure that adequate funds are available to meet the State's responsibility for oil spill clean up.

Since the legislature cannot dedicate revenues in any piece of legislation without a constitutional amendment, a clause was included in SB 260 to encourage the appropriation of the surcharge from the surcharge account into the Response Fund. If the legislature does not appropriate the balance of the surcharge account to the Response Fund or if the governor vetoes or reduces the appropriation of the surcharge account to the Response Fund, the surcharge would not be imposed that fiscal year.

The surcharge would also be suspended by the commissioner of the Department of Revenue if the commissioner of the Department of Administration reported that the difference between the cumulative total of surcharge money appropriated to the Response Fund equals or exceeds the amount expended by the fund by $50 million. If the surcharge had been suspended, it could be reimposed if the commissioner of the Department of Administration reports that the difference is less than $50 million.

During committee meetings regarding SB 260, discussion was held as to how long the imposition was likely to remain in effect based on expenditures from the Response Fund. One senator pointed out that 13 oil spill related pieces of legislation were currently pending and passage of them all would create more expenditures from the Response Fund than had

occurred so far. A member of legislative counsel agreed that there would be an unlimited draw from the Response Fund, but the sponsor of the legislation said the draw could not be unlimited. Expenditures from the Response Fund were limited by what revenues were produced by the 5¢ per barrel. Legislative counsel explained that, *"through legislation and statutes, the legislature establishes the purposes for which the fund can be used."* In the Findings and Purpose of the enacted piece of legislation, the legislature explained their purpose by stating:

> *(a) The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.*
>
> *(b) It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.*

Uses of Response Fund continue to expand

House Bill 567 [Ch 191, SLA 90] extended the number of the purposes of the fund which were to review oil discharge prevention and contingency plans; to conduct training, response exercises, inspections, and tests in order to verify state, municipality, and industry preparedness; and to verify or establish proof of financial responsibility. The bill also clarified DEC's reporting requirements on the Response Fund to include describing each personal services position and total compensation for the position, each contract in excess of $20,000, and each purchase in excess of $10,000.[3]

House Bill 566 [Ch 190, SLA 90] established SERC in DEC. The oil and hazardous substance response office in DEC established by Senate Bill 264 would serve as staff for SERC. SERC was to designate boundaries of local emergency planning districts and establish local emergency planning committees. SERC was to review and approve local, regional, and state plans for hazardous substance discharge response.

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[3]House Bill 470 had required the commissioner of DEC to submit an annual report to the legislature. The report had to include the amount of money expended from the fund in the preceding fiscal year, the amount and source of money received, a summary of municipal participation in responses paid by the fund, a detailed summary of department activities paid by the fund, and the projected cost for the next fiscal year of monitoring sites oil spill or hazardous waste sites. The report also had to include a summary of contaminated sites, the threat these sites represented to public health or the environment, and the cost and action needed to clean these sites.

A Hazardous Substance Spill Technology Review Council,[4] which was to review and recommend research topics to DEC, was created under SERC. The bill clarified that the Response Fund was to pay expenses incurred by DMVA, DES for response corps and depots when presented with appropriate documentation by the division. This bill allowed the Response Fund to be used for response to a declared disaster emergency related to an oil or hazardous substance discharge.

House Bill 578 [Ch 199, SLA 90] created a Citizens' Oversight Council on Oil and Other Hazardous Substances in the legislature (oversight council). The oversight council would request money from the Alaska Legislative Council, which in turn would seek reimbursement from the Response Fund. The oversight council would determine whether state and federal agencies were fulfilling their responsibilities for the prevention and response to oil and hazardous releases. The oversight council was to file an annual report with the legislature and governor and make policy recommendations to prevent releases.

Senate Bill 25 [Ch 83, SLA 91] amended the authorized uses of the Response Fund to include making grants to a municipality or village that is affected by a release involving extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from current revenue sources. Senate Bill 165 [Ch 48, SLA 91] allowed the Response Fund to be used to construct or refurbish one or more ferries so the ferries would have the capability to assist in responding to oil or hazardous substance spills.

Legislature plays active role in shaping purpose of fund

In addition to expanding the purpose of the Response Fund through statutory amendments, the legislature has taken an active role in shaping the purpose of the fund by appropriating on a project specific basis. In FY 93 over $50 million was appropriated from the Response Fund. The legislature was specific in the purpose of the appropriations by allocating each appropriation to individual projects. On several occasions, the legislature was detailed to the point of listing a specific project's purpose and location. For example the appropriation for the Nearshore Demonstration Project reads:

> *The sum of $1,200,000 is appropriated from the oil and hazardous substance release response fund (AS 46.08.010) to the Department of Environmental Conservation, division of spill prevention and response, for fiscal year 1993, for nearshore strike team demonstration projects along the Gulf of Alaska coast and in southeast Alaska that are developed in consultation with the division of emergency services and the regional citizens' advisory councils in the affected region.*

The legislature has chosen to supplant general fund appropriations with Response Funds. They have done so when services previously funded out of the general fund qualified for

[4]The Division of Legislative Audit conducted a Sunset Audit on the Department of Environmental Conservation, Hazardous Substance Spill Technology Review Council, dated November 29, 1993.

Response Funding. For example in FY 93, the legislature changed the funding source for over $950,000 in SPAR management costs from the general fund to the Response Fund. In addition, when DEC requested capital appropriations to clean up contaminated sites where the State was the responsible party, the legislature changed the funding source to the Response Fund from the general fund.

Various budgeting procedures used to track Response Fund expenditures

In FY 91, direct appropriations from the Response Fund were made to other agencies. This made it very difficult for DEC, as fund administrator, to manage expenditures. In an attempt to give DEC greater control and responsibility for activities supported by the Response Fund. especially those of other agencies, the legislature put the entire Response Fund appropriation into the front section of the FY 92 budget bill (Ch 73, SLA 91). This had the effect of greatly increasing the complexity of accounting for Response Fund expenditures. To gain access to the Response Fund appropriation, DEC was forced to use intra-agency reimbursable services agreements (RSAs) between itself and the Response Fund. DEC would then fund approved projects from other agencies such as DMVA and the Department of Fish and Game (DFG) via inter-entity RSAs. This created a chain of interlocking RSAs which made it very difficult to track expenditures related to the Response Fund.

Different budget processes were used in FY 93 and FY 94

DEC took a more effective role in the management of the Response Fund in FY 93 and FY 94. For FY 93, DEC notified other agencies that they must file a formal request for any activities they wanted funding with Response Funds. This procedure improved coordination, but was untimely. By the time agency requests had been received, reviewed by DEC, and forwarded to the Office of the Governor, Office of Management and Budget (OMB) with DEC's recommendation; the State's budget had essentially already been submitted.

DEC followed the same interagency process for the FY 94 budget, but the memorandums were submitted to the other agencies in a timely manner. DEC reviewed the requests based on the anticipated statutory requirements those agencies needed to fulfill. DEC submitted to OMB a list of allocations of Response Funds DEC recommended for approval. OMB has the final approval authority in making recommendations to the governor's budget.

Except for two notable appropriations,[5] there were no direct operating appropriations to agencies other than DEC in FY 93. However, direct capital appropriations were made to other agencies for cleanup of contaminated sites. In FY 94, no "front section" appropriations were made to DEC except for the transfer from the oil surcharge and mitigation accounts to the Response Fund. The SPAR division is the direct recipient of the funds. SPAR is responsible for RSAs between DEC and other agencies.

[5]The two FY 93 appropriations made to agencies other than DEC were, $7,500,000 appropriated to the Alaska Marine Highway Ferry Replacement Fund and $237,300 appropriated to the Legislative Council for the Citizens' Oversight Council on Oil and Other Hazardous Substances.

Reimbursable Services Agreements extensively used for Response Funds expenditures

DEC entered into 16 RSAs with other agencies in FY 92 and entered into 17 RSAs with other agencies in FY 93 where the primary funding source was the Response Fund. In addition, DEC had 17 internal RSAs between its own divisions in FY 92 and 16 internal RSAs in FY 93. Response Fund expenditures on both internal and external RSAs combined totalled almost $16 million in FY 92. In FY 93, there were over $6 million in Response Fund RSA expenditures related to FY 92 RSAs and over $8 million on FY 93 RSAs.

Agencies provide minimal supporting information to DEC for their RSA expenditures when requesting reimbursement from the Response Fund. Generally the supporting summary of accounting information provides limited detail of the agencies' activity, especially those related to personal services. DEC requires copies of invoices for purchases exceeding specified dollar amounts. Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. Examples of individual external FY 92 and FY 93 RSAs are included in Table D of this report.

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REPORT CONCLUSIONS

Purposes of the Response Fund prevail over contradictory purpose of major funding source

As explained on page 13 of Background Information, SB 260, which established the 5¢ per barrel surcharge on taxable oil produced, indicated the purpose of the surcharge was for the *"state to have an independent spill containment and cleanup capability in the event of* ***future discharges*** *[emphasis added] of oil or a hazardous substance."* Under the provisions of the bill, the revenue generated by the surcharge was to be appropriated to the Response Fund.

The Response Fund had already been used to address cleanup of existing contaminated sites. This resulted in a situation whereby the major funding source of the Response Fund had the more narrow focus of being used for **future discharges**. But the activities of the Response Fund itself were broader, in that they addressed the results of historical oil and hazardous substance spills, i.e., contaminated sites.[6]

Members of the oil and gas industry have expressed dismay at how the expanded uses of the fund, particularly as it is being used to cleanup existing contaminated sites, does not meet their understanding of the reason for the surcharge. There are claims that *"there have been abuses to the oil spill fund since it was established in 1989."*[7] Such arguments appear to us to be based on the emphasis on future discharges that was placed on the 1989 imposition of the surcharge. As quoted above, this emphasis was part of the Findings and Purpose of Senate Bill 260. The Findings and Purpose does not carry the degree of authority that an enacted statute does.

Therefore AS 46.08.040, Purposes of the Fund, is the overriding authority on appropriate uses of the fund. At payment date, the surcharge becomes an unrestricted revenue to the State, albeit from a specified source. It is the prerogative of the legislature to determine the best use of the State's unrestricted revenues. Specific cleanup activities cited by an oil and gas industry group as being inappropriate uses of the Response Fund include *"cleaning up state campgrounds, state airports, responding to chlorine leaks and buying new ferries."* All of these specific projects are appropriate uses of the Response Fund; the first two involved cleanup of contaminated sites; the third project is a response to a hazardous substance spill; and the fourth item is a specific allowed use of the fund under expanded legislation. However, the dichotomy between the purposes of the fund and the purpose of

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[6]In 1986 during committee meetings regarding the bill originating the Response Fund, the commissioner of DEC had made it clear he intended cleanup activities from the Response Fund to address both current and past spill activity. The final legislation was silent as to what time period would be used to determine cleanup activities. In addition, the purposes of the Response Fund were expanded in 1989 and have continued to expand since that time.

[7]Quote came from an article entitled "AOGA supports bill to fix the oil-spill-response fund," which was published in the Forum/Letters section of the *Anchorage Daily News* on November 27, 1993. The letter was written by Ardie Gray, who is the public affairs manager of the Alaska Oil and Gas Association.

the major funding source has created a continuing controversy about the appropriateness of how the fund is being used.

Current spill reserve balance is close to DEC goal for adequate response

As of the end of FY 93, the unreserved balance of the spill reserve was $27,084,100. In a draft report, DEC stated the spill reserve had two primary purposes. One was to address costs faced by communities, municipalities, and villages in responding to a major spill incident. The second purpose would be to cover state costs. DEC has a goal of depositing and maintaining $30 million in spill reserve for these two purposes; $10 million for communities, municipalities, and villages; and, $20 million for the State.

Alaska Statute 29.60.510 states in part that the commissioner of the Department of Community and Regional Affairs *"may not expend not more than $10,000,000 of the balance of the fund that is appropriated to the spill reserve or of the unrestricted balance of the fund for grants authorized under this section. . ."* The other $20 million in the spill reserve may be accessed by DEC.

Allowed uses include costs necessary to investigate, evaluate, contain, clean up, and take other necessary action, to address a release or threatened release of oil or a hazardous substance. Such release or threatened release must pose an imminent and substantial threat to the public health or welfare, or to the environment. One reason for having the spill reserve is for an immediate source of start-up cash in the event of a catastrophic spill. It is estimated that $50 million would last about 10 days in a spill the magnitude of *Exxon Valdez*.

Spill reserve balance and the 5¢ surcharge suspension formula are unrelated

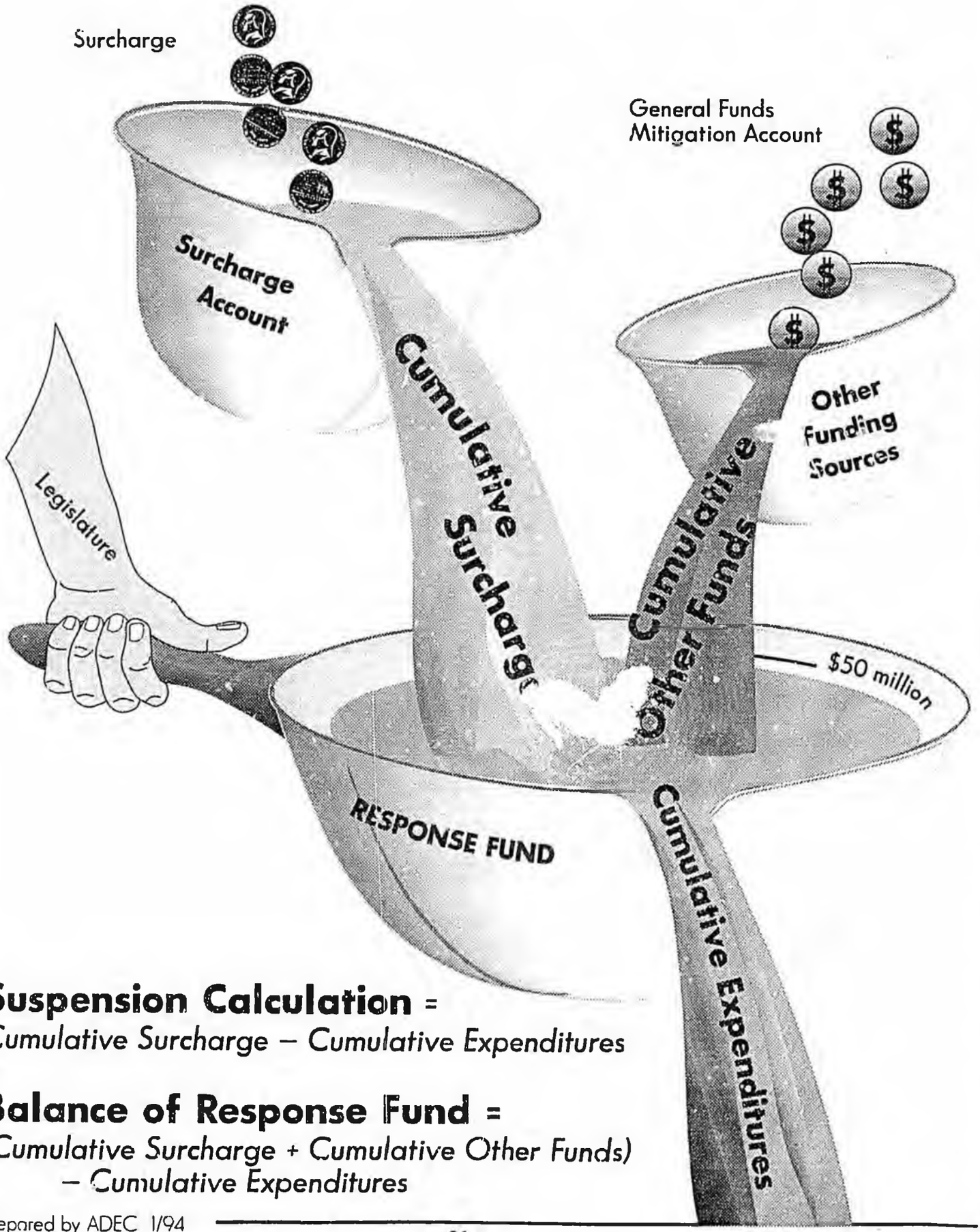
As discussed above, the State had over $27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a **deficit** balance of over $8.5 million as of the same time. It should be recognized that there is a difference between the spill reserve balance and the surcharge suspension balance. The difference between these two is based on the revenues that go into calculating each balance. The facing page illustrates the difference between the suspension calculation and the balance of the Response Fund.

The $27 million set aside to respond to spills includes all revenue sources, i.e., fines, penalties, damages, surcharge revenues, and additional general fund appropriations. While the suspension calculation only considers surcharge revenues. Both the spill reserve and suspension calculation consider cumulative expenditures.

DEC lacks authority and capability of monitoring other agencies Response Fund expenditures

Although DEC is the administrator of the Response Fund, the department lacks the authority to control the spending of other agencies. Further, DEC does not have the personnel to

SURCHARGE SUSPENSION vs. RESPONSE FUND BALANCE



Suspension Calculation =
Cumulative Surcharge – Cumulative Expenditures

Balance of Response Fund =
(Cumulative Surcharge + Cumulative Other Funds)
– Cumulative Expenditures

Prepared by ADEC 1/94

monitor or audit the appropriateness of other agencies' expenditures. Other agencies have had access to the Response Fund through the use of RSAs. According to Alaska Administrative Manual 40.060, an RSA is an inter-entity transfer where one agency is reimbursed for costs associated with services provided to another agency. As administrator of the Response Fund, DEC has been forced to enter into RSAs for which the agency has limited inherent interest or expertise. In some cases, the RSA represents a project or budget request for which DEC did not originally endorse or support the other agency's request for access to the Response Fund.

DEC has made it a standard practice on all RSAs with other agencies to require five pieces of information. This information is required in order for DEC to fulfill its annual reporting requirements to the legislature. DEC requires the servicing agency to provide:

1. a listing of each position control number (PCN) with title and the amount compensated the position;

2. copies of all contracts in excess of $20,000 and all subsequent amendments, and copies of all RSAs with the University of Alaska in excess of $20,000 and all subsequent amendments;

3. documentation of each purchase in excess of $10,000;

4. the amount paid to each municipality, community, or village; and

5. RSAs to other state agencies funded by the RSA must also report the information requested in items 1 through 4.

Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. The reports are generally submitted; however, the extent of information varies between servicing agencies.

DEC has spent an inordinate amount of time trying to monitor RSAs with other agencies. DEC's experience has been, in a practical sense, the department has no power to monitor the expenditures or deny a request for funds from other agencies. An example of the lack of power, is provided for by an FY 92 reimbursement request: the Department of Fish and Game (DFG) came to DEC and wanted reimbursement for expenditures that DFG could not support; DEC initially refused reimbursement; but because the only alternative left to DFG would be to request a supplemental appropriation, DEC staff was directed to pay the RSA reimbursement request.

Criteria for allocating resources within SPAR varies by program

The only Response Fund expenditures that DEC has direct control over are the expenditures actually made by the department, the majority of which occur in the SPAR division. The criteria used by SPAR in determining which projects will be undertaken varies between programs. SPAR can exercise discretion when allocating resources for the following

services: spill response, reviewing and testing contingency plans, and contaminated site cleanup.

1. Response depends on the risk posed by a spill: The Government Preparedness and Response Program within SPAR is charged with responding to spills that pose an imminent and substantial threat to public health or the environment. No preset policy exists as to which spills will be responded to in a region. Determining if a spill poses an imminent and substantial threat is a subjective process. Every region and district has taken into consideration a myriad of factors and developed its own method for deciding whether a spill warrants a response. Common criteria for response among regions include proximity of a spill to populations and water source, size of spill, and type of spill. The level of response can vary from responding via telephone, to monitoring the cleanup, to taking the lead in response through a contractor.

2. Progress in reviewing contingency plans has lagged behind agency projections: As discussed in Background Information, the *Exxon Valdez* oil spill caused major revisions to the statutes that set forth requirements for oil discharge prevention and contingency planning. As a result of the new statutes, SPAR's IPP was required to draft new regulations. These regulations forced affected operators to either prepare contingency plans or make amendments to their existing plans. The new regulations also created the need for technical assistance to be provided to those operators who were either drafting amended, or developing new, contingency plans. IPP has focused their resources on drafting new regulations, providing technical assistance to operators and reviewing contingency plans.

   As a result of the new regulations which became effective in August 1992, a large number of new and amended plans were submitted to IPP. To cope with the influx of plans requiring review, regulations provided for a transitional period. During this period, IPP was permitted to review the plans in a predetermined order of priority.

   Review of contingency plans has fallen behind agency projections. Almost 200 contingency plans required approval by IPP. Most of the submissions requiring approval are amendments to existing plans that were previously approved under the old regulations. These plans continue to be considered approved until plan amendments that incorporate the new regulations have been reviewed. Of the almost 200 plans, only 30 have been approved under the new regulations as of December 9, 1993. However, many plans are in the final stages of review and, according to DEC staff, most should be approved by the end of 1994.

   A successful oil spill prevention program is composed of interrelated parts. The success of IPP is dependent on the combined strength of its facility inspections, oil spill drills, contingency plans, and financial responsibility sections.

   Contingency plans must be tested and facilities inspected to provide assurance that personnel are being trained and that equipment and resources are available and can be mobilized quickly. To help speed up its contingency plan review process, IPP has

shifted resources away from performing oil spill drills and facility inspections.

As a result, most of IPP drill activity has been limited to oversight of industry-initiated drills and fewer inspections have been performed. Once the review process has advanced to a point where the program is reviewing contingency plans on a regular rotational basis, SPAR plans to shift its IPP resources back to testing contingency plans through department-initiated drills and inspections.

3. Priority for contaminated sites perceived differently: One of the major purposes of the Contaminated Sites Remediation Program is to determine the priority (see sidebar to the right for a discussion on the Hazard Ranking Model, which is used to prioritize sites) in which sites should be addressed. This is necessary so that resources can be allocated in such a way that the sites which represent the greatest risk to the public and the environment are addressed first — regardless of ownership.

Hazard Ranking Model

The Hazard Ranking Model is the primary tool available to the Contaminated Site Remediation Program to determine caseload priorities. The hazard ranking model is an exposure model that uses factors such as the level of toxicity, exposure to ground or surface water, and population density to determine a site's relative priority. The model provides for unknowns, allowing sites to be ranked when information is missing. The ranking scores compose an index of relative threat posed by the contaminated sites to public health and the environment.

DEC personnel do not consider the hazard ranking score an absolute indicator of priority because ranking scores can be skewed by factoring in unknowns and because the model does not take into consideration certain elements. In practice, the ranking score is considered one of many indicators when determining caseload priorities.

Although central office presents prioritization as one of the program's main emphases, a statewide list of all contaminated sites in priority order does not exist. Instead, resources are allocated based on the identity of a responsible party, their willingness and capacity to clean up, site priority when known, and the amount of public interest in a site.

As discussed in Organization and Function, SPAR's central office is responsible for developing policy and providing technical assistance to regions and districts. Work on contaminated sites is accomplished at the district level with support from their region. Most of staff time at the district level is spent providing oversight to responsible parties who are willing to perform cleanup.

The logic behind addressing willing responsible parties (RPs) is simple. Helping willing RPs is efficient in that more sites are cleaned up by oversight than by working with uncooperative RPs or by taking state lead in cleanup. The other motivation behind helping RPs is a socioeconomic concern. RPs are often stimulated to clean up their site because a real estate, construction, or some other financial transaction is involved. In the past when DEC staff explained they did not have time to monitor

cleanup of a site, the RP contacted their legislator, who in turn contacted the district and insisted their constituent be assisted.

It is not uncommon for political pressure to play a role in the way resources are allocated. In the past, sites, which were a lower priority relative to other sites, have received funding because of an heightened interest in the site taken by the general public, the governor, or a particular legislator.

4. District personnel reluctant to initiate state-lead in contaminated site cleanup: For a site to be eligible for state-lead, potential RPs must be identified and an extensive notification process must be completed. Because state-lead sites are labor intensive, district personnel are reluctant — or do not have the resources — to conduct RP searches or go through the notification process.

   District personnel are also hesitant to take state lead because they feel their role should be one of service agency rather than enforcement agency. Rather than taking the lead in cleanup and holding the RP liable, staff want to help RPs find some way to assume responsibility. False promises from unwilling or incapable RPs have also slowed down the process of cleaning up sites with state-lead money.

   Because of the amount of resources required to identify state-lead sites and a general reluctance by district staff, the program does not have a complete listing of contaminated state-lead sites.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should make statutory changes to clarify the role of the fund administrator.

A. Currently there is no clearcut criteria in place stating how DEC should "manage" the Response Fund.

In order to be properly evaluated as the fund administrator, DEC needs the legislature to clarify their expectations of the department's role. Alaska Statute 46.08.050 identifies two accounting duties of DEC. This statute says DEC

(1) shall maintain accounting records showing the income and expenses of the fund; and

(2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

This statutory requirement has not been amended since the Response Fund was first established in 1986. The duties were appropriate when the fund was used to respond to emergency spills, and DEC was virtually the only user of the fund. But DEC lost its effectiveness as administrator when the Response Fund began to be used as a funding source for a number of projects managed by many different agencies.

As explained on page 22 of Report Conclusions, DEC has spent an inordinate amount of time trying to monitor the appropriateness of expenditures made by other agencies. It has been difficult for DEC to monitor the appropriateness of reimbursement requests from other agencies when the service provided is beyond DEC's interest or expertise. DEC is often put in the position of having to approve for reimbursement an expenditure for which the department has no way of determining represents a valid project cost. DEC has not experienced as many problems on those RSAs with other agencies for services which the department would normally contract.

DEC has, with the assistance of Office of the Governor, Office of Management and Budget (OMB) and Legislative Finance, developed an adequate budget process showing appropriations into and out of the Response Fund. DEC can track allocations to specific projects. The department has also developed an internal process to review other agencies' Response Fund requests and make recommendations to OMB for inclusion in the Governor's budget. These duties are appropriate for DEC to fulfill in its role as fund administrator.

We recommend the legislature amend part (1) of AS 46.08.050 to state that DEC shall develop procedures governing the expenditure of, and accounting for, money expended from the fund for activities of their own department. Other agencies who

receive monies from the Response Fund must develop their own procedures governing the expenditure of, and accounting for, money expended from the fund. To receive reimbursement from the Response Fund, other agencies must submit to DEC the detailed information required to be included in the annual report on the Response Fund's activities. DEC shall rely on the other agencies' internal procedures when responding to a request for reimbursement. The legislature may request Division of Legislative Audit to review the procedures developed by each agency and audit that agency's expenditures against the Response Fund.

B. Some of the information DEC is required to submit in their annual report is either too voluminous or to uncertain to provide meaningful information to the legislature.

Information required by AS 46.08.060 to be included in DEC's annual report is as follows:

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

DEC has not been providing this information as part of the annual report because of the volume and uncertainty of information involved. DEC has indicated this information is available for review in their office in the Statewide List of Contaminated Sites. A list of contaminated sites dated November 8, 1993, which is 104 pages long, contains site name and address and hazard ranking model score on 1,858 sites, of which 338 are in a closed status and 1,520 are in an active status. Of the 1,520 active sites, 240 sites are unranked, and 38 sites cannot be ranked due to lack of information available on the site. In addition to the known sites, DEC is aware that there are likely to be a large number of sites which are not yet on their database.

We recommend the legislature amend part (b) of AS 46.08.060 to allow DEC to report information on contaminated sites that can be readily prepared and still be of use to the legislature. DEC should be asked to identify how many sites are in active and closed status on the database. DEC should identify the number of sites and prioritize those sites based on immediate and long-term threats to the public health or welfare; or to the environment. Since the information is too uncertain, DEC should not be asked to provide individual discussion on each site, nor due to the volume of sites, should the department be asked to report the appropriate actions and estimated costs involved.

Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

In the original legislation on the Response Fund, DEC was not required to seek recovery of money expended by the department to contain and clean up oil or hazardous substances. The actual wording was,

> *The attorney general, at the request of the commissioner, **may seek** [emphasis added] to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control threatened release of oil or a hazardous substance.*

While DEC did seek recovery and levy fines and penalties in some instances, many contaminated sites were cleaned up without any intention of seeking cost recovery. In addition, appropriations were made from FY 88 through FY 90 to cleanup contaminated sites on the Kenai peninsula. There were no cost recovery requirements related to these appropriations.

Because of the lack of cost recovery requirements DEC district staff and the public developed a cooperative relationship regarding DEC's monitoring of the clean up of contaminated sites. The public came to view monitoring of clean up of contaminated sites as a service provided by DEC, rather than as an enforcement action. Since cost recovery would not be sought, DEC staff did not consistently track their personal service costs related to cleanup.

The passage of Senate Bill 256 [Ch 29, SLA 1989] changed the optional nature of the statutory phrasing. The legislation made it definite that cost recovery must be sought. Specifically the statute called for:

> *The attorney general, at the request of the commissioner, **shall immediately seek** [emphasis added] to recover money expended by the department under AS 46.08.005-46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or hazardous substance.*

DEC has been slow to develop policy and procedures related to accumulating cost information that can be used to support recovery efforts. DEC has developed a draft Cost Recovery Policy and Procedures manual that addresses when and how to code costs to sites. As of the date of this report, this policy still has not been fully implemented. Of particular concern is the failure to consistently charge personal service costs to specific sites. This makes it difficult, if not impossible, to recoup these costs from the responsible party.

The draft Cost Recovery Policy and Procedures manual also addresses how to identify and notify potential responsible parties (PRPs) of their obligation to clean up a site. Staff who

have received training on the manual reported to us a reluctance to implement the policy. Specifically staff feel the public needs to be adequately notified of DEC's policy change of seeking cost recovery for containment and cleanup efforts.

Not all applicable DEC personnel have received training on the Cost Recovery Policy and Procedures manual. In some districts, we found staff unaware that a cost recovery procedures manual was available.

We recommend DEC revise the draft Cost Recovery Policy and Procedures manual to address public notification and consistent statewide implementation. After the manual is revised, training should be provided to DEC personnel so that the department's policy will be consistently implemented. The manuals need to be made available in each region and district office.

Recommendation No. 3

DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

A. Program personnel and resources have been allocated to contaminated sites based on the identity of the PRP and the willingness/insistence of the RP to clean up a site.

The Contaminated Sites Remediation Program is in place to carry out one of the original purposes of the Response Fund, to clean up oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare, or to the environment. The program has a limited amount of resources that must cope with a large and ever increasing number of contaminated sites. Because there exists more contaminated sites than resources to address them, a system must be in place to allocate resources to the highest priority sites. Central office of the Spill Prevention and Response division, has drafted policy which sets criteria for determining priority and allocates resources to the highest priority sites. However, district personnel are reluctant to implement the proposed policy change. As a result, highest priority sites are not being addressed.

As discussed in Report Conclusions, district personnel spend most of their time providing oversight to RPs who are willing to clean up contamination. Because RP searches, PRP notification, and negotiation with unwilling RPs is timeconsuming and frustrating, district staff prefer to allocate their resources to sites where the RP is known and is willing to cleanup. This method of allocating resources is efficient in that it allows more sites to be cleaned given districts' limited staffing. It also provides the easiest way to cope with pressure from insistent RPs who need their sites cleaned for socioeconomic reasons, such as real estate transactions or potential construction. However many of the sites with a willing RP do not pose an imminent and substantial threat relative to other sites.

Such an approach only provides limited assurance that Response Funded activities are addressing sites that pose the most "imminent and substantial" threat to the general public. While we recognize district personnel have a legitimate basis for wanting to work with willing RPs, their approach does not ensure that the statutory purpose of the Response Fund is met.

DEC should work to implement their draft guidance policy entitled Prioritization of Contaminated Site Work. The policy addresses allocating resources in such a way that the highest priority sites are addressed first. In addition, DEC should redefine their role in monitoring RPs with relatively low priority sites. Any change in DEC's policy of providing oversight to willing RPs should be accompanied with a thorough public notice campaign.

B. Contrary to what the department has reported to the legislature, DEC has not maintained a current complete prioritized list of state-lead[8] sites.

In budget papers presented to the legislature, DEC stated that they maintained a list of state-lead sites and prioritized them based on their threat to human health or the environment, or unique social or economic factors. The department also claims that sites are placed on the list only after DEC staff have determined that PRPs will not clean up the site or when no PRP can be determined or located.

DEC also made it clear to the legislature that the list of state lead sites accompanying the budget request is dynamic. If a responsible party decides to perform cleanup or a site's relative priority changes, the funding allocated to that site will be used to fund the next highest priority site.

In practice, DEC has not maintained a complete prioritized list of state-lead sites. In addition, the department has not always completed the proper notification process before placing sites on the state-lead list. As discussed in Report Conclusions, district staff are reluctant to perform RP searches or go through the RP notification process because the procedures are timeconsuming. Once a site is allocated funding, taking lead in cleanup is highly labor intensive.

DEC has not documented their rationale for allocating funding among state-lead sites. We recognize that a state-lead list is dynamic. However, in our view, the dynamic nature of the program makes a current list of prioritized state-lead sites essential. In addition, the dynamic nature of the program makes it imperative that the rationale used to justify funding decisions be documented and presented to the legislature.

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[8]As stated in the Organization and Function section, if a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead in cleanup efforts. These sites are commonly called state-lead or orphan sites.

DEC should make an effort to pursue state-lead on sites that present an imminent and substantial threat to public health and the environment. As part of this effort, an updated list should be prepared and maintained to guide in the allocation of funding. Before sites are placed on the state-lead site list, their orphan status should be confirmed through the proper notification process.

AUDITOR COMMENTS

State better able to prevent and respond to oil spill, but ability jeopardized by cuts in staffing

The Prince William Sound Regional Citizens' Advisory Council (PWS-RCAC) and staff in the Department of Environmental Conservation (DEC) both believe the State has improved its prevention and response capabilities for oil and hazardous substance spills. Both organizations feel that the State is in a better position than it was on March 24, 1989, the date of the *Exxon Valdez* spill. Much of the reason for these improved capabilities is attributed to the financing of prevention and response activities made possible by the Oil and Hazardous Substance Release Response Fund (Response Fund). However, the two organizations are concerned about the current trend of reducing staff positions in DEC. In a pamphlet entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill*" the PWS-RCAC points out:

> *Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding. Laws must be implemented through clear, strong regulations and enforced by committed agencies that are given the funding necessary to monitor, oversee and enforce compliance.*

PWS-RCAC's point echoes one of the observations made in the report produced by the Alaska Oil Spill Commission (AOSC). AOSC said, *"The Valdez DEC office always has been seriously understaffed, which weakened the state's position relative to Alyeska. The state cannot negotiate or enforce effectively without adequate competent personnel."*

As we explain in Report Conclusions, DEC's progress in reviewing contingency plans has lagged behind the department's projections. To increase staff time devoted to contingency plan review and approval, inspections and drills have been severely limited. DEC's oil program consists of several interrelated parts. Prevention includes contingency plans, inspections, and drills. Other parts include response and cleanup, which occur only when prevention has failed. If any part of DEC's program is hindered, the department does not have an effective, viable program.

We understand the decision DEC was forced to make in allocating resources to contingency plan review and approval. However, inspections and drills are a fundamental portion of a successful prevention program. DEC is already dangerously close to having to implement statute with limited resources. Any reduction of staff positions in the Spill Prevention and Response (SPAR) division will jeopardize the likelihood of a successful prevention program. AOSC addressed this same problem in their final report on the events leading up to the *Exxon Valdez* grounding, *"Rigor flagged, complacency took root. Prevention was neglected with disastrous results."*

We wonder whether complacency is again taking root. Program consequences must be considered when SPAR funding is reduced. SPAR needs to be funded at least at the current level to maintain its ongoing operations. However, if the legislature decides to reduce

funding for SPAR then statutes should be amended or repealed so that required programs can be eliminated. Reduction of funding alone does not eliminate a department's duty to fulfill statute.

SPAR needs general funds if contaminated sites are to be cleaned for socioeconomic reasons

As explained in Recommendation No. 3, district staff often monitor the cleanup of willing responsible parties (RPs). While many of these sites do meet Response Fund criteria (that is, they pose an imminent and substantial threat to public health or the environment) others clearly do not. The RP is often motivated to clean their site in order to obtain bank financing for the sale of the property or obtain a permit to do construction on the property. While these sites may not pose a substantial risk, the monitoring of the site cleanup by DEC is important to the owner for their own socioeconomic reasons. If the legislature feels that DEC is providing a valuable and valid public service by providing technical assistance on sites that do not pose an imminent and substantial threat, then the legislature needs to make general funds available to SPAR.

ISSUES NEEDING FURTHER STUDY

It was beyond the scope of this audit request for us to test Oil and Hazardous Substance Release Response Fund (Response Fund) expenditures and accounting procedures developed in agencies other than the Department of Environmental Conservation (DEC). However, as explained in the Background Information section, other agencies are significant users of the Response Fund. In FY 92 DEC entered into over $18.5 million in Response Fund reimbursable services agreements (RSAs) with other agencies; in FY 93 DEC entered into almost $5 million in Response Fund RSAs with other agencies. Consistently, the largest participants in using the Response Fund outside of DEC are the Department of Law, the Department of Military and Veterans Affairs, and the Department of Fish and Game.

As stated in Report Conclusions and Recommendation No. 1, DEC has little authority and receives limited information supporting requests for reimbursement on the RSAs. Supporting information submitted with the request for reimbursement usually provides little detail and DEC is forced to rely on the other department's accounting procedures.

We suggest that the Legislative Budget and Audit Committee may want to consider reviewing the support for selected expenditure transactions, the accounting procedures, and project results of Response Fund activity in agencies outside of DEC. Those agencies we recommend be considered for review include the Department of Law, Department of Military and Veterans Affairs, and the Department of Fish and Game.

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TABLE A

RESPONSE FUND SUMMARY AS OF JUNE 30 1993

Sources of funding:	
Oil Surcharge Revenue	$82,500,000
General Fund	44,447,000
Program Receipts: Exxon Reimbursements 1989 & 1990	30,000,000
Mitigation Revenue	4,346,600
	161,293,600
Uses of funding:	
Expenditures through FY 93 (Note 1)	119,567,992
Reserve for Encumbrances	6,786,808
Reserve for Prior Year Appropriations	2,190,914
Accounts receivable recorded for Exxon Valdez cleanup	2,338,795
Fund Balance/Spill Reserve (Note 2)	$30,409,091

Note 1: Expenditures are inception to date as reported in Response Fund Annual Reports for FY 87 - FY 93. This amount is the same as the total reported in our Table B.

Note 2: Department of Environmental Conservation has stated their fund balance/spill reserve is $27,084,100; which is $3,324,991 less than what we have calculated. Review of their backup indicates the discrepancy occurred in FY 91 and FY 92 when information for the annual report was pulled from the Alaska accounting system. The department needs to reconcile this discrepancy.

TABLE B

SUMMARY OF EXPENDITURES BY FISCAL YEAR
(NOTE 1)

PROJECT	FY 87	FY 88
Contaminated site investigation, safety, cleanup, and cost recovery	$428,815	$329,977
Spill Response containment, safety, cleanup, and cost recovery		
Spill prevention and response preparedness		
State and regional contingency planning		
Spill response office, depots, and corps		
Mt. Redoubt Volcano/Publication of 1990 annual report		
Spill reserve		
Spill response drills		
Kenai cleanup project		
State Emergency Response Commission and local emergency response planning		
Local Emergency Planning Committees		
UAA - Soldotna Fire Training		
DFG - Spill prevention and response preparedness		
LEG - Citizen's Oversight Council		
Hazardous Substance Spill Technology Review Council		
Arctic Marine Resources Commission		
Prince William Sound Regional Citizens' Advisory Council		
Non-crude Oil Tanker/Barge Study		
Nearshore Strike Team Demonstration Projects		
Oil spill contingency plans/requirements		
Geographic Information System		
Advisory Council/transportation of oil		
Ferries with oil spill response ability		
Natural resource damage assessment		
Subtotal of Non-Exxon Related Expenses	$428,815	$329,977

FY 89	FY 90	FY 91	FY 92	FY 93	Total
$320,900	$774,500	$1,671,700	$1,262,400	$2,926,700	**$7,714,992**
	211,000	690,200	378,500	71,000	**1,350,700**
		1,056,200	3,846,200	5,385,800	**10,288,200**
	158,400	556,700	223,500	54,700	**993,300**
	199,800	967,700	1,125,100	2,663,000	**4,955,600**
	112,800	4,800			**117,600**
	245,500	313,600	71,400	268,500	**899,000**
		448,500	105,700		**554,200**
		583,700	555,900	177,900	**1,317,500**
		399,600	257,000	186,200	**842,800**
			575,200	1,039,700	**1,614,900**
				88,400	**88,400**
		119,800			**119,800**
		119,500	237,300	88,300	**445,100**
			112,400	275,300	**387,700**
			100,000	90,000	**190,000**
			57,200	10,200	**67,400**
			29,900		**29,900**
				3,300	**3,300**
			84,200	15,000	**99,200**
				91,600	**91,600**
			120,300		**120,300**
			102,400	7,501,500	**7,603,900**
			1,358,400	59,400	**1,417,800**
$320,900	$1,702,000	$6,932,000	$10,603,000	$20,996,500	**$41,313,192**

PROJECT	FY 87	FY 88	FY 89
Subtotal of Non-Exxon Related Expenses (from page 38)	$428,815	$329,977	$320,900
DEC - Exxon Valdez			5,456,300
RSAs - Exxon Valdez			609,700
Local Response - Exxon Valdez			205,600
LAW - Exxon Valdez Litigation			
DFG - Exxon Valdez Damage Assessment			
Exxon Valdez - Spill Cleanup and Cost Recovery			
Exxon Valdez - Assessment and Restoration			
Exxon Valdez Litigation			
Exxon Valdez Project			
Subtotal for Exxon expenses			6,271,600
Total Expenses	***$428,815***	***$329,977***	***$6,592,500***

Note 1: This table was prepared from expenditures reported by the Department of Environmental Conservation in their Response Fund Annual Reports for FY 87 - FY 93. We have not audited this information and therefore do not express an opinion on its reliability. Since project titles changed over the seven years, for comparability purposes we have grouped those activities that seemed the same despite small title changes.

FY 90	FY 91	FY 92	FY 93	*Exxon Valdez*	Total
$1,702,000	$6,932,000	$10,603,000	$20,996,500		**$41,313,192**
24,005,400	11,977,700			**41,439,400**	
4,560,000				**5,169,700**	
3,210,200				**3,415,800**	
	4,100,000			**4,100,000**	
	8,834,400			**8,834,400**	
		2,337,300	$492,600	**2,829,900**	
		6,654,400	407,000	**7,061,400**	
		1,576,900	2,703,500	**4,280,400**	
		1,123,800		**1,123,800**	
31,775,600	24,912,100	11,692,400	3,603,100	**78,254,800**	**78,254,800**
$33,477,600	***$31,844,100***	***$22,295,400***	***$24,599,600***		***$119,567,992***

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TABLE C

DESCRIPTION OF RESPONSE FUND ACTIVITIES APPROPRIATED IN FY 92 AND FY 93

As reflected by discussion in Background Information, there have been numerous changes to the Oil and Hazardous Substance Release Response Fund (Response Fund) since its inception in 1986. Many of the amendments expanded the authorized purposes of the fund. The following table illustrates all Response Fund appropriations for FY 92 and FY 93. The table indicates if these appropriations would have been covered under the original purposes of the fund or if they are allowed due to amendments subsequent to 1986 inception.

The first two columns of the table give the name of the project or activity and a brief description of the purpose of the project. FY 92 operating appropriation amounts came from Ch 73, SLA 91. FY 93 operating appropriation amounts come from Ch 136, SLA 92 and capital appropriation amounts come from Ch 5, FSS 1992.

Some projects meet both original and expanded legislation and are so indicated by a checkmark in both columns. One project, Arctic Marine Resources Commission, in our opinion, does not appear to meet either the original or any expanded use of the Response Fund, but there is nothing that prevents the legislature from appropriating from the Response Fund for other uses.

Project/Activity	Description
Department of Environmental Conservation (DEC) Operating Programs - except Contaminated Sites	Operating programs include the Director's Office and the Division of Spill Prevention and Response (SPAR). The Director's Office is responsible for administrative support, safety and data management. In addition to contaminated sites, SPAR is composed of three sections: Government Preparedness and Response, Industry Preparedness Program, and Underground Storage Tank Program. Government Preparedness develops regulations and guidelines for SERCs and LEPCs, ensures that local plans are under development and are integrated with other plans, ensures that there is a complete compilation of hazards analysis for the State, and conducts drills on the state and local plans. Industry Preparedness reviews oil discharge prevention and contingency plans for oil operations, conducts inspections and spill drills, and administers the statewide financial responsibility program to ensure that oil operators demonstrate sufficient proof of ability to respond.
Exxon Valdez Oil Spill Project	Response funded activities in FY 92 included data compilation and documentation, monitoring, and select restoration activities. The funding was also allocated to coordinate support efforts by state agencies. FY 93 monies funded DEC's Oil Spill Response Office whose staff gathered data regarding the extent of subsurface oil and surveyed selected beaches. In addition, staff archived records and created a records database.
Contaminated site projects identified by DEC	Contaminated sites are ranked based on a hazard ranking model that prioritizes sites based on their threat to human health or the environment. DEC also takes into account unique social or economic factors. However, the ranking model allows for numerous unknowns, which affects the reliability of the numeric scores. The cleanup list is subject to constant change as responsible parties assume cleanup responsibilities and as new contaminated sites become known. DEC provides oversight only on sites where the responsible party is taking action. Contaminated sites that require cleanup, but where the potential responsible party is unknown, unwilling, or unable to clean up are referred to as orphan sites. DEC must go through a notification process to the potential responsible party before a site is placed on the orphan site list. The State initiates cleanup on orphan sites.
Contaminated sites identified by other agencies	Beginning in FY 92, contaminated sites with the State as the responsible party were dealt with by a Memorandum of Agreement between several state agencies. Department of Natural Resources, Department of Transportation and Public Facilities, and DEC formed a work group that determined which sites were the highest priority and submitted a capital budget request for funding. The major tool used by the group to rank the various sites was DEC's ranking model. The work group recommended funding for 10 projects in FY 93 for a total capital request of $2.6 million. Actual expenditures in FY 93 came to slightly over $310,000.
Oil Spill Reserve	The legislature established the spill reserve so that funds would always be available for the abatement of a release of oil or a hazardous substance. The spill reserve can only be accessed to address a release that poses an imminent and substantial threat to public health or the environment. DEC only uses the spill reserve to address unbudgeted activities that pose an imminent and substantial threat. Eleven spills were responded to in FY 92 for a total of $71,382.76, and thirty were responded to in FY 93 for a total of $245,995.37.
Oil Response capable ferry	The legislature authorized expanding the use of the fund to include refurbishment or construction of marine response vessels. Alaska Marine Highway System is currently in the design phase of constructing a vessel that could be used to respond to oil spills. For FY 93, the legislature appropriated $7.5 million from the Response Fund to the Alaska Marine Highway System Replacement Fund for the oil response ferry. But these funds will not be used until the vessel is in construction phase, which is currently targeted for the first quarter of FY 95.
State Emergency Response Commission (SERC)	SERC was established by executive order in 1987 and formalized in 1990 with the passage of HB 566. SERC guides and coordinates a state-wide emergency response plan. SERC designates Local Emergency Planning Districts (LEPDs) and approves LEPCs for those districts. SERC reviews and comments on local emergency plans, including oil facility and vessel spill contingency plans.
Local Emergency Planning Committees (LEPCs)	The State has been divided into 26 LEPDs. SERC establishes and appoints a Local Emergency Planning Committee for each district; however, only 14 LEPCs have been established to date.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
$5,731,300	$7,339,300	✓	✓	SB 261 [Ch 90, SLA 89] HB 567 [Ch 191, SLA 90]
$20,081,900	$3,318,000	✓	✓	SB 261 [Ch 90, SLA 89] SB 264 [CH 113, SLA 89]
$4,203,200	$3,528,600	✓		
$0	$2,193,000	✓		
$12,627,400	$23,656,700	✓		
$500,000	$7,500,000		✓	SB 165 [Ch 48, SLA 91]
$329,900	$350,800		✓	SB 261 [Ch 90, SLA 89]
$900,000	$1,200,000		✓	SB 261 [Ch 90, SLA 89]

Project Activity	Description
Response office, depots/corps	The legislature authorized that depots and corps were to be planned through the DEC master and regional contingency planning and the State Emergency Response Commission approval process. The exact determination of locations was left to the DEC and SERC planning process. The State was to pay for training volunteers in communities selected as depot sites and pay them when necessary to combat a spill or participate in training. Exact types and amounts of containment equipment and materials to be stored at depots was also left to the DEC and SERC planning process. DEC and DMVA have jointly expended over $4 million on depots and corps to date. The only depot that has been established to date is a $1.6 million project for a communications depot, which is 50% Response Funded and 50% funded by the Federal Emergency Management Authority. Other expenditures have been used to train 823 first responders and develop an Incident Command System and an Advanced Integrated Management System.
Citizens' Oversight Council on Oil and Other Hazardous Substances	This council was established in 1990 following the passage of HB 578. The council assesses the performance of state and federal agencies in preventing and responding to releases of oil and hazardous substances, identifies risks, and recommends improvements for environmental safety to the legislature, governor, and federal agencies.
Nearshore Strike Team Demonstration Projects	The legislature appropriated $1.2 million for FY 93 to provide coastal communities that are not connected by a highway system with the resources to be able to respond to a major oil spill. Currently, contingency plans do not always address industry's preparedness to respond to a spill in communities for extended distances downstream from an oil terminal facility or tank vessel route. One purpose for the demonstration project was to define the optimum array of equipment needed in communities to mobilize and respond to spills which have escaped initial containment or to orphan spills which may occur within the operating range of nearshore communities. Two informal planning committees were organized - one for the Gulf of Alaska region and the other for Southeast Alaska region. Each region developed their own project design criteria.
Hazards Analysis	A Hazards Analysis covers four stages: (1) identifying the hazard, which is defined in AS 46.03.826, (2) performing a vulnerability analysis, (3) conducting a risk analysis, and (4) assessing response capability by industry and local response. After DEC had prepared a request for proposals to perform a statewide Hazards Analysis, LEPCs indicated that they preferred to control this project themselves. In FY 92, DEC delegated the responsibility and funding to LEPCs for the Hazards Analysis. As of October 15, 1993, hazards analyses were completed for four LEPDs, are in process for twelve LEPDs, and the other ten LEPDs are scheduled for completion in June 1994 as part of a statewide Hazards Analysis contract. Once the hazard analyses are complete, DEC believes they will have an inventory of between 80%-90% of all facilities with hazardous substances required to report under SARA Title III. DEC will need to keep their database of information up-to-date.
Geographic Information System (GIS)	The legislature appropriated $689,300 for a GIS. DEC administered $250,000 and signed a reimbursable services agreement with the Department of Military and Veterans Affairs (DMVA), Division of Emergency Services (DES) for the remaining $439,300. GIS will be a map-based system that monitors where a spill has occurred in comparison to the natural surroundings. The GIS will be able to track the response of industry or the responsible parties and can be used to project what path the spill will follow. The GIS could store countless data useful in making decisions, such as population centers, location of contaminated sites and hazardous substances, and location of equipment. Two demonstration projects have been completed for DEC. One problem that has not been reconciled is how the DEC and DMVA, DES systems will coordinate. DES is developing an Advanced Integrated Incident Management System to respond to an emergency situation. DES is interested in knowing where manpower, communication, and aircraft are located. DEC will not be able to view DES' information on a geographic base.
Hazards Substances Spill Technology Review Council	The council exists within the SERC. The council's duties include responsibility for reviewing and recommending research topics to DEC, establishing testing protocols for the department to use to evaluate the effectiveness of hazardous substance spill technologies within the State, and compiling and maintaining information relating to containment and cleanup technology.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
$1,700,000	$800,000		✓	SB 264 [Ch 113, SLA 89]
$237,300	$237,300		✓	HB 578 [Ch 199, SLA 90]
$0	$1,200,000		✓	HB 567 [Ch 191, SLA 90]
$0	$177,300		✓	SB 261 [Ch 90, SLA 89]
$0	$689,300	✓	✓	SB 261 [Ch 90, SLA 89]
$236,800	$420,000		✓	HB 567 [Ch 191, SLA 90]

Project/Activity	Description
Arctic Marine Resources Commission (AMRC)	The legislature appropriated $100,000 to fund the commission through FY 92, with the intent to form a Regional Citizens' Advisory Council for residents of Alaska's Arctic coastal communities. AMRC would review Arctic oil exploration and development issues affecting Alaskans and attempt to secure federal and industry recognition and support as an Arctic Regional Citizens' Advisory Council.
Alyeska Terminal Ballast Water Testing/Monitoring	The legislature appropriated $175,000 for DEC to disburse to the Prince William Sound Regional Citizens Advisory Council. RCAC was to retain technical experts who would review and evaluate three monitoring programs being conducted by DEC at the Alyeska Valdez Marine Terminal. The three programs, which have been completed with final reports, were to monitor the influent ballast water to the ballast water treatment facility, to monitor the treated discharge from the ballast water treatment facility, and to monitor sediment hydrocarbon chemistry and sediment toxicity in Port Valdez.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
$100,000	$100,000			See discussion on page 43
$175,000	$0	✓		

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TABLE D

EXAMPLES OF EXTERNAL FY 92 AND FY 93 RSAs

FY 92 RSA, DEC/DMVA Oil Spill Depots/Corps $1,700,000

Over $1.2 million has been spent on this RSA through fiscal year end 93.

The "communications depot" is the only depot in place. The communications depot is a $1.6 million project that will be 50% Response Funded and 50% federally funded by the Federal Emergency Management Agency. The equipment includes two 4.5 meter trailer mounted satellite communication dishes, four foamy satellite communication packages, and two mobile satellite telephones.

On the same RSA, DMVA trained 823 people to be first responders in the event of a spill. First responders include such persons as police and fire personnel. DMVA and the LEPCs worked together to determine who should be trained and in what localities. A database of people who were trained was prepared and given to GPRP.

FY 93 RSA, DEC/DMVA Oil and Hazardous Substance Release and Response Preparation and Planning $800,000

This RSA, which only had $155,000 in expenditures through fiscal year end 93, was to fund six different projects, many of the projects being continuing and open-ended. On Response Corps and Emergency Response Depots DMVA assisted and will continue to assist SPAR is preparing a 3-year strategic plan on the development of depots and corps to facilitate planning and budgeting.

For the State Emergency Response Commission, the Chief of Logistics was appointed by the Adjutant General as his designee and vice-chair on the commission. DMVA staff assisted and will continue to assist the Chief of Logistics in his membership roles on various SERC committees. DMVA provided and will continue to provide a person to serve as the State's alternate member of the Alaska Regional Response Team.

DMVA provided and will continue to provide an ex-officio, non-voting member to the board of directors on each of the two Regional Citizens' Advisory Councils in Alaska. For Emergency Response Planning, DMVA provided technical assistance to Local Emergency Planning Committees to ensure their response plans are consistent with the State Emergency Operations Plan. DMVA assisted and will continue to assist SPAR in developing a communications plan for response to oil and hazardous substance releases.

FY 93 RSA, DEC/DMVA Geographic Information Systems (FEMME) $439,300

This RSA is to be used primarily for contractual services from the University of Alaska, Anchorage and the purchase of hardware and software. DMVA will develop an emergency management decision system for the State Emergency Operations Center with this funding ensuring that the system aids management of oil and hazardous substance release incidents. The system will incorporate a graphic user interface which will be compatible with DEC's geographic information system (GIS). GIS will provide an automated decision support system and an automatic resource tracking system. The GIS system will use computer graphics to show a map of response capabilities.

For an estimated $250,000, the university will prepare a briefing paper on the emergency management decision system which includes: estimated costs for equipment, software, and training; a phasing plan; schedules and project milestones; cost/benefit analysis; and personnel utilization.

The hardware and software for the emergency management decision system is estimated to cost $175,000.

FY 93 RSA, DEC/DFG Spill Prevention Planning and Management Assistance and State Emergency Response Commission Contingency Plans $202,200

This RSA is to have DFG's participation on three distinct projects. DFG is expected to be reimbursed $5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DFG will complete work tasks assigned by the commission or committees and provide expertise on fish and wildlife services.

DFG anticipates having $127,200 in reimbursable expenditures for their participation in oil pollution control. DFG will review and comment on approximately 180 oil spill contingency plans submitted by industry for compliance with state regulations. DFG's primary focus is to enhance protection of fish and wildlife populations, habitats, and public uses of these resources.

DFG anticipates having $70,000 in reimbursable expenditures for their participation in reviewing the state master and regional plans.

FY 93 RSA, DEC/DNR Industry Contingency Plan Reviews and State Emergency Response Commission $28,900

This RSA is to have the Department of Natural Resources' (DNR's) participation on two distinct projects. DNR is expected to be reimbursed $5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DNR will complete work tasks assigned by the commission or committees.

DNR anticipates having $23,900 in reimbursable expenditures for their participation in oil pollution control. DNR will review and comment on approximately 170 oil spill contingency plans submitted by industry for compliance with state regulations. DNR's primary focus is to ensure that sensitive natural resource areas are adequately protected.

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DEPT. OF ENVIRONMENTAL CONSERVATION
410 Willoughby St., Juneau, AK 99801 (907)465-5010

Mr. Randy S. Welker
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
MAR - 4 1994
LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to reply to the Division of Legislative Audit's Preliminary Audit of the Oil and Hazardous Substance Release Response Fund (Response Fund). First I would like to formally thank Ms. Cynthia Ryan and Ms. Kristin Dolquist for the professional and thorough manner in which they conducted this audit. I have heard this comment made by several members of my staff.

In general, we believe that this draft audit report accurately reflects the legislative and Department of Environmental Conservation (DEC) history of the Response Fund. We also generally agree with the description of current DEC management of the Response Fund. In the face of the many misunderstandings currently existing about the Response Fund and its intended purpose, it is refreshing to see such an accurate explanation of the Fund.

Recommendation No. 1

The legislature should make statutory changes to clarify the role of the fund administrator.

We agree with the proposed statutory changes and will work with the Attorney General's Office and the respective Senate Finance and House Resource Committees to investigate ways that these statutory changes can be made.

Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

We generally agree with this recommendation and will take immediate steps to implement it.

DEC has been pursuing cost recovery on selected oil and hazardous releases since FY90. A formal cost recovery notification policy and process has been in place since April of 1992 and a draft cost recovery manual and training was completed in August of 1993.

We agree that these policies and procedures should be finalized and that any training inadequacies should be remedied as soon as possible.

Recommendation No. 3

DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

This is an excellent recommendation and one that will require coordinated assessments with other government agencies, especially the Department of Defense (DOD). The DEC has a formal Statement of Cooperation with the DOD and an assessment of the effectiveness of joint environmental programs is now underway. Opportunities for improvements in contaminated sites management will be identified and implemented as a result of this assessment.

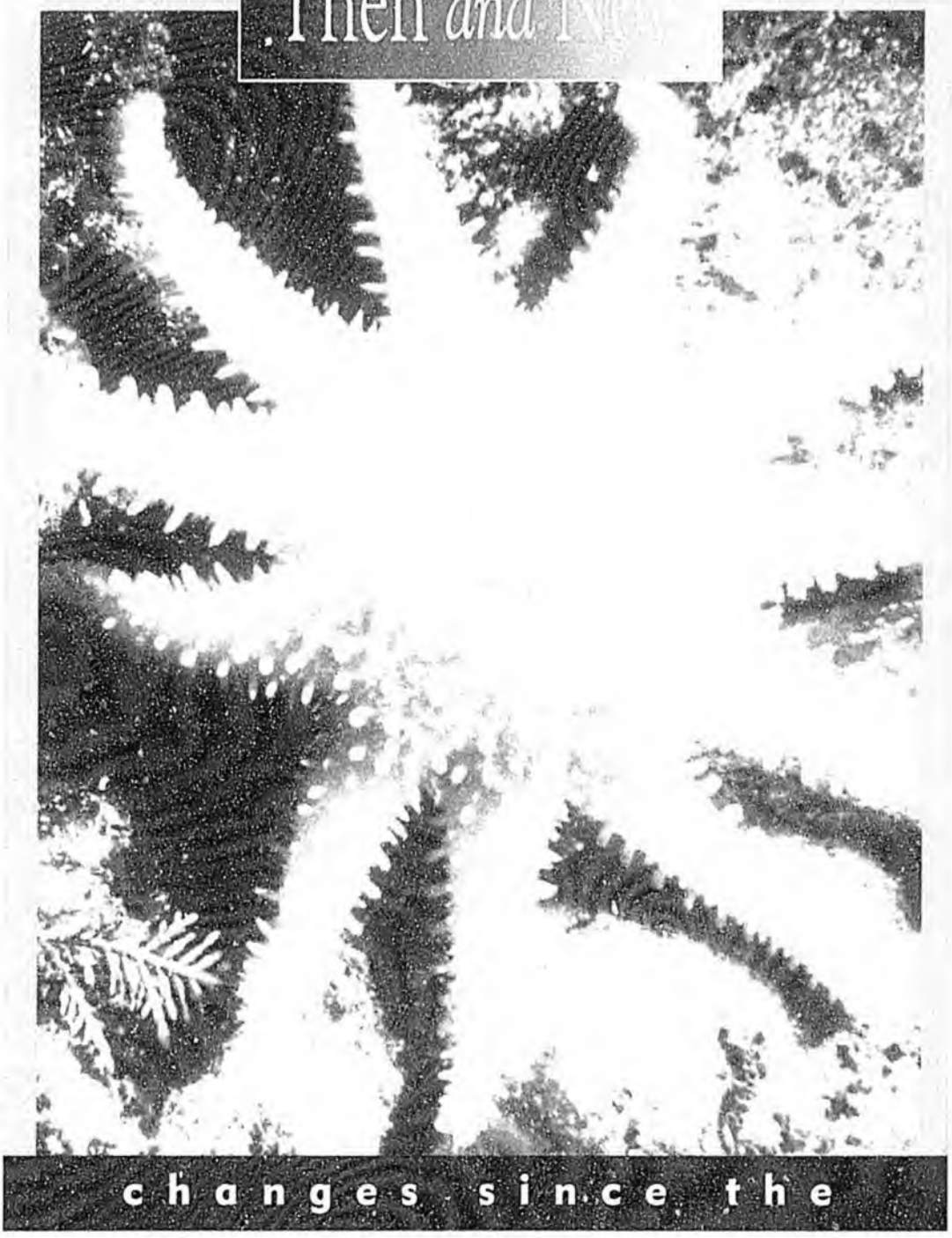
What the DEC has been providing is a prioritized list of high priority contaminated sites determined by the ranking model and judgement by regional staff with the suspicion that the responsible party is reluctant or unwilling to conduct the necessary cleanup. We agree with the recommendation to provide a better listing and have been developing policies and guidance during this fiscal year to put in place a more aggressive approach to confirm responsible party intent and prioritize all contaminated sites into a high/medium/low category.

Thank you again for the opportunity to respond to this draft audit and we look forward to working with your office toward the completion of the proposed management recommendations.

Sincerely,

John A. Sandor
Commissioner

Then and N



changes since the

Regional Citizens' Advisory Council
PRINCE WILLIAM SOUND

RCAC
mission

Citizens
promoting
environmentally
safe operation
of the
Alyeska
terminal and
associated
tankers.

RCAC
Regional Citizens' Advisory Council

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Then and Now

THE *EXXON VALDEZ* OIL SPILL WAS not simply a freak accident. While Exxon as the spiller should be held fully accountable and responsible for the spill and its impacts, there were myriad other factors that allowed it to happen. The oil industry, government agencies, elected officials and, to some extent, the citizens of Alaska also share varying degrees of responsibility for conditions that allowed the spill to occur and failed to ensure prompt, effective cleanup.

The oil industry failed to maintain adequate prevention and response systems.

Regulatory agencies failed to protect public resources because of ineffective or inadequate monitoring, oversight and enforcement.

State and federal elected officials were unwilling to pass laws strong enough to protect the environment and give regulatory agencies the funds they needed to protect public resources.

Most Alaskans simply weren't paying attention.

The *Exxon Valdez* oil spill was caused by the ship's master and crew. It could have been prevented by stronger prevention practices and vigilant government oversight. Once the spill occurred, better response planning could have lessened the impacts.

This publication provides an overview of how factors that led to the nation's worst oil spill have been addressed in the ensuing four years. Are the resources and communities of Prince William Sound and the Gulf of Alaska better protected from a major oil spill than they were four years ago? Can Alaskans now breathe easier?

The Regional Citizens' Advisory Council of Prince William Sound (RCAC) believes Prince William Sound and communities in the path of tanker traffic clearly are much better protected now. Yet continued vigi-

lance is essential to ensure that protections aren't diluted and that gains are not lost as political memory dims.

Much has changed since 1989, mainly because of new and revised federal and state laws and regulations spurred by the *Exxon Valdez* oil spill. The goal of this publication is to provide the general public with information about many of the changes implemented, and some of the gaps that still remain, as a measure of how much the risk of major oil spills has been reduced.

This publication was produced by the RCAC, an independent non-profit organization formed after the *Exxon Valdez* oil spill to promote environmentally safe operation of the crude oil terminal in Valdez, Alaska, and the tankers it serves.

Under a contract with Alyeska Pipeline Service Company, RCAC monitors and advises Alyeska on terminal operations, spill prevention and response planning, and other environmental issues. RCAC conducts independent research, monitors regulatory activity and advises tanker owners and operators, regulatory agencies and the public, on issues related to oil transportation and its environmental impacts.

RCAC's 18 member organizations include communities affected by the *Exxon Valdez* oil spill and interest groups with a stake in the affected region.

The federal Oil Pollution Act of 1990 requires an industry-funded citizens' advisory group for Prince William Sound; the RCAC is certified as the entity that meets the requirement.

The views expressed in this document are those of the RCAC, which is solely responsible for the content. *

—June 23, 1993

Continued vigilance is essential to ensure that protections aren't diluted and that gains are not lost as political memory dims.

HISTORICALLY, once oil is spilled on water it is never fully contained and recovered. Despite improvements in containment and cleanup technology, it has been virtually impossible to recover all the oil from a major spill, even in the most favorable conditions. Indeed, the best-laid response plans in the world are no guarantee that any spilled oil will be recovered since severe weather conditions can render even a good response plan useless.

The first line of defense must be prevention.

Vessel Traffic Management

The U.S. Coast Guard's Vessel Traffic Service (VTS) system functions as the waterway manager for major shipping including tankers traveling to and from the Valdez Marine Terminal. Numerous changes have been made to update and improve the system. These changes enhance the Coast Guard's ability to monitor and provide traffic advisories to inbound and outbound tankers from its Vessel Traffic Center in Valdez.



Tanker positions are plotted every three minutes through the Valdez Narrows and every six minutes elsewhere.

PHOTO BY SEAN REID © 1992

Radar coverage has been upgraded to provide better resolution in varying weather conditions and at an extended range.

The *Exxon Valdez* left the tanker lanes altogether to avoid ice. Now, if a vessel of 1,000 or more gross tons encounters ice, the one-way zone—which has always applied through the Valdez Narrows—is extended to Bligh Reef. The extended one-way zone allows a tanker to avoid ice by using any portion of the traffic separation scheme, without risk of collision with an on-coming vessel.

A third permanent position, watch supervisor, was added to the Vessel Traffic Center, to supervise the radar and radio watch standers. Qualifications and training for watch standers have also been upgraded and expanded.

Reporting and communica-

tions have been upgraded. New repeater towers installed by Alyeska allow better two-way communications between tankers and the Valdez Marine Terminal. Coast Guard personnel now track and plot tanker positions every three minutes while the tanker is in the Valdez Narrows and every six minutes elsewhere in the radar coverage area between the terminal and Bligh Reef. If a ship moves from one traffic lane into another, to avoid ice for example, fixes are taken every three minutes until the vessel re-enters its correct lane.

A new tracking system, to begin operating in mid-1994, will enable the Coast Guard to track tankers beyond Bligh Reef. The new system will give a visual display of all tankers between the terminal and approaches to Hinchinbrook Entrance. The new system will automatically transmit tanker position data, determined by a satellite-based global positioning system, back to the Vessel Traffic Center.

A fixed navigational aid tower has been installed on Bligh Reef. Studies required by federal law are investigating additional navigation aids and the adequacy of tanker navigation safety standards.

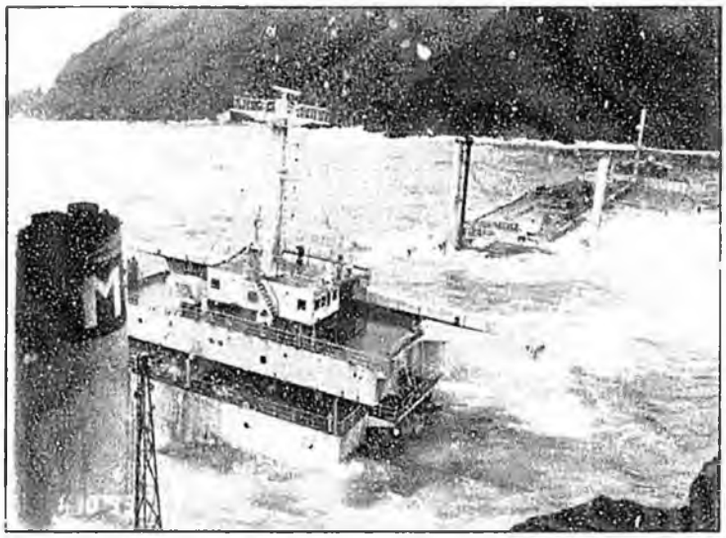
- Traffic lanes
- Watch supervisor added
- More radar coverage
- Navigational aid—Bligh Reef
- Tracking system *(to come)*

The *Exxon Valdez* was traveling, unaccompanied by an escort vessel, at 12 knots and accelerating when it approached icebergs northwest of Bligh Reef. Tankers now must be accompanied by escort vessels and must stay within one-half mile of the escorts. Alyeska limits the maximum speed of the escort vessels to 10 knots in Prince William Sound, thereby indirectly limiting the speed of the tanker, as well.

Since 1977, the U.S. Coast Guard has restricted laden tankers to a maximum speed of 6 knots through the Valdez Narrows. After a steering malfunction in 1992 on the tanker *Kenai*, Alyeska

ordered escort vessels to stay within one-quarter mile of the tanker through the Narrows.

In the past, tankers could request permission to deviate from the traffic lanes altogether. Tankers now must remain in the traffic lanes, although they may request Coast Guard permission to move from one lane to the other if circumstances warrant.



The Braer goes down on the coast of Shetland, the victim of severe weather.
PHOTO BY SCOTT STERLING

Weather restrictions

Weather restrictions on tanker traffic were instituted after the *Exxon Valdez* oil spill. Now, the Coast Guard closes Port Valdez to tanker traffic if sustained winds are 40 knots or more. If sustained winds are between 30 and 40 knots, the Coast Guard requires additional tugs through the Valdez Narrows: a total of two tugs for tankers up to 100,000 dead weight tonnage (DWT) and three tugs for tankers over 100,000 DWT. Alyeska suspends escorts altogether in sustained winds over 40 knots, because such weather would render spill response impractical, if not impossible. If escort vessels encounter such winds while under way, they normally proceed. In more severe weather conditions, escorts may turn back, but that occurs infrequently *(see "Areas of concern")*.

While severe weather was not a factor in the grounding of the *Exxon Valdez*, it has been a factor in other major spills, most recently the *Braer* off Scotland's Shetland Islands. After the *Braer* incident, the Coast Guard Captain of the Port in Valdez evaluated conditions at Hinchinbrook Entrance and instituted new weather restrictions there. Outbound laden tankers may not transit Hinchinbrook Entrance if sustained winds in the Gulf of Alaska are 50 knots or more, or if seas reach 15 feet or greater.

Impaired crews

Until April 1989, signs of alcohol use did not prevent tanker crews

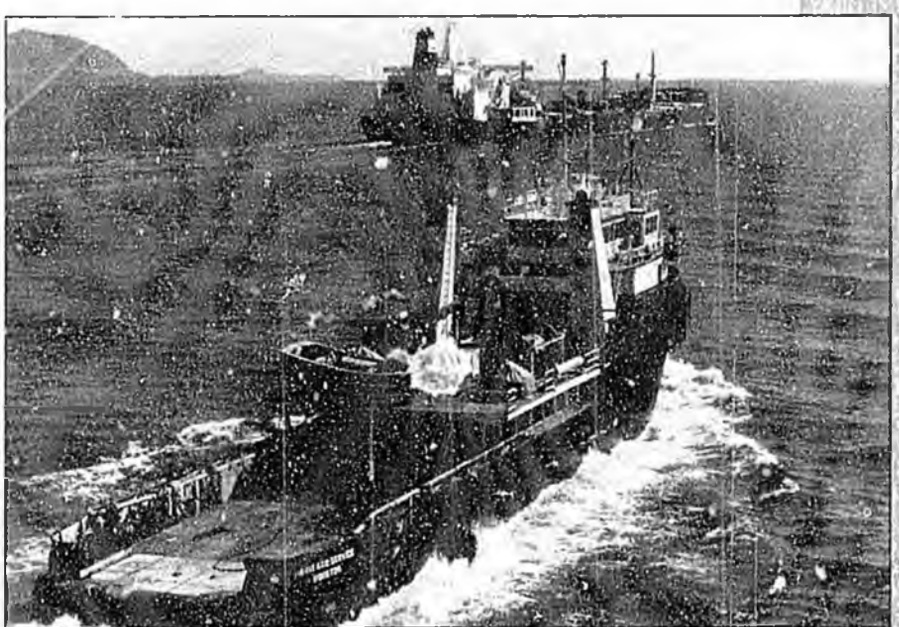
from returning to their vessels through the terminal. Under new alcohol screening procedures instituted by Alyeska, all tanker captains are given breath tests an hour before sailing. Crew members suspected of consuming alcohol are tested; any with blood alcohol content of .04 percent or greater are denied access to the terminal and their vessel.

A state-certified ship's pilot must be on board all tankers transiting between Bligh Reef and the terminal. A federally-licensed pilot or two licensed deck officers must be on watch on the bridge while the vessel is under way in Prince William Sound between Bligh Reef and Seal Rocks. Federal law also now limits the number of hours crew members may work, to reduce the risk of fatigue-induced accidents *(see "Areas of concern").*

Spill prevention measures begin before a tanker leaves the terminal. State regulations now require that all tankers docked at the Valdez Marine Terminal be surrounded with containment boom while cargo is transferred.

The Coast Guard has always required laden tankers to have one tug escort through the Valdez Narrows. Now, the State of Alaska requires each laden tanker to be accompanied to Hinchinbrook Entrance by at least two escort vessels. Up to two additional tugs may be required through the Valdez Narrows, depending on weather conditions and vessel size. Federal law, under the Oil Pollution Act, also requires two escort vessels in Prince William Sound. The Coast Guard is writing regulations to implement that requirement.

The escort vessels have two functions: to assist a tanker disabled or in trouble and to provide the first line of defense should a spill occur. At least one of the escorts is a spe-



The Heritage Service escorts a laden outbound tanker.

PHOTO COURTESY ALYESKA PIPELINE SERVICE CO. © 1989 DAVID PREDEGER

cially-fitted Escort Response Vessel, or ERV, equipped with containment boom, oil skimmers, a work boat to deploy boom, storage capacity and a trained crew. The second escort may be another ERV or a tug.

Since 1980, when the tanker *Prince William Sound* drifted powerless for approximately 17 hours, tankers calling at the terminal have carried towing packages to facilitate hook up with an escort vessel *(see "Areas of concern").*

One of the most important steps taken to prevent and reduce oil spills is the federal requirement that by 2015, all tankers in U.S. waters must have double hulls. Double hulls are to be phased in, with certain vessels to be converted or scrapped on schedules based on size and age of the vessel.

Double hulls are important because studies indicate that double hulls could have prevented five of the six major oil spills in Alaskan waters between 1975 and 1990. In the case of the *Exxon Valdez*, one study said a double hull could have reduced the amount of oil spilled by 60 to 80 percent.[1]

Double-hulled vessels existed long before 1989, and more have been built since then. However, no double-hulled tankers are currently used in the trans-Alaska pipeline system (TAPS) trade. Most of the tankers calling at the terminal in Valdez were built in the 1970s. Approximately one-third of the tankers now coming to Valdez have double bottoms.[2] On three of the double-bottom tankers, the wing tanks are left empty, making them de facto double-hulled tankers.

The structural integrity of the tanker *Exxon Valdez* was not an issue in its grounding. However, in 1988, a report issued by the Coast Guard identified the TAPS trade fleet as disproportionately affected by structural failures. The problem was underscored in January 1989, when the tanker *Thompson Pass* spilled 71,000 gallons of crude oil at the terminal because of cracks in its hull. The Coast Guard now requires more stringent inspections of tankers vulnerable to structural failure.





[TOP] *Citizens whose communities may be at risk from tanker traffic are represented on the Citizens' Advisory Council of Prince William Sound Regional. Pictured: Jim La Belle, Chugach Alaska Corp., and Larry Evanoff, Chenega.*

[BOTTOM] *Cordova is one of 18 communities and interest groups that make up the Regional Citizens' Advisory Council of Prince William Sound.*

PHOTO BY RICHARD NEWMAN

The *Exxon Valdez* oil spill generated a shift in the oil industry's attitude about the need to communicate with and involve local citizens in issues and decisions that affect their lives. That change in attitude was exemplified by former Alyeska President James Hermiller, who in the summer of 1989, actively supported formation of a citizens' advisory group funded by Alyeska.

Citizens are involved in preventing and responding to oil spills through the RCAC. There is a similar citizens' group for Cook Inlet and another is forming among citizens of Northwest Alaska. The RCAC has 18 member organizations consisting of communities affected by the *Exxon Valdez* oil spill and other interest groups with a stake in the region.

The RCAC monitors terminal and tanker operations in the area impacted by the *Exxon Valdez* oil spill, conducts independent research and advises industry and government on ways to prevent oil spills and respond effectively if spills do occur. The RCAC is funded through a contract with Alyeska Pipeline Service Company. The RCAC, or a similar citizens' advisory group, is required by the federal Oil Pollution Act of 1990 (OPA 90) as a demonstration program that eventually may be applied in other U.S. ports.

Citizen advisory groups do not necessarily prevent complacency among the general public, but they can serve as an early warning system to alert industry, government

The *Exxon Valdez* oil spill generated a shift in the oil industry's attitude about the need to communicate with and involve local citizens.

and the public of problem areas.

Prior to 1989 there was no mechanism, other than public hearings required by regulatory agencies, for citizens to advise the oil industry or otherwise speak directly on operations that affect their communities and livelihoods. Earlier attempts by Prince William Sound residents to give their input to oil industry representatives were generally met with negative responses.

Alyeska and others in the oil industry have become more sensitive to and communicate better with Alaskans in coastal communities, where residents' lives depend on the Sound's resources.

The Alaska Department of Environmental Conservation (ADEC) and the U.S. Coast Guard are the two agencies most directly responsible for oversight and monitoring of the Valdez Marine Terminal and oil tanker traffic. After the *Exxon Valdez* oil spill, both agencies were criticized for failing to either implement or enforce adequate prevention measures.

Changes have been made in both agencies.

At the state level, the *Exxon Valdez* oil spill focused public and political attention on the need for ADEC to have the authority and funding to monitor and oversee terminal and tanker operations, programs which had been under-funded through the late 1970s and '80s.

After 1989, state funding increased significantly for spill drills, review and approval of contingency plans, and facility and vessel inspections. Oil-related functions were consolidated into one division, called Spill Prevention and Response (SPAR). State legislation passed in 1990 provided the authority, resources and funding that ADEC needed to effectively monitor and oversee industry operations and implement spill prevention and response programs.

ADEC now has the authority, which it didn't have before, to require and enforce prevention measures as a condition for approval of contingency plans. Those measures include more training, more equipment, more inspection and maintenance of equipment, better record-keeping



The Exxon Valdez oil spill focused public and political attention on the need for better monitoring and oversight.

and specific requirements for laden tankers.

However, the progress appears to be woefully short-lived, since ADEC is under attack again and many of the gains made are now at risk *(see "Areas of concern")*.

The Coast Guard is the federal agency most affected by the *Exxon Valdez*. As a result of the problems that emerged from the spill, the Coast Guard has a more direct role in spill prevention and response and much greater regulatory oversight of the oil transportation industry. It is responsible for implementing most of the new prevention measures required by the Oil Pollution Act of 1990 (OPA 90). ☆

Progress by the state appears to be woefully short-lived, since ADEC is under attack again and many of the gains made are now at risk.

PREVENTION measures reduce the incidence and sometimes the severity of oil spills. But until prevention efforts become fail safe, the industry, regulatory agencies and the public must be prepared to respond to spills that do occur. Oil transportation poses risks to the environment. It is incumbent upon those who handle and carry crude oil, as well as regulatory agencies and the public, to make sure that spilled oil is contained and recovered to the greatest extent humanly possible.

The speed and effectiveness of responding to an oil spill hinge on the availability of equipment, resources and trained personnel. Ultimately, responding to a spill depends on planning, preparation and favorable weather.

Anyone who handles or transports crude oil or refined product is a potential spiller. Potential spillers cannot operate without an approved contingency plan for preventing and responding to a spill. What's in the plan and provisions for drills, training, acquisition of equipment, etc. is determined by state and federal laws and regulations. Requirements vary based on type of vessel or facility, location, and amount and type of cargo carried or handled.

Contingency plans were required before. But since 1989, state and federal agencies have expanded plan requirements and changed some of the assumptions. Those who must have contingency plans to operate—called "plan holders"—must provide greater assurances that personnel are being trained, that equipment and resources are available and can be mobilized quickly, and that all players have practiced their roles in preparation for an actual spill.

The size of spill assumed in a response plan makes a tremendous difference in the resources and equipment that must be available. Alyeska's 1987 contingency plan, approved by the state, said it was highly unlikely that a spill of 8.4 million gallons (three-quarters the size of the *Exxon Valdez* spill) would occur and reasoned that "Catastrophic events of this nature

are further reduced because the majority of tankers calling on Port Valdez are of American registry and all of these are piloted by licensed masters or pilots."[3]

Both state and federal law now require planning for larger potential spills than in the past, and require more spill response equipment to be immediately available.

Plan holders must have enough equipment immediately available to deal with a spill of 300,000 barrels of oil within 72 hours. Plan holders must also plan for a much larger spill based on a complicated formula that includes credit for prevention measures.

As the consortium that operates the trans-Alaska pipeline and terminal for its seven owner companies, Alyeska is the plan holder for spills on the pipeline and at the terminal. In Prince William Sound, the tanker owner or operator would be the actual spiller and therefore ultimately responsible, but Alyeska is charged by the State of Alaska with providing the initial response. Federal law requires the tanker operator to submit vessel response plans, but the vessel operator may contract with Alyeska.

Tanker owners and operators must have their own approved contingency plans, but state law requires them to contract with Alyeska to provide the initial response described in their plans. Under these contracts, Alyeska manages the spill response for up to the first 72 hours after a spill. After that, it may transfer management of the response to the spiller, so long as the U.S. Coast Guard and the Alaska Department of Environmental Conservation agree that the spiller or its representative is ready to take over.

- How much oil might be spilled?
- Equipment accessible and functioning?
- Who will do what?
- Is everybody trained?
- Fishing vessels on contract to help out?
- Who's in charge?



Alyeska's escort response vessels are equipped to respond quickly if a spill occurs. PHOTO | SEAN REID



Fishing vessel tows boom during a spill drill. Local fishermen demonstrated in 1989 that they could be effective components of spill response.

PHOTO COURTESY ALYESKA PIPELINE SERVICE CO. / RANDY BRANDON

The first three days after the *Exxon Valdez* oil spill afforded nearly ideal weather for oil recovery. Seas and winds were calm. But the equipment wasn't ready. Seventeen hours after the grounding, neither the leading edge of the spill nor the grounded tanker had been boomed and the few skimmers on-scene were operating ineffectively. Two hours later, skimming was forced to stop, pending arrival of more storage capacity. Throughout the first few days, debate raged about use of dispersants.[4] Exxon argued for widespread dispersant use, yet didn't have either enough dispersant or the equipment to do the job.

The situation now is quite different. Prince William Sound is home to Alyeska's Ship Escort and Response Vessel System (SERVS), among the top oil spill response forces in the world.

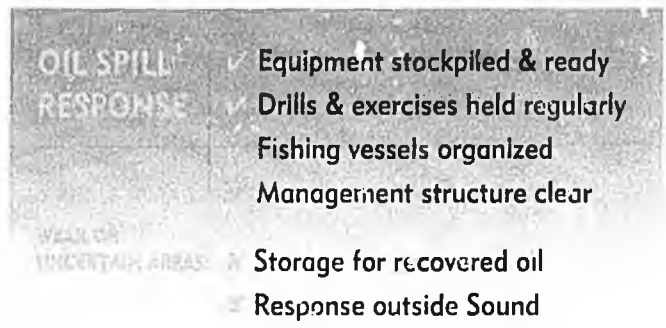
SERVS has two functions: to assist tankers in safe navigation through Prince William Sound and respond to a tanker problem or spill. The escort side of SERVS' fleet consists of five escort response vessels (ERVs) and three tugs. The ERVs are equipped to

tow or assist tankers, carry spill response equipment and contain, recover and store oil. The escort vessels stay within one-half mile of the laden tanker and maintain radio communication with the tanker bridge until the tanker reaches Seal Rocks, outside Hinchinbrook Entrance.

Trained response crews are on duty around the clock and a response fleet is on standby alert whenever a laden tanker is transiting the Sound. SERVS employs approximately 200 trained personnel; another 60 people comprise Alyeska's crisis management team.

Four task forces, each with a trained crew and a large barge with two skimming systems on-board, are stationed at three sites: one each at Naked Island and Cape Hinchinbrook and two in Port Valdez. SERVS' response resources include 33 miles of containment boom, 37 high-volume skimming systems, barges to receive recovered oil and water mixture, and equipment to pump and transfer oil-water mix. Equipment is tested in drills and exercises, to reduce the chances of confusion and surprises in an actual incident.

Local fishing vessels are part of Alyeska's planned response to a tanker spill. Private vessels are used, among other things, to transport response equipment, deploy and tend boom, and mobilize pre-staged equipment to protect hatcheries. Alyeska has provided comprehensive response training to about 35 fishing boats and their crews. Another 300-plus





Alyeska has pre-positioned spill response equipment at hatcheries, community response centers and other sites in Prince William Sound. Community Response Centers are also set up in Kodiak, Seldovia and Seward.

fishing boats and their crews have undergone training in basic response. The fishing vessels, based in communities in Prince William Sound, the Kenai Peninsula and Kodiak Island, are under contract with Alyeska to respond according to a pre-determined call-out procedure.

Spill containment and removal equipment is stockpiled at five fish hatcheries in Prince William Sound. Five community response centers also have been established in Prince William Sound, at Chenega, Cordova, Tatitlek, Whittier and Valdez. Three other centers have been established in Kodiak, Seldovia and Seward. Each center is responsible for coordinating emergency responses, manpower and equipment. Spill response equipment is pre-positioned at the five community response centers in Prince William Sound, and at Naked Island and Port Etches.

Two airborne dispersant delivery systems are maintained at Anchorage International Airport, for rapid mobilization if dispersant use is approved.

Storage capacity for recovered oil was a problem in the 1989 recovery effort. Boats would pick up the emulsified oil, only to find there was nowhere to put it. Alyeska now maintains storage capacity, much of it on barges, for nearly 20 million gallons of recovered oil and water mixture (*see "Areas of concern"*).

Spill drills enable response personnel to become knowledgeable and proficient in the strengths and weaknesses of equipment and procedures. Major, all-systems drills are conducted twice a year, as required by the state and the Coast Guard. These major drills include state and federal agencies, fishing vessels, tanker owners and operators and the RCAC. In 1992, Alyeska conducted nine drills at the terminal, including two surprise drills. Smaller equipment exercises are held much more frequently, often on a weekly basis.

An important aspect of spill response implemented since 1989 is use of the National Interagency Incident Management System (NIIMS), an incident command system (ICS) first developed by fire fighters in California to coordinate management, resources and roles during an emergency response.



Practice—a tanker is surrounded by boom during a major spill drill.

PHOTO BY DENNIS HARDING
CHEVRON CORP

This ICS integrates the party responsible for the spill, the State of Alaska and the Coast Guard in a unified command structure that expands according to need. It also establishes a pre-determined decision-making process and a common language that significantly reduces confusion and misunderstandings among personnel from different organizations.The ICS structure has been adapted by industry and government agencies to define and coordinate their roles and responsibilities in the event of a spill. The ICS structure has been tested and practiced extensively in drills.

Other requirements added since 1989 put more emphasis on shoreline protection, identification of sensitive areas such as hatcheries, and wildlife protection. A new term was coined – Nearshore Response – to describe the effort to protect shorelines threatened by spilled oil that has escaped initial containment.

Nearshore response is a major component of spill response, in which local personnel, knowledge and resources can be used to protect critical resources and shorelines. Industry groups, RCAC and regulatory agencies have worked cooperatively to develop nearshore response plans. The nearshore response plan for Prince William Sound appears strong, but strategies for implementing it still need to be developed *(see "Areas of concern").*



One of the jobs of the RCAC is to monitor the adequacy of spill response. From left, Kristin Stahl-Johnson, John Herschleb and Ann Rothe get briefed at the Valdez Marine Terminal.

PHOTO : SEAN REID

After the *Exxon Valdez* oil spill, an existing spill response fund was expanded to ensure that reserves would be available to respond to a major oil spill and provide a long-term funding source for the state's spill prevention and response programs. The money for this expanded role comes from a five-cent conservation surcharge on every barrel of oil produced in Alaska. The surcharge ceases when the fund reaches $50 million.

One of the projects to be paid for from the fund is a volunteer response corps and emergency response depots to ensure prompt response in the event of another major spill. However, little progress has been made to set them up *(see "Areas of concern")*.

To ensure that money will be available to pay for responding to and cleaning up a major spill, the federal Oil Pollution Act required establishment of a $1 billion oil spill liability trust fund, funded by the oil industry.

The Oil Pollution Act strengthened federal authority to order spill cleanup action and requires the Coast Guard to direct spill response actions when any spill poses a risk to public health or safety. It also provides tougher criminal penalties and higher civil penalties for the spiller.

Local citizens are involved in actual spill response and drills in several different ways. One of the jobs of the RCAC is to monitor the adequacy of spill response. RCAC representatives convey local concerns, advice and observations to response officials and help communicate developments in the response effort to local communities. ★

PROGRESS made by the State of Alaska since 1989 is in jeopardy. ADEC's ability to implement monitoring, oversight, prevention and response is being hobbled by a legislature and administration sympathetic to oil industry concerns.

Much of the state's spill prevention and response efforts are funded by a nickel-per-barrel conservation surcharge on oil producers. The surcharge was instituted after the *Exxon Valdez* spill, in part to ensure a long-term funding source for the state's spill prevention and response programs and to set aside a reserve for use in case of a future spill. The surcharge is levied only until the fund reaches $50 million. But continuous draws from the fund by the legislature have kept it from reaching that level, requiring the industry to keep paying into it.

Questionable legislative appropriations from the fund—to pay for a new state ferry, for example—have fueled efforts to narrow how the fund can be used. In the 1993 legislative session, oil industry lobbyists attempted to restrict the fund to actual spill response. Though unsuccessful in 1993, those efforts are expected to continue in 1994.

While the bill didn't pass, the message was not lost on the legislature. Most of the Fiscal Year 1994 budget cuts made in ADEC's Spill Prevention and Response Division (SPAR) are projects and programs paid for out of that fund. The result will be significant delays in programs designed to mitigate environmental impacts of terminal operations, prevent another major spill and improve response should oil spills occur. By reducing those programs, the legislature ensured that the fund will reach its $50 million cap sooner, resulting in less industry taxes.

Separate from political pressure on the response fund, there have been staffing and organizational problems. Positions in ADEC's Spill Prevention and Response (SPAR) Division have gone unfilled. As of

Progress made by the State of Alaska since 1989 is in jeopardy.

June 1992, 16 positions were vacant or unfilled, representing about 18 percent of the division's total staff. [5]

Between 1989 and 1992, the legislature appropriated nearly $10 million from the spill response fund to establish a volunteer response corps and emergency depots. Yet little progress has been made to set it up and much of the funding has lapsed because it wasn't spent. [6]

A tanker disabled at the narrowest portion of the Narrows could hit the rocks in less than 10 minutes.

Although all laden oil tankers coming into Prince William Sound must carry special towing equipment, there is significant disparity in how the towing equipment is stowed. Stowage affects how quickly the equipment can be deployed. On some tankers, towing equipment can be deployed in 15 minutes or less with a deck crew of two. On others, however, deployment would take a crew of eight at least one hour, with power, and at least three hours, without power.

Although not currently a federal requirement, emergency towing equipment is being proposed under rules to implement provisions of OPA 90.

Efficient towing packages are only part of the solution. Any towing package would be of questionable value to a tanker that loses power in the Valdez Narrows, where the navigable water shrinks to a width of 0.5 nautical mile. A tanker disabled at the narrowest portion of the Narrows could hit the rocks in less than 10 minutes. Averting a grounding in that situation would depend on the escort tug's ability to push or pull the tanker away from the rocks. It is not clear that the assist tugs and ERVs now being used in the Narrows are capable of doing so.

A study co-sponsored by the RCAC, industry groups and regulatory agencies is investigating the adequacy of current towing practices and equipment, and escort vessel deployment. The study is expected to be completed by the end of 1993.

At the center of the issue is whether the more-maneuverable tractor tugs should be required in Prince William Sound. Unlike conventional tugs, tractor tugs could be more safely attached to a tanker before it enters the Narrows. The study findings will be considered by the Coast Guard when it develops federal regulations on escort requirements.

Lack of information about weather conditions in Prince William Sound and Hinchinbrook Entrance is a problem. Because of wind patterns and local topography, readings from the wind measuring station at Potato Point are not always a reliable gauge of actual conditions. Inadequate reporting stations through the Sound mean that frequently the only information available about wind and sea conditions is from a vessel already under way.

The problem is lack of funding. During the *Exxon Valdez* oil spill cleanup, the National Oceanic and Atmospheric Administration (NOAA) temporarily placed reporting stations at numerous sites in Prince William Sound, but later removed them. The Coast Guard has requested NOAA install weather stations at various locations in Prince William Sound to provide real time weather information to aid in better vessel traffic management.

While federal law now limits the work hours of tanker crews, questions about other human factors have yet to be answered. Meanwhile, the U.S. Congress has yet to ratify international protocols for crew certification and training, even though such protocols would improve the safety and technical training of crews on foreign vessels calling at U.S. ports.

Issues such as the adequacy, qualifications and training of crews are to be addressed in a U.S. Coast Guard study of tanker navigation safety standards. The study is expected to be released in 1995. Minimum requirements for pilots also need to be re-evaluated; that issue will also be addressed in a Coast Guard study.

Coast Guard given more authority & responsibility
ADEC given more authority and funding
Citizens have a voice

PROBLEM AREAS:

- ✗ **State politicians cutting back on spill programs**
- ✗ **Transfer of spill response to spiller (criteria vague)**



Kodiak—Oil from the Exxon Valdez hit the beaches but little has been done to assess the need there for response resources.

The nearshore response plan for Prince William Sound is good, but more work needs to be done to implement and test it. Strategies must be developed, equipment must be tested and personnel trained and drilled. The nearshore response plans are expected to be addressed more fully in future major drills, beginning in fall 1993.

RCAC continues to be concerned about the adequacy of response capabilities and preparation outside Prince William Sound. Oil from the *Exxon Valdez* washed up on the beaches of Kodiak Island and the southern Kenai Peninsula, yet little has been done to assess the needs of those areas or provide them with response resources. There are no specific detailed plans describing what resources and equipment will be provided, where they will come from, and how they will be transported to the region within the time period required.

RCAC is also concerned about whether the storage capacity outlined in Alyeska's contingency plan will be sufficient to meet actual needs in the event of a spill. This is especially critical for nearshore response. Available storage capacity affects recovery of spilled oil, because skimming can proceed only so long as there is somewhere to store the recovered oil and water.

Under its state-required contingency plan for tanker spills in Prince William Sound, Alyeska may transfer management of a spill response to the actual spiller, i.e., the vessel owner or operator. The transfer of spill management from Alyeska to the spiller must be approved by the Department of Environmental Conservation (DEC) and the U.S. Coast Guard.

However, RCAC has several concerns about the transition of response management. The criteria used to determine whether the responsible party is capable of managing the response are vague. Also vague are the criteria for determining whether the responsible party is financially able to respond. RCAC also questions whether responsible parties have the experience and training to take over in the middle of a crisis. ★

Conclusion

RCAC believes Prince William Sound is better protected from major oil spills and better prepared for an effective initial response should a spill occur. Important steps have been taken to prevent oil spills from occurring. Crews are better trained and monitored. Masters are held to more stringent requirements. Measures have been instituted to increase chances of safe passage and reduce the possibility of accidents.

Several important prevention measures, such as double hulls on tankers and a study of human factors in tanker operations, will take time to implement. Getting laws on the books is only the first step and the federal rulemaking process is slow. Many of the actual requirements and specific decisions have yet to be clarified and formalized in final regulations. Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding. Laws must be implemented through clear, strong regulations and enforced by committed agencies that are given the funding necessary to monitor, oversee and enforce compliance.

Yet, industry and regulators are actively demonstrating the importance of learning from experience. During 1993, the Coast Guard and Alyeska's SERVS division instituted safety changes in response to potential problems that came to light from the *Braer* spill in Shetland and the *Kenai* incident in 1992.

Response capabilities in Prince William Sound have improved dramatically. Alyeska, through its SERVS division, has done an excellent job of acquiring, stockpiling, testing and drilling spill response equipment and training personnel.

The fact that there is room for improvement in some areas should not detract from the very substantial overall progress that has been made by both industry and regulatory agencies.

In the face of such progress, it is all the more alarming to see the State of Alaska backing off its commitment to oil spill prevention and response. Alaskans who care about the safe transportation of oil and environmental protection must defend ground gained since 1989, continue to monitor implementation of new laws, strengthen weak areas and close gaps that remain. ★

Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding.

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5 YEARS AFTER THE SPILL

Time dulls the pain, urgency

By KIM FARARO
Daily News business reporter

No one has forgotten the footage of the stranded tanker belching waves of thick, black crude into Prince William Sound, or the photos of oiled otters, belly up on blackened beaches.

Yet while major gains in tanker safety have been made since the Exxon Valdez disaster that began five years ago today, some of the Sound's protectors say Alaskans are forgetting how difficult it is to clean a catastrophic spill and are losing the will to fight for costly protection.

The resulting complacency, those activists say, is slowing needed reforms and threatening to undo some of the improvements in spill protection made since 1989.

Only months ago, there was a striking echo of the unpreparedness that marked the early effort at cleaning up the 11-million-gallon spill from the Exxon Valdez. In each case, a barge was involved.

Just how badly the industry was prepared in 1989 became apparent after the 12:27 a.m. radio message from Capt. Joseph Hazelwood to the Coast Guard in Valdez.

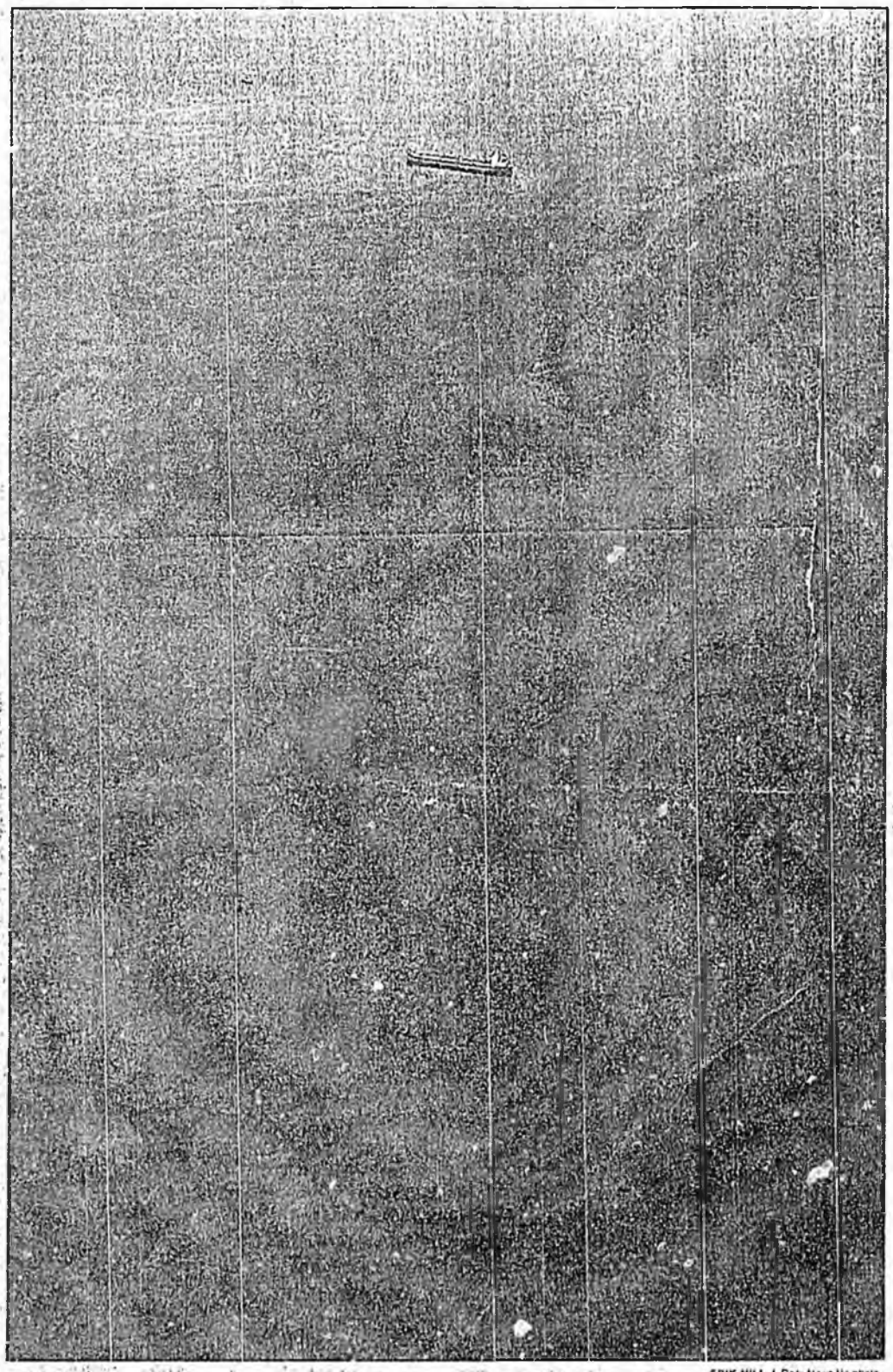
"We've fetched up hard aground north of Goose Island off Bligh Reef," Hazelwood said in a slow, deep monotone. "Evidently we're leaking some oil, and we're going to be here for a while."

In the hours that followed, Alyeska Pipeline Service Co. workers struggled in the dark to reload cleanup equipment onto the company's spill-response barge. Some equipment was in warehouses. Some was buried under mounds of Valdez snow.

The barge had been unloaded weeks before for repairs and had not been reloaded for service.

The barge made it to the stricken ship 14 hours later — and hours too late. By then, the bulk of the oil that spilled had escaped into the

Please see Back Page,
5 YEARS LATER



ERIK HILL / Daily News file photo

Oil spills from the tanker Exxon Valdez after it ran aground on Bligh Reef in Prince William Sound.

INSIDE

■ Seventeen people who had roles in the Exxon Valdez oil spill or the cleanup and investigations that followed reflect on the effects of the worst oil spill in U.S. history and talk about what they're doing now. **Metro, B-1**

5 YEARS LATER: Oil-spill preparedness better, but concern fades

Continued from Page A-1

Sound.

Last December — four years and eight months after that disaster — Alyeska sent its largest barge out of state for maintenance.

The state Department of Environmental Conservation could have demanded the barge stay put until a replacement was found. But it didn't.

Steve Provant, the department's top man for spill prevention in Valdez, believed Alyeska's assurances that it could handle a spill using backup equipment on other barges.

Provant, the official who directed the state's clean up effort after the Exxon Valdez spill, changed his mind when a test of a backup skimmer failed. But it was too late. The barge was gone, and a new one couldn't get there for several weeks.

Alyeska, owned by seven of the North Slope oil producing companies, won't be punished for the barge incident. But the state has proposed fining the tanker companies that have spill-cleanup agreements with Alyeska a total of $110,000.

"Complacency is insidious and this is how it starts," said Joe Banta, a spill specialist with the Prince William Sound Regional Citizens' Advisory Council, an oil-industry watchdog group. "People say nothing happened, so it's OK. But we can't say that because what's the next step backward? The point is, had we had a spill, we might really not have done as good a job because this barge was gone."

Even the most die-hard environmental defenders of Prince William Sound agree the oil industry's ability to prevent and react to spills has dramatically improved since March 1989. In most cases, the changes were mandated by a flurry of state and federal laws passed in the wake of the Exxon Valdez.

Tankers that relied mainly on the skills of their crew to keep them out of trouble in the sometimes stormy Sound now have a virtual armada of escort vessels to choose from. Each ship is trailed by at least one tug, which could push or pull the tanker away from danger, and a response vessel carrying cleanup equipment in case the rescue fails.

The escort vessels' much-expanded inventory of spill-fighting equipment is considered among the best in the world, and their crews have practiced cleanup maneuvers countless times during the past five years.

> *"Complacency is insidious and this is how it starts. People say nothing happened, so it's OK. But we can't say that because what's the next step backward? The point is, had we had a spill, we might really not have done as good a job because this barge was gone."*
>
> — Joe Banta, Prince William Sound Regional Citizens' Advisory Council

The Coast Guard stiffened rules for safe travel through the Sound, forbidding sailing in high winds. The agency also expects to finish installing a tanker tracking system this summer that will finally allow it to keep tabs on ships all the way through the Sound.

Alyeska has instituted tight procedures designed to catch drunken crew members before they board their ships. Hazelwood was charged with drunkenness after the disaster, though a jury acquitted him.

And in case the Coast Guard or other regulators go soft on industry — as was widely charged after the Exxon Valdez disaster — two citizens' groups have been created that bird-dog their activities and those of the oil companies.

The older of the groups, the Prince William Sound Regional Citizens' Advisory Council, spends a lot of time nudging regulators to take a tougher stance with industry on such issues as how much spill equipment is needed. The group receives more than $2 million a year for its work from the oil industry and spends much of its money on scientific and technical studies that test oil-industry assertions about pollution and spill preparedness.

But even with all the improvements, environmental regulators and activists say, more needs to be done to keep history from repeating itself.

Some major battles have ended in compromises that will delay improvements for years.

In 1990, Congress required oil tankers to have a double hull, but allowed ship owners up to 25 years to switch. The hulls would add what government and other experts say is a critical layer of protection between a ship's cargo tanks and the rocks and reefs that could tear them open.

That same year, Arco Marine tried unsuccessfully to interest Alaska's other oil shippers to join it in designing a super skimmer to augment crude cleanup by small skimmers that slurp oil.

Jay Kitchener, an Arco Marine official, said at the time that such improved spill technology was crucial to giving oil companies a fighting chance to pick up more than just a fraction of Exxon Valdez-sized spills.

Other battles continue.

The Prince William Sound Regional Citizens' Advisory Council, or RCAC, is leading the fight to get more weather stations installed in the Sound, arguing that the Coast Guard's wind restrictions make sense only if the agency knows how hard the wind is blowing.

The Valdez Coast Guard station agrees that it knows very little about the weather in much of the Sound and relies on ships to report on high winds by radio. Officials there have asked for more money from their Washington, D.C., headquarters to add reporting stations, but have not yet won approval.

RCAC also is pushing regulators to consider making Alyeska add versatile tugs to its response fleet. The citizens' group has joined shippers in paying for a study of the tugs and other response equipment that is expected to be completed this year.

Fishermen and environmentalists are still pushing the Coast Guard to order tanker escorts in less-traveled Cook Inlet. And Dan Lawn, a longtime DEC official and oil-industry critic, is still hoping for rules that would increase the size of tanker crews to reduce fatigue on ships.

At the same time, battles that already were won are being refought.

RCAC's Joe Banta is trying to get regulators to adhere to post-Exxon Valdez legislation that required agencies to stash spill-response equipment at depots around the state.

The law, passed in 1989, was written to ensure that communities would have good equipment to protect themselves from spills if industry and government spill-fighters were overwhelmed. Banta recalled that volunteers were forced to build booms made of logs during the Exxon Valdez spill because no other boom was available.

No depots have been created yet. Pete Wuerpel of the state's division of emergency services, which is charged with creating the depots, says the division has so far purchased a communications system for use in remote areas. He says such systems are essential to efficient spill cleanup.

Wuerpel blames the DEC for delays in getting other equipment, saying the agency officials haven't said what they think would work best. The DEC says it has been difficult to figure that out because each community's needs are different. The agency is testing equipment this year so it can make recommendations to the emergency services division.

RCAC also is expecting to follow up results of a 1992 study showing some tankers plying Prince William Sound would need hours — and in one case, days — to deploy towing gear mandated years ago. Tankers that lose power can use the cables to connect to tugs that can control the bigger ships' movement. The Sound's tugs also have towing gear, but the author of the study said a good towing system deployed from a tanker would likely work better in stormy seas.

With so much to accomplish, oil-spill activists say they need every ounce of support they can get from the public, the regulators, the legislature and the industry. Instead, they say, attention is straying, threatening not only future reforms but those already made.

Stan Stephens, a Valdez charter boat operator who heads RCAC, and others say DEC will need to be more aggressive if it hopes to keep up with an oil industry increasingly concerned with saving money as production declines.

That decline already has had an effect. Late last year Alyeska announced it would cut the number of people who tie up tankers for loading. The company cited declining oil production for the cutbacks. Company officials said that if they needed help with the tankers, they would call in workers whose only job had been to prepare for oil spills.

Alyeska said the move won't hurt oil-spill preparedness because it will only need the workers occasionally. But environmental activists see history repeating itself. Alyeska dismantled the crews dedicated to oil-spill response in the early '80s. Those crews were re-created June 1, 1989, after a frustrated Gov. Steve Cowper put pressure on Alyeska.

In the legislature, politicians sympathetic to the oil industry, including Republican Rep. Joe Green, continue to try to roll back a 5-cents-a-barrel tax imposed on Alaska crude after the Exxon Valdez spill. The tax is expected to raise $26 million this year.

The legislature enacted the tax in 1989 so the state would have the ability to clean up oil and other hazardous spills. But the money is paid into a fund with broader uses, and it has become an important funding source for the DEC. The agency is using the money in part to beef up monitoring of companies' abilities to clean up oil and other types of spills.

Mead Treadwell, deputy DEC commissioner, said the idea behind the increased inspections is to avoid repeating past mistakes. Although Alyeska had a spill-response plan in 1989, regulators hadn't carefully checked to see if it was doable. It wasn't.

Industry supporters have argued that the oil industry shouldn't have to pay for nonoil cleanups, but a recently released legislative audit says the tax money can be used for those purposes.

The audit also says funding cuts could jeopardize DEC's ability to maintain a viable prevention program, which it suggests is key to avoiding another Exxon Valdez disaster. The auditors noted that the state oil spill commission investigating the spill blamed the disaster in good part on the lack of focus on prevention and on complacency.

"We wonder whether complacency is again taking root," the audit said.

In the wake of the Exxon oil spill

Five years later, principle players recall catastrophe

Over the spring, summer and fall of 1989, news coverage of the Exxon Valdez disaster overshadowed virtually all other other events in Alaska. Many of the names from that period became household words, and a few were media stars.

Five years later, most of them have returned to private life and relative obscurity. Here are 17 people — and one infamous ship -- who played prominent roles in the Exxon Valdez oil spill.

The Exxon Valdez

■ **WHAT IT DID:** On March 24, 1989, the Exxon Valdez, with more than 50 million gallons of North Slope crude on board, shuddered as it steamed through the shallows of Bligh Reef. It jerked to a halt, impaled on a spire of rock, as the first of some 11 million gallons of oil began boiling from its hull.

■ **WHERE IT IS TODAY:** With the name "Exxon Valdez" firmly etched in the public mind as a symbol of environmental disaster, Exxon sought to rehabilitate the ship's image by changing its name to "Exxon Mediterranean" and banishing it to oil hauling far from the United States, in the Mediterranean. Last year, Exxon Shipping, the subsidiary that owned the ship, changed its corporate name to the more mellifluous and organic "Sea/River Maritime," so the Exxon Valdez is now the "Sea/River Mediterranean." Last month, it crept back to North America for the first time since the spill, where protesters from Greenpeace discovered it at anchor in Freeport, Bahamas, and painted its old name on its hull. In nontoxic paint, they claimed. At the moment, the ship that became history on Bligh Reef is tankering oil back in Europe, said Les Rogers, a Sea/River spokesman.

Steve Cowper

■ **WHAT HE DID:** As Alaska governor from 1986-1990, he played a high-profile role in the state's response to the spill. On the morning of March 24, 1989, before even hearing about the spill, Cowper announced to a Fairbanks newspaper that he would not seek re-election in 1990. A few hours later, he flew to Valdez and motored out to the stricken ship, climbing a dangling ladder to reach the deck. What he saw so angered him that nine days later, he threatened to shut down the pipeline — and forgo millions of dollars in state revenue — if Alyeska Pipeline Service Co. and its oil company owners couldn't come up with a workable plan for cleaning up spills.



■ **WHERE HE IS TODAY:** Despite gaining nationwide prominence, Cowper stuck to his decision to leave politics. He spent some time in California, then returned to Anchorage in 1992, where he works as a business consultant.

■ **WHAT HE SAYS:** The spill left Alaska and the oil industry with a "permanent burden of proof" that oil and gas can be developed without jeopardizing the environment. But he also says the spill belongs to history now. "There's been a fixation on the Exxon Valdez. To me, it's time to move away from that. . . . It's time to declare our lessons learned."

Samuel Skinner

■ **WHAT HE DID:** Samuel Skinner was U.S. Transportation Secretary when the Exxon Valdez went aground. That made him the boss of the Coast Guard. Apart from cameo appearances by Vice President Dan Quayle, Skinner was the highest-ranking federal official to monitor the spill and the cleanup.

■ **WHERE HE IS NOW:** He later became President George Bush's chief of staff. Soon after Bush left office, Skinner was hired as president of Commonwealth Edison, an electric company serving Chicago and northern Illinois.

■ **WHAT HE SAYS:** When the state and environmental groups were criticizing Exxon's beach-cleaning and oil-skimming efforts, Skinner defended the company, saying it had done all it could. Looking back, Skinner said he remains convinced of that. "I still believe that we were very fortunate it was Exxon that was the spiller. They were willing to step up to the plate and spend several billion dollars." He said he thought the spill had resulted in better control of tanker traffic, better spill-response plans and a better understanding of oil in the environment.



JIM JAGER / Daily News file photo

Ernie Piper checks a map while looking for a test pit from an earlier oil-spill survey on Seal Island last summer. He led a team of researchers who evaluated cleanup progress.

Ernie Piper

■ **WHAT HE DID:** As a special assistant to Gov. Steve Cowper at the time of the oil spill, Ernie Piper became the governor's chief spokesman on spill matters. Straight-talking and quotable, Piper was a frequent critic of the early cleanup effort led by Exxon and the U.S. Coast Guard. In September 1990, Piper was named "on-scene coordinator" for the spill, but news reports generally referred to him as the state's "cleanup chief." Although his credentials were solidly Democratic, Gov. Wally Hickel, Republican turned Alaskan Independence Party standard-bearer, asked Piper to stay on, citing his advocacy for the state's interests. Piper also served on the Department of Environmental Conservation restoration team, wrote a history of the spill for DEC and, last summer, ran a shoreline survey for the Exxon Valdez Trustees Council.

■ **WHERE HE IS TODAY:** Piper is serving as campaign manager to former Anchorage mayor Tony Knowles' gubernatorial bid.

■ **WHAT HE SAYS:** "The thing that stands out most for me is the fact that, not just in government but also in industry and the general public, there are some fundamental misunderstandings about science and about technology and about the environment. Science and technology cannot do everything that people think they can do, and at the same time the environment can be more resilient and more complex than we like to think."

Michael Tumey

■ **WHO HE WAS:** Michael Tumey was a volunteer firefighter from Girdwood who became one of the most visible protesters in the months following the spill. In April 1989, he climbed down the side of the Calais II building in Midtown, where Exxon had its offices, and draped a huge sign on the side of the building: "Oil Spilled, Exxon Killed, Remember the Sound!" In October, he interrupted an Anchorage Chamber of Commerce meeting where Exxon USA President William Stevens was scheduled to speak. Standing up with a blackened Sesame Street Big Bird that looked like a large, oiled bird, Tumey said "Mr. Stevens, I have a bird I don't believe you counted on."

■ **WHERE HE IS TODAY:** Tumey still lives in Girdwood, where he is a self-employed construction worker and a volunteer firefighter. He remains interested in oil-spill prevention, but now concentrates on issues like ozone depletion and pesticide use. His last major involvement in the oil-spill issue was lobbying Congress to require double hulls on tankers.

■ **WHAT HE SAYS:** Oil companies are better prepared for a spill than they were five years ago. "I think more and more the oil industry realizes it's only good public relations nowadays to walk their talk and to protect the environment." But unless the public and the press remain vigilant, the industry will once again "try to save a dollar instead of putting it into prevention." His remaining image of the spill is how people came together to protest and to clean up.

Please see Page B-3, MAJOR

Major players reflect on an ecological tragedy

Continued from Page B-1

Frank Iarossi

■ **WHAT HE DID:** As president of Exxon Shipping Co., the subsidiary that operated the tanker, Iarossi flew from Houston to Valdez the morning of the grounding. He was the top — and most visible — Exxon official in Alaska during the spill's early days, appearing at a series of noisy Valdez press conferences. Early on, he admitted the oil had slipped beyond Exxon's control, despite years of industry assurances that it could handle a major spill. He also acknowledged that Joe Hazelwood, the captain of the grounded tanker, had a history of drinking known to the company. He received praise from some Prince William Sound fishermen for his willingness to work with them during in the spill's early days.

■ **WHERE HE IS TODAY:** Iarossi left Exxon about a year after the spill to become chairman and chief executive of the American Bureau of Shipping, a nonprofit corporation that inspects and classifies ships to make sure they are seaworthy. Both Iarossi and Exxon have maintained his leaving the company had nothing to do with the Exxon Valdez. Iarossi splits his time between Houston and New York.

■ **WHAT HE SAYS:** Iarossi is traveling in Asia and could not be contacted; Publicly he has had little to say about the oil spill. But in an interview last year with the Houston Post, Iarossi said his top priority was fulfilling the shipping bureau's mission of promoting safety at sea. An aging fleet, he said, means substandard vessels must be identified and upgraded or removed from service. "I think I understand the consequences of an unsafe ship like very few people in the world do," he said. "If I let myself, I could become a crusader."

Dan Lawn

■ **WHAT HE DID:** Dan Lawn, the state regulator with the Alaska Department of Environmental Conservation, had warned that Alyeska was unprepared for a big spill long before the Exxon Valdez ran aground. On March 24, 1989, he was the first DEC official to reach the stricken Exxon Valdez. Later, in a BBC-Home Box Office docudrama, he was portrayed as one of the few heroes in the spill.



■ **WHERE HE IS NOW:** Lawn still works for the DEC in Valdez, but was stripped of his oil-industry watchdog duties in August 1989. In January 1992, an independent arbitrator ruled that Lawn should not have been demoted, but the DEC has kept him in a job overseeing sewage and drinking water systems. Lawn is suing to get his old job back.

Rick Steiner

■ **WHAT HE DID:** A Cordova marine biologist, he helped organize fisherman to protect three fish hatcheries in the hectic days following the spill and became a leading spokesman for local interests. Later, he came up with the idea to use Exxon settlement funds to conserve forests in Prince William Sound, Kenai Fjords National Park and Kachemak Bay by buying out loggers.



■ **WHERE HE IS TODAY:** He is still working for the University of Alaska Marine Advisory Program, and still devoted to oil-spill issues, particularly tanker safety. He helped organize a conference in Anchorage this week marking the five-year anniversary.

■ **WHAT HE SAYS:** "We know that oil, fish and wildlife don't mix," Steiner says. "We know that oil is harmful. We know we can't fix what we've done. . . . That says to me that at least 90 percent of our effort should be prevention" of oil spills. Tanker safety has been improved in Prince William Sound, he said, but there are still improvements to be made here and around the world.

Joseph Hazelwood

■ **WHAT HE DID:** The skipper of the Exxon Valdez, Joseph Hazelwood ordered the tanker to shift position to dodge icebergs, then left the bridge. With Third Mate Gregory Cousins in charge, the tanker failed to make a second turn and ran aground on Bligh Reef. Hazelwood was acquitted of three charges, including operating a vessel under the influence of alcohol, and convicted of negligent discharge of oil, a misdemeanor. The conviction was overturned by the Alaska Court of Appeals, but the Alaska Supreme Court last December directed the lower appellate court to reconsider.



Michael Chalos and Joseph Hazelwood

■ **WHERE HE IS TODAY:** Since the spill, Hazelwood has worked as an oysterman in Long Island Sound, an instructor at the State University of New York Maritime College and, presently, as a maritime consultant for the New York law firm of his defense attorney, Michael Chalos. Hazelwood, who has an unlisted telephone number, did not return messages left with his parents and with the law firm, Chalos and Brown.

Robert Kagan

■ **WHAT HE DID:** The man at the helm when the tanker failed to negotiate a simple turn and ran aground, Robert Kagan testified at Joseph Hazelwood's trial that the tanker captain had told him later that night he had done "a hell of a job." Third Mate Gregory Cousins testified that what Hazelwood actually said was, "Damn fine job, Bob." Cousins said he interpreted the remark as an attempt at black humor.

■ **WHERE HE IS TODAY:** According to an Exxon spokeswoman, Kagan continues to work for Sea/River Maritime Inc., the new name for Exxon Shipping Corp. The spokeswoman declined to say where and in what capacity Kagan is employed.

Adm. Paul Yost

■ **WHAT HE DID:** Adm. Paul Yost, the national commandant of the U.S. Coast Guard, was President Bush's man on the scene in Prince William Sound a month after the spill. Stung by criticism that the federal government wasn't doing enough, Bush dispatched Yost, a gruff-talking, take-charge guy. In Valdez, Yost landed off suggestions that the Coast Guard take over the spill response, saying that would absolve Exxon of liability. He forced Exxon to come up with a much-delayed beach cleanup plan, but some of his other pronouncements, such as a swift decision that beaches should be cleaned with hot-water spray, were shelved as the jockeying over who should do what continued. The following year, in May 1990, he retired.



■ **WHERE HE IS TODAY:** Yost is president of the James Madison Memorial Fellowship Foundation, a federally funded agency in Washington, D.C., that awards student fellowships to high school social science and history teachers. Funded with a $20 million endowment from Congress, the agency's aim is to increase teachers' understanding of the Constitution.

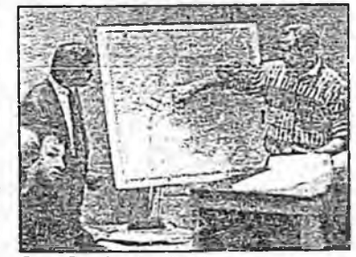
Chuck Hamel

■ **WHAT HE DID:** A disgruntled oil broker and investor in North Slope leases, Chuck Hamel became the biggest critic of the Alaska oil industry. Four years before the March 1989 spill, Hamel had warned that Alyeska Pipeline Service Co. and its oil-company owners were systematically dismantling the spill-response program to cut costs. After the spill, Hamel was in Valdez working with commercial fishermen and helping arrange for congressional hearings. Hamel later became a conduit for Alyeska whistle-blowers reporting persistent problems along the pipeline. His criticism of the oil industry made him the target of a 1990 spy investigation by Alyeska and the Wackenhut Corp. Hamel settled a damage lawsuit against the two companies last December for an undisclosed sum.



■ **WHERE IS HE TODAY:** After the settlement of his lawsuit, Hamel has virtually stopped his self-created role as the Alaska oil industry's biggest and most effective critic, as he was once described by a House committee that investigated the spill and the spy operation. Operating out of his home in Alexandria, Va., Hamel is now pursuing a variety of business opportunities and he said he may get back into the oil transportation business.

■ **WHAT HE SAYS:** Alyeska and its owner companies "dismantled the spill-response system because of greed. The spill demonstrated that cutting corners hurts everybody."



Greg Cousins testifies in court.

Greg Cousins

■ **WHAT HE DID:** As third mate on the Exxon Valdez, Greg Cousins was in charge on the bridge when the ship hit Bligh Reef five years ago. In October 1989, he pleaded no contest to civil charges of failing to navigate the tanker properly. A Coast Guard judge suspended his license for nine months.

■ **WHERE HE IS TODAY:** Cousins is no longer with Exxon. As of six months ago, he was working on a freighter, according to his Anchorage attorney, Bob Richmond. "The last I heard, he was sailing from Portugal to South Africa," Richmond said. "I couldn't tell you much more than that." Cousins may be back in the spotlight soon, however. He is one of the defendants in a civil lawsuit stemming from the spill. It is scheduled for trial in Anchorage federal court in May.

Dennis Kelso

■ **WHAT HE DID:** As Alaska's commissioner of Environmental Conservation, Dennis Kelso was the state's chief oil regulator at the time of the spill and the cleanup that followed. Quotable and telegenic, he became the state's chief spokesman — and a major oil company critic. In one East Coast press conference, he called Alyeska Pipeline's cleanup plan "the biggest piece of American maritime fiction since Moby Dick."



■ **WHERE HE IS TODAY:** Now enrolled in a Ph.D. program at the University of California, Berkeley, studying energy and resources. He returns to Alaska during the summer and works as a consultant and occasional wilderness guide.

■ **WHAT HE SAYS:** The people of Prince William Sound "experienced the Exxon Valdez spill as a direct and frightening threat to their whole way of life, but they never gave up . . . They believe there are still adverse effects of the spill, on salmon returns, physical lesions on herring, anomalies with salmon behavior." On learning the Alaska Legislature is considering a bill to cut back on tax collections for its oil-spill response fund, Kelso said, "Five years out of the box, are we already forgetting that the time to prepare for a spill is before there is one?"

Don Cornett

■ **WHAT HE DID:** Don Cornett was Exxon's manager of Alaska operations and was one of those on the front line of the press conferences and company public relations efforts. With his rich drawl, he fielded thousands of inane questions about the slow progress of the spill cleanup.

■ **WHERE HE IS TODAY:** After the spill he was promoted and returned to Exxon Co. USA headquarters in Houston. He is now Exxon's manager of public relations. An Exxon spokesman said Cornett couldn't talk about the spill because of pending litigation.

Cmdr. Steven McCall

■ **WHAT HE DID:** As the federal on-scene coordinator and captain of the Port of Valdez, he was the point man who tried to keep the federal, state and oil industry groups working together to clean up the spill. This put him in the middle of fierce infighting that broke out between different agencies and between agencies and Exxon over how to proceed with the cleanup.



■ **WHERE HE IS TODAY:** McCall has retired from the Coast Guard and is working with Maritime Overseas Corp., a tanker operator, as manager of environmental affairs. Maritime operates tankers under charter to British Petroleum, including some that ply the Alaska trade. McCall's job is to develop oil pollution contingency plans that meet federal requirements developed in the aftermath of the Exxon Valdez spill.

■ **WHAT HE SAYS:** The spill came in McCall's fourth and final year in Valdez, an unusually long tour of duty for a Coast Guard officer and one that he did not expect. "By all rights I shouldn't have been anywhere near Valdez on March 24. . . . But being there that long helped me because I knew all the people and who I could rely on and who I couldn't rely on, and who was twisting the truth and who was talking on both sides of their mouth."

Riki Ott

■ **WHAT SHE DID:** As an established resident of Cordova and a commercial fisherman with advanced degrees in marine pollution, Riki Ott was well-known around Prince William Sound before March 24, 1989. But she leaped into prominence on a much broader stage during the press conferences that followed the oil spill, asking tough, technical questions about oil-spill cleanup plans, particularly those involving chemical dispersants. She later helped form the Oil Reform Alliance, which brought environmentalists and commercial fishermen together to work.



■ **WHERE SHE IS TODAY:** Ott says she is still doing the same work. She is reviewing, questioning, interpreting and commenting on the government's and Exxon's scientific findings. She has done some consulting work for Greenpeace. She is doing volunteer work for Alaska Clean Water Alliance and is habitat chairman of the United Fishermen of Alaska. She is also a fiber artist whose work focuses on marine ecology themes. The Oil Reform Alliance she helped form was dissolved earlier this month, but has been replaced by other grass-root groups made up of commercial fishermen and environmentalists, Ott said.

■ **WHAT SHE SAYS:** The tragedy now is the incredible manipulation by Exxon to make us think that the spill is not as bad as we think," Ott said. Without the spill, she added, "I wouldn't be who I am today. They (Exxon) created me."

Rain or snow
38/30

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PENINSULA CLARION

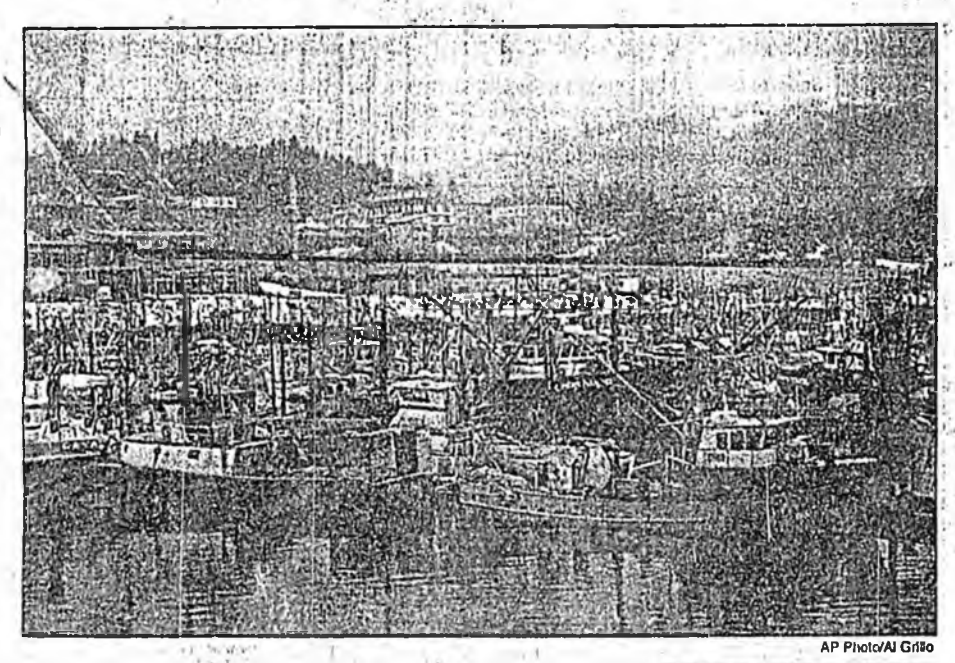
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'89 Spill still lingers



AP Photo/Al Grillo

Above, although the oil from the Exxon Valdez spill did not reach this coastal fishing town of Cordova, the effects of the spill are still being felt. Nearly half the work force of Cordova, a town of nearly 2,600, is directly employed in fish harvesting or processing.

And right, this Red Necked Grebe was covered in oil resulting from a spill on March 24, 1989, when the tanker Exxon Valdez ran aground in Prince William Sound dumping nearly 11 million gallons of toxic crude oil into pristine waters.

Since the tanker accident, storms have scoured Alaska's 1,500 miles of polluted coastline, removing about half the oil embedded in some places.



AP Photo/Jack Smith

Lawsuits unsettled five years after tanker strikes reef

By ROSANNE PAGANO
Associated Press Writer

CORDOVA — Tides and times have been kind to Prince William Sound in the five years since the Exxon Valdez rammed a charted reef, dumping nearly 11 million gallons of crude oil into pristine waters.

Storms have scoured Alaska's 1,500 miles of polluted coastline, removing about half the oil embedded in some places. Many beaches look clean. Population forecasts for bald eagles are good. The tourists are back.

"It's behind us," said John Manly, an aide to Gov. Walter J. Hickel, whose administration won a $900 million

See SUITS, page 6

Fate of Inlet fishers snarled by tarballs

By CATHY BROWN
Peninsula Clarion

The value of an Upper Cook Inlet salmon permit has dropped by two-thirds in the last three years, a plunge commercial fishers' attorneys blame on the 1989 Exxon Valdez oil spill.

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...Suits

Continued from page 1

settlement from Exxon Corp. in 1991.

But it's not over for the people of Cordova, homeport to Prince William Sound's commercial fishing fleet.

Cordova fishermen are among the plaintiffs who filed damage claims in the wake of the March 24, 1989 accident. They are only just getting their day in court, and until they do, they will not turn the page on the Exxon Valdez.

They blame the Valdez spill for bad salmon harvests over the past two years. They say they are just hanging on, and that massive Exxon is trying to wait them out, an assertion the company denies.

"It's been a war of attrition," says salmon fisherman R.J. Kopchak, a former Cordova city councilman whose three-story house overlooks Cordova's dock and forested Orca Bay.

A typical week's mail, stacked on Kopchak's kitchen table, contains court notices about his lawsuit: More papers to sign, more documents to file.

"We know one guy, a fisherman here with a valid claim, who just quit sending in his paperwork. Refuses to do it anymore," Kopchak says as he scans the foggy bay.

"The longer Exxon and its attorneys can make it miserable for you, the greater the chance the settlement will be less."

Kopchak is among fishermen who say this summer's salmon season could be his make-or-break year. If the run fails or prices are weak, Kopchak says he may have to polish up his carpentry skills and move his wife and four young children somewhere else.

Lawyers for Exxon, the world's largest corporation, reject any suggestion that delay was a tactic. Complaints have been separated into state and federal class actions, each with separate trial judges, schedules and evidence rules.

The federal suit, scheduled to start May 2, includes 100,000 potential class members. Some estimates put the damages at $1.5 billion or more.



AP Photo/Al Grillo

Fisherman R.J. Kopchak, his wife Barclay and youngest child, Zebon, 4, stand by their fishing boat in Cordova March 9.

A trial in state Superior Court is scheduled to start June 6 and includes seven towns oiled in the spill's path. The mayors want compensation for municipal services they say were diverted in response to the spill.

Other state plaintiffs include 13 Alaska Native corporations; they claim damage to their land and archaeological sites. Natives also sued Exxon in federal court over damage to their traditional ways, which depend on the sound for food.

Evidence-gathering for all these actions has consumed the past five years. The company said more than 5 million pages of documents have changed hands; nearly 2,000 depositions were taken.

A list filed by Exxon names 315 planned witnesses in the federal case. Plaintiffs planned to call 270 witnesses in a case scheduled to last all summer. Authorities will testify on marine science, land values, fish abundance and — hardest of all — whether there are any lingering effects of the spill.

In Cordova, everyone wants an Exxon settlement — even townspeople with no claim pending.

"We don't want to be known as the oil spill town any more," Mayor Margy Johnson said.

Seated at a table in the restaurant of her dockside hotel, Johnson points out a pair of sea otters playing in icy waters where, in late February, the fishing fleet is idle. Some Cordovans, hoping for a new image as a tourist town, say the city should adopt a new slogan — "sea otter capital of the world" is mentioned.

Johnson, a can-do businesswoman, wants action.

Until it was abruptly canceled this week, she was helping organize Cordova's first "Bury the Blues Day" on March 26. The event, complete with a New Orleans-style band parading through town, was aimed at uniting the community. But organizers called it off when too many people complained they weren't yet ready to forgive and forget.

"For Cordova, the spill was like a death in the family," Johnson says. "I'm appalled that five years later there's still no settlement with Exxon. That's like trying to get over a death when you can't read the will."

Cordova, a town of nearly 2,600 on the sound's eastern edge, is reached only by boat or plane. Nearly half the work force is directly employed in fish harvesting or processing. State labor economists reported this month there was "little prospect" that salmon prices would bounce back soon.

Employment has receded over the past three years, sales receipts dropped and more than two dozen homes are on the market, the state said.

Real estate agent Linden O'Toole — among the only families to get out of fishing, remain in Cordova and pursue a new occupation — says she is fielding about as many inquiries from out of state as from Cordovans looking to buy.

O'Toole, who is supporting her fisherman husband and two small children, says earnings from real estate have gone to pay off tens of thousands of dollars in fishing debts.

"I'm hoping for our sake and a lot of people in this town that Exxon will come through with a settlement," she says. "They're a huge company. They don't need to hurt families like ours to do business."

In 1990, one year after the spill, the fleet turned in a near-record pink salmon harvest and prices were good. Then, in 1991, prices on the worldwide market collapsed and harvests were dumped back into the sea.

The next two years, for undetermined reasons, the run failed. Last year, the Pacific herring season, which typically begins in April and is the fishermen's first cash crop of the year, was cut short in Prince William Sound when schools failed to materialize. Some fish were diseased.

Last year, frustrated by Exxon's claims that the spill caused no ongoing harm, a mosquito fleet of 65 seiners gave up the dismal pink salmon season to bottle up the Port of Valdez, terminus of the trans-Alaska oil pipeline. For nearly two days, no tankers could arrive or depart during the protest.

"I will never forgive and forget," says 42-year-old Doug Pettit, a Cordova fisherman who since 1987 has run a local heating repair business to tide his family over the winter.

"It's as if someone murdered my daughter," he says. "You can never forgive the person who did that."

Pettit is an oil-spill domino. Since fishing has declined, he has worked harder at the heating company. But his neighbors are living on savings and hopes for an Exxon settlement, and Pettit — who also has an Exxon claim pending — said he has gotten lenient on pricing.

"It isn't like you tapped a new resource," he says, taking a break one rainy morning as he coaxed heat from the pipes at the fishermen's union hall, in Cordova's downtown.

"You're still working with money from fishing. We all share the problem."

...Inlet

Continued from page 1

Five years ago today the tanker Exxon Valdez spilled nearly 11 million gallons of oil into Prince William Sound, oil that eventually made its way into Kodiak, Cook Inlet and Chignik fisheries.

In May attorney Brian O'Neill will begin the months-long process of trying to convince a jury that Exxon Corp. and Exxon Shipping Co. owe fishers in Prince William Sound, Cook Inlet and other spill areas almost $1 billion in compensatory damages.

He will also be asking for an as-yet-undetermined amount in punitive damages.

O'Neill of the Minnesota firm Faegre and Benson will be the lead attorney trying the case against Exxon for more than 4,000 salmon and herring permit holders and their deckhands, including 903 Upper Cook Inlet permit holders.

The legal arguments vary for different fisheries, but O'Neill will argue that Upper Cook Inlet fishers are owed damages for three primary reasons:

• The drop in fish prices after the oil spill. O'Neill says Cook Inlet sockeye salmon prices dropped $1 a pound from 1988 to the 1989, 1990 and 1991 seasons.

"People don't like to buy oiled fish," he said. He will argue the price drop continued past the spill year itself because fishers lost market share when they were unable to provide buyers with fish in 1989.

• The drop in limited entry permit values after the oil spill. The average value of an Upper Cook Inlet drift gillnet permit has fallen from a high of $210,000 in 1990 to $69,000 today, said Kurt Iverson, a research analyst with the state Commercial Fisheries Entry Commission.

Upper Cook Inlet set gillnet permits have dropped from a high of $102,000 in 1990 to $33,700 today, he said.

• The drop in boat values after the spill. The value of a commercial drift fishing boat has fallen about $25,000, O'Neill said.

Pat Lynch, a member of the legal team representing Exxon, said he did not want to discuss the fishing industry's claims with the press before the case goes to trial.

O'Neill attributes the decline in boat and permit prices to a study that projected Kenai River sockeye salmon runs will crash in the mid-1990s, partly as a result of overescapement — too many fish entering the river — in the 1989 oil spill year.

"That has harmed the ability of the river system to produce salmon," O'Neill said.

State fishery managers greatly restricted commercial fishing in Cook Inlet in 1989 because oil had entered the inlet. As a result, too many sockeye salmon made it up the Kenai River to spawn, and state biologists believe the resulting pressure on the food supply caused a dieoff in juvenile salmon populations. They expect that dieoff to result in dramatic declines in fish returns, starting in 1994 and worsening in 1995 and 1996.

Biologists say overescapement in 1987 and 1988 probably also contributed to the anticipated crash in the system.

Entry Commission figures show the most dramatic declines in permit values occurred between 1991 and 1992, the year news of the projected crash was made public.

"The permit value drop was extreme," O'Neill said. "The moment people in the fishing business became aware there was a long-term damage to the Kenai River, why would you buy a permit there?"

Seventy lawyers are working on the court case on behalf of the commercial fishers, O'Neill said.

Exxon has fewer lawyers on the case, but three separate firms are involved in defending the company, Lynch said. The trial is expected to last three months.

O'Neill said neither side has made an offer for an out-of-court settlement, although neither he nor Lynch ruled that out.

Exxon paid fishers and other affected groups more than $300 million in claims for lost fish and other damages in the months after the spill, an Exxon spokesman, Dennis Stanczuk, said. Those claims did not prevent fishers or other parties from suing for additional damages.

O'Neill is confident about the case, noting he represented the same Upper Cook Inlet fleet before the same judge, federal Judge Russell Holland, in the Glacier Bay oil spill case. The Glacier Bay spill in 1987 temporarily shut down Upper Cook Inlet commercial fisheries during the peak of the red salmon run.

O'Neill came away with a $51 million judgment for the fishing industry in that case.

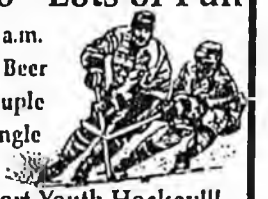
Assuming the fishers win their case against Exxon, they could wait a few months to two years to receive their payment, depending on whether Exxon appeals, O'Neill said.

The fishing industry has already settled its suit against Alyeska Pipeline Service Co. Alyeska agreed five months ago to pay plaintiffs, primarily fishers, $98 million in damages, O'Neill said. The process of distributing that money is not yet complete, he said.

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Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									$0.0
Mitigation Account Transfers In	$302.7		$136.5	$197.6	$1,696.1	$30.1	$1,823.3	$661.2	$4,847.5
General Fund Transfers In	$380.7	$976.2	$10,500.0	$32,600.0					$44,456.9
General Fund Program Receipts Transfer In			$9,469.0	$15,596.7	$2,976.9	($553.0)			$27,489.6
Total General Fund Transfers In	$683.4	$976.2	$20,105.5	$48,394.3	$4,673.0	($522.9)	$1,823.3	$661.2	$76,794.0
.05 Surcharge Receipts Transfer In					$27,000.0	$28,500.0	$27,000.0	$26,700.0	$109,200.0
TOTAL REVENUE	$683.4	$976.2	$20,105.5	$48,394.3	$31,673.0	$27,977.1	$28,823.3	$27,361.2	$185,994.0
Expenditures From The Response Fund									
Statewide Programs	$428.7	$329.9		$1,702.0	$6,034.7	$8,617.3	$23,785.2	$14,083.0	$54,552.1
Exxon Valdez Oil Spill			$6,271.6	$31,775.6	$24,912.1	$15,702.8	$297.0		$78,959.1
Capital Budget					$583.7	$555.9	$177.9	$2,774.0	$4,091.5
TOTAL EXPENDITURES	$428.7	$329.9	$6,271.6	$33,477.6	$31,530.5	$24,876.0	$24,260.1	$16,857.0	$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	$428.7	$329.9	$6,271.6	$33,477.6	$4,652.0	($464.9)	$1,534.6	$407.4	$46,636.8
Proportion Expended From Surcharge Funds	$0.0	$0.0	$0.0	$0.0	$26,878.5	$25,340.9	$22,725.5	$16,449.6	$91,394.6
Total Expenditures	$428.7	$329.9	$6,271.6	$33,477.6	$31,530.5	$24,876.0	$24,260.1	$16,857.0	$138,031.4
Reconciliation									
Total Revenue									$185,994.0
Less Total Expenditures									$138,031.4
Subtotal									$47,962.6
Less Reserve For Encumbrances									$10,559.2
Spill Reserve Balance									$37,403.4

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Alaska Sea Grant
College Program

news release

MEDIA ADVISORY

March 18, 1994
FOR IMMEDIATE RELEASE
Contact: Doug Schneider, Sea Grant Information Officer, (907) 474-7449. An electronic copy of this news release also is available on Internet via the UA Gopher under Alaska Sea Grant News Releases; and the UA Vax, under EXPL SXLIB SEAGRANT, for a limited time
SG-94/NR135

Series highlights oil spill conference

Exxon Valdez: Five Years Later

An International Conference on the Prevention, Response, and Oversight Five Years after the *Exxon Valdez* oil spill. Sponsored by the Alaska Sea Grant College Program, University of Alaska Fairbanks.

To Reporters/Editors:

For three days beginning March 23, 1994, the Alaska Sea Grant College Program will convene an international conference of scientists, regulators, industry representatives, and environmental and citizen groups to discuss the improvements made and the gaps that remain in the nation's oil spill preparedness.

To assist reporters and editors interested in the conference, Alaska Sea Grant has prepared the accompanying four-part series of articles that highlights some of the issues that will be discussed at the conference. The series also is available on computer disk by calling Doug Schneider, information officer, Alaska Sea Grant, (907) 474-7449.

FYI - Toss

- MORE -

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Part I *Oil spills less likely with new protections*

Numerous steps have been taken to prevent a repeat of the 1989 Alaska oil spill. Part one looks at what Alaska has done to prevent and respond to oil spills.

Part II *Critics say spill plans inadequate*

While much has been done to improve oil spill protections, gaps and shortcomings remain. Part two looks at these gaps and what's needed to repair them. Part two also includes sidebars on seafood contamination screening and cleanup technology.

Part III *Burning oil spills better than scrubbing beaches*

Burning oil spills has always been controversial, largely because of the unknown consequences to the environment and human health. Recently, Canada and the United States set fire to 26,000 gallons of oil intentionally spilled off the coast of Newfoundland, Canada. Part three looks at how the experiment went.

Part IV *Citizen councils experience growing pains*

After the *Exxon Valdez* oil spill, Congress recognized newly created Regional Citizen Advisory Councils as a check against government and industry complacency toward preventing oil spills. The fourth and final part of the series looks at how well these special citizen councils have worked.

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

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SG-94/NR135

Part I: *Oil spills less likely with new protections*

Scientists, regulators, environmentalists and citizen groups meet this week at an international conference in Anchorage , Alaska, to assess the progress made toward preventing oil spills in the five years since the Exxon Valdez *disaster. We begin part one of the four-part series,* Exxon Valdez: Five Years Later, *with a look at what Alaska has done to prevent and respond to oil spills.*

VALDEZ, Alaska—The most obvious place to see how things have changed in the five years since the *Exxon Valdez* oil spill is to visit the Alyeska Pipeline Service terminal at the south end of the 800-mile Alaska pipeline.

Each day, some 1.5 million barrels of crude oil are loaded onto tankers at Valdez bound for West Coast refineries. Unescorted and largely unwatched before the spill, the tankers now traverse Prince William Sound flanked by large escort ships equipped with tow cables, containment boom and skimmers.

"I would say the escort ships are probably the single biggest improvement in protecting the sound from a repeat of the *Exxon Valdez* spill," says Patty Ginsburg, spokeswoman for the sound's Regional Citizens' Advisory Council. "They provide a level of protection we did not have before and they are the first line of defense if a spill does occur."

The council is one of two in Alaska set up after the spill to give the public a voice in how oil is transported in the state. The other is in Cook Inlet, the site of oil refineries and offshore gas and oil platforms. Prior to the spill, the public had virtually no say in how oil was produced and transported in the state. The councils, says Ginsburg, gave citizens "a seat at the table and a voice."

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Also new are the caches of oil spill boom, skimmers, pumps, absorbent pads and other hardware stockpiled by the U.S. Coast Guard in 11 locations from Dutch Harbor to Ketchikan. In 1989 equipment had to be airlifted from as far away as Europe to combat the Alaska spill. The new equipment complements industry stockpiles also required by the Coast Guard.

"We've taken numerous steps to improve our ability to respond to spills and enforce industry's obligation to prevent them," says Cmdr. Gary Stock. Stock is chief of the Coast Guard's marine environmental protection branch and is charged with enforcing federal oil spill laws in Alaska.

Exactly what has and hasn't been done to protect Alaska against future spills was the subject of a three-day international conference in Anchorage March 23-25. Scientists, regulators, environmentalists and citizen oversight groups presented their sometimes different accounts of the nation's oil spill readiness. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education agency at the University of Alaska Fairbanks.

On at least one thing everyone agrees. The *Exxon Valdez* triggered vast changes in the way oil is transported. The lion's share of those changes is the result of the Oil Pollution Act of 1990. The act requires, among other things, that tanker captains and crew be tested for drugs and alcohol, that tankers have double-hulls and that cleanup plans be improved. The act also mandates new measures that involve citizens in making public policy pertaining to oil transport.

In Alaska the act translates to an expansion of Coast Guard radar coverage of tanker traffic in Prince William Sound and escorts for outgoing tankers. The act also requires all tankers to have transponders that allow their locations to be pinpointed anywhere in the sound. In Valdez the Coast Guard used the act to justify a ban on loaded tanker traffic in the sound whenever winds exceed 40 miles per hour.

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Officials at the Alaska Department of Environmental Conservation also have taken steps to lessen the likelihood of future spills. The agency now conducts more stringent reviews of oil spill contingency plans, inspects ships and the Valdez terminal, conducts spill drills, operates prevention programs and oversees industry compliance with state and federal laws.

"Before 1989 there were no spill drills, no inspections, no response standards and minimum oversight," says Larry Dietrick, an environmental specialist with the DEC Oil Spill Prevention and Response Division. "Today we have all of those things. Things are much improved."

Also sorted out is deciding just who will be in charge of the next big spill. A new command structure now puts all doubt to rest, according to Coast Guard Capt. Don Bodron, the official now charged with having to decide whether to federalize any future spill. "The federal government is in charge," he says. "The federal on-scene coordinator has authority to assert federal control and direct cleanup operations over any future spill. There is no question about that."

Even the oil industry has gotten into the act and taken steps on its own to avert a repeat of the Alaska spill. In February, Alyeska began using pilot vessels to guide tankers through the sometimes ice-choked Prince William Sound.

But even with all the additional protections, no one believes the measures will prevent every spill.

"The Valdez spill overwhelmed everyone's idea of worst-case scenario," says Bodron. "If you're asking me if I think it could happen again, I would honestly say that yes, I do think it could happen again. That's why prevention is so important."

NEXT: Part two of the series, Exxon Valdez: Five Years Later, *looks at gaps remaining in protection that could lead to another major oil spill.*

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

END

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Part II: *More work needed to improve spill protections*

Many steps have been taken since the 1989 Exxon Valdez *oil spill to lessen the chances of another large oil spill in Alaska. Yet critics say more should be done. Part two of the four-part series,* Exxon Valdez: Five Years Later, *examines the gaps in Alaska's oil spill protections.*

ANCHORAGE, Alaska—While much has been done to protect against oil spills, state officials and a citizen advisory council say serious gaps still remain in Alaska's oil spill protections.

"We have better laws and we have better monitoring," says Patty Ginsburg, a spokeswoman for the Prince William Sound Regional Citizens' Advisory Council. "But we are still vulnerable in areas we can control. There's still a lot more work to be done."

The citizen group, created in 1989 to advise regulatory agencies and industry, highlighted its view of the strengths and weaknesses of the state's oil spill protections at a three-day conference in Anchorage March 23-25. There government, industry and citizen groups presented findings of research done to assess the measures taken since the *Exxon Vladez* oil spill. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education program at the University of Alaska.

The citizen group is concerned about a plan by state lawmakers to change the way a five-cent per barrel industry tax is spent. At present the tax is used to review oil spill contingency plans, conduct practice drills and pay for cleanup of spills when industry either can't or won't pay. The tax ran into controversy when lawmakers spent some of the revenue on a new state ferry and other projects with questionable ties to oil spill cleanup. Industry and state offcials both want to narrow how the tax can be spent, but disagree on how to accomplish the goal.

- MORE -

"This split nickle would not provide the funding to do the degree of oversight and prevention we need to have," says Ginsburg. "Our concern is that reducing the dollar amount may dilute the programs available."

Mike Conway, director of the state Department of Environmental Conservation Spill Prevention and Response Division, agrees. "If the money is cut it will be a signal that the state is heading back toward complacency," says Conway. "All of the efforts we've made to this point to prevent spills would be lost if those programs are eliminated."

Although several changes are being contemplated, mentioned most often is a proposal that would split the tax in half. Half the tax would be set aside in a reserve account to pay for cleanups. The other half would continue to fund state prevention and response programs. The reduced tax rate would raise about $13 million each year. However, Ginsburg is worried that revenue may not be enough to pay the costs of prevention and response programs.

"The state is facing a billion dollar budget deficit," says Ginsburg. "If the industry doesn't fund these programs, it's unlikely the Legislature will fund them. And if that happens, the programs either could be eliminated or inadequately carried out."

State officials also say more needs to be done to reduce the number of spills along the trans-Alaska pipeline and near misses experienced by tankers in Alaska waters. In a letter sent February 28 to major Alaska oil shippers, DEC Commissioner John Sandor expressed concern that a recent rash of spills along the 800-mile pipeline and near-accidents involving tankers in Prince William Sound and Cook Inlet could jeopardize public trust in the state's ability to prevent oil spills. The letter cited specific incidents including the tanker *Overseas Ohio*, which struck an iceberg in Prince William Sound January 2, and the *Overseas Washington*, which lost power in Cook Inlet February 17.

- MORE -

"We cannot ignore the above wake-up calls, nor the daily reminders of other spills and releases that are within close calls of being significant incidents," Sandor said in the letter. "I am not at all comfortable nor satisfied with the current status of spill prevention and response programs for both state government and the industry in Alaska." No mention was made in the letter of the steps the agency might take should the accidents and near misses continue.

The fact that a tanker lost power in Cook Inlet adds fuel to the debate over the ability of escort vessels to tow tankers that lose power. Critics of the escort ships, in use in the sound since shortly after the Alaska spill, say vessels may not be able to tow a stricken tanker during rough seas or high winds. Other ships, including so-called tractor tugs that can tow heavy ships through rough seas, are being studied to replace the current escort ships.

But Rick Steiner, a University of Alaska professor in Cordova, calls the study an industry delaying tactic. "British Petroleum, which is a partner in the Alyeska consortium, uses tractor tugs at its terminal in the Shetland Islands and in Puget Sound," he says. "But Alyeska has balked at using them here in Alaska."

Ginsburg, whose citizen group is among the study's backers, defends the study. "We need good hard data about how the different tugs and escorts function under various conditions and scenarios here in the sound," says Ginsburg.

NEXT: Burning of oil spills has long been controversial in Alaska, and was only successfully tried once following the Exxon Valdez *spill. Part three of the series,* Exxon Valdez: FiveYears Later, *looks at what happened when scientists recently set fire to a 26,000-gallon oil spill off the coast of Newfoundland, Canada.*

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

- MORE-

Part Two (Sidebar)

Seafood testing not included in oil spill response plans

ANCHORAGE, Alaska—New screening methods that quickly test seafood for oil contamination are not included in state oil spill response plans. But the state agency responsible for inspecting seafood may adopt a plan of its own.

"This kind of screening has not become part of the standard response procedures for oil spills," says Usha Varanasi, director of the National Marine Fisheries Service's Northwest Fisheries Science Center. "It should be among the first things done following a spill."

Varanasi, who directed the federal seafood testing program following the *Exxon Valdez* oil spill, spoke at a conference this week in Anchorage. She called on state officials to include the streamlined testing procedures in the state's spill response plans. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education agency at the University of Alaska Fairbanks.

The screening methods, developed in the aftermath of the Alaska spill, eliminate the tedious and costly testing procedures used in the past, Varanasi said.

"Now that rapid screening methods are available that can cut both cost and time of processing samples of seafood, sediment and other biota, my call is to include these screening methods as a first level of testing," Varanasi said.

Varanasi also called upon state officials to use the new screening methods to periodically test seafood from areas where future spills may occur. The baseline information would help officials judge whether hydrocarbon contamination levels increased after a spill.

"The state should know what the fish, shellfish and sediments should look like normally, to know if there have been significant changes after a spill," says Varanasi.

- MORE -

Manny Soares oversees the Alaska Department of Environmental Conservation efforts to safeguard the state's seafood. He says that while there presently is no written plan to test for oil contamination following a spill, he says his agency would begin such testing in the event of an oil spill.

"We don't have any ongoing plan on paper per se," says Soares. "But if we determined there was a need [for testing], we would respond accordingly to ensure the safety of Alaska's seafood. We can respond within hours. We have done that in the past and we are prepared to respond in the future."

As for an ongoing screening program that would measure hydrocarbon levels in seafood prior to any spill, Soares says his agency is looking into the possibilities.

"It would be great to have the data beforehand," he says. "We will have to re-evaulate these screening methods and see if we can put together a program with the resources at hand."

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Part Two (sidebar)

Lagging technology slows spill cleanup

ANCHORAGE, Alaska—Too bad oil spills don't happen when the weather is nice.

"The equipment we have—the skimmers, the booms and other technologies—were designed to work when the weather is good," says Walt Parker. "They don't work well under many of the conditions we have here in Alaska."

Parker chaired the Alaska Oil Spill Commission, which was created shortly after the 1989 *Exxon Valdez* oil spill to recommend ways to prevent future spills. He now is director of a state council that reviews oil spill technology and sponsors research aimed at improving the weapons used to wage war against oil spills. At a conference in Anchorage this week, Parker said existing technology needs improvement before it can be relied on to mop up spills.

"The big gap in protection is that there is a point at which we cannot pick up oil with traditional methods," says Parker. He says dispersants used elsewhere may not work well on Alaska's rocky beaches and in frigid waters, and skimmers are all but useless when the wind kicks up.

Only about 10 percent of the 11-million gallons of oil spilled by the *Exxon Valdez* was recovered by cleanup crews. The rest either evaporated, dispersed in the water or remains trapped in the beaches. To better the odds next time, Parker's council has funded studies on bioremediation, dispersants and burning to clean up spills.

"The goal is to make existing technologies work effectively in Alaska's climate," says Parker.

He says work done on a new dispersant shows promise, and he likes what he's heard so far about a test burn of 26,000 gallons of crude oil done off the coast of Newfoundland last year. The council funded a University of Washington study that measured the toxic effects of the burn's smoke plume. Early results of the study indicate burning may be a safe alternative to letting oil reach the beach.

END

March 18, 1994
FOR IMMEDIATE RELEASE
Contact: Doug Schneider, Sea Grant Information Officer, (907) 474-7449.
An electronic copy of this news release also is available on Internet via the UA Gopher under Alaska Sea Grant News Releases; and the UA Vax under EXPL SXLIB SEAGRANT, for a limited time.
SG-94/NR135

Part III: *Burning oil spills better than scrubbing beaches*

In the scramble to contain the rapidly spreading Exxon Valdez *oil spill, officials consented to burning a portion of the slick. It was the only time burning has been used to cope with a spill in U.S. waters. Recently, Canadian and U.S. scientists set fire to 26,000 gallons of oil intentionally spilled off the coast of Newfoundland, Canada. Part three of the four-part series,* Exxon Valdez: Five Years Later, *looks at how the experiment went.*

ANCHORAGE, Alaska—Last August, Canadian and U.S researchers twice dumped 13,000 gallons of crude oil into the ocean off Newfoundland. Then they set fire to it. It was, officials say, the first realistic test to study whether burning is an environmentally safe way to clean up oil spills at sea.

"In many ways, and under certain conditions, burning is definitely a better deal for the environment and for the people who have to clean up the spill," says Joseph Mullin, a federal Minerals Management Service scientist who participated in the study.

Mullin was in Anchorage to discuss his research at an international oil spill conference March 23-25. The conference highlighted the steps taken and the gaps that remain in the nation's oil spill preparedness. The conference was organized by the Alaska Sea Grant College Program, a marine research and education program at the University of Alaska Fairbanks.

A large part of the conference focused on new technologies developed to prevent and clean up future oil spills. One of the promising technologies is actually simple—set the oil on fire. In tests first done in the laboratory, Mullin and other researchers found that between 95-98 percent of the oil was consumed by fire. What was left resembled roofing tar [illegible] was easily cleaned up. Mullin found that for some toxic chemicals, burning released no higher concentrations than what would normally occur through evaporation. For the remaining chemicals, burning actually reduced their concentration.

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"You're going to get pollution whether you burn the spill or not," says Mullin. "When you ignite the spill you see the pollution as smoke, which is mostly just the harmless carbon particles left over. If you don't burn it, you get oiled beaches and birds."

After the lab tests it was time to see what would happen under real ocean conditions. The researchers started small, setting fire to a 4,000-gallon spill on Mobile Bay, Alabama. Then it was on to the George's Bank, a once-rich fishing ground about 15 miles from St. John's, Newfoundland. As the U.S. and Canadian Coast Guards looked on, and as the EPA and Environment Canada monitored air quality, Mullin set fire to two 13,000-gallon oil slicks.

"It took off fast," recalls Mullin. The flames shot 300 feet into the air, and the smoke plume rose 8,000 feet during the three-hour burn.

While lighting the oil was fairly easy, getting the oil into a pool thick enough to ignite required surrounding the slick with a specially developed fire retardant boom. The oil needed to be at least two to three millimeters thick to catch fire, Mullin says. "It will burn down to about one millimeter and then blow out like a candle."

When it was over, about 300 gallons of sticky residue remained. Mullin says his tests confirm that burning is an environmentally-safe alternative to scrubbing beaches, rehabilitating wildlife and fighting costly legal battles.

"We criss-crossed the area with the testing equipment, and we didn't find anything harmful in the soot," says Mullin. "It was mostly carbon and residual heavy metals. At six kilometers away, we didn't pick up any particulates at all."

Alaska was following the Canada experiment with great interest. "We were very pleased with the outcome of the Canada burn," says Walt Parker, director of a state council charged with finding new technologies that could be used to clean up a future Alaska spill. Parker funded a team of scientists from the University of Washington to conduct independent measurements of the Newfoundland smoke plume. Early results of the tests indicate the technique may be a safe alternative to traditional cleanup methods.

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"I think we are at the point where we can tell the public what they can expect under different conditions," says Parker.

Industry also may welcome the research as a way to preserve their bottom line. Exxon spent as much as $10,000 for each barrel of oil recovered after the Alaska spill. The average cost is about $200 per barrel using conventional skimmers. By contrast, burning is a relatively low-tech job. Anyone with a match and some gelled gasoline can ignite an oil spill. And the cost to clean up the tar left after burning: about $50 per barrel.

Still, burning hasn't been used in any U.S. ocean oil spill since the Alaska disaster. "Public acceptance is probably our biggest hurdle," says Mullin. "People don't think twice about the smoke in forest fires, but they react negatively to burning oil. In my view a few hours of air pollution is much better than beaches coated by oil for a couple of years."

While the public may not like the idea of billowing smoke plumes, the biggest limit to burning future spills probably is the environment itself. Mullin says ocean conditions must be ideal for burning to work. Rough seas that churn oil into the water make igniting the spill difficult. And even Mullin agrees that most oil spills don't happen when the weather is nice.

Ironically, the Newfoundland burns have their origins in Alaska, where a test burn the day after the *Exxon Valdez* spill proved that burning could be done without risking fire to the tanker itself. In the Alaska spill, 15,000 to 30,000 gallons of North Slope crude was corralled behind fire-resistant booms and

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set afire. Thirty minutes later only 300 gallons of gooey tar was left. But burning the Alaska spill was a short-lived proposition. The day after the test, high winds and concerns about the effects of burning on the environment and human health ended the experiment.

Even so, Alaska and several other states have designated certain areas where oil spills can be burned. Mullin sees that as a big step forward.

"Five years ago, we didn't have enough information to make good decisions on when to burn," says Mullin. Now we have that information and it's helping people include burning as a tool in their response and cleanup plans."

NEXT: Shortly after the Exxon Valdez *oil spill, Congress created special citizen councils to ensure that government and industry comply with new oil spill laws. The councils gave average citizens power to influence oil spill preparedness. Part four of the series,* Exxon Valdez: Five Years Later, *looks at how well Regional Citizen Advisory Councils have worked.*

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END

March 18, 1994
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SG-94/NR1.5

Part IV: *Citizen councils experience growing pains*

Shortly after the Exxon Valdez oil *spill, Congress recognized newly created Regional Citizen Advisory Councils as a check against government and industry complacency toward preventing oil spills. The final part of the series,* Exxon Valdez: Five Years Later, *looks at how well citizen councils have worked.*

ANCHORAGE, Alaska—Years before the Alaska oil spill, fishermen and environmentalists demanded that citizens have a say in how oil was shipped through the state's Prince William Sound.

Those demands went unmet until the tanker *Exxon Valdez* spilled 11 million gallons of oil into the sound and revealed glaring deficiencies in the state's oil spill protections. Soon after the spill, citizen councils were created, and in 1990 Congress officially recognized regional citizen advisory councils in Prince William Sound and Cook Inlet.

True to their intent, council membership consists of average citizens: fishermen, university professors, union laborers, environmentalists, business owners and others. But in the nearly five years since the councils were formed, their effectiveness at bringing about change has drawn mixed reviews—even from among their own ranks.

"I once thought the councils had power," says Doug Coughenower, a University of Alaska Fairbanks professor who represents Homer on the Cook Inlet Regional Citizens' Advisory Council. "When I first joined the council two years ago, I thought that if we didn't approve oil spill contingency plans the industry would be shut down. I know now that is not quite so."

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He says that rather than having real teeth to force change, the councils' role has been as their name implies—to merely advise government and industry on oil issues. "We can suggest and encourage and demand," says Coughenower. "But we cannot make them do all the things we ask."

Patty Ginsburg, a spokeswoman for the Prince William Sound Regional Citizens' Advisory Council, says the councils have been effective. More than anything, she says the councils send a clear message that the public is watching.

"A big chunk of what the councils are about is process, to sit side-by-side with governme[illegible] and industry and try to persuade them of your point of view," Ginsburg s[illegible]s.

Ginsburg says much of the council's successes stem from working cooperatively with industry and government. "We don't like to do a lot of breast beating," says Ginsburg. "Our effectiveness is based on our ability to get people to agree with us. In that, everyone gets the credit."

The strategy appears to have worked. In the five years since the spill, persuasion by the Prince William Sound council is credited with helping get the most stringent oil spill protections in the United States. The council also played a role in getting near-shore cleanup plans included in the region's oil spill contingency strategy, and spearheaded a cooperative study of escort vessels' ability to tow stricken tankers. Most recently, the council won an agreement by Alyeska Pipeline Service Company to captu[illegible]armful fumes that escape during tanker loading operations at its termina[illegible]z.

The Cook Inlet council, on the other hand, has had difficulty finding its niche. Funding problems and disagreements over purpose slowed the council in the first few years. But those growing pains are behind it now, says Coughenower. Recently the council has begun to tackle issues such as safety on offshore oil and gas platforms and environmental quality concerns.

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"We have begun to design an environmental monitoring program for the inlet, as required by federal law," says Coughenower. "That program will gauge the health of the environment so we can track how oil development may be affecting the inlet."

Still, citizen councils aren't without critics. Most vocal have been environmental groups such as Greenpeace, which accuses the Cook Inlet council of being too industry-friendly. The problem rests in part, says the group, with how the councils are funded. Both councils operate on money provided by the oil industry.

"It's apparent that they are influenced by industry," says Pamela Miller, a spokesperson with Greenpeace in Anchorage. "They're afraid to make statements that oppose the demands of industry. They make decisions that too often favor industry, in direct contradiction to their own policies."

Miller pointed to the Cook Inlet council's recent decision not to object to planned offshore oil lease sales in the inlet, and a decision to hire Arthur D. Little, a consulting firm that has worked for the oil industry, to design the inlet's environmental monitoring plan.

Coughenower discounts any suggestion of industry favoritism. "I don't know what the basis is for their [Greenpeace] accusations," he says. "I don't believe the consulting firm would change their results just to favor the people who hire them." As for the proposed inlet lease sale, Coughenower says federal and state agencies were notified of the council's policy that opposes development until a monitoring plan is in place.

Ginsburg says she isn't surprised by environmentalists' statements. They come, she says, from groups with only one point of view. Citizen councils by definition represent the views of many people, pro-environment and pro-industry.

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"There are people who aren't willing to work cooperatively with industry and regulators," says Ginsburg. "We are not radical environmentalists but we seek to protect the environment. We also are not oil industry toadies, but we understand that industry should make a profit, and that the oil industry is important to the state. All we ask is that industry do what is reasonable to protect the public interests, which are the interests we serve."

Knowing what those public interests are isn't easy. Too many people, says Coughenower, don't even know the councils exist.

"The councils haven't involved the public in their activities," laments Coughenower. "I would bet that if you did a survey of the public, most people wouldn't know what the councils were or what they do. We need to take the next step and involve the general public in our activities."

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

END

Legislative Research Agency

Alaska State Legislature

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November 18, 1993

MEMORANDUM

TO: Senator Mike Miller

FROM: Maria Gladziszewski
Legislative Analyst

RE: **Questions Regarding the Oil and Hazardous Substance Spill Response Fund**
Research Request 94.070

You asked several questions regarding the Oil and Hazardous Substance Release Response Fund (the "470 Fund"). Each is answered below.

What is the current balance in the Spill Response Fund and the emergency spill reserve?

According to an administrative officer at the Department of Environmental Conservation, the response fund balance available for appropriation on June 30, 1993 was $54,445,300. For fiscal year 1994 (FY 94), the legislature appropriated a total of $16,857,000 to state agencies (Departments of Environmental Conservation, Military and Veterans Affairs, Transportation and Public Facilities, Natural Resources and the University of Alaska). The spill reserve balance, therefore, was $37,588,300 at the beginning of FY 94. Between July 1, 1993 and November 17, 1993, DEC officials spent $155,200 from the spill reserve. The current spill reserve balance, then, is approximately $37,433,100.

Between July 1, 1993 and November 18, 1993, expenditures and encumbrances totaled approximately $5,221,800 from the $16,857,000 appropriated to state agencies.[1]

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[1]According to the state accounting system (AKSAS), as of November 18, 1993, $2,634,000 had been expended and $1,696,000 had been encumbered for operating expenditures. As of November 18, 1993, $891,800 had been encumbered for capital expenditures.

Please see Table One, a flow chart prepared by this agency, for a graphic representation of the response fund balance at the beginning of FY 94. In addition, Attachment A, prepared by DEC ("Oil and Hazardous Substance Release Response Fund"), contains additional details.

Is a legislative appropriation to the emergency spill reserve considered an expenditure for the purpose of AS 43.55.230 (suspension and reimposition of the $0.05/bbl surcharge)?

According to Assistant Attorney General Breck Tostevin, an appropriation to the spill reserve is not considered an expenditure for the purpose of AS 43.55.230. Mr. Tostevin concluded in a memorandum of April 28, 1993 that "money that is simply appropriated to the spill reserve is not 'expended' for purposes of calculating whether to suspend the surcharge." A copy of Mr. Tostevin's memorandum is included as Attachment B.

What is the current status of *Exxon Valdez* settlement reimbursements to the state of Alaska and the Response Fund? How much has been reimbursed so far and how much is likely to be reimbursed in the future?

The settlement does not specify how much the state will receive directly. Except for reimbursement of certain expenses incurred by the state and federal government, the $900 million in civil settlement money is to be managed jointly by both governments. State officials with whom we spoke were extremely reluctant to estimate the amount of additional reimbursements under the settlement that the state is likely to receive. The spending guidelines for the $900 million in civil settlement payments are contained in the Memorandum of Agreement and Consent Decree dated August 28, 1991. Provisions in that agreement specify what costs qualify for reimbursement and limit certain reimbursements that can be made to the governments.[2]

The first installment of the $900 million in civil payments was made by Exxon in December 1991. The state received approximately $29.3 million of the $90 million installment. The state's share of the second payment, received in December 1992, was $29 million. The state's share of the third payment, received in September 1993, was $20 million.

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[2]In addition, the state received $50 million in the fall of 1991, which is half of the $100 million criminal penalty received by the Exxon Shipping Corporation and the Exxon Corporation. The $50 million is currently in a segregated interest-bearing account of the general fund ("The Exxon Valdez Oil Spill Restitution Expendable Trust Fund").

Alaska Statute 37.14.410 specifies that all money received as reimbursement for expenses related to the *Exxon Valdez* oil spill incurred by the state shall be deposited to the general fund.[3] A percentage of each payment is to be credited to the oil and hazardous substance mitigation account. "That percentage is determined by dividing (1) the amount of expenses. . .that were paid from the oil and hazardous substance release response fund. . .by (2) the total amount of expenses for which the state may be reimbursed.

Of the first three settlement payments to the state totaling $78.3 million, $21.3 million has been or will be deposited into the oil and hazardous substance mitigation account and $57 million has been deposited into the general fund. See Table Two, for additional information regarding the Exxon settlement reimbursements.

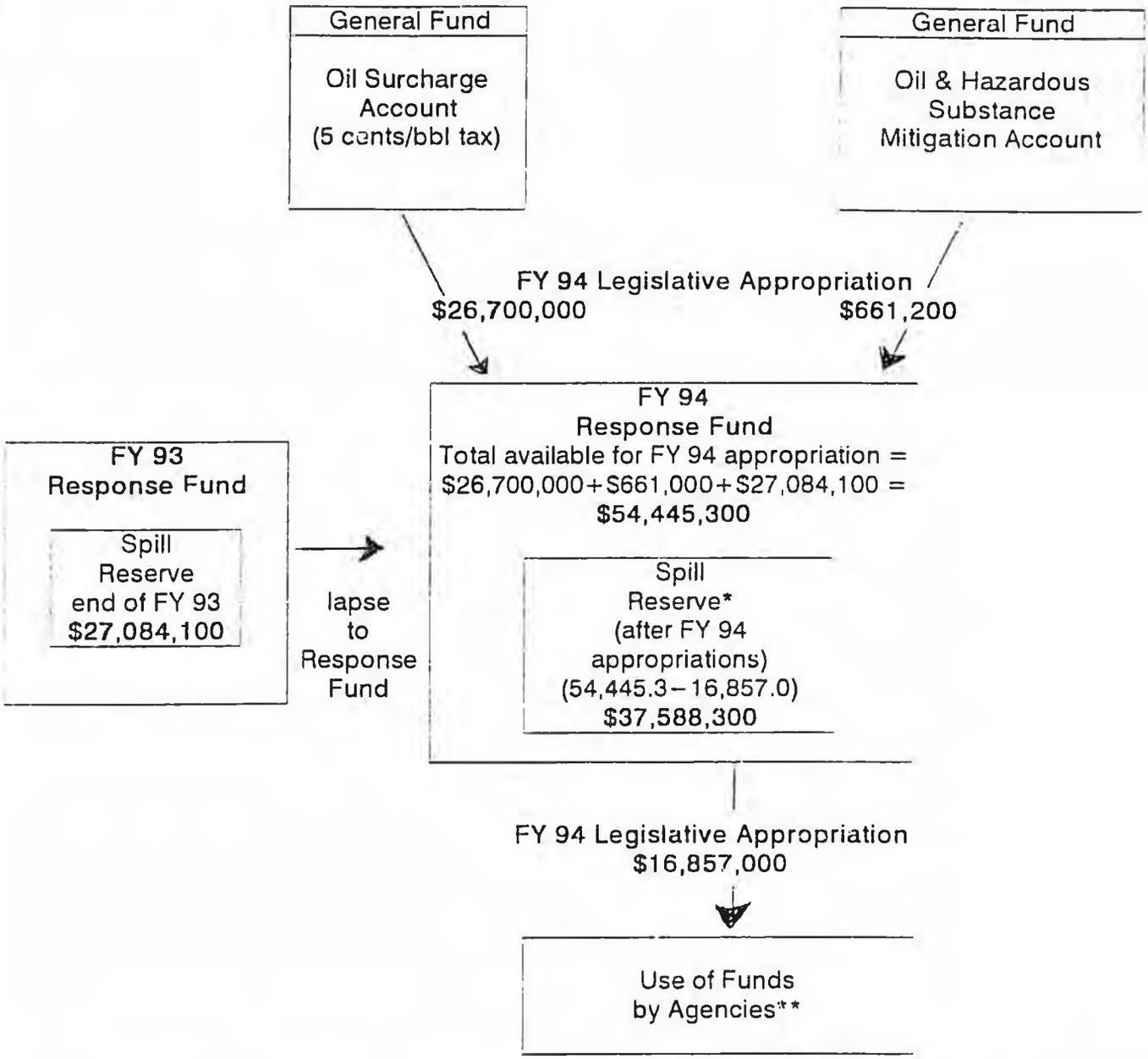
I hope this information is useful for your purposes. Please do not hesitate to contact this agency if you need further assistance.

Attachments

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[3]The first $50 million payment is considered restitution and not reimbursement to the state for expenses incurred. That money, therefore, is not subject to the provisions of AS 37.14.410.

TABLE ONE
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND



* The legislature can appropriate a specific dollar amount to the spill reserve or, as is often the case, appropriates the difference between the balance in the response fund and the amount otherwise appropriated from the response fund.

** Regardless of whether or not funds have been appropriated to the "spill reserve" subaccount, DEC is authorized to use Response Fund money for emergency response to sites which pose an imminent and substantial threat to human health or the environment. Historically, however, DEC has used very little of the Response Fund that has not specifically been appropriated to it by the legislature. Between July 1, 1993 and November 17, 1993, DEC officials expended $155,200 from the spill reserve. These are the only DEC expenditures made without legislative approval. Authority to expend funds from the response fund/spill reserve for emergency response is found in AS 46.08.040(a)(1).

SOURCE: Alaska Department of Environmental Conservation, Division of Administrative Services

Prepared by the Legislative Research Agency, November 1993 (94.070A).

TABLE TWO

SCHEDULE OF PAYMENTS TO BE MADE BY EXXON SHIPPING CORPORATION & THE EXXON CORPORATION RESULTING FROM THE EXXON VALDEZ OIL SPILL

DATE & TYPE OF PAYMENT	TOTAL PAYMENTS & DISPOSITION OF MONEY			
	TOTAL AMOUNT OF PAYMENT	TO THE STATE OF ALASKA	TO THE U.S. GOVERNMENT	TO THE JOINT TRUST FUND
Criminal Penalty				
May 1, 1991	$100,000,000	$50,000,000	$50,000,000	$0
Civil Payments				
December 1, 1991	$90,000,000	$29,300,000 *	$24,500,000	$36,200,000
December 1, 1992	$150,000,000 **	$29,000,000 *	$24,500,000	$56,500,000
September 1, 1993	$100,000,000	$20,000,000 *	$11,600,000	$68,400,000
September 1, 1994	$70,000,000	Some deposits to state & federal treasuries are likely (as payment for certain costs incurred). SEE NOTE ***, BELOW.		$70,000,000 ***
September 1, 1995	$70,000,000			$70,000,000 ***
September 1, 1996	$70,000,000			$70,000,000 ***
September 1, 1997	$70,000,000			$70,000,000 ***
September 1, 1998	$70,000,000			$70,000,000 ***
September 1, 1999	$70,000,000			$70,000,000 ***
September 1, 2000	$70,000,000			$70,000,000 ***
September 1, 2001	$70,000,000			$70,000,000 ***
TOTAL	$1,000,000,000 ****	$128,300,000	$110,600,000	$721,100,000

* AS 37.14.410 specifies that settlement money received as reimbursement of incurred expenses be deposited into the general fund but that a percentage be credited to the oil and hazardous substance mitigation account. See the lower portion of this table for how these payments were distributed between the general fund and the mitigation account.

** This payment was actually approximately $110 million because of $40 million in credits for cleanup costs already paid by Exxon.

*** The MOA between the State of Alaska and the U.S. Government specifies that all money paid by Exxon be deposited into the joint trust fund unless reimbursements should be made to the state or federal governments for certain expenses incurred. The governments agreed that certain costs shall be "advanced or reimbursed to each Government, at its election, out of any natural resource damage recoveries related to the Oil Spill and shall not be placed in the joint trust fund. . ." Assistant Attorney General Craig Tillery expects the state to receive additional monies from Exxon settlement payments.

**** In addition, Exxon Shipping Corporation received a $125 million fine, $105 million of which was remitted. The U.S. Treasury received $13 million from this fine, the North American Wetlands Conservation Fund [16 U.S.C. 4406(b)] received $7 million. Also, the Exxon Corporation received a $25 million fine, $20 million of which was remitted. The North American Wetlands Conservation Fund received this $5 million payment.

DEPOSITS TO THE STATE OF ALASKA GENERAL FUND

Criminal Penalty	$50 million
1st Payment (December 1991)	$25.3 million
2nd Payment (December 1992)	$16.7 million
3rd Payment (September 1993)	$15 million (approximately)
	$107 million TOTAL

DEPOSITS TO ALASKA'S OIL SPILL MITIGATION ACCOUNT

1st Payment (December 1991)	$4 million
2nd Payment (December 1992)	$12.3 million
3rd Payment (September 1993)	$5 million (approximately)
	$21.3 million TOTAL

SOURCES: Alaska Department of Law (Craig Tillery); Alaska Department of Environmental Conservation.

Prepared by the Legislative Research Agency, November 1994 (94.070B).

ATTACHMENT A

"Oil and Hazardous Substance Release Response Fund,"
Department of Environmental Conservation, November 1993

— ATTACHMENT A —

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

Calculation of Current Available Balance of Spill Reserve (in thousands)

June 30, 1993 Lapse of the Unreserved/ Unobligated Spill Reserve to the Response Fund			27,084.1
(This number reflects the amount of spill reserve available that is not encumbered or reserved for prior year authorizations. This amount lapsed at the end of FY93 to the Response Fund and was available for appropriation in FY94.)			
FY94 Appropriation of 5 Cent Surcharge from the General Fund to the Response Fund	+	26,700.0	
FY94 Appropriation of Mitigation Account to the Response Fund	+	661.2	
(This number represents a net amount after legislative appropriations from the mitigation account have been deducted.)			
TOTAL RESPONSE FUND AVAILABLE FOR FY94 APPROPRIATION			54,445.3
FY94 RF Appropriation DEC Budget	+	11,513.6	
FY94 RF Appropriation DEC - Other Agencies	+	2,569.4	
FY94 RF Capital Approp. (DMVA,DOT/PF,UA,DNR)	+	2,774.0	
TOTAL FY94 RESPONSE FUND APPROPRIATIONS			16,857.0
SPILL RESERVE BALANCE AVAILABLE DURING FY94			37,588.3
(This number reflects the balance of the Response Fund after total FY94 Response Fund Appropriations are subtracted from the total FY94 Response Fund Available for appropriation. This amount is also considered what is available as the Spill Reserve. This is clarified by legislative appropriation of this balance to the Spill Reserve.)			
FY94 EXPENDITURES FROM SPILL RESERVE			155.2
(This represents year-to-date (11/17/93) expenditures for emergency response to sites which pose an imminent and substantial threat to human health or the environment. A detailed listing of these sites is available. Please note that these are the only DEC expenditures made without legislative approval. Authority to expend funds from the response fund/spill reserve for emergency responses is found under AS 46.08.040(a)(1).)			
AVAILABLE SPILL RESERVE BALANCE AS OF 11/17/93			37,433.1

PREPARED BY DEPARTMENT OF ENVIRONMENTAL CONSERVATION (11/93)

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ATTACHMENT B

Memorandum from Breck Tostevin to Tracy Kramer Regarding Treatment of Spill Reserve Appropriation Under AS 43.55.230(a)(2)

— ATTACHMENT B —

MEMORANDUM

State of Alaska
Department of Law

TO: Tracy Kramer
Office of Management and Budget

DATE: April 28, 1993

FILE NO:

TEL NO: 269-5274

SUBJECT: Treatment of Spill Reserve Appropriation under AS 43.55.230(a)(2)

FROM:
Breck C. Tostevin BCT
Assistant Attorney General
Environmental Section

You have asked whether an appropriation of funds from the oil and hazardous response fund (AS 46.08.010) to the Department of Environmental Conservation ("DEC") spill reserve (see, e.g. 1992 SLA Ch. 136 §22) is considered an expenditure under AS 43.55.230(a)(2) for purposes of the calculation used to determine whether to suspend the conservation oil surcharge.

For the reasons set forth below, I conclude that money that is simply appropriated to the spill reserve is not "expended" for purposes of calculating whether to suspend the surcharge.

In fiscal year 1993, the Legislature appropriated $23,656,700 from the oil and hazardous substance release response fund ("response fund") to DEC as a spill reserve in order to serve as a source of funds for response to potential oil or hazardous substance releases. 1992 SLA Ch. 136, § 22. I understand that this sum represented the balance left in the response fund after other specific appropriations were made. I further understand that in past fiscal years, the majority of the funds in the spill reserve were not spent by DEC and these monies lapsed back into the general fund and were reappropriated to the response fund in the next fiscal year.

Should say "Response Fund"

AS 43.55.230 provides that:

> (a) No later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money
>
> . . .
>
> (2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.08.010.

In determining whether an appropriation from the oil and

In determining whether an appropriation from the oil and hazardous substance fund to DEC for use as a spill reserve is "expended" within the meaning of AS 43.55.230(a)(2), I have considered two factors.

First I have looked at technical accounting principles in determining whether money has been expended. Under this approach funds are not expended until they are unequivocally committed for specific purposes without the possibility of lapse. Even if moneys from the oil and hazardous substance fund are set aside or otherwise obligated for a specific purpose, the moneys are not yet expended until they are paid out to cover specific invoices or costs. Therefore moneys appropriated to the spill reserve would not been considered expended until they were disbursed to cover specific costs incurred in responding to a spill. This conclusion is further supported under this accounting approach because the spill reserve monies remain in the oil and hazardous substance fund until they are actually used by DEC. Therefore under fund accounting principles, the monies are not expended or paid out until DEC actually uses them to cover response expenses.

The second factor focuses on the Legislature's purpose in adopting AS 43.55.230(a). In imposing the nickel a barrel conservation oil surcharge, the Legislature found that "the March 24, 1989, oil spill disaster in Prince William Sound demonstrates the need for the state to have an independent spill containment and cleanup capacity in the event of future discharges of oil or a hazardous substance." 1989 SLA Ch. 112, §1(a). In establishing the response fund in 1986, the Legislature found that "it is in the best interests of the state and its citizens to provide a readily available fund for the payment of the expenses incurred . . . in the protection of the environment of the state from the release of oil and hazardous substances." AS 46.08.005. This legislation specifically declared that "it is the intent of the Legislature and the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available." AS 46.08.030.

The spill reserve is an appropriation which remains available for the purposes of this legislation. The reserve is not obligated for specific, anticipated expenses.[1] Rather, the spill reserve acts as a contingency fund for response to potential

[1] I do not address the issue of whether funds that are obligated but not yet paid out for lawful expenses are "expended" under AS 43.55.230(a)(2).

releases. The spill reserve funds have not changed in character by virtue of their appropriation. AS 46.08.040 specifically authorizes DEC to use response fund monies without a specific appropriation for response to a release of oil or hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. Thus, DEC could use unappropriated money in the response fund for the same purposes as money in the appropriated spill reserve account. The spill reserve account simply allows for better accounting of the balance of the response fund.

In sum, the appropriation of response fund monies to the spill reserve has not changed the fundamental character of those monies. Rather, the transfer is made for technical accounting purposes. This consideration leads us to the conclusion that the transfer of the balance of the response fund to a spill reserve for accounting purposes should not be considered an expenditure of those funds.

In summary, both of these considerations indicate that an appropriation to the spill reserve is not an expenditure for purposes of AS 43.55.230.

BCT:vo

cc: Craig Tillery
Janice Adair
Deborah Behr

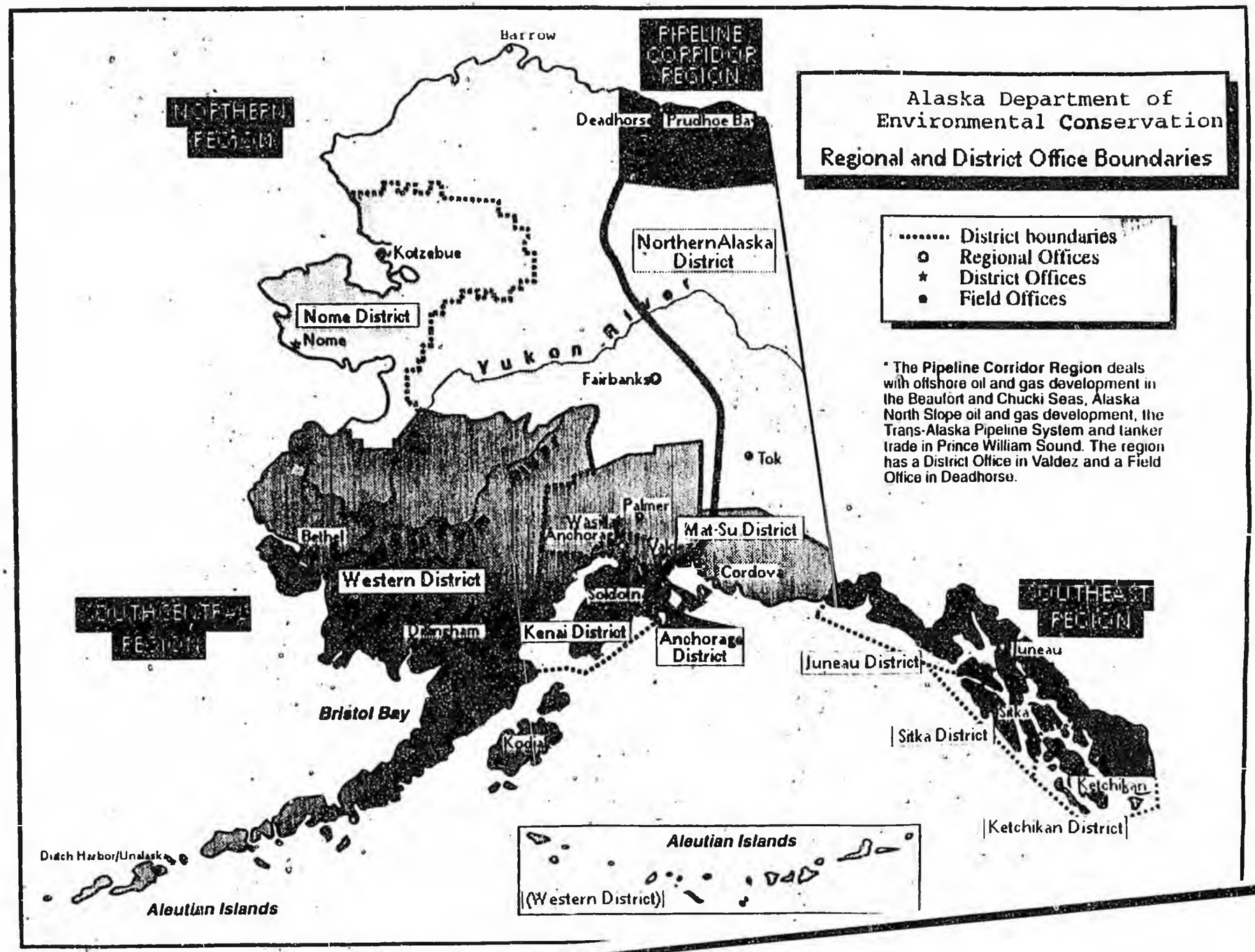
STATE OF ALASKA

Selected Oil and Hazardous Substance Pollution Control Statutes and Regulations



November, 1993

Alaska Department of Environmental Conservation


Alaska Department of Environmental Conservation
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District boundaries
Regional Offices
District Offices
Field Offices
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Selected Alaska Oil and Hazardous Substance Pollution Control Statutes and Regulations



Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
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November, 1993

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ALASKA STATUTES

TITLE 24. LEGISLATURE.

CHAPTER 20. AGENCIES OF THE LEGISLATURE.

ARTICLE 1. LEGISLATIVE COUNCIL.

SECTION 24.20.600. CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES.

(a) There is created in the legislature the Citizens' Oversight Council on Oil and Other Hazardous Substances. The oversight council consists of five members appointed by the Alaska Legislative Council. The Alaska Legislative Council shall notify members of the public throughout the state that nominations for membership are being sought. Members of the oversight council serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(b) The oversight council shall elect a chair and other officers that the oversight council finds necessary to carry out its responsibilities.

(c) Members of the oversight council serve staggered terms of four years and, upon expiration of their terms, continue to serve until their successors qualify and are appointed. A member may serve no more than two consecutive terms.

(d) A member of the oversight council may not work as an independent contractor for or be employed by a federal, state, or municipal agency directly or indirectly involved in the oversight or regulation of industries engaged in the production, transport, or storage of oil or other hazardous substances; be an elected official of the state or of a political subdivision; or work as an independent contractor for or be employed by a person engaged in the production, transport, or storage of oil or other hazardous substances. The Alaska Legislative Council shall appoint as members of the oversight council persons who have an interest in and commitment to preventing oil and hazardous substance releases in the state.

(e) The oversight council shall make a formal request to the Alaska Legislative Council for money it considers necessary for staff, per diem, travel, and contractual expenses. Money distributed to the oversight council is to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The chair of the oversight council shall approve all expenditure documents.

SECTION 24.20.610 POWERS AND DUTIES OF THE OVERSIGHT COUNCIL.

(a) The oversight council shall

(1) determine whether state and federal agencies responsible for the prevention of the release of oil and other hazardous substances, and for responding to releases, are carrying out their duties in these areas;

(2) recommend to the legislature, the governor, agencies of the federal government, and private entities appropriate policies and actions to prevent releases of oil and other hazardous substances;

(3) assist the legislature and the governor in the development of interstate compacts and policy recommendations to the federal government regarding the prevention of releases of oil and other hazardous substances;

(4) file an annual report with the legislature and the governor assessing the status of major areas of risk, the performance of state and federal regulatory agencies, and changes in the long-term options for improving environmental safety;

5) request the attorney general to bring or request the attorney general to move to intervene in legal actions in order to ensure compliance with state laws and regulations regarding the release of oil and other hazardous substances;

(6) make recommendations to the legislature, the governor, and the federal government on the creation, funding, and composition of regional or local advisory committees and on the relationship between the oversight council, local advisory committees, and other citizens' oversight groups on oil and other hazardous substances; and

(7) schedule regular meetings with local and regional advisory committees as they are created to make sure that they complement each other and avoid overlap in oversight and advisory functions.

(b) The oversight council may

(1) hire an administrator and additional administrative staff, and enter into contracts for personal services that the oversight council finds necessary to carry out its responsibilities under this section; all employees of the oversight council are in the exempt service under AS 39.25.110;

(2) subpoena witnesses, administer oaths, take testimony, and require the production for examination and copying of books or papers relating to matters within the responsibility of the oversight council;

(3) conduct investigations, studies, and analyses necessary to enable the oversight council to carry out its duties under (a) of this section; and

(4) appoint advisory panels in specialized areas to include representatives of appropriate groups such as state and municipal regulatory agencies, oil spill prevention and response authorities, fishing and environmental groups, residents of areas of risk, scientists, and shippers and owners of oil and other hazardous substances produced or transported in the state.

SECTION 24.20.620 COOPERATION BY STATE AGENCIES.

Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the oversight council by providing information and assistance, including disclosure of records relating to the agency's enforcement of laws and regulations for the prevention of and response to releases of oil and other hazardous substances.

SECTION 24.20.630 DEFINITIONS.

In AS 24.20.600 - 24.20.630,

(1) "hazardous substance" has the meaning given in AS 46.08.900;

(2) "oil" has the meaning given in AS 46.08.900; and

(3) "oversight council" means the Citizens' Oversight Council on Oil and Other Hazardous Substances.

TITLE 43. REVENUE AND TAXATION.

CHAPTER 55. OIL AND GAS PRODUCTION TAXES AND OIL SURCHARGE.

ARTICLE 1. OIL AND GAS PROPERTIES PRODUCTION TAXES.

SECTION 43.55.200. SURCHARGE LEVIED.

(a) Every producer of oil shall pay a surcharge of $.05 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150.

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.150.

SECTION 43.55.210. DISPOSITION OF PROCEEDS OF SURCHARGE.

(a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.200 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge that are deposited into the general fund.

SECTION 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE.

The legislature may appropriate the annual estimated balance of the account established under AS 43.55.210 to the oil and hazardous substance release response fund established by AS 46.08.010.

SECTION 43.55.230. SUSPENSION AND REIMPOSITION OF THE SURCHARGE.

(a) Not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

(1) that has been deposited through that calendar quarter into the general fund under AS 43.55.210;

(2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.08.010.

(b) Within 15 days after making the determinations required by (a) of this section, the commissioner of administration shall report to the commissioner the difference between the amount determined under (a)(1) of this section and amount determined under (a)(2) of this section.

(c) If the commissioner of administration reports that the difference determined under (b) of this section equals or exceeds $50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.200. Suspension of the imposition and collection of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of a suspension authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be paying the surcharge under AS 43.55.200 that the surcharge will be suspended.

(d) Except as provided in AS 43.55.240, if the commissioner of administration reports that the difference determined under (b) of this section is less than $50,000,000, the commissioner of revenue shall require imposition and collection of the surcharge authorized under AS 43.55.200. Reimposition of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of reimposition of the surcharge authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be required to pay the surcharge under AS 43.55.200 that the surcharge will be reimposed.

SECTION 43.55.240 SURCHARGE NOT IMPOSED.

The surcharge authorized by AS 43.55.200 is not levied during any fiscal year for which the estimated revenue from the surcharge would be sufficient to restore the balance of the oil and hazardous substance release response fund on the first day of the fiscal year to at least $50,000,000, and

(1) the legislature does not, during the regular legislative session preceding the first day of the fiscal year, appropriate money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least $50,000,000; or

(2) the legislature, during the regular legislative session preceding the first day of the fiscal year, appropriates money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least $50,000,000 and, because of gubernatorial veto or reduction in the amount of the appropriation, restoration of the balance of the fund to at least $50,000,000 does not become law.

TITLE 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION.

CHAPTER 3. ENVIRONMENTAL CONSERVATION.

ARTICLE 1. DECLARATION OF POLICY.

SECTION 46.03.010. DECLARATION OF POLICY.

(a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

ARTICLE 2. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

SECTION 46.03.020. POWERS OF THE DEPARTMENT.

The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers, and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention, and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;

(F) *[Repealed, Sec. 12 ch 172 SLA 1978.]*

(G) control of pesticides;

(H) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(I) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits that have been included or deleted;

(12) *[Repealed, Sec. 92 ch 6 SLA 1990.]*

(13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715.

ARTICLE 3. WATER POLLUTION CONTROL AND WASTE DISPOSAL.

SECTION 46.03.050. AUTHORITY.

The department has jurisdiction to prevent and abate the pollution of the waters of the state.

ARTICLE 8. PROHIBITED ACTS AND PENALTIES.

SECTION 46.03.710. POLLUTION PROHIBITED.

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

SECTION 46.03.740. OIL POLLUTION.

A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may

by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

SECTION 46.03.742. RECKLESS OPERATION OF TANK VESSEL.

(a) A person commits the crime of reckless operation of a tank vessel when, by recklessly operating, navigating, or piloting a tank vessel, the person causes a release of a hazardous substance and the release causes serious physical injury to another person or damage to the property of another.

(b) Reckless operation of a tank vessel is a class C felony.

(c) In this section, "reckless" has the meaning given in AS 11.81.900.

SECTION 46.03.743. NEGLIGENT OPERATION OF TANK VESSEL.

(a) A person commits the crime of negligent operation of a tank vessel when, by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates an unjustifiable risk of a release of a hazardous substance or an unjustifiable risk of harm to a person or property.

(b) Negligent operation of a tank vessel is a class A misdemeanor.

(c) In this section, "criminal negligence" has the meaning given in AS 11.81.900.

SECTION 46.03.744. DEFINITIONS.

In AS 46.03.742 - 46.03.744,

(1) "hazardous substance" has the meaning given in AS 46.03.826;

(2) "tank vessel" means

(A) a vessel that is constructed or adapted to carry, or that carries, as a means of transportation by water, a hazardous substance in bulk as cargo or cargo residue;

(B) the vessel that propels the tank vessel if the tank vessel is a barge or other vessel that is not self-propelled.

SECTION 46.03.745. HAZARDOUS SUBSTANCE RELEASE.

Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

SECTION 46.03.750. BALLAST WATER DISCHARGE.

(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

SECTION 46.03.755. DISCHARGE REPORTING.

(a) A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of AS 46.03.740 or 46.03.750, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

SECTION 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL.

(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 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 which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and the state'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 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 poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that 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 ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

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

(A) $10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) $2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) $1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint

session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule 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 shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment; and the penalty shall decrease for less productive or sensitive receiving environments.

(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 in the regulations adopted under this section:

(1) if the discharge occurs from 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.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less, not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section.

(k) *[Repealed, Sec. 19 ch 59 SLA 1986.]*

(l) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

SECTION 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

(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, in the amount of

(1) $8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude 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, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the $500,000,000 maximum set under (a) of this section the court shall assess four times the penalty 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 act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the State of Alaska or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

SECTION 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable; in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

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

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

(b) Except as determined by the court under (f)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(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

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(f) A person who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

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

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

(4) the need for an enhanced civil penalty to deter future noncompliance.

SECTION 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 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

SECTION 46.03.765. INJUNCTIONS.
The superior court has jurisdiction to enjoin a violation of this chapter, AS 46.04, AS 46.09, AS 46.14, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

SECTION 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES.
A vessel that is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g).

SECTION 46.03.780. LIABILITY FOR RESTORATION.
(a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, AS 46.04, AS 46.09, or AS 46.14, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

(b) Liability for damages under (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or

degraded resource, or to otherwise restore the environment of the state to its condition before the injury

(c) Damages under (a) of this section shall be recovered by the attorney general on behalf of the state.

SECTION 46.03.790. CRIMINAL PENALTIES.

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence

(1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

(2) fails to provide information or provides false information required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.755, AS 46.04, or AS 46.09;

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a local air quality control program under AS 46.14.

(b) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(c) Each day on which a violation described in this section occurs is considered a separate violation.

(d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of

(1) a class C felony if the oil discharge is 10,000 barrels or more;

(2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.

(e) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(f) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(g) In this section,

(1) "barrel" has the meaning given in AS 46.04.900;

(2) "criminal negligence" has the meaning given in AS 11.81.900;

(3) *[Repealed, Sec. 62 ch 21 SLA 1991.]*

(h) Notwithstanding AS 12.55.035(b), upon conviction of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than $10,000 for each separate violation.

SECTION 46.03.820. EMERGENCY POWERS.

(a) When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the

people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected has the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

(d) After a hearing the department may affirm, modify, or set aside the order. An order affirmed, modified, or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

SECTION 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES.

(a) Notwithstanding any ~~other~~ provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or

a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(e), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 - 508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature, is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner, operator, or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) In this section, "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

SECTION 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

(c) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

(f) This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

(g) In this section, "response action" means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

SECTION 46.03.824. DAMAGES.

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

SECTION 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

(A) approved under AS 46.04.030 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

(b) The limitation on liability contained in (a) of this section does not apply to (1) an action for personal injury or death or;

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 is in use.

(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission of the oil spill response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply to an oil spill response action contractor who would have been liable for the initial release or threatened release of oil under AS 46.03.822 even if that contractor had not carried out a response action.

(d) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(e) Except as provided in (d) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(f) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor.

(g) In this section,

(1) "consistent" means in substantial compliance with a contingency plan;

(2) "primary response action contractor" has the meaning given in AS 46.04.035;

(3) "registered" means registered under AS 46.04.035;

(4) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, clean up, marine salvage, or removal of a release or threatened release of oil.

SECTION 46.03.826. DEFINITIONS.
In AS 46.03.822 - 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(5) "hazardous substance" means

(A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);

(6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

(7) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(8) "owner" and "operator"

(A) mean

(i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;

(ii) in the case of facility, any person owning or operating the facility;

(iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and

(iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;

(B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

(10) "response action contract" means a written contract or agreement to provide response action with respect to a release or threatened release of a hazardous substance entered into by a person with

(A) the department;

(B) another person who has entered into an agreement with the department that provides for response action subject to the department's oversight and control;

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release under state or federal law;

(11) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract; and

(C) a person who acts as a volunteer and is engaged in a response action.

(12) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur-bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(13) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(14) "vessel" means every description of watercraft or other artificial contrivance that is used, or is capable of being used, as a means of transportation on water, or that carries hazardous substances for the purpose of incineration of the hazardous substances;

(15) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska.

SECTION 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED.

The provisions of AS 46.03.822 - 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury.

SECTION 46.03.850. COMPLIANCE ORDER.

(a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter, AS 46.04, or AS 46.14, or a regulation or lawful

order of the department, or a permit or certificate, or a term or condition of a permit or certificate issued by the department under this chapter, AS 46.04, or AS 46.14, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under AS 46.03.820.

(b) The recipient of the determination shall file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in AS 46.03.010. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

ARTICLE 9. GENERAL PROVISIONS.

SECTION 46.03.860. INSPECTION WARRANT.

The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter.

SECTION 46.03.865. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY.

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. If there is an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 that is applicable to the situation for which the department issues an order under this subsection, the department's exercise of authority under this subsection shall be guided by the relevant provisions of the incident command system.

(b) A person to whom an order is directed shall comply with it immediately, but on application to the department shall be given a hearing under the Administrative Procedure Act (AS 44.62). Thereafter the department may affirm, revoke, or modify the order.

(c) During a period of emergency declared under (a) of this section, each state agency shall take whatever action the department finds necessary to meet the emergency and to protect the public health, welfare, or environment, consistent with the

responsibilities assigned to them under an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 if one is applicable to the situation.

SECTION 46.03.870. ACTIONABLE RIGHTS.

(a) Except as specified in AS 46.03.822 - 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 - 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons, or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

SECTION 46.03.875. REMEDIES CUMULATIVE.

All remedies provided by this chapter, AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of this chapter, AS 46.04, or AS 46.14.

SECTION 46.03.880. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.

Except as otherwise specifically provided in this chapter, the Administrative Procedure Act (AS 44.62) governs the activities and the proceedings of the department.

SECTION 46.03.890. ENFORCEMENT AUTHORITY.

(a) The following persons are authorized to enforce this chapter:

(1) a state employee authorized by the commissioner;

(2) a police officer of the state.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.04, AS 46.09, and AS 46.14.

SECTION 46.03.900. DEFINITIONS.

In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

(5) "commissioner" means the commissioner of environmental conservation;

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

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

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

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and (C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.40.100;

(16) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

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

(18) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides;

(19) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(20) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other

processes or purposes and includes the reuse of materials or products to conserve natural resources;

(21) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(22) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(23) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(24) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(25) "solid waste" means all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source;

(26) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(27) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(28) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(29) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(30) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(31) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes;

(32) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereig munity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

(33) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means

(A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(34) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

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

CHAPTER 4. OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTROL.

ARTICLE 1. OIL POLLUTION CONTROL.

SECTION 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES.
The department shall promptly seek reimbursement under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account".

SECTION 46.04.020. REMOVAL OF OIL DISCHARGES.
(a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil shall be carried out in a manner approved by the department. Wastes generated as a result of containment or cleanup activities shall be disposed of in a manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of Sec. 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under Sec. 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

(e) The department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons in order to

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic

control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures.

(f) In fulfilling its responsibilities under (e) of this section, the department shall consult with the governing bodies of municipalities and villages.

(g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska pipeline shall

(1) immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; and

(2) provide services required in a response action under contract terms as provided under AS 46.04.030(r). The obligations imposed under this subsection do not affect the response action duties of another person or the liability of another person for a discharge or threatened discharge. Upon the request of the person required to respond to a discharge or threatened discharge under this subsection, the obligation imposed by this subsection may be transferred to another person required by law to respond to the discharge or threatened discharge if the transfer is approved by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has the meaning given in AS 46.04.030(r).

(h) A charge, contract term, or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the holders and lessees' common operating agent, or the agent or representative of either the holders and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal and related to containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed under (g) of this section

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to a financial responsibility requirement in excess of $10,000,000, must

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge or threatened discharge of oil from that vessel before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following the discharge or threat of discharge; and

(B) vary among each vessel in proportion to the volume of oil carried by each vessel per voyage from a marine terminal; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.

(i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to

review and enjoin a charge, contract term, or financial responsibility requirement described under (h) of this section at the request of a vessel owner, operator, or charterer. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

SECTION 46.04.025. CONFIDENTIAL INFORMATION.

The department may maintain the confidentiality of a manufacturer's proprietary technical information relating to chemical and biological agents used to control or mitigate the effects of an oil discharge. The department may refuse to release the information unless the manufacturer authorizes its release or unless a court orders its release. The department may provide the information to the Department of Fish and Game and other state and federal agencies if the department or other agency requesting the information agrees to maintain its confidentiality.

SECTION 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every three years.

(e) *[Editor's note: oil spill primary response action contractor provisions of this subsection become effective January 1, 1994 -- other provisions are presently in effect. Consult the Department for clarification.]* The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

(f) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of a facility or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification. The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that

(1) approval was obtained by fraud or misrepresentation;

(2) the operator does not have access to the quality or quantity of resources identified in the plan;

(3) a term or condition of approval or modification has been violated; or

(4) the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(h) The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section. The department shall exercise its power under this section in a timely manner. Except as provided in (i) of this section, it is not a defense to an action brought for a violation of (a) - (c) of this section that the person charged believed that a current contingency plan had been approved by the department.

(i) It is a defense to an action brought for a violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

(j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) - (3) of this subsection that enters a receiving environment other than open water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements

of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) *[Repealed, Sec. 1 ch 16 SLA 1993.]*

(q) In this section,

(1) "contingency plan" means an oil discharge prevention and contingency plan required under this section;

(2) "in compliance with the plan" means, with respect to a contingency plan, to

(A) establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(B) have access to and have on hand the quantity and quality of equipment, personnel, and other resources identified as being accessible or on hand in the plan;

(C) fulfill the assurances espoused in the plan in the manner described in the plan;

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

(4) "region of operation," with respect to the holder of a contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210.

(r) Except as provided in (n) of this section and in order to receive approval from the department for an oil discharge prevention and contingency plan submitted under this section, the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by the Trans Alaska Pipeline System shall obtain by contract the services required in a response action from the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System. The contract must contain the following provisions: (1) the common operating agent, as a primary response action contractor shall, unless services required in a response action are transferred as provided in (3) of this subsection, provide services required in a response action for a discharge or a threatened discharge of oil to the owner or operator,

or charterer of the vessel while the vessel is berthed at, en route to, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; (2) that its coverage for any particular vessel may not be terminated by the common operating agent while that vessel is within Prince William Sound; this provision may not be interpreted to limit the department's authority to revoke approval under this section for an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer of a vessel; and (3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators. In addition to the requirements of this subsection, the department may require individual vessels to submit additional contingency plans to cover specific vessel response, prevention equipment, and procedures. Nothing in this subsection is intended to preclude the federal or state government from assuming management and control of an oil spill response to a discharge or threatened discharge from a vessel under appropriate circumstances. In this subsection, "Prince William Sound" means all marine waters within the boundary line established at Cape Puget, southeasterly to Cape Cleare, along Montigue Island to Zaikof Point, easterly to Cape Hinchinbrook, along Hinchinbrook Island to Point Bintinck, and easterly to Point Whitshed.

SECTION 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A person may apply to the department for registration as an oil spill primary response action contractor. The department shall adopt regulations governing the registration and approval of oil spill primary response action contractors. Regulations adopted by the department under this section must include

(1) minimum training standards for personnel;

(2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;

(3) minimum professional response action standards and practices; and

(4) minimum planning standards for oil spill primary response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(b) Notwithstanding (a) of this section, the department may substitute a primary response action contractor approval program, and a subsequent process to approve primary response action contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations required under (a)(1) - (3) of this section if the approval program and subsequent process are developed by the United States Coast Guard.

(c) The department shall establish fees applicable to registration under this section in an amount necessary to cover the costs of the registration program. The fees shall be collected by the department.

(d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations under this section.

(e) The department shall develop and maintain a list of oil spill primary response action contractors registered under this section. The department shall provide the list on request to interested persons.

(f) A primary response action contractor registered under this section shall annually provide to the department a list of all contingency plans approved under AS 46.04.030

in which the primary response action contractor has agreed in writing to be listed as a responder.

(g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or a response action contractor.

(h) In this section,

(1) "oil" has the meaning given in AS 46.03.826;

(2) "primary response action contractor" means a person who enters into a response action contract with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release of oil.

SECTION 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal is $50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is $25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or $1,000,000, whichever is greater, subject to a maximum of $50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the $25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is $50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is $20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is $5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) $300, per incident, for each barrel of storage capacity or $100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) $100, per incident, for each barrel of storage capacity or $1,000,000, whichever is greater, subject to a maximum of $35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) - (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other

proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility; however, the liability under this section of a third-party insurer is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility furnished to and approved by the department. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state. In this subsection, "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of an applicant under this section; "third-party insurer" does not include the applicant.

(f) Acceptance of proof of financial responsibility expires

~~(1)~~ one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or

(3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in (f)(1) - (3) of this section, which would have warranted denial of the application.

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

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the expiration date of the certificate.

(k) It is a defense to an action brought for violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

(l) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not

agree to be subject to direct action in state courts or to appoint an agent for service of process if

(1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;

(2) the applicant provides proof of $50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and

(3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department.

[Editor's note: For provisions effective from June 1, 1992, to June 1, 1994, relating to proof of financial responsibility by certain noncrude oil operations, see Sec. 2, ch. 102, SLA 1992 in the Temporary and Special Acts.]

[Chapter 102, SLA 1992. Source: CSSB405 (O&G). APPROVED DATE: June 20, 1992.
** Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant*

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

** Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.*

** Sec. 6. Section 2 of this Act is repealed June 1, 1994.*

** Sec. 7. This Act takes effect immediately under AS 01.10.070(c).]*

SECTION 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) The dollar amounts in AS 46.04.040 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 1990 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 a..nouncing

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

(2) 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.

SECTION 46.04.050. EXEMPTIONS.

(a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

SECTION 46.04.060. INSPECTIONS.

(a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

(1) ensure compliance with the provisions of this chapter; or

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected.

SECTION 46.04.070. SCOPE OF REGULATIONS.
The department shall adopt regulations that are necessary to carry out the purposes of this chapter and that do not conflict with and are not preempted by federal law or regulations.

SECTION 46.04.080. CATASTROPHIC OIL DISCHARGES.
(a) The commissioner of environmental conservation or the commissioner of military and veterans' affairs may request the governor to determine that an actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23. The commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent discharge under the relevant provisions of the applicable incident command system.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050.

SECTION 46.04.090. OIL DISCHARGE, CLEANUP PERSONNEL, EQUIPMENT, EXPENSES.
The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

SECTION 46.04.100. COMPACTS AUTHORIZED.
The governor may execute supplementary agreements, reciprocal arrangements, or compacts with any other state or country, subject to the approval, if required by the United States Constitution, of the Congress of the United States, for the purpose of implementing this chapter.

SECTION 46.04.110. MUNICIPAL POWERS LIMITED.
If a conflict occurs between a provision of this chapter, or a regulation, order, decision, or other determination of the department under this chapter, and a charter, ordinance, permit, regulation, franchise, decision, or other determination of a municipality, the provisions of this chapter or the regulation, order, decision, or other determination of the department prevail. However, nothing in this chapter precludes a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION CONTINGENCY PLANS.

SECTION 46.04.200. STATE MASTER PLAN.

(a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080; responsibilities assigned to each state agency must be consistent with its statutory authority;

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances; and

(5) designate the locations where oil and hazardous substance emergency response depots should be established in the state and where emergency response corps personnel should be available.

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan;

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section; and

(5) submit the plan and any annual revision to the Alaska State Emergency Response Commission for its review and approval under AS 46.13.045.

SECTION 46.04.210. REGIONAL MASTER PLAN.

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve

an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.04.900. DEFINITIONS.

In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;

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

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "natural gas"

(A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;

(B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state.

(10) **"oil"** means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(11) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(12) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only

when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(13) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

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

(15) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(16) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;

(17) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal.

(18) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(19) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(20) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(21) "vessel" includes tank vessels and oil barges;

(22) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determined and give official recognition of village entities under AS 44.47.150(b);

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

CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES.

ARTICLE 1. RELEASE RESPONSE FUND.

SECTION 46.08.005. PURPOSE.
The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation and the Department of Transportation and Public Facilities in the protection of the environment of the state from the release of oil or hazardous substances.

SECTION 46.08.010. FUND ESTABLISHED.

(a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(d)(2), the fund may not be used for capital improvements.

SECTION 46.08.020. FINANCING OF THE FUND.

(a) The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

SECTION 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES.
It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

SECTION 46.08.040. PURPOSES OF THE FUND.

(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2) - (7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

(d) Upon a request from

(1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

(2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities

to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

SECTION 46.08.050. RECORDS OF THE FUND.

(a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures.

SECTION 46.08.060. REPORT TO THE LEGISLATURE.

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020;

(3) a summary of municipal participation in the department's responses that were funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of $20,000, and each purchase in excess of $10,000; and

(5) the projected cost to the department for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous waste sites, the commissioner shall include in the report under this section

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b).

SECTION 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP.

(a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

(c) The department shall reimburse a municipality or village for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance if

(1) the municipality or village has entered into an agreement with the commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

(2) the commissioner determines that

(A) the expenses to be reimbursed were for a necessary emergency first response to a release or threatened release that, at the time of the release or threatened release, posed an imminent and substantial threat to the public health or welfare, or to the environment;

(B) the municipality or village has demonstrated a need for financial assistance, and the money to be advanced is necessary to enable the municipality or village to carry out an emergency first response to a release or threatened release that, at the time of the release or threatened release, poses an imminent and substantial threat to the public health or welfare, or to the environment; and

(C) containment and cleanup efforts paid for in whole or in part by a reimbursement or an advance made under this section were consistent with the regional master plan for the region in which the municipality or village is located if a plan has been prepared by the department under AS 46.04.210.

SECTION 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE EXPENDITURES.

(a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until.

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance.

SECTION 46.08.080. REGULATIONS.

The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all of any portion of the substances to which AS 46.08.005 - 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 - 46.08.080.

ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE.

SECTION 46.08.100. OFFICE ESTABLISHED.

There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances.

SECTION 46.08.110. RESPONSE CORPS.

(a) The division of emergency services, Department of Military and Veterans' Affairs, shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions.

SECTION 46.08.120. RESPONSE DEPOTS.

The division shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

SECTION 46.08.130. DUTIES OF THE OFFICE.

(a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) - (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding.

SECTION 46.08.140. EMERGENCY POWERS.

(a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action.

SECTION 46.08.150. CONTRACTS.

The office or the division, as applicable, may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(1) provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology; the office shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120.

SECTION 46.08.160. LIMITATION OF LIABILITY.
The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 - 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct.

SECTION 46.08.190. DEFINITIONS.
In AS 46.08.100 - 46.08.190

(1) "corps" means the oil and hazardous substance response corps;

(2) "depots" means the oil and hazardous substance supply and equipment storage depots;

(3) "division" means the division of emergency services, Department of Military and Veterans' Affairs;

(4) "office" means the oil and hazardous substance response office.

ARTICLE 3. GENERAL PROVISIONS.

SECTION 46.08.900. DEFINITIONS.
In this chapter

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

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

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

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

(5) "fund" means the oil and hazardous substance release response fund;

(6) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

(7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(10) "service"

(A) means a function performed or service provided by a municipality under a duty or power authorized by AS 29 or by another provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village;

(B) includes functions not previously performed and services not previously provided by the municipality or village;

(11) "threatened release" means an imminent danger that a release will occur;

(12) "village" means a place within the unorganized borough or within a borough if the power, function, or service for which a grant application under AS 29.60.510 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application is submitted that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise in connection with the use of grant money under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b).

CHAPTER 9. HAZARDOUS SUBSTANCE RELEASE CONTROL.

SECTION 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES.

(a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel, or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

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

SECTION 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE.

(a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

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

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

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

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

SECTION 46.09.030. DISASTER EMERGENCIES.
The commissioner of environmental conservation or the commissioner of military and veterans' affairs may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23. The commissioner of environmental conservation and the commissioner of military and veterans' affairs shall respond appropriately in the relief of the actual or imminent release under the relevant provisions of the applicable incident command system.

SECTION 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

SECTION 46.09.050. COMPACTS AUTHORIZED.
The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for, the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

SECTION 46.09.060. MUNICIPALITIES.
(a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provisions of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter, AS 46.04, and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

SECTION 46.09.070. REGULATIONS.
The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies. The commissioner shall adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

SECTION 46.09.900. DEFINITIONS.
In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred

in response to the release of the hazardous substance, including administrative expenses for the incremental costs of providing the function or service;

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

(4) "hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(7) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(8) "threatened release" means an imminent danger that a release will occur.

CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

SECTION 46.13.010. ALASKA STATE EMERGENCY RESPONSE COMMISSION ESTABLISHED.

(a) There is established in the Department of Environmental Conservation the Alaska State Emergency Response Commission.

(b) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the commission.

SECTION 46.13.020. COMPOSITION OF THE COMMISSION.

The commission consists of the commissioners of community and regional affairs, environmental conservation, fish and game, health and social services, labor, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven public members to be appointed by the governor. To the extent practicable, the commission must include members with expertise in the emergency response field.

SECTION 46.13.030. OFFICERS, TERMS, AND COMPENSATION.

The commissioner of environmental conservation, or the commissioner's designee, shall chair the commission. The adjutant general of the Department of Military and Veterans' Affairs, or the adjutant general's designee, shall serve as vice-chair. Members of the commission other than those from the designated state departments serve at the pleasure of the governor for staggered terms of three years. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

SECTION 46.13.040. POWERS AND DUTIES OF COMMISSION.

The commission shall

(1) serve as the state emergency response commission required under 42 U.S.C. 11001 - 11005;

(2) designate, and revise as necessary, the boundaries of emergency planning districts, using the boundaries of regions established under AS 46.04.200 - 46.04.210 and of political subdivisions where appropriate;

(3) facilitate the preparation and implementation of emergency plans for hazardous substance response, including the statewide, interjurisdictional, and local plans prepared under AS 26.23, state and regional plans prepared under AS 46.04.200 - 46.04.210, and plans prepared under this chapter;

(4) review and approve or disapprove the plans described in (3) of this section according to the criteria established in AS 46.13.045;

(5) establish a local emergency planning committee for each emergency planning district, and appoint, and revise as necessary, the membership of each committee;

(6) supervise and coordinate the activities of local emergency planning committees;

(7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(8) perform other coordinating, advisory, or planning tasks related to hazardous

substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances;

(9) recommend procedures to integrate, as appropriate, hazardous substance response planning under 42 U.S.C. 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous substance discharges, and state, regional, and local hazardous substance contingency planning under AS 26.23 and AS 46.04.200 - 46.04.210;

(10) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for state emergency response commissions under 42 U.S.C. 11001 - 11005; and

(11) adopt regulations necessary to carry out the purposes of this chapter and 42 U.S.C. 11001 - 11005.

SECTION 46.13.045. PLAN APPROVAL; INCIDENT COMMAND SYSTEMS.

(a) The commission shall review and exercise approval authority over local, interjurisdictional, regional, and state plans for hazardous substance discharge response, including plans prepared under AS 26.23, AS 46.04.200 - 46.04.210, and this chapter.

(b) Before approving a plan, the commission shall ensure that the plan includes an incident command system that describes the respective roles of affected persons and agencies in a clear and specific manner and that the respective roles of state agencies are consistent with their statutory duties. The commission shall also ensure that the plans are well-integrated with related plans.

(c) To the extent consistent with other law, an incident command system approved under this section must provide that the Alaska division of emergency services has a major role in mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a state response to an imminent or actual hazardous substance discharge.

SECTION 46.13.050. AGENCY COOPERATION.

The commission may request data, reports, or other information from a state agency. To the extent feasible and not otherwise prohibited by laws making specific information confidential and nondisclosable, a state agency shall cooperate with the commission and furnish the commission with the information and assistance necessary to accomplish the purposes of 42 U.S.C. 11001 - 11005 and this chapter.

SECTION 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES.

Boundaries for emergency planning districts are the regions designated by the Department of Environmental Conservation under AS 46.04.210, unless otherwise designated by the commission.

SECTION 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES.

The commission shall establish and appoint the members of a local emergency planning committee for each emergency planning district. Each committee must include, at a minimum, representatives from each of the following groups or organizations: elected state and local officials; law enforcement; civil defense; fire fighting; first aid; health; local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of 42 U.S.C. 11001 - 11005.

SECTION 46.13.080. DUTIES OF LOCAL EMERGENCY PLANNING COMMITTEES.

Each local emergency planning committee shall

(1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(2) appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information;

(3) prepare and periodically review an emergency plan in accordance with 42 U.S.C. 11003(a);

(4) evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing the additional resources;

(5) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for emergency planning committees in 42 U.S.C. 11001 - 11005; and

(6) participate as a local advisory committee in the preparation of statewide regional contingency plans.

SECTION 46.13.090. EMERGENCY PLANS.

(a) An emergency plan prepared under AS 46.13.080 must include

(1) identification of facilities subject to the requirements of 42 U.S.C. 11001 - 11005 that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of 42 U.S.C. 11001 - 11005, such as hospitals or natural gas facilities;

(2) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of hazardous substances, and to a release of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a);

(3) designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the emergency plan;

(4) procedures providing reliable, effective, and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;

(5) methods for determining the occurrence of a release, and the area or population likely to be affected by that release;

(6) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of 42 U.S.C. 11001 - 11005, and an identification of the persons responsible for the equipment and facilities;

(7) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) training programs, including schedules for training of local emergency response and medical personnel; and

(9) methods and schedules for exercising the emergency plan.

(b) Each emergency plan prepared under AS 46.13.080 must incorporate within it an incident command system. The incident command system must be substantially equivalent in relevant respects to the incident command systems established under AS 46.04.200 - 46.04.210 and meet the requirements of AS 46.13.045.

SECTION 46.13.100. FINDINGS AND PURPOSE.

The legislature

(1) finds and declares that there exists a lack of scientific knowledge concerning the availability, properties, and effectiveness of various hazardous substance containment and cleanup technologies; and

(2) concludes that it is in the best interest of the state and its citizens to establish a Hazardous Substance Spill Technology Review Council in the Alaska State Emergency Response Commission to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment..

SECTION 46.13.110. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL.

(a) There is established in the Alaska State Emergency Response Commission the Hazardous Substance Spill Technology Review Council.

(b) The council consists of the commissioner of environmental conservation, the adjutant general of the Department of Military and Veterans' Affairs, a representative of the University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the Environmental Protection Agency may each appoint a federal employee to the council to represent their agencies as nonvoting members. Appointed state members of the council serve overlapping three-year terms.

(c) The council members shall elect from among themselves a chair and vice-chair.

(d) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the council.

(e) State and federal members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(f) The council shall meet regularly at the call of the commission or the chair of the council.

(g) State members of the council are subject to AS 39.50.

SECTION 46.13.120. DUTIES OF THE COUNCIL.

The council shall

(1) review and recommend to the Department of Environmental Conservation research topics for it to pursue;

(2) establish testing protocols to be used by the Department of Environmental Conservation to evaluate the effectiveness of hazardous substance spill technologies for use in the state;

(3) identify sources of money that may be available for discharge-related research;

(4) make proposals to the governor, commission, and other entities to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances;

(5) compile and maintain information relating to

(A) containment and cleanup technology that is available in the event of a hazardous substance discharge, the extent to which current containment and cleanup technology is available and may be applied in the state, and ways to improve hazardous substance spill response technology and procedures;

(B) steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substances and to improve the statewide ability of industry and governmental agencies to respond to discharges of hazardous substances;

(C) the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharges;

(D) hazardous substances spill technology research conducted by the Department of Environmental Conservation; and

(6) perform other functions as may be requested by the commission.

SECTION 46.13.130. INVESTIGATIONS; HEARINGS.

(a) The council may issue subpoenas, administer oaths, and conduct investigations related to its duties.

(b) The council may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the duties assigned to the council.

(c) On a majority vote of the council, subpoenas and subpoenas duces tecum may be issued and served in the manner prescribed by AS 44.62.430(b) and (c) and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(d) State agencies shall, to the extent permitted by law, cooperate with the council and provide it with information it requests for carrying out its duties.

SECTION 46.13.900. DEFINITIONS.

In this chapter,

(1) "commission" means the Alaska State Emergency Response Commission;

(2) "council" means the Hazardous Substance Spill Technology Review Council;

(3) "hazardous substance" has the meaning given in AS 46.03.826.

ALASKA ADMINISTRATIVE CODE

TITLE 18. ENVIRONMENTAL CONSERVATION.

CHAPTER 75. OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTROL.

ARTICLE 1. Oil Pollution Prevention Requirements.

18 AAC 75.005. RESPONSIBILITY.

The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility subject to the requirements of AS 46.04.030 is responsible for meeting the applicable requirements of this chapter and for preventing the discharge of oil into waters or onto land of the state. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.03.740 AS 46.04.070
AS 46.04.030

18 AAC 75.007. GENERAL OIL POLLUTION PREVENTION REQUIREMENTS.

(a) The oil pollution prevention requirements of 18 AAC 75.005 -- 18 AAC 75.090 apply to each facility or operation for which an approved oil discharge prevention and contingency plan is required under AS 46.04.030.

(b) A vessel, barge, pipeline, or other facility subject to the applicable requirements of this chapter must be equipped and operated in accordance with this chapter and other state and federal law applicable to the prevention of an oil discharge.

(c) Unless preempted by federal law, if a conflict exists between a requirement of 18 AAC 75.005 -- 18 AAC 75.090 and a requirement of federal law, the more stringent requirement applies.

(d) The owner or operator shall ensure that all personnel are appropriately and regularly trained regarding company and state pollution prevention measures that are applicable to each person's duties. After completing a training course or program, each participant shall sign and date a statement that lists the course content.

(e) The owner or operator shall institute programs designed to ensure that each drill operator, each person who has navigational, towline, security, or maintenance duties, and any other person responsible for an activity that might result in a violation of this chapter is free of substance-abuse or medical problems that would impair that person's ability to do that person's job.

(f) The owner or operator shall provide security measures and surveillance appropriate to each component of the operation to minimize the risk of vandalism, sabotage, and unauthorized entry.

(g) The owner or operator shall maintain for the life of the facility or operation, a history of spills over 55 gallons, including the source, cause, amount, and corrective action taken.

(h) The owner or operator shall prepare and maintain records to document training, inspections, tests, maintenance, and repairs required by 18 AAC 75.005 -- 18 AAC

75.090. Unless specified otherwise, records must be kept for at least three years and must be available for inspection and copying by the department upon request. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.015. COMPLIANCE SCHEDULE.

(a) The owner or operator shall provide a compliance schedule for meeting the requirements of 18 AAC 75.005 -- 18 AAC 75.090 as part of the plan required by 18 AAC 75.400. Requirements that cannot be implemented immediately must be implemented as soon as feasible, but no later than January 1, 1997.

(b) If compliance with one or more of the requirements of 18 AAC 75.005 -- 18 AAC 75.090 is not practical within the time stated, the owner or operator may propose an alternate compliance schedule, citing substantial cause for delay. The department will, in its discretion, approve an alternate compliance schedule if other measures acceptable to the department have been taken in the interim to minimize the risk of a discharge.

(c) The department will, in its discretion, waive a requirement of 18 AAC 75.005 -- 18 AAC 75.090 if the owner or operator demonstrates to the department's satisfaction that an equivalent level of protection will be achieved by using a technology or procedure other than that required. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

18 AAC 75.025. TRANSFER REQUIREMENTS.

(a) The owner or operator of an oil terminal facility, oil tank vessel, or oil barge shall take all appropriate measures to prevent spills or overfilling during a transfer of oil, including reduced loading rates at the beginning and end of a transfer,

(b) Unless it is technically unfeasible to do so, an oil containment boom appropriate for local conditions must be deployed in an effective manner around an oil tank vessel or barge during the transfer of crude oil and persistent ~~produets~~.

(c) Except for crude oil washing, tank cleaning operations may not be conducted during cargo offloading.

(d) The owner or operator shall ensure that each person involved in a transfer is capable of clearly communicating orders to stop a transfer at any time during the transfer.

(e) A positive means must be provided to stop a transfer in the shortest possible time consistent with the best commercially available technology.

(f) Before beginning a transfer to or from an area not protected by secondary containment, the owner or operator shall ensure that all valves in the transfer system have been checked to ensure that they are in the correct position, and that all manifolds not in use are blank flanged or capped. Where feasible, the owner or operator shall also inspect for damage or defects all piping and hoses used in the transfer ~~before and~~ at least once during each transfer.

(g) The lowermost drain and all outlets of any tank car or tank truck must be examined for leakage before filling and before departure. All tank car or tank truck manifolds must be blank flanged or capped, and valves must be secured before leaving the transfer area. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.027. REQUIREMENTS FOR LADEN OIL TANK VESSELS.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, a laden oil tank vessel must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels.

(b) The owner or operator shall ensure that each laden tank vessel has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in English, a person fluent in English and in the master's language must be immediately available to the bridge of any laden tank vessel when underway in state waters.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including measures such as visual lookouts, the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding, and, where technically feasible, electronic leak detection systems.

(e) A tank vessel under escort by another vessel must, at all times, be operated in a manner that permits the escort vessel to be available immediately to provide the intended assistance to the tank vessel.

(f) While in state waters, towing line must be made up and prepared for rapid deployment to a towing vessel. The tow line must be fitted to allow tow vessels commonly available in the area of operation to take the vessel in tow rapidly. For a vessel operating at the oil loading terminal at Valdez, the Prince William Sound towing package may be used instead of having lines made up, if the package permits rapid deployment to a towing vessel. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.037. REQUIREMENTS FOR LADEN OIL BARGES.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, a laden oil barge must carry or have ready access to sufficient oil transfer equipment to facilitate lightering to and from other vessels.

(b) The owner or operator of a laden oil barge shall ensure that each barge or vessel towing a barge has on board a person who is designated as an oil spill prevention and response officer and is responsible for training and drilling the crew on state and federal oil pollution prevention and response requirements.

(c) If the master is not fluent in Engl... a person fluent in English and in the master's language must be immediately available to any vessel towing an oil laden barge.

(d) The owner or operator shall ensure that measures are in place that allow the prompt detection of an oil discharge, including visual inspections of the barge and the area around the barge, and the sounding of all cargo tanks to check cargo and water levels in the tanks after an intentional or unintentional grounding.

(e) The owner or operator shall inspect towing equipment every two months and shall record the results of each inspection and any actions taken to resolve problems discovered during an inspection.

(f) The owner or operator shall provide an adequate means of recovering a barge that breaks free of its towing vessel. The recovery means must be capable of being used by other vessels if the towing vessel is lost or incapacitated. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.045. OPERATING REQUIREMENTS FOR EXPLORATION AND PRODUCTION FACILITIES.

(a) In addition to the applicable requirements of 18 AAC 75.007 -- 18 AAC 75.025, the owner or operator of an exploration or production facility shall collect and store oil produced during a formation flow test or other drilling operation in a manner that prevents the oil from entering the land or waters of the state.

(b) In state waters, a prefabricated offshore platform that is towed into place and begins operations after the effective date of this section must be inspected for fatigue and structural integrity as required by 30 C.F.R. 250, Subpart I, as amended through July 1, 1991, the provisions of which are adopted by reference. The inspection must be conducted after platform installation and before drilling or production operations begin. The owner or operator shall submit to the supervisor of the appropriate regional office of the department a report of the inspection results and any corrective actions taken.

(c) Closure valves for pipelines leaving the platform must be located at a protected location that isolates the pipeline from the platform if a discharge or other emergency occurs and must function both manually and remotely as part of an emergency shutdown system.

(d) The owner or operator of an exploration or production facility shall provide, at a minimum, containment and collection devices such as drip pans and curbs for offshore drilling and wellhead sumps for onshore drilling.

(e) An offshore production platform, including a mobile offshore drilling unit, must have a sufficiently impermeable deck with catch tanks or other devices adequate to contain, collect, and divert spilled oil. The catch tank must have adequate storage capacity to contain anticipated and accidental discharges of oil and high-liquid-level alarms that will immediately notify the operator if a high liquid level develops.

(f) Oil storage tanks, including bulk fuel tanks, must meet the applicable requirements of 18 AAC 75.065 and 18 AAC 75.075.

(g) Piping associated with an exploration or production facility must meet the applicable requirements of 18 AAC 75.080. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.055. LEAK DETECTION, MONITORING, AND OPERATING REQUIREMENTS FOR CRUDE OIL TRANSMISSION PIPELINES.

(a) A crude oil transmission pipeline must be equipped with a leak detection system capable of promptly detecting a leak, including

(1) if technically feasible, the continuous capability to detect a daily discharge equal to not more than one percent of daily throughput;

(2) flow verification through an accounting method, at least once every 24 hours; and

(3) for a remote pipeline not otherwise directly accessible, weekly aerial surveillance, unless precluded by safety or weather conditions.

(b) The owner or operator of a crude oil transmission pipeline shall ensure that the incoming flow of oil can be completely stopped within one hour after detection of a discharge.

(c) If oil storage tanks are present at the crude oil transmission pipeline facility, the owner or operator shall meet the requirements of 18 AAC 75.065 and 18 AAC 75.075.

(d) For piping connected to or associated with the main crude oil transmission pipeline the owner or operator shall meet the requirements of 18 AAC 75.080. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.065. OIL STORAGE TANK REQUIREMENTS.

(a) The owner or operator of an oil terminal, crude oil pipeline, exploration, or production facility shall maintain and inspect oil storage and surge tanks consistent with the requirements of API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API Recommended Practice 12R1, Fourth Edition, 1991, as appropriate, unless a more stringent requirement is set out in this section.

(b) The owner or operator shall inspect oil storage tanks for structural integrity at least every ten years unless a shorter or longer inspection interval is prescribed by API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API RP 12R1, Fourth Edition, 1991. The department will, in its discretion, require a more frequent schedule

(1) for tanks older than 30 years;

(2) for riveted or bolted tanks;

(3) for tanks with demonstrated corrosion or foundation problems; or

(4) after a significant seismic event.

(c) An elevated or a portable tank is not required to undergo an internal inspection if an external integrity inspection, performed in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API RP 12R1, Fourth Edition, 1991, is substituted and that inspection includes a thorough inspection and a nondestructive integrity test of the tank, including the tank bottom.

(d) A record of inspection results and corrective actions taken after May 14, 1992 must be kept for the service life of the tank and must be available to the department for inspection and copying upon request.

(e) The owner or operator shall notify the department if an oil storage tank undergoes major repair or major alteration, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992, section 10.3.1.2.

(f) Oil storage tanks served by internal steam heating systems must be designed to control leakage through defective heating coils. Condensate lines must be monitored, passed through an oil separating device, or passed through a retention system.

(g) If an internal lining system is used to control corrosion or to meet the requirements of

(i) of this section, it must be installed in accordance with API Standard 652, First Edition, 1991.

(h) A new installation must meet the following requirements:

(1) tanks must be constructed and installed in compliance with API Standard 650, 1988 edition, API Standard 12, D (Ninth Edition, 1989), F (Tenth Edition, 1989) and P (First Edition, 1986), or another standard approved by the department;

(2) oil storage tanks may not be of riveted or bolted construction;

(3) cathodic protection or another approved corrosion control system must be installed to protect the tank bottom from external corrosion where local soil conditions warrant; and

(4) each tank must be equipped with a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or other leak detection system approved by the department.

(i) An existing installation is subject to the following:

(1) each tank must be equipped with

(A) a leak detection system that an observer from outside the tank can use to detect leaks in the bottom of the tank, such as secondary catchment under the tank bottom with a leak detection sump, a sensitive gauging system, or another leak detection system approved by the department;

(B) cathodic protection in accordance with API Standard 651, First Edition, 1991;

(C) a thick film liner in accordance with API Standard 652, First Edition, 1991; or

(D) another leak detection or spill prevention system approved by the department; and

(2) notwithstanding the provisions of 18 AAC 75.015(a), each tank must undergo an initial inspection in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992, or API 12R1, Fourth Edition, 1991, as appropriate, on the following schedule, with tank age determined as of 5/14/92:

(A) tanks 30 years old or older: by January 1, 1994;

(B) tanks 25 -- 29 years old: by January 1, 1995;

(C) tanks 20 -- 24 years old: by January 1, 1996;

(D) tanks 10 -- 19 years old: by January 1, 1997; and

(E) tanks less than 10 years old: in accordance with API Standard 653, First Edition, 1991, and Supplement 1, January 1992.

(j) In addition to the applicable requirements of 18 AAC 75.025, the owner or operator shall ensure that one or more of the following means of preventing overfilling is provided:

(1) high liquid level alarms with signals that sound and display in a manner immediately recognizable by personnel conducting a transfer;

(2) high liquid level automatic pump shutoff devices set to stop flow at a predetermined tank content level;

(3) a means of immediately determining the liquid level of each bulk storage tank, provided that the liquid level is closely monitored during a transfer; or

(4) a system approved by the department which will immediately notice the operator of high liquid levels.

(k) Overfill protection devices must be tested before each transfer operation or monthly, whichever is less frequent. If monthly testing would necessitate interrupting the operation of a system subject to continuous flow, the owner or operator may substitute monthly inspection and annual testing for the monthly testing of overfill protection devices. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

[Editor's Note: The API standards set out in this section may be reviewed at any regional office of the department or may be obtained from the American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005.]

18 AAC 75.075. SECONDARY CONTAINMENT REQUIREMENTS FOR ABOVEGROUND OIL STORAGE AND SURGE TANKS.

(a) Onshore oil storage tanks must be located within a secondary containment area that has the capacity to hold the volume of the largest tank within the containment area, plus enough additional capacity to allow for local precipitation. Minimum secondary containment system requirements include

(1) berms, dikes, or retaining walls that are constructed to prevent the release of spilled oil from within the containment area;

(2) with the exception of the area under a tank, components constructed of, or lined with, materials that are

(A) adequately resistant to damage by the products stored to maintain sufficient impermeability;

(B) resistant to damage from prevailing weather conditions;

(C) sufficiently impermeable; and

(3) checking for the presence of oil leaks or spills

(A) daily at a manned facility; or

(B) each time the facility is visited, but at least monthly, at an unmanned facility.

(b) In locations where physically feasible, offshore production platform oil storage tank areas must incorporate a secondary containment method to prevent oil spills from entering the water.

(c) Secondary containment systems must be maintained free of debris or other materials or conditions that might interfere with the effectiveness of the system, including excessive accumulated rainwater.

(d) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive close failsafe valves or other positive means to prevent a discharge. Valves must be kept closed and locked when not in use. The owner or operator shall inspect accumulated water before discharging it from a secondary containment area to ensure that no oil will be discharged and shall keep a written record of each drainage operation. If no sheen is present, water accumulated may be discharged without a state wastewater permit under 18 AAC 72. Oil-contaminated water accumulations may be discharged from secondary containment without a state wastewater permit under 18 AAC 72 if the receiving environment is not a sensitive receiving environment and if it is treated through an oil/water separating device that reduces the total concentration of hydrocarbons to below 15 ppm. The oil separating device must be equipped with effluent monitors and alarms that notice the operator if the device fails.

(e) A new installation is subject to the following:

(1) impermeable liners or double bottoms that are chemically resistant to damage by the product being stored in the tank must be installed under all tanks, except for tanks containing viscous products exceeding 400 SUS (Saybolt Universal System) at storage temperatures; and

(2) drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements.

(f) At an existing installation, in the event of a known or suspected discharge, the department will, in its discretion, require installation of monitoring wells to detect oil or other hazardous substances in the groundwater if the local geology and groundwater conditions allow installation of monitoring wells, and if monitoring wells will not substantially increase the risk of contaminating groundwater.

(g) Rail tank car and tank truck loading areas and permanent unloading areas must

(1) have a secondary containment system designed to contain the maximum capacity of any single compartment of the tank car or tank truck, including containment curbing and a trenching system or drains with drainage to a collection tank or device designed to handle a discharge;

(2) be paved, surfaced, or lined with sufficiently impermeable materials;

(3) be maintained free of debris or other materials or conditions that might interfere with the effectiveness of the system, including excessive accumulated rainwater; and

(4) have warning lights, warning signs, or a physical barrier system to prevent premature vehicular movement. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.080. FACILITY PIPING REQUIREMENTS FOR OIL TERMINAL, CRUDE OIL TRANSMISSION PIPELINE, EXPLORATION, AND PRODUCTION FACILITIES.

(a) All facility oil piping associated with an oil terminal, crude oil transmission pipeline, exploration, or production facility must meet the requirements of this section.

(b) Buried steel piping containing oil must be maintained in accordance with a corrosion control program, approved by the department and,

(1) for a new installation, must be

(A) protected from corrosion by installing protective wrapping or coating and cathodic protection appropriate for local soil conditions; and

(B) of all welded construction with no clamped, threaded, or similar connections for lines larger than a one inch nominal pipe size; and

(2) for an existing installation, must

(A) undergo a corrosion survey;

(B) be carefully examined for deterioration any time a section of buried line is exposed for any reason;

(C) undergo an additional examination and corrective action to repair the damaged pipe and control future corrosion if corrosion damage is found; and

(D) be replaced with piping that meets the requirements of (1) of this subsection, if feasible, when significant repairs or replacements are made.

(c) Buried or insulated transfer piping and hoses that are located outside of secondary containment areas and that are used to transfer oil to or from docks or vessels must be leak tested at least annually, at or above the normal operating pressures, or must be subjected to another verification method approved by the department. The testing medium used must be in accordance with API RP 1110, Second Edition, 1981, or another applicable published safety standard. The owner or operator shall keep records of the results of these tests. Piping and hoses must be stenciled or tagged with the date

of the last test and the allowable operating pressure. An oil discharge resulting from testing is not exempted from legal action under applicable state law.

(d) All aboveground transfer piping that is used to transfer oil to or from docks or vessels must be visually checked before and during each transfer or monthly, whichever is less frequent.

(e) Pipes removed from service for more than one year must be drained, identified as to origin, marked with the words "Out of Service", and capped or blank flanged.

(f) Aboveground piping and valves must be visually checked for leaks or damage during routine operations or at least monthly.

(g) Piping supports must be designed to be seismically stable and composed of materials to minimize corrosion and prevent chafing.

(h) Appropriate measures must be taken to protect aboveground piping from damage by vehicles. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.090. RECOMMENDED PRACTICES.

To meet the requirements of 18 AAC 75.005 -- 18 AAC 75.080, the owner or operator is encouraged to follow applicable recommended practices and operating guidelines, including the following:

(1) American Petroleum Institute (API) Chapter 6,6, Manual of Petroleum Measurement Standards, Metering Assemblies, Pipeline Metering Systems, First Edition, 1981, Reaffirmed August 1987 (ANSI/API MPMS 5.6-1981);

(2) API Publication 1615, Installation of Underground Petroleum Storage Systems, Fourth Edition, Cautionary Statement, March, 1989;

(3) API Publication 2008, Safe Operation of Inland Bulk Plants (1984);

(4) API Publication 2200-83, Repairing Crude Oil, Liquified Natural Gas, and Product Pipelines (1983);

(5) API Recommended Practice 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms;

(6) API Recommended Practice 2A-LFRD, Draft Recommended Practice for Planning, Designing and Construction Fixed Offshore Platforms -- Load and Resistance Factor Design, First Edition, December 15, 1989;

(7) API Recommended Practice 2K, Recommended Practice for Care and Use of Marine Drilling Risers, Second Edition, January 1982;

(8) API Recommended Practice 2Q, Recommended Practice for Design and Operation of Marine Drilling Riser Systems, Second Edition, April 1984;

(9) API Recommended Practice 2R, Recommended Practice for Design, Rating and Testing of Marine Drilling Riser Couplings, First Edition, May 1984;

(10) API Recommended Practice T-2, Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work with Anti-Pollution Safety Devices, Revised Edition, October 1975;

(11) API Recommended Practice T-3, Recommended Practice for Training and Qualification of Personnel in Well Control Equipment and Techniques for Drilling on Offshore Locations, July 1976;

(12) API Recommended Practice T-6, Recommended Practice for Training and Qualification of Personnel in Well Control Equipment and Techniques for Completion and Workover Operations on Offshore Locations, First Edition, October 1986;

(13) API Recommended Practice 6G, Recommended Practice on Through Flowline (TFL) Pump Down Systems, Third Edition, January 1982;

(14) API Recommended Practice 12R1 (RP12R1), Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service, Fourth Edition, 1991;

(15) API Recommended Practice 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Third Edition, January 1, 1990;

(16) API Recommended Practice 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, Fourth Edition, September 1986, Errata November 1986;

(17) API Recommended Practice 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fourth Edition, April 1984;

(18) API Recommended Practice 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Second Edition, 1986;

(19) API Recommended Practice 14H, Recommended Practice for Use of Surface Safety Valves and Underwater Safety Valves Offshore, Second Edition, April 1984 and Supplement 1 to the Second Edition for RP 14H, June 1986;

(20) API Recommended Practice 16E, Recommended Practice for Design of Control Systems for Drilling Well Control Equipment, First Edition, October 1, 1990;

(21) API Recommended Practice 17A-87, Recommended Practice for Design and Operation of Subsea Production Systems, First Edition, September 1, 1987;

(22) API Recommended Practice 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells, Second Edition, May 1984;

(23) API Recommended Practice 521, Guide for Pressure-Relieving and Depressuring Systems, Second Edition, September 1982;

(24) API Recommended Practice 652, Lining of Aboveground Petroleum Storage Tank Bottoms, First Edition, 1991;

(25) API Recommended Practice 750-90, Management of Process Hazards, First Erratum, February 1990;

(26) API Recommended Practice 1102, Recommended Practice for Liquid Petroleum Pipelines Crossing Railroads and Highways, Fifth Edition, November 1981 and Errata;

(27) API Recommended Practice 1110, Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines, Second Edition, December 1981;

(28) API Recommended Practice 1111, Recommended Practice for Design, Construction, Operation and Maintenance of Offshore Hydrocarbon Pipelines, First Edition, 1976;

(29) API Recommended Practice 2003, Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents, Fourth Edition, March 1982;

(30) API Recommended Practice for Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, Second Edition (1987) and Supplement 2, March 1989;

(31) API Specification 5L, Specification for Line Pipe, Thirty-Eighth Edition, May 1, 1990;

(32) API Specification 6A, Specification for Wellhead and Christmas Tree Equipment, Sixteenth Edition, October 1, 1989;

(33) API Specification 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twentieth Edition, 1991;

(34) API Specification 10, Specification for Materials and Testing for Well Cements, Fifth Edition, 1990;

(35) API Specification 12B, Specification for Bolted Tanks for Storage of Production Liquids, Thirteenth Edition, 1990;

(36) API Specification 12D, Specification for Field Welded Tanks for Storage of Product Liquids, Ninth Edition, January 1982, Supplement 1, March 1983, Supplement 2, May 1985;

(37) API Specification 12F, Specification for Shop Welded Tanks for Storage of Production Liquids, Tenth Edition, June 1, 1989;

(38) API Specification 12P, Specification for Fiberglass Reinforced Tanks, First Edition 1986;

(39) API Specification 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Seventh Edition, January 1988 and Supplement, August 1989;

(40) API Standard 510, Pressure Vessel Inspection Code: Maintenance, Inspection, Rating, Repair and Alteration, Sixth Edition, June 1989, Erratum September 1989;

(41) API Standard 526, Flanged Steel Safety Relief-Valves, Third Edition, February 1984;

(42) API Standard 620, Design and Construction of Large Welded, Low-Pressure Storage Tanks, Eighth Edition, June 1990;

(43) API Standard 650, Welded Steel Tanks for Oil Storage, Eighth Edition, November 1988, Revised 1990;

(44) API Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, First Edition, 1991, and Supplement 1, January 1992;

(45) API Standard 1104, Welding of Pipelines and Related Facilities, Seventeenth Edition, September 1988 and Errata, June 1989;

(46) API Standard 2000, Venting Atmospheric and Low Pressure Storage Tanks, Third Edition, Revised 1987;

(47) American Society of Mechanical Engineers (ASME), ASME SPPE 1-88, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Addenda SPPE 1A-1988, Addenda SPPE 1B-1989, Addenda SPPE 1D-1990, Special Notice, October 1990;

(48) ASME Boiler and Pressure Vessel Code, Section VIII, "Pressure Vessels Division 1" (1989);

(49) ASME Boiler and Pressure Vessel Code, Section IX, "Qualification Standard for Welding and Brazing Procedures Welders, Brazers and Welding and Brazing Operators" (1989);

(50) American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME), ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices (1989);

(51) ANSI/ASME Boiler and Pressure Vessel Code, Section Heating Boilers including non-mandatory Appendices A, B, C, D, E, F, H, I, and J and the Guide to Manufacturers Data Report Forms (1989);

(52) ANSI/ASME Boiler and Pressure Vessel Code Section VIII, Pressure Vessel Divisions 1 and 2, including Nonmandatory Appendices (1989);

(53) ANSI B31.1, Pressure Piping Code, Power Piping, and Addenda B31.1a (1989);

(54) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping (1990);

(55) ANSI B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols" (ASME) (1989);

(56) ANSI B36.10M. Welded and Seamless Wrought Steel Pipe (1985);

(57) American Concrete Institute (ACI), ACI Standard 201.2R- 77(82), Guide to Durable Concrete, Sixth Printing (1982);

(58) ACI Standard 222R-89, Corrosion of Metals in Concrete (1989);

(59) ACI Standard 224R-89, Control of Cracking in Concrete Structures (1989);

(60) ACI Standard 318-89/318R-89, Building Code Requirements for Reinforced Concrete and Commentary (1989);

(61) ACI Standard 350R-89, Environmental Engineering Concrete Structures ACI 515R.1R Guide to the Use of Waterproofing, Dampproofing, Protective and Decorative Barrier Systems for Concrete (1989);

(62) ACI Standard 357-R-84, Guide for the Design and Construction of Fixed Offshore Concrete Structures (1989);

(63) ACI Standard 357.1R-85, State-of-the Art Report on Offshore Concrete Structures for the Arctic (1985);

(64) ASTM Specification A333/A333M, "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (1988), Revised A-88;

(65) ASTM Specification A381, "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High Pressure Transmission Systems" (1989);

(66) ASTM Specification A671, "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (1989), Revision A, 1989;

(67) ASTM Specification A672, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High Pressure Service at Moderate Temperatures" (1989), Revision B, 1989;

(68) ASTM Specification A69 1 Rev A, Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion Welded for High Pressure Service at High Temperatures (1989);

(69) Manufacturers Standardization Society of the Valve and Fitting Industry (MSS) MSS SP-75, Specification for High-Test Wrought Welding Fittings (1988);

(70) MMS OCS Order No. 2, Drilling Operations, Section 5, Blowout-Preventer (BOP) Equipment Requirements (1988);

(71) National Association of Corrosion Engineers (NACE), NACE RP0175-75, Control of Internal Corrosion in Steel Pipelines and Piping Systems (1975);

(72) NACE RP 0275-75, Application of Organic Coatings to the External Surface of Steel Pipe for Underground Service;

(73) NACE RP 0276-76, Extruded Asphalt Mastic Type Protective Coatings for Underground Pipelines (1976);

(74) NACE RP 0286-86, The Electrical Isolation of Cathodically Protected Pipelines (1986);

(75) NACE-RP 06-75 Control of External Corrosion on Offshore Steel Pipelines (1988);

(76) NACE RP 01-69 Recommended Practice for Control of External Corrosion on Underground or Submerged Metallic Piping Systems, Revised 1983;

(77) NACE RP 02-85, Control of External Corrosion on Metallic Buried, Partially Buried or Submerged Liquid Storage Systems (1985);

(78) National Association of Pipe Coating Applicators (NAPCA), NAPCA 3-67-87, External Application Procedures of Hot Applied Coal Tar and Asphalt Enamel Coatings to Steel Pipe (Specifications and Plant Coating Guide, 1983);

(79) National Fire Protection Association (NFPA), NFPA 30-90, Flammable and Combustible Liquids Code (1990);

(80) NFPA 77-88, Recommended Practice on Static Electricity (1988);

(81) NFPA 78-89, Lightening Protection Code (1989);

(82) NFPA Chapter 6, Bulk Plants and Terminals (Flammable and Combustible Liquids Code Handbook, Third Edition, 1990;

(83) Petroleum Equipment Institute (PEI) RP-100-90, Recommended Practice for Installation of Underground Liquid Storage Systems (1990);

(84) Steel Structural Painting Council (SSPC), SSPC Chapter 16.1-82, Coatings for Pipelines and Other Underground Structures (Good Painting Practice), Volume 1, Second Edition, 1982;

(85) Steel Tank Institute, STI-P3 Specification System and Manual for External Corrosion Protection of Underground Steel Storage Tanks (1987);

(86) Underwriters Laboratories Standard 58, Steel Underground Tanks for Flammable and Combustible Liquids, Eighth Edition, August 3, 1990;

(87) Underwriters Laboratories Standard 174689, External Corrosion Protection Systems for Underground Storage Tanks, First Edition, November 7, 1990. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

ARTICLE 2. Financial Responsibility for Oil Discharges.

18 AAC 75.205. APPLICATION FOR APPROVAL.

(a) Subject to the exemptions provided under AS 46.04.050 and (d) of this section, an application for approval of proof of financial responsibility under AS 46.04.040, including an application for renewal of approval under 18 AAC 75.225 must be submitted to the department by the following responsible party:

(1) for an oil terminal facility, by the owner or operator of the facility;

(2) for a vessel transporting liquid bulk oil cargo, by

(A) the charterer, if the vessel is chartered by demise
(leased);

(B) the owner of the vessel, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or

(C) in any other case, the person with primary operational control;

(3) for an exploration or production facility, whether mobile or fixed, by the operator or one or more lease holders;

(4) for a pipeline facility, by the operator or one or more lease holders; or

(5) for a group of vessel or facility owners or operators who have agreed to pool their resources to provide proof of financial responsibility for each other, by a designated person in the group.

(b) Applications under this section and renewal applications under 18 AAC 75.225 must be made on a form supplied by the department. The following conditions apply, as appropriate, to an application:

(1) an applicant must furnish the department with the appropriate documents listed in the "financial responsibility application and checklist" supplied by the department;

(2) the completed and signed application must be submitted to the department at least 30 days, but no earlier than 90 days before operations are proposed to begin; the department will, in its discretion, expedite its review of an application if circumstances warrant;

(3) if the applicant is an agency of the United States or the State of Alaska, proof of financial responsibility is not required, but the "financial responsibility application

and checklist" must be submitted to the department in accordance with the time frames established under (2) of this subsection;

(4) an applicant may submit a combined application for more than one vessel or facility;

(5) an approval may not be assigned to another person, nor may it be transferred from one vessel or facility to another; an attempted assignment or transfer of an approval voids the approval; and

(6) all forms of proof of financial responsibility must be in effect before operations begin; an approval will not be given on pending coverage.

(c) Applications submitted under this section and renewal applications submitted under 18 AAC 75.225 must be signed upon oath or affirmation as follows:

(1) in the case of a corporation, by an authorized representative responsible for the overall management of the facility or operation, or that person's designee;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee;

(5) in the case of a combined application, by an appropriate representative of each party to the application; and

(6) in the case of a joint venture, by the operator.

(d) The department will, in its discretion, approve an application for an exemption from the proof of financial responsibility requirements of AS 46.04.040(c) if the owner or operator of a vessel that is conducting, or is available only for conducting, an oil discharge response operation submits to the department

(1) a written explanation requesting the exemption, giving details of the time period during which the exemption is requested for each vessel for the oil discharge response operation; and

(2) a completed "financial responsibility application and checklist" form. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.215. APPLICATIONS SUBMITTED BY FACSIMILE.

The department will, in its discretion, accept an application by facsimile transmission if an unforeseen event prevents submission of the original application within the time frames stated under 18 AAC 75.205(b)(2) or 18 AAC 75.225(b). The completed original of the application must be submitted to the department by registered or certified mail or by courier and must be postmarked or dated by courier within two working days after it was sent by facsimile. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.225. RENEWALS.

(a) Application for renewal of department approval of proof of financial responsibility must be submitted to the department at least 30 days, but no earlier than 90 days, before the current approval of proof of financial responsibility expires.

(b) An application for renewal must include the information required by 18 AAC 75.205(b)(1). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.235. AMOUNT AND EVIDENCE OF FINANCIAL RESPONSIBILITY.

(a) Each vessel or facility must be specifically covered by an approved form of financial responsibility. An applicant under 18 AAC 75.205 or 18 AAC 75.225 must demonstrate financial responsibility to respond in damages for claims covered by AS 46.04.040(i) in the amount required by AS 46.04.040(a) -- (c).

(b) The required amount of financial responsibility does not increase with increasing numbers of vessels or facilities operated by the same applicant. An application covering multiple vessels or facilities must show proof of financial responsibility in an amount equal to the greatest applicable amount prescribed by AS 46.04.040(a) -- (c). The department will, in its discretion, approve the proof of financial responsibility as being applicable to all combined operations if each separate operation is named as being specifically covered by the proof submitted.

(c) The applicant may add an owned, operated, leased, or chartered vessel or facility to its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the additional operation is covered by the current approved proof of financial responsibility.

(d) The applicant may delete an owned, operated, leased, or chartered vessel or facility from its proof of financial responsibility by submitting a letter to the department requesting an amendment to the application and including documents that verify to the department's satisfaction that the vessel or facility is no longer covered by the current approved proof of financial responsibility.

(e) In satisfying proof of financial responsibility requirements for a combined application, a guarantor or insurer is responsible only for the amount applicable to the vessel or facility that discharges oil and not the amount applicable to another vessel or facility listed on the application.

(f) If a vessel or facility subject to AS 46.04.040 discharges oil and the department determines that a claim has been or is likely to be presented as a result of the discharge and that payment of the claim will reduce the owner's or operator's demonstrated financial responsibility below that required by AS 46.04.040(a) -- (c), the department will, in its discretion, require the owner or operator to demonstrate an additional amount of financial responsibility equal to the amount the department determines might be paid as a result of the claim.

(g) If the applicant fails to comply with the requirement imposed under (f) of this section to demonstrate an additional amount of financial responsibility, the department will, in its discretion, provide the owner or operator with 10 days' notice of the department's intent to revoke its approval of the proof of financial responsibility.

(h) An applicant may request a review of the department's decision under (g) of this section to revoke its approval, using the procedures set out at 18 AAC 75.490(c) -- (g). For the purposes of judicial review, the department's decision following a review under this subsection is final. The requirement of (f) of this section is not stayed during the pendency of a review.

(i) Proof of financial responsibility may be demonstrated by one or any combination of the mechanisms listed in AS 46.04.040(e), as approved by the department.

(j) An insurer or surety shall respond to damages covered by AS 46.04.040(i), but only with respect to the stated limit of liability contained in an insurance policy or surety submitted as proof of financial responsibility and approved under this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.240. CERTIFICATE OF PROOF OF FINANCIAL RESPONSIBILITY.

(a) If the department approves a proof of financial responsibility, it will issue a certificate to the applicant stating that the proof of financial responsibility requirements have been met for each vessel or facility identified in the application.

(b) The original certificate, or a copy of the original certificate that is certified by the applicant to be a true copy of the original certificate, must be readily available for inspection

(1) at each covered facility or pipeline; or

(2) on each covered vessel while it is in state waters; the certificate must be shown to the owner or operator of an oil terminal facility before loading or unloading liquid bulk oil cargo.

(c) The effective date and the expiration date, as determined under AS 46.04.040(f), will be clearly marked on the certificate. For certificates that are effective for more than one year when issued, the continuing effectiveness of the form of financial responsibility that was approved by the department must be verified annually by submitting to the department, not more than 90 days and not less than 30 days before the anniversary of the certificate's effective date, the affidavit of a responsible party, as specified under 18 AAC 75.205(a), stating that the form of financial responsibility remains in effect and stating the date on which it will expire.

(d) If the owner or operator to whom the certificate was issued ceases to be the responsible party under 18 AAC 75.205(a), that person shall immediately return the original certificate to the department with written information regarding the new owner or operator's name and address and the date of the change in ownership or operational control so that a new certificate can be issued.

(e) A certificate is void and subject to immediate revocation by the department, without prior notice, if

(1) it contains erasures or is altered in any way, except for erasures, errors, or alterations made by the department in issuing the certificate;

(2) the person to whom the certificate was issued

(A) is no longer the responsible party under 18 AAC 75.205(a) for the facility or vessel identified on the certificate;

(B) fails to furnish acceptable proof of the continuing effectiveness of a form of financial responsibility as required under (c) of this section or in support of an application for renewal; or

(C) permits the cancellation or termination of the form of financial responsibility upon which issuance of the certificate was based.

(f) The department will give a certificate holder 10 days' written notice of the department's intent to revoke a certificate under AS 46.04.040(h). The notice will include an effective date for and an explanation of the revocation.

(g) The applicant may request a review of the department's action or decision issued under (e) or (f) of this section, using the procedures set out at 18 AAC 75.490(c) -- (g). For the purposes of judicial review, the department's decision following a review under this subsection is final. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.245. SELF-INSURANCE.

(a) In order to demonstrate financial responsibility through self-insurance, an applicant shall maintain in the United States, working capital and net worth, each in an amount at least equal to the applicable amount required under AS 46.04.040(a) -- (c), or a lesser amount necessary to supplement other forms of proof which, when combined, are at least equal to the applicable amount required under AS 46.04.040(a) -- (c). In determining working capital or net worth, the department will consider all current contractual requirements to which the applicant is bound. For the purposes of this subsection,

(1) "working capital" means the amount of current assets located in the United States, less all worldwide current liabilities; and

(2) "net worth" means the amount of all assets located in the United States, less all worldwide liabilities;

(b) The proof of financial responsibility required under (a) of this section must be supported by the following, which must be submitted with the application for approval, and which must be later supplemented as described:

(1) annual audited financial statements for consolidated holdings in the United States for the fiscal year ending immediately before each initial or renewal application, certified by an independent certified public accountant;

(2) subsequent quarterly affidavits attesting that the amounts of working capital and net worth are each equal to the applicable amount required by AS 46.04.040(a) -- (c); and

(3) any additional information the department considers necessary.

(c) Instead of the information required under (b) of this section, a self-insuring applicant may provide the department with a copy of the applicant's Form 10K as filed with the United States Securities and Exchange Commission for the fiscal year preceding application or renewal, and each Form 10Q subsequently filed with that commission, subject to the following conditions:

(1) if the applicant's fiscal year ended six months or more before initial application, the applicant's Form 10Q for the first quarter of the current fiscal year must also be submitted with the initial application; and

(2) if the applicant's United States Securities and Exchange Commission forms do not specify what portion of its working capital and net worth are located in the United States, each form must be supplemented by an affidavit from the applicant's chief financial officer or treasurer, or a sworn statement by the certified public accountant who prepared the form, certifying that the working capital and net worth located in the United States are each in an amount equal to the applicable amount required under AS 46.04.040(a) -- (c).

(d) Instead of the affidavit or sworn statement required under (b)(2) and (c)(2) of this section, the applicant may file a quarterly affidavit showing that sufficient liquid assets and cash flow, other than those assets with a high exposure to damage in a

pollution incident, are immediately available to respond to claims in the required self-insured amount without placing the applicant in an insolvent position.

(e) Instead of the information required under (b) and (c) of this section, the applicant may submit annually to the department a copy of its Form No. 6 as filed with the Federal Energy Regulatory Commission for each fiscal year, starting with the fiscal year that ended immediately preceding application.

(f) The affidavits required under (b)(2), (c)(2), and (d) of this section must be signed as follows:

(1) in the case of a corporation, by the treasurer or chief financial officer;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state, federal, or other public facility, by an authorized public official or employee; and

(5) in the case of a combined application, by a representative of each party to the application.

(g) A self-insurer shall notify the department within 10 days after the self-insurer knows, or has reason to believe, that the amount of the self-insurer's working capital or net worth has fallen below the applicable amount required under AS 46.04.040(a) -- (c) or the lesser amount necessary to supplement other forms of proof.

(h) Unless it is earlier replaced by another form of financial responsibility approved by the department, termination or cancellation of self-insurance that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the self-insurer notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The self-insurer remains liable for any discharge occurring before the effective date of termination or cancellation.

(i) The department will, in its discretion, revoke a certificate issued under 18 AAC 75.240 approving self-insurance as proof of financial responsibility if any document required under this section is not submitted on or before the following due date:

(1) a Form 10K is due within three calendar months after the end of the applicant's fiscal year;

(2) a Form 10Q is due 45 days after the quarter ends;

(3) a Form No. 6 is due at the same time it is required to be filed with the Federal Energy Regulatory Commission, but no later than three calendar months after the end of the applicant's fiscal year;

(4) an annual audited financial statement is due within three calendar months after the end of the applicant's fiscal year; and

(5) a quarterly affidavit is due 30 days after the quarter ends.

(j) Upon written request, the department will, in its discretion, grant a reasonable extension of a time limit set in (i) of this section if the request is received at least 15 days before the document is due. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.250. INSURANCE.

(a) An applicant may demonstrate financial responsibility with insurance for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part. The applicant shall provide proof of insurance issued by an insurer who is either authorized to sell insurance in Alaska under a certificate of authority issued by the director of the division

of insurance of the Department of Commerce and Economic Development or who is an unauthorized insurer listed by the division of insurance as meeting the minimum trust or capital and surplus requirements of AS 21.34.040(c). Proof of insurance may be provided by a binder, by a certificate of insurance acceptable in form to the department, or by a copy of the policy. If a binder or certificate of insurance is submitted to meet the requirements of this subsection, a copy of the underlying insurance policy must also be provided to the department within 90 days.

(b) If a policy of insurance, certificate, or binder is submitted, it must include an endorsement with the following, or substantially similar language:

> "Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040(i) or any provision cited in it as a result of an unlawful discharge of oil within or affecting land or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section (Article or Clause) of this policy, subject to any deductible as specifically set out in Section (Article or Clause) of this policy (binder, certificate); (2) the insurer agrees that any final judgment against the insured for damages under AS 46.04.040(i) or any provision cited in it resulting from an unlawful discharge of oil from or by any vessel or facility named in this policy may be enforced or executed in Alaska state courts, directly against the insurer, subject to the limits of coverage in this policy; the insurer will be bound by such a judgment as if the judgment were against the insurer; any person obtaining such a judgment against the insured is expressly made a third-party beneficiary of this provision; and (3) termination or cancellation of this policy, insofar as it serves as proof of the insured's financial responsibility under AS 46.04.040, shall not become effective until 60 days after notice with the exception for nonpayment of premium which will require 30 days notice, in writing has been mailed, prepaid and certified, by the insurer to the insured and to the Alaska Department of Environmental Conservation at its office in Juneau, Alaska; however, this policy shall apply to all claims arising from a discharge occurring during the period covered by the policy and before the effective date of the termination or cancellation."

(c) An applicant may submit a claims made policy if it contains

(1) an extended reporting period of at least six months; and

(2) the endorsement language required by (b) of this section, with the following added to the end of the endorsement: "and made to the insurer during the policy period or the extended reporting period."

(d) A deductible provision in any policy of insurance, binder, or certificate is acceptable if

(1) the applicant demonstrates supplemental coverage for the amount of the deductible by means of other acceptable insurance, surety, guaranty, self-insurance, letter of credit, or other proof of financial responsibility approved by the department; or

(2) the deductible provision provides for a loss reimbursement plan that contains language guaranteeing that the insurer will be responsible for the payment of all claims on a first dollar basis, without waiting for the insured to pay the deductible.

(e) For purposes of this section "claims made policy" means a policy of liability insurance that covers claims arising out of a discharge occurring after a specified

retroactive date but before the end of the policy period and first made to the insurer during the policy period or extended reporting period. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.255. SURETY.

(a) An applicant may demonstrate financial responsibility with a contract of surety, in full or in part, for the applicable amount required under AS 46.04.040(a) -- (c). The applicant shall submit the contract of surety to the department on forms supplied by the department.

(b) The issuer of the contract of surety must

(1) be registered to do business in Alaska;

(2) possess a current certificate of authority to do business in the United States under 31 C.F.R. 223; and

(3) possess an underwriting limitation of risk at least equal to the amount of the bond or in a lesser amount necessary to supplement other forms of proof of financial responsibility.

(c) An applicant may demonstrate financial responsibility by a contract of surety for an amount equal to the deductible of an insurance policy submitted under 18 AAC 75.250 or in combination with another means of proof.

(d) Termination or cancellation of a contract of surety that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the surety notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The surety remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.260. GUARANTY.

(a) An applicant may demonstrate financial responsibility with a contract of guaranty, in full or in part, for the applicable amount required under AS 46.04.040(a) -- (c). The applicant shall submit the contract of guaranty to the department, using a form supplied by the department.

(b) The issuer of the guaranty contract must meet the financial and reporting requirements of 18 AAC 75.245.

(c) Termination or cancellation of a guaranty that serves as proof of financial responsibility under AS 46.04.040 may not become effective until 60 days after the guarantor notifies the department in writing, by certified mail, at its office in Juneau, Alaska. The guarantor remains liable for any discharge occurring before the effective date of termination or cancellation. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.265. LETTERS OF CREDIT.

(a) An applicant may demonstrate financial responsibility with a letter of credit, in favor of the State of Alaska, for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part. The letter of credit

(1) must be irrevocable for a period of not less than one year on the part of the issuer; in addition, the letter must provide that it will be automatically extended for one year unless the department and the applicant are notified in writing at least 90 days before expiration of its stated term that the letter will not be renewed; however, if a vessel is to be used in state waters for less than one year, the letter of credit must cover the period that the vessel is to be used in state waters plus 30 days;

(2) must be irrevocable until satisfaction of a judgment or of a claim against the applicant under AS 46.04.040(i) or the provisions cited in it which results from a discharge occurring during its term, subject to the limit of credit;

(3) must be a standby letter of credit to respond specifically to a claim under AS 46.04.040(i) or the provisions cited in it, subject to the limit of credit;

(4) may not be used as collateral nor be drawn upon by the applicant except to respond to a claim under AS 46.04.040(i) or the provisions cited in it for as long as the letter of credit is used by the applicant as proof of financial responsibility under AS 46.04.040;

(5) must be issued by a financial institution that has authority to issue letters of credit, and that is regulated and examined by state and federal banking agencies; and

(6) must state an effective date and an expiration date, and must be effective on or before the approval date of proof of financial responsibility.

(b) The issuing bank shall pay upon presentation by the State of Alaska of a draft or other document as specified in the letter of credit and may not make determinations of fact or law that might be at issue between the responsible party and the department. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.270. OTHER PROOF OF FINANCIAL RESPONSIBILITY.

(a) An applicant may demonstrate financial responsibility for the applicable amount required under AS 46.04.040(a) -- (c), in full or in part, with a contract of indemnity or with insurance issued by a group of insureds who have agreed to cover the pollution risks of the group's members, if approved by the department.

(b) Subject to AS 46.04.040(e), the department will, in its discretion, approve a Protection and Indemnity (P&I) club or an insurance syndicate contract of indemnification as demonstrating financial responsibility if

(1) a statement of indemnification issued by the P&I club or insurance syndicate contains an endorsement that meets the requirements of 18 AAC 75.250(b);

(2) the P&I club or insurance syndicate has the financial solvency and a favorable history of claim handling to meet the obligations contained in the contract of indemnity; and

(3) the P&I club or insurance syndicate appoints an agent for service of process in the state as required under AS 46.04.040(e).

(c) The department will, in its discretion, approve a P&I club or insurance syndicate that does not agree to be subject to direct court action in Alaska or that does not agree

to appoint an agent for service of process in the state if the requirements of AS 46.04.040(l) are met. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.275. SERVICE OF PROCESS.

An agent designated for service of process under AS 46.04.040(e) must be a resident of the state or a corporation authorized to do business in the state. If no designation is made and filed, or if process cannot be served in Alaska upon the designated agent, process may be served upon the commissioner. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.280. CLASSIFICATION AS AN OIL TERMINAL FACILITY.

(a) If a vessel is to operate as an oil terminal facility as defined at AS 46.04.900, the owner or operator shall submit a written request for classification of the vessel as an oil terminal facility to the department. The request for classification must include the

(1) name of the owner or operator;

(2) vessel name and official number;

(3) oil storage capacity of the vessel;

(4) type of product carried as cargo; and

(5) period of time during which the classification will apply.

(b) Upon receipt of a request under (a) of this section, the department will issue a certificate to the vessel, classifying the vessel as an oil terminal facility for the prescribed period.

(c) If the capacity of the vessel for which classification is requested is more than 10,000 barrels of noncrude oil, the owner or operator must meet the financial responsibility requirements of AS 46.04.040(a) and the oil discharge prevention and contingency plan requirements of AS 46.04.030. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.04.040 AS 46.04.900
AS 46.04.050

18 AAC 75.285. OIL TERMINAL FACILITIES.

(a) An oil terminal facility may not load or transfer a liquid bulk oil product to a vessel if the oil product is declared as liquid bulk cargo, unless the vessel provides proof to the terminal operator that the vessel has a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or has a capacity of less than 10,000 barrels and has a certificate of classification as an oil terminal facility issued under 18 AAC 75.280.

(b) For a vessel that has frequent transactions at an oil terminal facility and is known by the facility operator, the owner or operator of that oil terminal facility may accept verbal confirmation from the vessel's master that the vessel has the required certificate of financial responsibility on board.

(c) If a vessel operator fails or refuses to provide proof of a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290, an exemption under 18 AAC 75.205(d), or a certificate of classification as an oil terminal facility issued under 18 AAC 75.280 as required under (a) of this section, the owner or operator of an oil terminal facility shall notify the department's appropriate regional or district office of that failure or refusal by telephone or facsimile on the first working day. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.040
AS 46.04.070

18 AAC 75.290. ENFORCEMENT.

If a person required to provide proof of financial responsibility under AS 46.04.040 and 18 AAC 75.205 -- 18 AAC 75.290 fails or refuses to do so, the department will, in its discretion,

(1) seek civil assessments and costs under AS 46.03.760 or other appropriate statutes for each separate violation of AS 46.04.040 or of 18 AAC 75.205 -- 18 AAC 75.290;

(2) take action to halt the operation of a vessel or facility that is not in compliance with AS 46.04.040 or 18 AAC 75.205 -- 18 AAC 75.290;

(3) take action to deny entry to a vessel to the navigable waters of the state;

(4) take action to detain a vessel that does not produce, upon the department's request, a current, valid certificate of proof of financial responsibility issued under 18 AAC 75.205 -- 18 AAC 75.290; or

(5) take such other and further action as may be warranted by the circumstances. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.760
AS 46.03.850
AS 46.04.040
AS 46.04.050
AS 46.04.070
AS 46.04.900

ARTICLE 3. Discharge Reporting, Cleanup, and Disposal.

18 AAC 75.300. DISCHARGE NOTIFICATION REQUIRED.

(a) Subject to (b) of this section, a person in charge of a facility or operation shall notify the department of a discharge of any hazardous substance at or from the facility or operation as follows:

(1) as soon as the person has knowledge of

(A) any discharge of a hazardous substance other than oil;

(B) any discharge of oil to water; or

(C) any discharge, including a cumulative discharge, of oil in excess of 55 gallons solely to land outside an impermeable secondary containment area or structure; and

(2) within 48 hours after the person has knowledge of any discharge, including a cumulative discharge, of oil solely to land

(A) in excess of 10 gallons, but 55 gallons or less; or

(B) in excess of 55 gallons, if it is the result of the escape or release of oil from its original storage tank, pipeline, or other immediate container into an impermeable secondary containment area or structure.

(b) A person in charge of a facility or operation shall maintain, and shall provide to the department on a monthly basis, a written record of any discharge, including a cumulative discharge, of oil solely to land from one gallon to 10 gallons.

(c) The information required by (a) and (b) of this section must include, to the extent known, the information required by 18 AAC 75.307(c).

(d) If a person is a person in charge solely by operation of 18 AAC 75.990(47)(C), the requirements of this section are met if notice of the discharge is in fact given by another person in charge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.740 AS 46.09.010
AS 46.03.755

18 AAC 75.307. REPORTS REQUIRED.

(a) After receiving notice of a discharge, the department will, in its discretion, require interim reports until cleanup is completed.

(b) For a discharge covered under 18 AAC 75.300(a), a written final report must be submitted within 15 days after cleanup is completed or, if no cleanup occurs, within 15 days after the discharge. The report must be submitted to the appropriate district or regional office of the department.

(c) Written reports required by this section and written notifications required under 18 AAC 75.300 must contain, as applicable

(1) the date and time of the discharge;

(2) the location of the discharge;

(3) the name of the facility or vessel;

(4) the name, mailing address, and telephone number of

(A) the person or persons causing or responsible for the discharge; and

(B) the owner and the operator of the facility or vessel;

(5) the type and amount of each hazardous substance discharged;

(6) the cause of the discharge;

(7) a description of any environmental damage caused by the discharge or containment, to the extent the damage can be identified;

(8) a description of cleanup actions taken;

(9) the estimated amount of

(A) hazardous substance cleaned up; and

(B) hazardous waste generated;

(10) the date, location, and method of ultimate disposal of the hazardous substance and any contaminated materials;

(11) a description of actions being taken to prevent recurrence of the discharge; and

(12) other information the department requires to fully assess the cause and impact of the discharge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.740 AS 46.09.010
AS 46.03.755

18 AAC 75.317. POSTING OF INFORMATION REQUIRED.

(a) A discharge notification placard provided or approved by the department, which includes telephone numbers of department offices, must be displayed in conspicuous locations on

(1) a tank truck containing more than 500 gallons of a hazardous substance, in addition to that required to operate the vehicle;

(2) a tugboat, tank vessel, oil barge, tow boat, or any other vessel transporting a hazardous substance as cargo in state waters;

(3) a vehicle carrying or towing a hazardous substance other than oil, or more than 500 gallons of oil, as cargo off-road over frozen or unfrozen ground; and

(4) a facility that has a total above-ground or underground storage capacity in excess of 1,000 gallons of a hazardous substance.

(b) A person who wants to post a substitute for a placard provided by the department shall submit the proposed placard for department approval. A placard approved under this subsection must contain the words: "form approved by the Alaska Department of Environmental Conservation." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.755
AS 46.03.740 AS 46.09.010

18 AAC 75.319. DISPOSAL OF HAZARDOUS SUBSTANCES.

Prior department approval is required for the ultimate disposal of a hazardous substance and of soil, cleanup materials, or other substances contaminated with a hazardous substance. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.03.745 AS 46.09.020
AS 46.04.020

18 AAC 75.327. CLEANUP.

(a) Immediately upon becoming aware of a discharge of a hazardous substance to land or waters of the state, any person responsible for that discharge shall contain, clean up, and dispose of the material collected, using methods for which approval has been given by the department. The discharge must be cleaned up to the department's satisfaction.

(b) Upon request, the department, in consultation with federal officials, as appropriate, will waive the requirements of (a) of this section if the department determines that it is technically not feasible to contain or clean up the discharge or that the containment or cleanup effort would result in greater environmental damage than the discharge itself. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.020
AS 46.03.740 AS 46.04.070
AS 46.03.745 AS 46.09.020

18 AAC 75.337. ADEQUACY OF CLEANUP.

(a) Subject to the provisions of AS 46.04.020 and AS 46.09.020, if the department finds that cleanup efforts are inadequate, the department will, in its discretion,

(1) order the person engaged in cleanup operations to use additional measures or to cease cleanup activities;

(2) authorize other agents to begin cleanup activities; or

(3) adopt a combination of these actions.

(b) Cleanup efforts will be considered inadequate if

(1) containment equipment is not deployed and used to intercept and concentrate the discharge in its pattern of movement, unless environmental conditions exceed the operational limitations of the equipment;

(2) exclusion equipment is not deployed and used to protect sensitive environmental zones, unless environmental conditions exceed the limitations of the equipment;

(3) the area affected by the discharge is increasing at an avoidable rate despite containment and removal activities, unless environmental conditions exceed the limitations of the equipment, or unless immediate containment would pose greater environmental risks than to allow the discharge to temporarily spread;

(4) the containment and exclusion equipment being used is not functioning effectively, because of existing weather or oceanographic conditions, and other containment and exclusion equipment is reasonably available which can function effectively in existing weather and oceanographic conditions;

(5) containment, exclusion, and lightering equipment is not deployed and operational in accordance with the procedures specified in an applicable oil discharge prevention and contingency plan;

(6) major items of cleanup equipment, including booms, skimmers, lightering pumps, sorbent, and storage containers, are not operational, or are not operating adequately; or

(7) available personnel, equipment, sorbent, or supplies are inappropriate or are being unused or mismanaged, or additional personnel, equipment, sorbent, or supplies are required, but not being provided. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.020
AS 46.03.740 AS 46.04.070
AS 46.03.745 AS 46.09.020

18 AAC 75.347. INTERFERENCE WITH CLEANUP PROHIBITED.

No person may interfere with, hinder, or obstruct oil or hazardous substance discharge cleanup operations conducted under this chapter. This prohibition does not apply to the U.S. Coast Guard or to the U.S. Environmental Protection Agency. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.020
AS 46.09.020

18 AAC 75.357. LOCAL CONTROL.

Subject to the provisions of AS 29.35.020, AS 46.04.110, and AS 46.09.060, nothing in this chapter preempts local control as stringent as, or more stringent than the requirements of 18 AAC 75.300 -- 18 AAC 75.347, consistent with a regional master plan prepared by the department under AS 46.04.210. (Eff. 5/14/92, Register 122)

Authority: AS 29.35.020 AS 46.04.210
AS 46.03.020 AS 46.09.060
AS 46.04.110

18 AAC 75.370. USE IMMUNITY.

In any criminal action for the discharge, information given under 18 AAC 75.300 -- 18 AAC 75.307, or information directly obtained through the exploitation of a notification

or report regarding the discharge will not be used against any natural person who provides the notification or report. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.755

ARTICLE 4. Oil Discharge Prevention and Contingency Plans.

18 AAC 75.400. APPLICABILITY.

(a) A person who is subject to AS 46.04.030 must file an application for approval of an oil discharge prevention and contingency plan as required under 18 AAC 75.400 -- 18 AAC 75.420 and meet the applicable requirements of 18 AAC 75.425 -- 18 AAC 75.495. The application must be made

(1) for an oil terminal facility, by the owner or operator of the facility;

(2) for a tank vessel, oil barge, or any other vessel transporting liquid bulk oil cargo, by

(A) the charterer, if the vessel or barge is chartered by demise (leased);

(B) the operator of the vessel, as defined at AS 46.04.900;

(C) the owner of the vessel or barge, if the agents or employees of the owner retain control and responsibility for the operation of the vessel or barge; or

(D) in any other case, the person with primary operational control;

(3) for an exploration or production facility, whether mobile or fixed, by the lease holder or the operator; or

(4) for a pipeline, by the lease holder or the operator.

(b) The department will, in its discretion, exempt from the requirements of AS 46.04.030(c), a vessel that is conducting, or is available only for conducting, an oil discharge response operation. A person seeking an exemption under this subsection must apply on a form supplied by the department. The department will approve or deny the request for exemption within 10 days after it receives an application. In an emergency response to an actual discharge, a person seeking an exemption may make a verbal request, and the department will, in its discretion, issue a verbal approval. The department will confirm a verbal approval in writing, stating the period during which the approval is valid.

(c) The owner or operator of an oil terminal facility that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495 may apply for an exemption to those requirements upon proof to the department that the effective storage capacity of the facility has been reduced below the amounts set out in AS 46.04.050. For purposes of reducing effective storage capacity, tanks and associated piping must be emptied and rendered unusable to the department's satisfaction. Tanks taken out of service must be clearly posted with a placard prohibiting refilling of the tank without department approval. Before reactivation of a tank that has been disabled for the purposes of an exemption under this subsection, the owner or operator must notify the department and, if necessary, must file a new application for approval of an oil discharge prevention and contingency plan. The department will conduct inspections as necessary to ensure compliance with this subsection. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

18 AAC 75.405. PRE-APPLICATION NOTIFICATION AND CONSULTATION.

(a) At least 60 days before submitting an application for approval of a new oil discharge prevention and contingency plan under 18 AAC 75.410 or for renewal of approval under 18 AAC 75.420, the applicant must notify the appropriate regional office of the department of its intent to submit. The department will determine the number of copies of the plan that the applicant will be required to submit to the department.

(b) The applicant may consult with the department to ensure that the application meets the requirements of 18 AAC 75.410 and to discuss the contents of the proposed plans. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.050
AS 46.04.030 AS 46.04.070

18 AAC 75.410. APPLICATION FOR APPROVAL.

(a) An application for approval must be delivered to the department's regional office in the primary region of operation for which the plan was prepared. The application for approval must include a completed application for approval, on a form supplied by the department and the number of copies of the plan determined under 18 AAC 75.405(a). The department will, in its discretion, require the submission to it of additional copies of the plan and will notify the applicant of the need for additional copies within 10 days after the plan is submitted to it. In addition, the applicant is responsible for providing copies of the plan, upon request, to resource agencies, coastal districts, regional citizens' advisory councils, and other persons as directed by the department under 18 AAC 75.455.

(b) The application for approval must include

(1) the applicant's name, address, and telephone number;

(2) the name, location, and type of facility or operation covered by the plan;

(3) for a vessel, the vessel's name, official number, country of registry, the name and address of the owner, and the name and address of the operator;

(4) the scheduled date for the operations covered by the plan to begin; and

(5) any other information required on the application form that is applicable to the facility or operation.

(c) The department will review an application submitted under this section using the procedures set out at 18 AAC 75.455 and will issue its decision under 18 AAC 75.460. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.412. TRANSITIONAL PROVISIONS FOR REVIEW OF PLANS APPROVED BEFORE MAY 14, 1992.

(a) In order to comply with the requirements of 18 AAC 75.400 -- 18 AAC 75.495, an owner or operator of a facility or vessel operating under an oil discharge prevention and contingency plan approved by the department before May 14, 1992 must amend that plan, as necessary; and submit it, along with an application for approval on a form supplied by the department, to the appropriate regional office on or before August 12, 1992.

(b) If an owner or operator submits an application for approval of an amended plan in accordance with (a) of this section and agrees immediately to begin operating the

facility or vessel or conducting a spill response under those provisions of the amended plan that would result in increased spill prevention or spill response capability, a plan that was approved before May 14, 1992 will continue to be considered approved for the purposes of AS 46.04.030 pending the department's review of and decision on the application and amended plan, unless the department determines otherwise with respect to a particular plan.

(c) If approval for a plan that was approved before May 14, 1992 will expire before the department's decision on the application and amended plan will be issued, the applicant may request an extension of the plan's expiration date. The department will, in its discretion, grant an extension of a plan's expiration date upon the applicant's agreement to operate the facility or vessel under the provisions of the amended plan submitted for approval under (a) of this section that would result in increased spill prevention or spill response capability.

(d) The department will use the procedures set out at 18 AAC 75.455 to review an application for approval of an amended plan under (a) of this section. However, notwithstanding any provision of 18 AAC 75.455(a) to the contrary, the timing by a regional office of the determination of whether an application and amended plan are sufficient for public review will be scheduled, based upon the relative priority of review of a particular plan as compared to the priorities assigned to all amended plans submitted to that regional office.

(e) The department's decision on an application for approval of an amended plan submitted under (a) of this section will be made under 18 AAC 75.460. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.415. APPLICATION FOR AMENDMENT.

(a) Subject to (b) of this section, before a change to an oil discharge prevention and contingency plan that has been approved under 18 AAC 75.400 -- 18 AAC 75.495 may take effect, the plan holder must obtain approval from the department for an amendment to the plan. An application for approval of an amendment must be submitted to the appropriate regional office on a form supplied by the department, accompanied by the number of amended plans or plan amendments determined under 18 AAC 75.405(a). The department will use the procedures set out at 18 AAC 75.455 to review a plan amendment, unless it is a routine plan update under (b) of this section; adds a vessel under (c) of this section, or otherwise that does not diminish the plan holder's ability to respond to an oil discharge.

(b) A routine plan update must be submitted to the department and to the applicable resource agencies within five days after the date of the proposed change. Routine plan updates include

(1) deletions to the list of vessels operating under the approved plan;

(2) revisions to the list of names, addresses, or telephone numbers of spill command and response personnel; and

(3) revisions to training procedures or course work requirements that do not reduce the amount or quality of training required by this chapter.

(c) An application for approval of a plan amendment to allow the addition of a vessel to operate under an approved plan must include the information required by 18 AAC 75.425(e)(1)(H) and 18 AAC 75.425(e)(3)(A)(iii), (iv), (v), (vii), and (viii). Plan

amendments for the addition of vessels must be submitted at least five days before operation in state waters. The department will review the application and issue a written decision within five days after receiving a proposed plan amendment under this subsection if the department determines that the addition of vessels will not diminish the plan holder's ability to respond to an oil discharge. A plan amendment under this subsection that might diminish the plan holder's ability to respond to an oil discharge will be reviewed under 18 AAC 75.455.

(d) If the department determines that a proposed plan amendment submitted under (b) of this section will diminish the plan holder's ability to respond to an oil discharge, the department will notify the plan holder within 10 days after receipt of the amendment that it will be reviewed under 18 AAC 75.455. If the department determines that a proposed plan amendment will not diminish the plan holder's ability to respond to an oil discharge, the department will review the plan amendment and issue a written decision within 30 days after receiving it.

(e) The plan holder shall notify and, upon request, send a copy of any proposed plan amendment or update submitted under this section to the Department of Fish and Game, the Department of Natural Resources, affected coastal districts and regional citizens advisory councils, and other persons as directed by the department. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.420. APPLICATION FOR RENEWAL.

(a) A plan holder must apply to the appropriate regional office for renewal of the department's plan approval, using a form supplied by the department, sufficiently in advance of expiration of the plan to permit department review before the plan approval expires.

(b) A change in ownership of a facility or operation requires an application for renewal of the department's approval of the plan.

(c) If no change will be made in the plan when it is renewed, a copy of the original plan need not accompany the application and may be incorporated by reference on the renewal application form. In all other cases, the number of amended plans or plan amendments determined under 18 AAC 75.405(a) must accompany the application for renewal.

(d) If the department determines that the change in ownership of a facility or operation will not diminish the plan holder's ability to respond to an oil discharge, the department will review and issue a written decision within 30 days after receiving an application for renewal.

(e) Except as provided in (d) of this section, an application for renewal will be reviewed under the provisions of 18 AAC 75.455. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN CONTENTS.

(a) An oil discharge prevention and contingency plan submitted for approval under 18 AAC 75.400 -- 18 AAC 75.495 must be in a form that is usable as a working plan for oil discharge prevention, control, containment, cleanup, and disposal. A plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495.

(b) The plan for a facility comprised of multiple operations as described at 18 AAC 75.442 must describe, for each category of operation at the facility, the appropriate response measures to meet the applicable portion of the response planning standard.

(c) The submitted plan must be accompanied by a cover page or promulgation letter that includes

(1) the name of the plan holder, and the covered vessel, barge, facility, or operation, followed by the words "Oil Discharge Prevention and Contingency Plan";

(2) the date of the plan; and

(3) a statement, signed by a person with appropriate authority, committing the resources necessary to implement the plan.

(d) The plan must

(1) include the official plan title;

(2) consist of three parts and contain the information described in (e)(1) -- (3) of this section;

(3) contain a complete table of contents and lists of any tables or figures, with corresponding page numbers; and

(4) be presented in the order shown in (e) of this section, or include a cross-reference table that directs the reader to the appropriate information.

(e) The information in the plan must include

(1) part 1 -- response action plan: The response action plan must provide, in sufficient detail to clearly guide responders in an emergency event, all information necessary to guide response to a discharge of any size, up to and including a discharge that is equal to the applicable response planning standard set out at 18 AAC 75.430 -- 18 AAC 75.442. The response action plan must include the following information:

(A) emergency action checklist -- a short checklist of the immediate response and notification steps to be taken if an oil discharge occurs; it is recommended that this summary be duplicated on a wallet-size card, to be carried by the appropriate response personnel while on duty;

(B) reporting and notification -- a description of the immediate spill reporting actions to be taken at any hour of the day, including

(i) the title and telephone number of facility personnel responsible for making the notification; and

(ii) the telephone number of each appropriate government agency to be notified if a discharge occurs;

(C) safety -- based on applicable safety standards, a description of the steps necessary to develop an incident-specific safety plan for conducting a response;

(D) communications -- a description of field communications procedures, including, if applicable, assigned radio channels or frequencies and their intended use by response personnel;

(E) deployment strategies -- a description of proposed initial response actions that may be taken, including

(i) procedures for the transport of equipment, personnel, and other resources to the spill site, including plans for alternative methods in adverse weather conditions; and

(ii) if the operator is not the primary spill responder, procedures to notify and mobilize the response action contractor or other responder identified in the plan, including a description of the interim actions that the operator will perform until the responder identified in the plan initiates a full response to the discharge;

(F) response strategies -- a description of the discharge containment, control, and cleanup actions to be taken, which clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response; this information must be presented in the form of a response scenario to a discharge of the applicable response planning standard volume and must be usable as a general guide for a discharge of any size; response strategies must include

(i) procedures to stop the discharge at its source and prevent its further spread;

(ii) a description of methods to prevent or control a potential fire hazard;

(iii) for an exploration or production facility, a plan and time frame for drilling a relief well or otherwise controlling an exploration or production well blowout;

(iv) procedures and methods for real-time surveillance and tracking of the discharged oil on open water and forecasting of its expected points of shoreline contact; (v) for a stationary facility or operation, and, if requested by the department, for a vessel, procedures and methods to exclude oil from environmentally sensitive areas and areas of public concern identified under (3)(J) of this subsection, including, for a land-based facility, protection of groundwater and public water supplies;

(vi) a description of the actions to be taken to contain and control the spilled oil, including, as applicable, boom deployment strategies, construction of temporary berms, and other methods;

(vii) a description of the actions to be taken to recover the contained or controlled oil using mechanical methods, including plans and provisions for skimming, absorbing, or otherwise recovering the contained or controlled product from water or land;

(viii) procedures for lightering, transfer, and storage of oil from damaged tanks or from undamaged tanks that might be at risk of discharging additional oil;

(ix) procedures and plans for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil;

(x) plans, procedures, and locations for temporary storage and ultimate disposal of oil contaminated materials, oily wastes, and sanitary and solid wastes, including plans for obtaining any required permits or authorizations for temporary storage or ultimate disposal;

(xi) plans for the protection, recovery, disposal, rehabilitation, and release of potentially affected wildlife, including: minimizing wildlife contamination through hazing or other means, when appropriate; the recovery of oiled carcasses to preclude secondary contamination of scavengers; and the capture, cleaning, rehabilitation, and release of oiled wildlife, when appropriate; and

(xii) if applicable, plans for the deployment of shoreline cleanup equipment and personnel, including cleanup and restoration methods and techniques to be used if the shoreline is impacted by the discharge;

(G) nonmechanical response options -- if applicable, a description of actions to be taken to obtain the necessary permits and approvals to initiate dispersant application, in situ burning, or other nonmechanical response methods, the basis for determining the conditions or circumstances under which these options will be used, and how the nonmechanical response techniques will be implemented, including a description of all required equipment and personnel; and

(H) facility or vessel diagram -- a plan diagram of the facility, vessel, or operation for reference in conducting emergency response operations, with locations of response equipment and other features pertinent to the response plan clearly marked, including surrounding topography, roads, air transportation and other transportation access, location and bathymetry of adjacent water bodies, mooring areas, oil transfer locations, pipelines, control stations, drip pans and drainage of drip pans, and a representation of the distance and gradients to surface water for an operation located on land, by topographic map, aerial photographs, or other means;

(2) part 2 -- prevention plan -- Under the provisions of 18 AAC 75.005 -- 18 AAC 75.090, the prevention plan must include a detailed description of all oil discharge prevention measures and policies employed at the facility, vessel, or operation, with reference to the risks involved. The prevention plan may be submitted as a separate volume; and must include, at a minimum, the following information:

(A) a description and schedule of regular pollution prevention, inspection, and maintenance programs in place at the facility or operation;

(B) a history of all known discharges greater than 55 gallons that have occurred at the facility, with an analysis of the relationship, if any, between their frequency, cause, and size, and a description of actions to be taken to prevent or mitigate similar discharges in the future;

(C) an analysis of potential oil discharges, including size, frequency, cause, duration, and location, and a description of actions taken to prevent a potential discharge;

(D) a description of any conditions specific to the facility or operation that might increase the risk of a discharge, including physical or navigation hazards, traffic patterns, or other site-specific factors, and any measures that have been taken to reduce the risk of a discharge attributable to these conditions;

(E) a description of the existing and proposed means of discharge detection, including surveillance schedules, leak detection, observation wells, monitoring systems, and spill-detection instrumentation; if electronic or mechanical instrumentation is employed, detailed specifications, including threshold detection, sensitivities, and limitations of equipment must be provided;

(F) a detailed basis for the calculation of exceptions, if any, to be applied to the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.438; and

(G) for an operation in existence or substantially completed before the effective date of this section, a compliance schedule as described at 18 AAC 75.015; and

(3) part 3--- supplemental information: The supplemental information section must provide background and verification information, including

(A) facility description and operational overview -- a general description of the oil storage, transfer, exploration, or production activities of the operation, including

(i) the number, type, and oil storage capacity of each container covered under the plan and its installation date, design, construction, and general condition;

(ii) the type and amount of oil stored in each container;

(iii) for vessels, a general chart showing routes normally used for the transportation of oil products within state waters, and the frequency of use for each route;

(iv) for vessels, plans or diagrams that identify cargo, bunker, and ballast tanks, all tank capacities, cargo piping, ballast piping, winches, emergency towing equipment, power plants, manifold pipe size, containment structures and equipment, and a description of the method of containing a discharge from fuel oil tank vent overflow and fill pipes;

(v) a description of the normal procedures for the loading or transfer of oil from or to a pipeline, facility, tank vessel, oil barge, or storage tank;

(vi) for a production facility, a description of the flow and gathering lines and processing facilities;

(vii) for vessels, a description of the methods for retention and disposal of oily wastes and bilge slops; and

(viii) any other information required by the department to evaluate the response capability of a vessel, including an approved loading manual that meets the requirements of 46 C.F.R. 45.105, amended through October 1, 1990;

(B) receiving environment -- for a land-based facility or operation:

(i) the potential routes of travel of oil discharged from the facility or operation to open water in the form of a drainage diagram or map, showing gradients and potential containment sites and features, including identification and explanation of all measures that will be taken to prevent a discharge from entering open water; and

(ii) based on the information in

(i) of this subparagraph, an estimate of what percentage of the applicable response planning standard volume set out at 18 AAC 75.430 -- 18 AAC 75.436, or 18 AAC 75.442 for the facility or operation will reach open water;

(C) command system -- a description of the command system to be used in response to a discharge, including the title, address, telephone number, and affiliation by company, agency, or local government of each person, including a person identified in (1)(B) of this subsection, who by law or through employment, contract, or cooperative agreement, is responsible for responding to a discharge, and each person's functional role in the command system; this list must include command, fiscal, operations, planning, and logistics lead personnel; the command system must be compatible with the state's response structure outlined in the state master plan prepared under AS 46.04.200;

(D) realistic maximum response operating limitations -- a description of the realistic maximum response operating limitations that might be encountered at the facility or operation and based on environmental and safety considerations, an analysis of the frequency and duration, expressed as a percentage of time, of limitations that would render mechanical and other response methods ineffective; the realistic maximum operating limitations for a response must be defined, with a description of any measures that will be taken to compensate for those periods when environmental conditions exceed this maximum; environmental conditions to be considered in this analysis must include

(i) weather, including wind, visibility, precipitation and temperature;

(ii) sea states, tides, and currents;

(iii) ice and debris presence;

(iv) hours of daylight; and

(v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;

(E) logistical support -- identification of aircraft, vessels, and other means that may be used to transport equipment and personnel during a discharge response, including information on ownership and availability of identified means of transportation;

(F) response equipment -- a complete list of contracted or other oil discharge containment, control, cleanup, storage, transfer, lightering, and related response equipment, including

(i) the location, inventory, and ownership of the equipment;

(ii) the time frame for delivery and startup of response equipment and trained personnel located outside the facility's primary region of operation;

(iii) the manufacturer's rated capacities, limitations, and operational characteristics for each item of oil recovery equipment, including any nonmechanical response techniques;

(iv) each vessel designated for oil recovery operations, including skimming vessels and platforms and vessels designated to tow and deploy boom;

(v) information on additional vessels available from other sources for oil recovery operations, including, if applicable, procedures for inventorying, training personnel, and equipping vessels;

(vi) pumping, transfer and temporary storage, and lightering equipment for transferring oil from damaged or undamaged tanks; and

(vii) the procedures for storage, maintenance, and inspection of spill response equipment under the immediate control of the operator when not in use, including procedures for periodic testing and maintenance of response equipment;

(G) nonmechanical response information -- if a nonmechanical technique such as dispersant use or in situ burning is proposed as a response option, the plan must include

(i) a description of the specific mechanisms in place to assess the environmental consequences of the nonmechanical response option and to provide continuous monitoring of its environmental effects;

(ii) a complete inventory of nonmechanical response equipment and supplies, including the type and toxicity of each dispersant, with procedures for storage, maintenance, and deployment;

(iii) identification of all necessary approvals, and a completed application for department approval for open burning if in situ burning is a proposed response technique;

(iv) identification of all permits, approvals, or authorizations for use of nonmechanical response techniques and the timeline for obtaining them; and

(v) a plan for protecting environmentally sensitive areas, areas of public concern, and the public from any adverse effects of the nonmechanical response action;

(H) oil spill primary response action contractor information -- if a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.400 -- 18 AAC 75.495, the contractor must be registered under 18 AAC 75.500 -- 18 AAC 75.570; the plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, the response contractor information described in 18 AAC 75.445(i), and a description of the response equipment and services provided; the use of an oil spill primary response action contractor does not relieve the plan holder of its responsibility to provide the information required by this subsection and to meet all other applicable requirements of 18 AAC 75.400 -- 18 AAC 75.495;

(I) training -- a detailed description of the training programs for discharge response personnel;

(J) protection of environmentally sensitive areas and areas of public concern -- for a stationary facility or operation, and, if required by the department, for a vessel, mapped predictions of discharge movement, spreading, and probable points of contact, based on expected local, seasonal, meteorologic, and oceanographic or topographic conditions; and, for each probable point of contact, a description of each environmentally sensitive area and each area of public concern, including

(i) the effect of seasonal conditions on the sensitivity of each area;

(ii) a discussion of the toxicity effects and persistence of the discharge, based on type of product; and

(iii) an identification of which areas will be given priority attention if a discharge occurs;

(K) additional information -- other information necessary to provide background for or verification of the plan contents; and

(L) bibliography -- a list of data and information sources used to determine the information contained in the plan. (Eff. 5/14/92, Register 122; am 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.430. RESPONSE PLANNING STANDARDS.

(a) Notwithstanding the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.442, the plan must demonstrate the general procedures to clean up a discharge of any size, including the greatest possible discharge that could occur, subject to the provisions of AS 46.04.020 and AS 46.09.020.

(b) Except for the requirements of 18 AAC 75.438(b)(1) and (2) and 18 AAC 75.440, the department will, in its discretion, consider and provide modifications to the response planning standards set out in 18 AAC 75.430 -- 18 AAC 75.442 for a prevention measure that is in addition to those listed in 18 AAC 75.432 -- 18 AAC 75.438, if the plan holder demonstrates to the department's satisfaction that the proposed measure reduces the potential size or risk of a discharge.

(c) If more than one prevention measure is used to modify the response planning standard, each subsequent reduction will be applied separately to the response planning standard value that results from application of the previous modification. However, in no case will the department reduce the response planning standard below an amount equal to

(1) 15 percent of the response planning standard applicable to a crude or noncrude oil terminal facility, an exploration or production facility, or a crude oil pipeline as determined under 18 AAC 75.432(b) or (c), 18 AAC 75.434(b), or 18 AAC 75.486(b), respectively, or

(2) 30 percent of the response planning standard for a crude oil tank vessel or barge as determined by 18 AAC 75.438(c).

(d) The department will, in its discretion, revoke or reduce a prevention credit set out in 18 AAC 75.432 -- 18 AAC 75.438 if the department finds that the plan holder has failed to execute or has not effectively implemented the prevention measure used to determine that credit.

(e) Liquefied petroleum gas is exempt from the requirements of 18 AAC 75.430 -- 18 AAC 75.442. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.432. RESPONSE PLANNING STANDARDS FOR OIL TERMINAL FACILITIES.

(a) For a crude or noncrude oil terminal facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a crude or noncrude oil terminal facility is equal to the capacity of the largest oil storage tank at the facility covered by the plan, unless there are specific natural or manmade conditions outside the facility which could place the facility at an increased risk of an oil discharge affecting one or more storage tanks.

(c). For an increased risk described in (b) of this section, the response planning standard volume is equal to the capacity of all of the potentially affected oil storage tanks at the facility. The plan must set out the basis for selecting the storage tanks and the volume of oil planned for in the response.

(d) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems for tanks and piping: 5 percent;

(4) a sufficiently impermeable secondary containment area with a dike capable of holding the contents of the largest tank, or all potentially affected tanks in the case of increased risk, and precipitation: 60 percent;

(5) for secondary containment as described in (4) of this subsection, designed with the following enhancements, an additional allowance for

(A) cathodic protection: 10 percent;

(B) fail-safe valve piping systems: 15 percent; or

(C) impervious containment area extending under the full area of each storage tank or double bottoms with leak detection: 25 percent; and

(6) containment outside the secondary containment area: 10 percent. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.434. RESPONSE PLANNING STANDARDS FOR EXPLORATION OR PRODUCTION FACILITIES.

(a) For an exploration or production facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for an exploration or production facility is 16,500 barrels, plus an additional 5,500 barrels for each day beyond 72 hours

necessary to stop the discharge, unless the plan demonstrates, based on adequate well data, analyses, and supporting documentation, that a higher or lower discharge rate is appropriate.

(c) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems: 5 percent;

(4) measurement of on-line bottom hole pressure while drilling, with computer-aided circulation control of drilling fluids, using a professional organization standard or recommended practice: 5 percent;

(5) a computer-aided management system of inspection, maintenance, and repair such as Bureau Veritas "IRM-Expert": 5 percent;

(6) a formal safety analysis, using reliability-management methods such as the United Kingdom's Formal Safety Assessment or Norway's Concept Safety Evaluation: 5 percent; and

(7) emergency pipeline-shutdown valves with remote, local, and fail-safe operation, capable of closing against full differential pipeline pressure and not used for any purpose other than emergency shutdown: 5 percent. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.436. RESPONSE PLANNING STANDARDS FOR CRUDE OIL PIPELINES.

(a) For a crude oil pipeline facility, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a crude oil pipeline facility is the amount of oil which equals the length of the pipeline between pumping or receiving stations or valves (L_{pl}), minus the hydraulic characteristics of the pipeline due to terrain profile (H_{pl}), times the capacity of the pipeline in barrels per lineal measure (C_{pl}), plus the flow rate of the pipeline in barrels per time period (FR_{pl}), multiplied by the estimated time to detect a spill event (TD_{pl}), plus the time to shut down the pipeline pump or system (TSD_{pl}). Written as a formula, the response planning standard is $(L_{pl} - H_{pl}) \bullet C_{pl} + FR_{pl} \bullet (TD_{pl} + TSD_{pl})$.

(c) The department will, in its discretion, reduce the requirements of (b) of this section, by a percentage up to that shown, for each of the following prevention measures in place at the facility:

(1) alcohol and drug testing of key personnel: 5 percent;

(2) an operations training program with a professional organization or federal certification or licensing of program participants: 5 percent;

(3) on-line leak detection systems: 5 percent;

(4) corrosion control using

(A) ultrasonic thickness meters: 15 percent;

(B) instrumented in-line cleaning and diagnostic equipment ("smart pigs"): 15 percent; or

(C) a method described in (A) or (B) of this paragraph, coupled with cathodic-profile inspection at least triennially: 30 percent; and

(5) underwater pipeline cathodic- and burial-profile inspection: 5 percent.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.438. RESPONSE PLANNING STANDARDS FOR CRUDE OIL TANK VESSELS AND BARGES.

(a) For a crude oil tank vessel or barge, the plan holder shall maintain or have available under contract within its region of operation, sufficient discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control and clean up within 72 hours that portion of the response planning standard volume set out in (b) of this section that enters open water; and

(2) contain or control within 72 hours, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume set out in (b) of this section that enters a receiving environment other than open water.

(b) For purposes of the requirements of (a) of this section, the response planning standard volume for a crude oil tank vessel or barge is

(1) 50,000 barrels, if the tank vessel or barge has a cargo volume of less than 500,000 barrels; and

(2) 300,000 barrels, if the tank vessel or barge has a cargo volume of 500,000 barrels or more.

(c) In addition to the requirements of (a) of this section, for all crude oil tank vessels and barges, the plan holder shall plan to have deployed and operating within 72 hours, from within or outside its region of operation, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to contain and control, and clean up at least 60 percent of the total cargo capacity of the tank vessel or barge.

(d) The department will, in its discretion, reduce the requirements of (c) of this section, by a percentage up to that shown, for each of the following prevention measures in place for the vessel or barge:

(1) hydrostatic loading: 20 percent;

(2) double hulls and bottoms: 30 percent;

(3) double bottoms: 25 percent; and

(4) emergency-response vessels and procedures described as follows:

(A) vessel escort during entire vessel transit in port area;

(B) escort vessels capable of

(i) providing steering and propulsion assistance with the ability to attach towing cables in a timely fashion under the weather conditions of transit; and

(ii) exerting sufficient force to change or maintain the escorted vessel's course;

(C) limits on the escorted vessel's speed in order to match escort vessel's ability to render assistance; and

(D) escort vessels have on-board oil discharge response equipment: 11 percent.

(e) A crude oil tank vessel or barge that has been exempted under 18 AAC 75.400(b) is exempt from the requirements of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.440. RESPONSE PLANNING STANDARDS FOR NONCRUDE OIL TANK VESSELS AND BARGES.

(a) For a noncrude oil tank vessel or barge, the plan holder shall maintain or have available under contract within the plan holder's region of operation or another approved location, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and other resources to

(1) contain or control within 48 hours, and to clean up within the shortest possible time, that portion of the response planning standard volume that enters open water; and

(2) contain or control, and clean up within the shortest possible time consistent with minimizing damage to the environment, that portion of the response planning standard volume that enters a receiving environment other than open water.

(b) The response planning standard volume for a noncrude oil tank vessel or barge is equal to 15 percent of the total cargo capacity of the oil tank vessel or barge. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.442. RESPONSE PLANNING STANDARDS FOR MULTIPLE OPERATIONS.

For a facility having more than one category of operation that requires an approved oil discharge prevention and contingency plan, the plan holder must plan to respond to a discharge of the applicable response planning standard volume for each separate category of operation at the facility as established under 18 AAC 75.430 -- 18 AAC 75.440. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.445. APPROVAL CRITERIA.

(a) The department will use the criteria set out in this section to review an oil discharge prevention and contingency plan submitted under 18 AAC 75.425.

(b) General Response Procedures. The plan must identify the maximum possible discharge that could occur at the facility or operation, and the general procedures to be followed in responding to a discharge of that magnitude, including the identification of resources in addition to those maintained by the plan holder or available under contract to meet the applicable response planning standard for that facility or operation.

(c) Deployment Strategies. The plan must demonstrate that the identified personnel and equipment are sufficient to meet the applicable response planning standard and can be deployed and operating within the time specified under 18 AAC 75.430 -- 18 AAC 75.442. The plan must state what conditions were assumed and must take into account the realistic maximum operating conditions and their effects on response capability and the deployment of resources. Plans using contractual resources must demonstrate that the transition and substitution of equipment and resources will occur without interruption of response or cleanup.

(d) Response Strategies. The response strategies must take into account the type of product discharged and must demonstrate that

(1) procedures are in place to stop the discharge at its source within the shortest possible time;

(2) for an exploration or production facility, plans and time frames are in place for controlling a well blowout, including provisions for drilling a relief well, and taking into account any seasonal environmental conditions that might reasonably be expected to preclude emergency operations from regaining control of well pressure;

(3) plans, procedures, and equipment are sufficient to monitor and track the discharge in order to ensure proper allocation and deployment of response personnel and equipment;

(4) sufficient oil discharge response equipment, personnel, and other resources are maintained and available for the specific purpose of preventing discharged oil from entering an environmentally sensitive area or an area of public concern that would likely be impacted if a discharge occurs, and that this equipment and personnel will be deployed and maintained on a time schedule that will protect those areas before oil reaches them according to the predicted oil trajectories for an oil discharge of the volumes established under 18 AAC 75.430 -- 18 AAC 75.442; areas identified in the plan must include areas added by the department as a condition of plan approval;

(5) plan strategies are sufficient to meet the applicable response planning standard established under 18 AAC 75.430 -- 18 AAC 75.442 for containment, control, recovery, transfer, storage, and cleanup within the specified time and under environmental conditions that might reasonably be expected to occur at the discharge site;

(6) there is access to sufficient lightering equipment and personnel to transfer all oil from damaged tanks and from undamaged tanks if the risk of an additional discharge is present; the plan must provide for commencement and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel; and

(7) adequate temporary storage and removal capacity for recovered oil and oily wastes will be available at or near the site of the spill to keep up with the skimming and recovery operations and to meet the applicable planning standard established under 18 AAC 75.430 -- 18 AAC 75.442 for control, containment, and cleanup; plans for temporary storage and ultimate disposal must include the specific actions to be taken to obtain all necessary permits and approvals.

(e) Receiving Environment. For an onshore facility or operation, the applicant must determine and clearly demonstrate that, based on an analysis of the facility or operation, resources identified in the plan are sufficient to clean up that portion of a discharge of the applicable planning standard volume that might realistically be expected to reach open water within the applicable time limit set out in 18 AAC 75.430 -- 18 AAC 75.442.

(f) Realistic Maximum Response Limitations. In designing a spill response, severe weather and environmental limitations that might be reasonably expected to occur during a discharge event must be identified. The plan must use realistic efficiency rates for the

specified response methods to account for the reduction of control or removal rates under those severe weather or other environmental limitations that might reasonably be expected to occur. The department will, in its discretion, require the plan holder to take specific temporary prevention measures until environmental conditions improve to reduce the risk or magnitude of an oil discharge during periods when planned spill response methods are rendered ineffective by environmental limitations.

(g) Response Equipment. Response equipment identified in the plan must meet the following conditions:

(1) the applicant must have ready access to enough equipment to meet the applicable response planning standards established under 18 AAC 75.430 -- 18 AAC 75.442 using mechanical methods of oil control, containment, and cleanup;

(2) identified equipment must reflect the best available technology at the time the plan is submitted or renewed;

(3) types and amounts of boom, boom connectors, and anchorage devices must be of the appropriate design for the particular oil product, type of environment, and environmental conditions experienced at the facility or operation; the boom must be of sufficient length to mount an effective response to the volume of discharged oil established under 18 AAC 75.430 -- 18 AAC 75.442 for each type of facility or operation;

(4) vessels used to deploy and tow boom must be of a number, size, and power adequate to deploy the types and amounts of boom addressed in

(3) of this subsection and must be capable of operating in the manner and at the speeds necessary for the effective use of boom; and

(5) the number and size of skimmers and pumps to be used must be appropriate and adequate for recovery of the planning standard volume of the type of oil discharged within the planning standard time limit for cleanup established under 18 AAC 75.430 -- 18 AAC 75.442; equipment types must be compatible with each other as necessary to ensure an efficient response.

(h) Nonmechanical Response Information. Plans which propose the use of dispersants, in situ burning, or other nonmechanical response techniques during periods when environmental conditions or other factors limit the use of mechanical spill response methods must demonstrate their efficiency and effectiveness and must include a full assessment of potential environmental consequences, provisions for continuous monitoring and real-time assessment of environmental effects, and full compliance with all applicable approval requirements. If in situ burning is proposed as a response technique, a completed application for approval by the department must be included.

(i) Oil Spill Primary Response Action Contractor Information. If a plan holder proposes to use the services of an oil spill primary response action contractor to meet a requirement of AS 46.04.030 or 18 AAC 75.400 -- 18 AAC 75.495, the contractor must be registered under 18 AAC 75.500 -- 18 AAC 75.570. The plan holder shall include a correct and complete list of each primary response action contractor, with name, address, telephone number, and affiliation by company, and, for each response action contract, a statement signed by the plan holder and the primary response action contractor attesting to the department that the contract

(1) clearly specifies that the contractor is obligated to

(A) provide the response services and equipment listed for that contractor in the contingency plan;

(B) respond if a discharge occurs;

(C) notify the plan holder immediately if the contractor cannot carry out the response actions specified in the contract or the contingency plan;

(D) give written notice at least 30 days before terminating its contract with the plan holder;

(E) respond to a department-conducted discharge exercise required of the plan holder; and

(F) continuously maintain in a state of readiness, in accordance with industry standards, the equipment and other spill response resources to be provided by the contractor under the contingency plan; and

(2) contains the provisions required under AS 46.04.030(r), if the contract is between the plan holder for a tank vessel or oil barge carrying crude oil that has been transported by the Trans Alaska Pipeline System and a primary response action contractor who is the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System.

(j) Training. In addition to maintaining continuous compliance with other applicable state and federal training requirements, the plan holder shall demonstrate that designated oil spill response personnel are trained and kept current in the specifics of plan implementation, including deployment of containment boom, operation of skimmers and lightering equipment, and organization and mobilization of personnel and resources. The plan holder shall ensure that proof of training is maintained for three years and is made available to the department upon request. (Eff. 5/14/92,Register 122; am 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.020 AS 46.04.070
AS 46.04.030

18 AAC 75.455. DEPARTMENT REVIEW PROCEDURES.

(a) Within seven days after receipt of an application and plan, the department will determine if the application and plan are sufficient for public review. If the application or plan is not sufficient for public review, the department will request the necessary additional information from the applicant.

(b) When the department determines that an application and plan are sufficient for public review, the department will

(1) send a notice setting a 30-day comment period to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and persons who have made a written request for information regarding submission subject to review under this section;

(2) direct the applicant to provide a copy of the application and the plan to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department;

(3) set a date, within the 18th to 25th day of the 30-day comment period, by which the department will convey to the applicant any request from the department or a person reviewing the application that the department finds necessary to make a determination that the application or plan is complete; and

(4) publish one 30-day notice of the application, in the manner described in 18 AAC 15.050(b), stating the deadline for comments established under (1) of this subsection and the date established under (3) of this subsection for conveying requests for additional information; the applicant is responsible for paying the cost of the notice under this paragraph.

(c) The notice published under (b) of this section will state that a copy of the application and plan are available for review at the district and regional offices of the department nearest to the affected area of the state. It is the applicant's responsibility to provide a copy of the application and plan if the department receives a request for a copy.

(d) If, by the date set under (b)(3) of this section, the department determines that additional information is necessary to evaluate the application or plan, the department will

(1) notify the applicant of the information needed; and

(2) extend the 30-day comment period established under (b)(1) of this section until the information is received, plus 10 days.

(e) If the department determines that additional information is necessary under (d) of this section and requests the information from the applicant, the applicant shall send a copy of any additional information requested to the department and to the Department of Natural Resources, the Department of Fish and Game, affected coastal districts and regional citizens advisory councils, and other persons designated by the department.

(f) Upon receipt by the department of the additional information requested under (d) of this section, the department will provide to the parties described in (e) of this section notice of

(1) receipt of the information and

(2) the final comment deadline, as extended.

(g) The department will make a determination as to whether an application and plan are complete within seven days after the receipt of any additional information under (e) of this section or, if no additional information was requested under (d) of this section, within two days after the end of the 30-day comment period established under (b)(1) of this section.

(h) Notwithstanding the review procedures set out in this section, if, at any time after receipt of an application and plan, and after consultation with the Department of Natural Resources, the Department of Fish and Game, and affected coastal districts and regional citizens advisory councils, the department determines that all information necessary to evaluate the application and plan has been received, the department will, in its discretion, find the application and plan complete. However, no decision will be made under (i) of this section until after the comment deadline established under (b)(1) of this section.

(i) Following the comment deadline established under (b)(1) of this section, including any extension under (d)(2) of this section, and within 65 days after the department determines that an application and plan are complete, the department will approve, approve with conditions, or disapprove a plan.

(j) The department will, if it determines good cause exists, hold a public hearing on an application and plan in the manner provided under 18 AAC 15.060.

(k) To assist the department in its review of contingency plans under this chapter, the department will enter into an annual agreement with the Department of Natural Resources and the Department of Fish and Game to provide expertise regarding protection of fish and game, state land, areas of public concern, and environmentally sensitive areas. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.457. EMERGENCY MODIFICATION OF REVIEW PROCESS.
If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited review, or if the commissioner or the commissioner's designee finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the commissioner or the commissioner's designee will, in that person's discretion, and consistent with the requirements of AS 46.04.030(j) that a copy of the applicant's plan be provided to the Department of Fish and Game and the Department of Natural Resources, modify the review process established in 18 AAC 75.455 as necessary to meet the emergency. Any modifications in the review process made under this section will be made in writing by the commissioner or the commissioner's designee based upon clear and convincing evidence of a need for the modification. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.459. PREISSUANCE CONFERENCE.

(a) At any time before the department's decision under 18 AAC 75.460, the applicant may request a preissuance conference from the appropriate regional office of the department. The request may be make orally, and will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision.

(b) A preissuance conference under this section will be conducted in the manner provided under 18 AAC 15.070. However, the time period for the department's review will not be held in abeyance pending completion of the conference. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.460. DEPARTMENT DECISION.

(a) After considering the information, analyses, and commitments contained in a complete application for an oil discharge prevention and contingency plan approval and timely comments submitted under 18 AAC 75.455, the department will approve, approve with conditions, or disapprove a plan.

(b) A decision issued under (a) of this section will include

(1) the written approval, if it is the department's determination that an oil discharge prevention and contingency plan approval should be issued; the department will provide a summary of the basis for its decision to approve a plan in a case in which public comment adverse to the application has been received;

(2) a brief summary of the basis for the department's decision if the decision is to disapprove a plan, or to subject a plan to conditions specific to the activity; and

(3) a statement that, if aggrieved by the department's decision, the applicant or any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing by submitting the information required under 18 AAC 15.200(a)(1) -- (5), and that any hearing requested under this subsection will be subject to the procedures set out at 18 AAC 15.210 -- 18 AAC 15.310.

(c) The department's decision will be served on the applicant and each person who submitted timely comments on the application under 18 AAC 75.455. The applicant and any person who submitted timely comments on the application under 18 AAC 75.455 may request an adjudicatory hearing with 30 days after service of the department's decision. The hearing will be conducted in accordance with procedures set out in 18 AAC 75.200 -- 18 AAC 75.310.

(d) An approval under this section is effective for three years after the date it is issued, or for a shorter time specified in the approval letter and certificate.
(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

[Editor's note: Department of Environmental Conservation approval under 18 AAC 75.460 does not negate any other requirement for approval to operate under other statutes or regulations, such as Alaska Coastal Management Program approval under 6 AAC 50.]

18 AAC 75.465. PROOF OF APPROVED PLAN.

(a) The owner or operator of an oil terminal facility may not cause or permit the transfer of oil to or from a vessel or barge unless

(1) the operator of the vessel or barge has produced for inspection by the facility owner or operator the original certificate or a true photocopy of the original, approving the oil discharge prevention and contingency plan for that operation; and

(2) the operator of the vessel or barge has certified, on a certification log form supplied by the department and maintained by the owner or operator of the oil terminal facility, that a copy of the response action plan section of the current approved oil discharge prevention and contingency plan for that vessel or barge is on board the vessel or barge.

(b) The owner or operator of an oil terminal facility shall certify on the certification log form that the operator of the vessel or barge has complied with (a)(1) and (a)(2) of this section. The facility owner or operator shall maintain the log on a monthly basis and shall submit the log for the previous month to the appropriate regional office within the first five days of the following month. Service is effective upon personal delivery or transmittal by facsimile or on the date of mailing by certified mail to the appropriate regional office. The department will retain copies of all log forms received under this subsection for three years after receipt.

(c) On the first working day after the operator of a vessel fails to comply with the requirements of (a)(1) or (a)(2) of this section, the oil terminal facility owner or operator shall report that failure to the appropriate regional or district office by telephone or facsimile.

(d) Verification and entry on the certification log form referred to under (b) of this section is required for each separate loading or unloading operation of a vessel at an oil terminal facility. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.070
AS 46.04.030 AS 46.04.070
AS 46.04.050

18 AAC 75.470. TRANSFERS BETWEEN PLAN HOLDERS.

(a) If approved under this section, a plan holder, or an oil spill response contractor or cooperative upon which one or more plan holders rely, may furnish to another plan holder or to another person, equipment, materials, or personnel to assist in response to an oil discharge. A description of the proposed transfer that addresses each of the considerations set out in (b) of this section must be provided with the request for approval of a transfer.

(b) The department will, in its discretion, approve a transfer under this section after considering

(1) for a provider of oil spill response equipment, materials, or personnel:

(A) the amount and types of equipment, personnel, or other resources to be transferred in response to a discharge and where it will be transferred;

(B) the number and types of other plan holders who rely upon the provider's response equipment, personnel, and other resources;

(C) the percentage by which the provider's response capability will be reduced by the transfer;

(D) the ability of the provider to acquire and deploy alternate response equipment if an emergency discharge occurs while equipment, materials, or personnel are transferred; and

(E) any compensating measures that will be taken by the provider to prevent or reduce the size of potential discharges during the period of reduced response capability; and

(2) for a plan holder receiving the equipment, the time estimated for the response equipment to reach the discharge.

(c) The department will, in its discretion, attach terms and conditions to an approval issued under (b) of this section.

(d) The provider shall reorder and replace equipment or materials that are

(1) exhausted, lost, destroyed, or rendered inoperable as soon as the condition is known by the provider; and

(2) not expected to be returned, such as sorbent boom, sorbent pads, and dispersant, as soon as they are transferred.

(e) If equipment, materials, or personnel are not replaced or returned to the provider within 30 days after the transfer, the plan holder may request an extension from the department. If the extension is denied, the provider must apply for approval of an amendment to its approved prevention and contingency plan under 18 AAC 75.415.

(f) Except in response to a major or catastrophic discharge, the department will not approve a transfer of equipment, materials, or personnel to another plan holder if the provider's spill response capability would be reduced to less than 40 percent of the response capability identified in its plan. If a major or catastrophic oil discharge occurs, the department will, in its discretion, approve an immediate transfer of up to 100 percent of the provider's response equipment, personnel, and other resources.

(g) The department will issue a verbal approval for a transfer if a discharge poses an imminent threat to life, property, the environment, or other significant public concern. The verbal approval will be verified in writing by the department.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.475. NOTIFICATION OF NONREADINESS.

(a) All spill response and other equipment identified in the approved oil discharge prevention and contingency plan to meet the response planning standards set out at 18 AAC 75.430 -- 18 AAC 75.442 must be maintained in operational condition. Any equipment found not to be operating properly must be repaired or replaced immediately.

(b) Except for a transfer approved under 18 AAC 75.470, if a significant change occurs in, or is made to, any component of a plan that would diminish the plan holder's response capability, the plan holder shall, within 24 hours, notify the department in writing and provide a schedule for a prompt return to operational status. A facsimile delivered to the appropriate regional office will be considered written notice for purposes of this subsection. If the department finds that, as a result of the change, the plan holder is no longer able to execute the plan, it will take appropriate action under 18 AAC 75.490.

(c) Notwithstanding (a) and (b) of this section, removal or inactivation of any major response item for maintenance or repair must be approved by the department before removal or inactivation. A request under this subsection must be submitted at least 10 days before the scheduled action or as soon as possible for an unanticipated repair. The request must state what substitute or temporary measures will be taken to provide equivalent response capability, reduce the time out of service, or otherwise ensure that equivalent response capability is maintained. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.480. INSPECTIONS.

(a) To verify compliance with the oil discharge prevention and contingency plan provisions of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495, the department will, in its discretion, conduct announced and unannounced inspections of a vessel, barge, pipeline, or other operation that is subject to the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495. If practicable, an inspection under this section will be coordinated with other regulatory agencies.

(b) Based on the results of an inspection made under this section, the department will, in its discretion, take appropriate action under 18 AAC 75.490. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.04.060
AS 46.04.030 AS 46.04.070

18 AAC 75.485. DISCHARGE EXERCISES.

(a) The department will, in its discretion, conduct announced and unannounced discharge exercises to assure that an oil discharge prevention and contingency plan is adequate in content and execution. No more than two exercises will be required in each 12-month period, unless an exercise demonstrates, in the department's judgment, a plan holder's failure to effectively implement the plan.

(b) Execution of a plan during a discharge exercise will be considered inadequate if the readiness for response and response performance stated in the plan are significantly deficient due to inadequate mobilization or performance of personnel, equipment, other resources, or other factors, including the mobilization or performance of a response action contractor identified under 18 AAC 75.445(i).

(c) If a plan holder cannot adequately execute the plan during a discharge exercise, the department will, in its discretion,

(1) require additional exercises until it is satisfied that the prevention and contingency plan and its execution are adequate; or

(2) take other appropriate action as described at 18 AAC 75.490.

(d) The department will consider a regularly scheduled training exercise initiated by a plan holder as a discharge exercise if the department monitors, evaluates, or participates in the exercise and concurs that it is equivalent to a discharge exercise conducted by the department. A plan holder shall notify the department in advance of the exercise and shall provide an opportunity for a department representative to be present and participate.

(e) The department will conduct announced or unannounced discharge exercises appropriate to the plan holder's current status of operations. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

18 AAC 75.490. FAILURE TO COMPLY.

(a) If a plan holder fails to comply with an approved oil discharge prevention and contingency plan, demonstrates an inability to maintain continuous access to the quality or quantity of resources identified in the plan, fails to respond with those resources in the shortest possible time if a discharge occurs, or is in any other way subject to the terms of AS 46.04.030(f)(1) -- (4), the department will, in its discretion,

(1) revoke its approval of the plan after notice and opportunity for hearing under (c) of this section;

(2) suspend its approval of the plan after notice and opportunity for hearing under (c) of this section, stating the conditions under which the department will reinstate its approval and allow operations to resume;

(3) order the plan holder to file an application to amend the plan within a specified time under 18 AAC 75.415; or

(4) take other necessary action to correct the failure to comply.

(b) If a plan holder fails to apply for an amendment as required under (a)(3) of this section, the department will, in its discretion, revoke its approval of the plan after notice and opportunity for hearing under (c) of this section.

(c) If the department issues a notice of intent to revoke an approval under this chapter, the plan holder may either request a hearing to review the department's proposed action under (d) -- (g) of this section or it may request an adjudicatory hearing. An adjudicatory hearing will be conducted in accordance with procedures set out in 18 AAC 15.200 -- 18 AAC 15.310. The request for review must be submitted in writing to the supervisor of the appropriate regional office within 10 days after the plan holder receives the department's notice and must include

(1) the name, mailing address, and telephone number of the plan holder; and

(2) a brief, clear summary of the reasons for requesting the review.

(d) A hearing under (d) -- (g) of this section will be held within 10 working days after the department receives a request for hearing, unless the department and the plan holder agree that the hearing will be held at another time. Immediately after receiving a request for review under (c) of this section, the department will notify the plan holder, by telephone, facsimile, or personal delivery, of the time and place of the hearing.

(e) If the plan holder fails to appear for the hearing at the time and place stated in the notice issued under (d) of this section, and if a delay has not been granted by the department, the failure to appear will be considered a waiver of the plan holder's right to a hearing under this section.

(f) A hearing under this section will be recorded, will be heard by the regional supervisor or a designee, and will be informal. The plan holder may

(1) present witnesses and evidence in its own behalf; and

(2) question witnesses and seek to disprove evidence presented by the department.

(g) Within 10 working days after a hearing under this section, the department will issue a final decision, stating the reasons for the decision, and indicating the evidence relied upon in reaching that decision.

(h) Nothing in (d) -- (g) of this section affects a plan holder's right under (c) of this section to an adjudicatory hearing. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.740 AS 46.03.745 AS 46.03.750 AS 46.04.030 AS 46.04.070 AS 46.35.090(e)

18 AAC 75.495. REGIONAL MASTER DISCHARGE PREVENTION AND CONTINGENCY PLAN BOUNDARIES.

(a) The regions described in this subsection and depicted on the map at Figure 1 are established for the purpose of preparing a regional master oil and hazardous substance discharge prevention and contingency plan as required by AS 46.04.210:

(1) Southeast Alaska Region: that area of the state east of 142°W. longitude and south of a line just west of Icy Bay that connects the U.S. - Canadian border with the Gulf of Alaska, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(2) Prince William Sound Region: that area south of 63°30' N. latitude, west of the region described in (1) of this subsection, and east of the region described in (3) of this subsection, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(3) Cook Inlet Region: that area encompassed by the boundaries of the Kenai Peninsula Borough, the Municipality of Anchorage, and the Matanuska-Susitna Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(4) Kodiak Island Region: that area encompassed by the boundaries of the Kodiak Island Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(5) Aleutian Region: that area encompassed by the boundaries of the Aleutians East Borough and the Aleutians West Coastal Resource Service Area, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(6) Bristol Bay Region: that area encompassed by the boundaries of the Bristol Bay Coastal Resource Service Area, the Bristol Bay Borough, and the Lake and Peninsula

Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(7) Western Alaska Region: that area north of the area described in (6) of this subsection, encompassed by the boundaries of the southernmost boundary of the Bering Straits Regional Corporation, and Regional Educational Attendance Areas 11 and 5, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(8) Northwest Arctic Region: that area encompassed by the Northwest Arctic Borough and the Bering Straits Regional Corporation, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured;

(9) North Slope Region: that area encompassed by the boundaries of the North Slope Borough, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(10) Interior Alaska Region: that area of the state not included in (1) -- (9) of this subsection.

(b) If the department finds that a discharge that could occur in an area beyond the territorial sea would not have a significant adverse impact on the resources of the state or on other interests of the state, the department will, in its discretion, adjust the seaward boundary of a region established in (a) of this section to exclude that area. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.04.070
AS 46.04.210

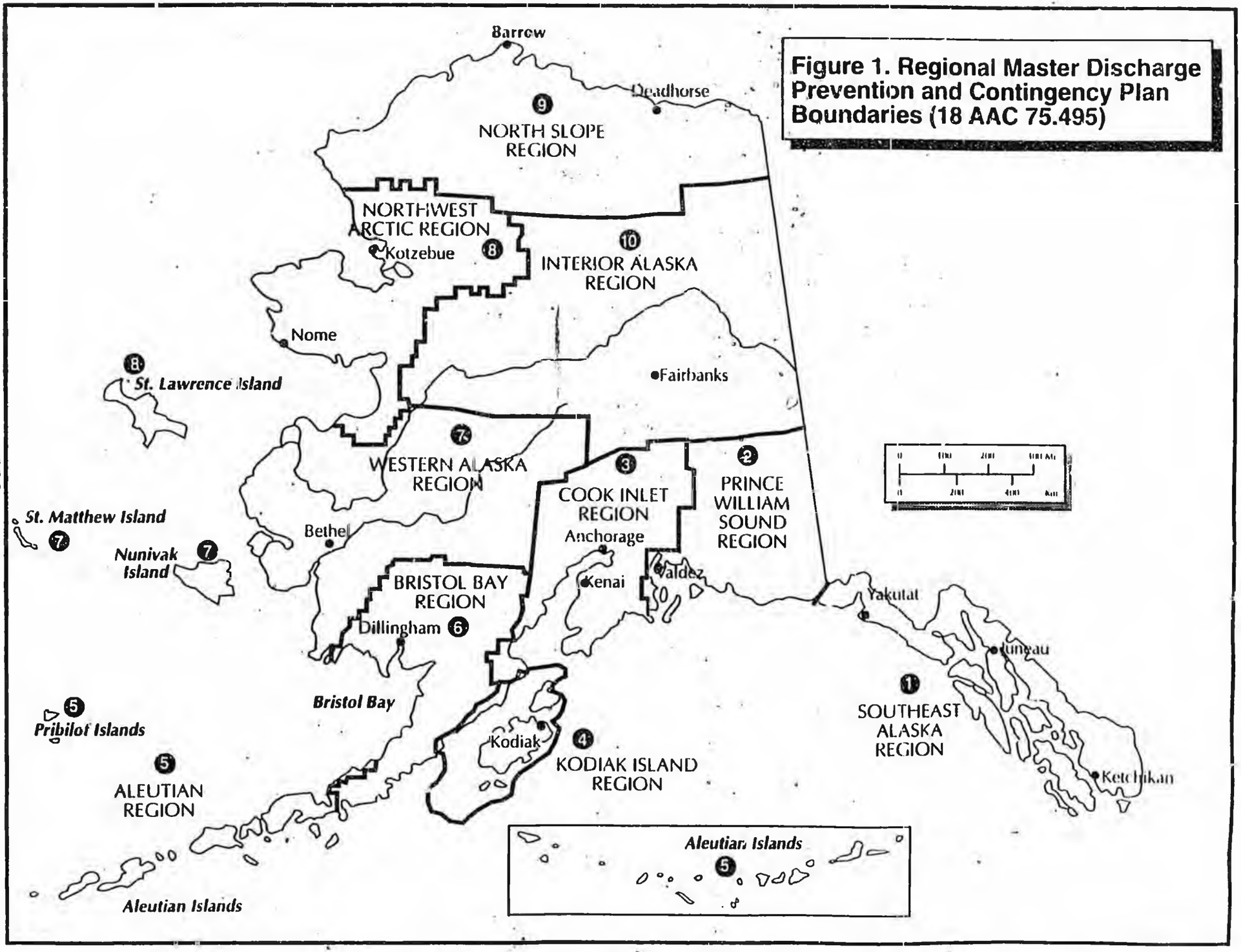


Figure 1. Regional Master Discharge Prevention and Contingency Plan Boundaries (18 AAC 75.495)

ARTICLE 5. Oil Spill Primary Response Action Contractors.

18 AAC 75.500. DEFINITION OF OIL SPILL PRIMARY RESPONSE ACTION CONTRACTOR; APPLICABILITY.

(a) As used in AS 46.04.035 and 18 AAC 75.500 -- 18 AAC 75.570, "oil spill primary response action contractor" means a person who is or intends to be obligated under contract to the holder of an approved oil discharge prevention and contingency plan issued under AS 46.04.030 to provide resources or equipment to contain, control, or clean up an oil discharge. "Oil spill primary response action contractor" does not include

(1) a person who provides only ancillary services or equipment not for the specific purpose of containing, controlling, or cleaning up an oil discharge; or

(2) an approved oil discharge prevention and contingency plan holder who provides to another plan holder resources or equipment to contain, control, or clean up an oil discharge.

(b) An oil spill primary response action contractor is not required to register under 18 AAC 75.500 -- 18 AAC 75.570 unless the contractor is directly obligated to a plan holder by contract to provide spill response resources to meet the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495 and is listed in that plan holder's oil discharge prevention and contingency plan as providing those resources.

(c) The holder of an approved oil discharge prevention and contingency plan whose resources are listed in the plan of another plan holder for purposes of meeting the requirements of AS 46.04.030 and 18 AAC 75.400 -- 18 AAC 75.495 is not required to register as an oil spill primary response action contractor, but is subject to all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i)(1) and (2).

(d) Any person may apply to the department for registration under 18 AAC 75.500 -- 18 AAC 75.570 as an oil spill primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030(k) AS 46.04.070

18 AAC 75.510. GENERAL PROVISIONS.

(a) Beginning January 1, 1994, the resources of an oil spill primary response action contractor listed in an oil discharge prevention and contingency plan submitted under this chapter will not be considered by the department in its review of the plan unless that person is registered in accordance with 18 AAC 75.500 -- 18 AAC 75.570 and all other requirements of 18 AAC 75.425(e)(3)(H) and 18 AAC 75.445(i) are met.

(b) Registration of an oil spill primary response action contractor by the department does not

(1) constitute an assurance by the department of the qualifications or abilities of that contractor;

(2) constitute an assurance by the department that the contractor will adequately respond to a release or threatened release of oil; or

(3) provide a defense to liability under state law. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.03.825 AS 46.04.070
AS 46.04.030

18 AAC 75.520. APPLICATION FOR REGISTRATION OR RENEWAL.

(a) Oil spill primary response action contractor registration under 18 AAC 75.500 -- 18 AAC 75.570 is effective for three years from the date of issuance under 18 AAC 75.550.

(b) A person seeking registration or renewal of registration as a primary response action contractor shall submit three copies of the application to the department's contractor registration and approval coordinator, division of spill prevention and response.

(c) An applicant for renewal of registration shall submit an application no less than 60 days before the registration expires. If there are no changes in the conditions of registration since the previous application, an application for renewal may incorporate the previous application by reference.

(d) An applicant for registration as a primary response action contractor whose resources will be used to meet all or part of an in-region response planning standard shall submit a separate application for each geographic region of operation as described in 18 AAC 75.495 for which the contractor's resources will be used.

(e) An applicant for registration as a primary response action contractor whose resources will be used to meet all or part of an out-of-region response planning standard shall submit an application for registration as an out-of-region oil spill primary response action contractor. Only one application is required for statewide out-of-region registration.

(f) Nothing in this section precludes a person from submitting applications for in-region and for out-of-region registration.

(g) A separate registration fee under 18 AAC 75.540 must accompany each application for registration or renewal of registration as an oil spill primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

Editor's note: An application for registration or renewal of registration as an oil spill primary response action contractor should be sent to:

Contractor Registration and Approval Coordinator
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801 - 1795

Telephone (907) 465-5275
FAX (907) 465-5245

18 AAC 75.530. REGISTRATION APPLICATION CONTENTS.

(a) An applicant for registration as an oil spill primary response action contractor shall submit a written application to the department that includes

(1) the applicant's name, address, telephone number, and facsimile machine number;

(2) a call-out list of appropriate response personnel;

(3) a statement that the applicant is seeking registration as an out-of-region oil spill primary response action contractor or, if applying for in-region contractor registration, identification of the geographic region of operation described in 18 AAC 75.495 for which application is being made;

(4) the types of oil (such as persistent or nonpersistent) and receiving environments (such as marine, fresh water, open ocean, shallow water, ice, or land) for which the applicant is trained and equipped to respond;

(5) a complete description and most recent inventory of the applicant's oil spill response resources, including

(A) the number and location of trained personnel;

(B) a description of the applicant's minimum training requirements for response personnel and procedures for training additional personnel if needed; and

(C) the amount and location of

(i) oil containment equipment;

(ii) oil recovery equipment, including equipment nameplate ratings in barrels per hour;

(iii) transfer, storage, and disposal equipment;

(iv) dispersant or burning equipment; and

(v) significant ancillary resources and equipment; and

(6) a description of the applicant's previous oil spill activities and compliance history.

(b) Instead of submitting the information required under (a)(4) and (5) of this section, an applicant may submit a complete copy of an application for and a certified copy of the applicant's current Interim or Final Letter of Classification as an Oil Spill Removal Organization issued by the United States Coast Guard. If a letter of classification has not been issued at the time of application, the applicant shall submit a certified copy of the letter of classification upon its receipt.
(Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.540. REGISTRATION AND RENEWAL FEES.

The following fees are established for registration of oil spill primary response action contractors and must be submitted with the appropriate application:

(1) for initial application, $500; or

(2) for renewal, $100. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020
AS 46.04.035
AS 46.04.070

18 AAC 75.550. APPLICATION REVIEW PROCEDURES.

(a) After receipt of an application for registration or renewal as an oil spill primary response action contractor, the department will determine whether the application is complete. If the department finds that an application is incomplete, the applicant will be notified of the need for additional information. The department will review each complete application and issue a decision.

(b) The department will approve an application for oil spill primary response action contractor registration or renewal of registration if the applicant meets the application requirements of 18 AAC 75.510 -- 18 AAC 75.540 and the minimum registration standards of 18 AAC 75.560.

(c) After completing the review, the department will notify the applicant that the application for registration or renewal of registration has been approved or denied. If the application for registration or renewal has been approved, the department will include a registration certificate describing the conditions of approval, the date registration will expire, and, for an in-region primary response action contractor, the region of operation for which that contractor is registered. If the application is denied, the department will explain the basis for the denial and include a list of corrective actions that would be required for the applicant to obtain approval of registration or renewal.

(d) Within 10 days after receiving a notice of denial under (c) of this section, the applicant may request an informal review of the decision. The request for review must be submitted in writing to the director of the division of spill prevention and response and must include

(1) the applicant's name, mailing address, and telephone number; and

(2) a brief, clear summary of the reasons for requesting the review.

(e) A review requested under (d) of this section will be held within 10 days after the director receives a request for review, unless the director and the applicant agree to another time. After receiving a request for review under (d) of this section, the director will notify the applicant by telephone, facsimile, or personal delivery, of the time and place of the review.

(f) If the applicant fails to appear at the time and place stated in the notice issued under (e) of this section, and if a delay has not been granted by the director, the failure to appear will be considered a waiver of the applicant's right to an informal review under this section.

(g) A review under this section will be recorded, will be heard by the director or a designee, and will be informal. The applicant may

(1) present witnesses and evidence in the applicant's own behalf; and

(2) question witnesses and seek to disprove evidence presented by the department.

(h) Within 10 days after a review under this section, the director will issue a final decision, stating the reasons for the decision, and indicating the evidence relied upon in reaching that decision.

(i) Nothing in this section affects an applicant's right to appeal the department's decision under the Administrative Procedure Act. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18 AAC 75.560. MINIMUM REGISTRATION STANDARDS.

(a) In addition to the requirements of (b) of this section, the minimum registration standards and verification requirements for an oil spill primary response action contractor required under AS 46.04.035(a)(1) -- (4) are the oil discharge prevention and contingency plan requirements and the response planning standards set out in AS 46.04.030 and 18 AAC 75.425 -- 18 AAC 75.495 that are applicable to a contractor listed in an approved oil discharge prevention and contingency plan.

(b) In addition to the requirements of (a) of this section, an oil spill primary response action contractor must be in compliance with the following minimum registration standards:

(1) all response resources that the contractor has agreed in writing to provide to the oil discharge prevention and contingency plan holder to meet all or part of the in-region response planning standards applicable to that plan holder must be located within the plan holder's region of operation unless the department has approved another location;

(2) the contractor shall maintain sufficient response preparedness to immediately initiate response efforts as described in the applicable contingency plan upon direction by the plan holder; response preparedness is subject to verification by the department through inspections and plan holder discharge exercises;

(3) training of contractor personnel must comply with 18 AAC 75.445(j) and must include appropriate Occupational Safety and Health Administration Hazardous Operations training;

(4) professional response action standards and practices must be continuously maintained, and must include

(A) responding immediately upon direction by the plan holder;

(B) remaining in substantial compliance with applicable contracts;

(C) abiding by applicable permits and authorizations unless directed to proceed otherwise by the federal or state on-scene coordinator;

(D) maintaining a working knowledge of all applicable oil pollution statutes and regulations and pertinent provisions of each contingency plan in which that contractor is listed; and

(E) maintaining a safe working environment and an acceptable safety history.

(c) No later than January 31 of each year, an oil spill primary response action contractor registered under this chapter shall provide to the department a complete list of oil discharge prevention and contingency plans in which that contractor has agreed in writing to be listed as a primary response action contractor. (Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

18.AAC 75.570. FAILURE TO COMPLY.

(a) If the department determines that an oil spill primary response action contractor has failed to meet or maintain a minimum registration standard identified in 18 AAC 75.560, the department will, in its discretion, revoke, suspend, or modify

(1) the contractor's registration; and

(2) its approval of the oil discharge prevention and contingency plan in which that contractor is listed as an oil spill primary response action contractor.

(b) A person who is aggrieved by a department decision under (a) of this section may request an informal review of that decision, using the procedures described in 18 AAC 75.550(d) -- (h). Nothing in this subsection affects that person's right to appeal the department's decision under the Administrative Procedure Act.
(Eff. 9/25/93, Register 127)

Authority: AS 46.03.020 AS 46.04.035
AS 46.04.030 AS 46.04.070

ARTICLE 6. Civil Penalties for Discharge of Petroleum and Petroleum Products.

18 AAC 75.605. APPLICABILITY.

18 AAC 75.605 -- 18 AAC 75.670 establish a schedule of civil penalties under AS 46.03.758 for the discharge of petroleum and petroleum products and byproducts, other than crude oil. The schedule of civil penalties does not apply to a discharge that is specifically made subject to the provisions of AS 46.03.760(a). (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.610. FRESHWATER ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(A), freshwater environments with significant aquatic resources are classified as follows:

(1) Critical freshwater environments include

(A) surface and subsurface water supplies for which the commissioner of natural resources has issued a water use permit under AS 46.15.040 -- 46.15.185, or which are in fact being used for a purpose that would qualify for a water use permit;

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

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

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

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

(2) Sensitive freshwater environments include

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

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

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

(b) For purposes of AS 46.03.758(b)(1)(C), all freshwater of the state that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.620. MARINE ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(B), estuarine, intertidal, and saltwater environments are classified as follows:

(1) Critical marine environments include

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

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

(C) marine water within the boundaries of marine sanctuaries established under 16 U.S.C. 1431 -- 16 U.S.C. 1445, as amended through July 1, 1991;

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

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

(F) marine water within one statute mile of a seabird colony or marine mammal rookery or hauling ground identified by the Alaska Department of Fish and Game under AS 16.20;

(G) high density sea otter habitat identified by the Alaska Department of Fish and Game under AS 16.20; and

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

(2) Sensitive marine environments include

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

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

(C) Prince William Sound, and the bays, arms, fjords, ports, and other inside marine waters of Prince William Sound not otherwise classified in (1) of this subsection; and

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

(b) For the purposes of AS 46.03.758(b)(1)(C), marine water that is not classified in (a) of this section is classified as "without significant aquatic resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

[Editor's note: Seabird colonies, marine mammal rookeries or hauling grounds, and high density sea otter habitats, referred to in 18 AAC 75.620(a)(1)(F) and (G) are described in the current edition of "Alaska Habitat Management Guides", published by, and available for review at the Alaska Department of Fish and Game.]

18 AAC 75.630. PUBLIC LAND ENVIRONMENTS.

(a) For the purposes of AS 46.03.758(b)(1)(C), public land is classified as follows:

(1) Critical terrestrial environments include

(A) state game reserve areas, refuges, and sanctuaries established under AS 16.05.255(1) or AS 16.020;

(B) state parks, campgrounds, and waysides;

(C) municipal parks and park reserves;

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

(E) established campgrounds, scenic waysides, and p ic areas; and

(F) national historical landmarks;

(2) Very sensitive terrestrial environments include

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

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

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

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

(b) For the purposes of AS 46.03.758(b)(1)(C), all public land not classified in (a) of this section is classified as "without significant terrestrial environmental resources." (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.640. TOXICITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the toxicity of petroleum and petroleum products and byproducts is as follows:

(1) highly toxic:

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

(B) jet aviation fuels A and B;

(C) motor gasoline, including aviation gasoline;

(D) kerosene; and

(E) stationary turbine fuels;

(2) moderately toxic:

(A) waste oil and waste oil mixtures;

(B) lubricating oil; and

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

(3) less toxic:

(A) bunker and residual fuel oils; and

(B) hydraulic fluids; and

(4) relatively nontoxic:

(A) asphalts;

(B) tars; and

(C) other petroleum and petroleum products and byproducts not listed in (1) -- (3) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.650. DEGRADABILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the degradability of petroleum and petroleum products and byproducts is as follows:

(1) low degradability:

(A) asphalt;

(B) tar;
(C) bunker and residual fuel oils; and
(D) other petroleum and petroleum products and byproducts not otherwise listed in (2) or (3) of this section;
(2) moderate degradability:
(A) hydraulic fluids;
(B) lubricating oil; and
(C) waste oils and waste oil mixtures; and
(3) high degradability:
(A) motor gasoline, including aviation gasoline;
(B) numbers 1, 2, and Arctic diesel fuel and heating oil;
(C) jet and stationary turbine fuels; and
(D) kerosene. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.660. DISPERSIBILITY OF PETROLEUM AND PETROLEUM PRODUCTS AND BYPRODUCTS.

For the purposes of AS 46.03.758(d), the dispersibility of petroleum and petroleum products and byproducts is as follows:
(1) highly dispersible:
(A) motor gasoline, including aviation gasoline;
(B) all jet fuels;
(C) kerosene;
(D) numbers 1, 2, and Arctic diesel fuel and heating oil;
(E) hydraulic fluids; and
(F) stationary turbine fuels;
(2) moderately dispersible:
(A) emulsified oil mixtures;
(B) lubricating oils; and
(C) waste oil and waste oil mixtures; and
(3) low dispersibility:
(A) bunker and residual fuel oils;
(B) asphalts;
(C) tars; and
(D) other petroleum and petroleum products and byproducts not otherwise listed in (1) or (2) of this section. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.758

18 AAC 75.670. SCHEDULE OF CIVIL PENALTIES.

The schedule of civil penalties for which a person may be held liable under AS 46.03.758(e) is established as follows:

(1) The base civil penalty for a discharge into a receiving environment is as follows:

Receiving Environment	Freshwater	Marine	Public Land
Critical environments	$10.00	$2.50	$1.00
Very sensitive environments	N/A	N/A	$0.75
Sensitive environments	$ 5.00	$2.00	$0.50
Environments without significant resources	$ 1.00	$1.00	$0.25

(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	0.50
(iv) relatively nontoxic	0.25
(B) **degradability**	
(i) low degradability	1.0
(ii) moderate degradability	0.50
(iii) high degradability	0.25
(C) **dispersibility**	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.50
(iii) low dispersibility	1.0

(3) The net civil penalty that will be assessed per gallon of petroleum or petroleum product or byproduct discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the factors established in (2) of this section. If a portion of the petroleum or petroleum product or byproduct enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion enters.

(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.758

**[Editor's note: 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 case may the toxicity factor exceed 1.0.]*

ARTICLE 7. Surface Oiling.

18 AAC 75.700. SURFACE OILING PERMIT.

(a) No person may discharge, cause to be discharged, or permit the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land of the state unless that person has been issued a surface oiling permit under 18 AAC 75.730.

(b) An application for a surface oiling permit

(1) is subject to the requirements of 18 AAC 15;

(2) must be made on forms supplied by the department; and

(3) must contain information considered necessary by the department.

(c) A person who proposes to stabilize soil with the application of asphalt emulsions, tars, asphaltic oils, cutback asphalts, oils, or other residuary petroleum product, without immediately applying a blotter or cover coat of aggregate, is not exempt from the surface oiling permit requirements of this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.710. EXEMPTION FROM SURFACE OILING PERMIT.

A person who proposes to construct one or more of the following types of surfaces is not required to obtain a surface oiling permit under this chapter, but shall ensure that construction of the surface does not result in pollution of land or waters of the state:

(1) a bituminous treatment surface that includes a surface constructed by sweeping the surface, applying a priming material, applying a bituminous body coat, and spreading a blotter or cover of mineral aggregate;

(2) a road-mix bituminous surface for which the mineral aggregate and the bituminous material are mixed directly in the surface;

(3) a plant-mixed bituminous surface for which the mineral aggregate and the bituminous material are thoroughly mixed at a suitable plant and then deposited on the surface;

(4) a bituminous macadam surface with a wearing course composed of broken stone aggregate of relatively coarse size and a bituminous material that is forced by penetration into the interstices of the stone after the stone has been compacted on the base; and

(5) a bituminous concrete or sheet asphalt surface with a wearing course composed of a bituminous mixture prepared in a stationary plant under close control of temperature, moisture content, and mixture composition. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.720. PROHIBITIONS.

(a) The use of oil for surface oiling or as a dust suppressant is prohibited if the oil contains any of the following components in the concentrations indicated:

(1) polychlorinated biphenyls (PCBs) in any detectable concentration;

(2) total volatile aromatics in 5000 parts per million by weight or greater;

(3) total halogenated volatile organics in 100 parts per million by weight or greater; or

(4) lead in 300 parts per million by weight or greater.

(b) The department will, in its discretion, require analysis of oil for a component listed in (a) of this section, using methods prescribed on the surface oiling permit application form. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.299
AS 46.03.296 AS 46.03.740

18 AAC 75.730. DECISION ON APPLICATION FOR SURFACE OILING PERMIT; PERMIT TERM AND CONDITIONS.

(a) The department will, in its discretion, grant or deny an application submitted under 18 AAC 75.700. The department will consider the following criteria before issuing a decision under this section:

(1) the potential for pollution of adjacent waters, including groundwater;

(2) the potential for pollution of vegetation;

(3) the need for the oiling, including local public opinion, and considerations of air quality as addressed by 18 AAC 50;

(4) the predicted weather conditions for the time of the oiling; and

(5) effects on the environment.

(b) In addition to the specific terms and conditions set out in the permit, a surface oiling permit is subject to the following terms and conditions:

(1) oil or other petroleum-derived dust retardants may not be applied to wet surfaces, frozen surfaces, or snow-covered surfaces; however, oil or other petroleum-derived dust retardants may be applied to a damp surface if deliberate dampening of the surface is part of the normal oiling procedure;

(2) oil or other petroleum-derived dust retardants may be applied only in the minimum amounts necessary and may not be allowed to stand in ponds on the surface;

(3) there may be no runoff of oil or other petroleum-derived dust retardants from the surface receiving the application;

(4) oil or other petroleum-derived dust retardants may not be applied to any surface during precipitation or when precipitation is imminent;

(5) there must be equipment such as brooms and mops on the job to prevent oily runoff and to spread any ponded oil or other petroleum derived dust retardants;

(6) unless specifically allowed in the permit, in order to avoid drifting of droplets to adjacent vegetation and property, oil or other petroleum-derived dust retardants may not be applied if local wind speed is 15 miles per hour or greater;

(7) the permittee shall inspect immediately the freshly-treated surface for oily runoff and ponding of oil or other petroleum-derived dust retardants;

(8) to avoid offensive odors, only nonodorous oils and other petroleum-derived dust retardants may be used on surfaces near residential areas or on surfaces that receive considerable pedestrian traffic; odorous oils may be used only on rural surfaces where the odor is less likely to be noticeable and pedestrian traffic is minimal; and

(9) no oil or other petroleum-derived dust retardants may be allowed to enter state waters or to enter upon private property. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

ARTICLE 8. Oil Discharge for Scientific Purposes

18 AAC 75.800. PERMIT FOR OIL DISCHARGE FOR SCIENTIFIC PURPOSES. Notwithstanding 18 AAC 70.020, 18 AAC 72.010, and 18 AAC 75.700 -- 18 AAC 75.730, the department will, in its discretion, issue a permit for the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land or into state waters for research and scientific purposes. The department will issue a permit under this section only after it has evaluated the proposed project and found that

(1) the benefits from the information that will be developed outweigh the potential environmental damage that might result;

(2) the project has the written approval of all potentially affected landowners and persons with appropriated water rights for the water to be affected;

(3) the person proposing the project will, upon completion of the project, restore the environment affected by the project to a condition as near to the original condition as feasible;

(4) the person proposing the project has sufficient expertise and resources to conduct the project in a responsible manner; and

(5) the proposed project is otherwise in the public interest. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020.
AS 46.03.740

18 AAC 75.810. PERMIT PROCEDURES.

(a) An application for a permit under 18 AAC 75.800 must be made on forms supplied by the department. The application must be sent to the department at least 60 days before the proposed discharge is to begin. The application must include

(1) the name, address, and telephone number of the applicant;

(2) a detailed description of the proposed project, including plans for restoration;

(3) a description of the geographical area involved; and

(4) a description of the expected flow pattern of any water to be affected by the project.

(b) The department will

(1) send a copy of a completed application received under this section to the departments of fish and game, natural resources, commerce and economic development, and health and social services; and

(2) publish notice of the application as provided in 18 AAC 15.050.

(c) The department will attach terms and conditions to the permit which it finds are necessary to protect the environment and potentially affected property owners. A permit is further subject to the permittee's stipulation and agreement to

(1) modify activities if served with a notice under 18 AAC 75.820; or

(2) immediately cease all permitted activities if served with a notice to terminate under 18 AAC 75.830. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.820. MODIFICATION OF PERMIT.
The department will, in its discretion, and after giving notice to the permittee, modify the terms and conditions of a permit issued under 18 AAC 75.810 if the department finds that modification is necessary to protect the environment.
(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.830. TERMINATION OF PERMIT.
The department will, in its discretion, and after giving notice to the permittee, terminate a permit issued under 18 AAC 75.810 if the department finds that

(1) the permit was obtained by misrepresentation of a material fact or by failure of the applicant to fully disclose the facts;

(2) there has been noncompliance with a term or condition of the permit; or

(3) based on information received after issuance of the permit, the permit should not have been granted. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

ARTICLE 9. General Provisions.

18 AAC 75.905. FALSIFICATION PROHIBITED.
No person may falsely state information submitted under AS 46.03, AS 46.04, AS 46.09, or this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.790
AS 46.04.070

18 AAC 75.990. DEFINITIONS.
Unless the context indicates otherwise, in this chapter

(1) "approved" means approved by the department;

(2) "area of public concern" means a geographic area that, in the department's judgment, deserves special protection from an oil discharge, including

(A) an area of unique cultural value, historical significance, or scenic importance;

(B) an area of substantial residential or public recreational value or opportunity;

(C) an area where fish hatcheries or other facilities primarily dependent upon the use of potentially affected water are located;

(D) an area significantly used for commercial, sport, or subsistence hunting, fishing, and gathering; and

(E) an area where concentrations of terrestrial or marine mammals or bird populations primarily dependent on the marine environment are located;

(3) "barge" means oil barge;

(4) "barrel" has the meaning given that term at AS 46.04.900;

(5) "best available technology" means equipment, supplies, and other resources which, in the department's judgment, meet or exceed the current level of demonstrated available technology;

(6) "capacity" means storage capacity;

(7) "cargo volume" means storage capacity;

(8) "catastrophic oil discharge" has the meaning given that term at AS 46.04.900;

(9) "catch tank" means the container that collects well fluids, muds, and oil from drilling;

(10) "cleanup" means removal of oil or another hazardous substance from the environment, restoration, and other measures that the department considers necessary to mitigate or avoid further threat to the land, waters, or air of the state;

(11) "contain" means to surround a discharge with booms, berms, dikes, or other barriers to prevent the further spread of the discharge;

(12) "control" means to stop, restrict, or deflect the movement of a discharge;

(13) "department" means the Alaska Department of Environmental Conservation;

(14) "discharge" has the meaning given that term at AS 46.04.900; for purposes of this chapter, the term applies to an unpermitted discharge into the environment;

(15) "dispersant" means a chemical agent used to enhance the breakup of concentrations of discharged oil into droplets, thereby promoting mixing of oil into the water column and accelerating dilution and degradation rates;

(16) "environmentally sensitive area" means a geographic area that, in the department's judgment, is especially sensitive to change or alteration, including

(A) an area of unique, scarce, fragile, or vulnerable natural habitat;

(B) an area of high natural productivity or essential habitat for living resources;

(C) an area of unique geologic or topographic significance which is susceptible to a discharge;

(D) an area needed to protect, maintain, or replenish land or resources, including floodplains, aquifer recharge areas, beaches, and offshore sand deposits;

(E) a state or federal critical habitat, refuge, park, or other designated refuge or preserve; and

(F) an area that merits special attention as defined at 6 AAC 80.170;

(17) "estuarine" or "estuary" means a semi-enclosed, coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(18) "existing installation" means storage and surge tanks, secondary containment, piping and any other operational appurtenances constructed and installed before the effective date of this section; existing storage and surge tanks that have been reconstructed, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992, are considered a new installation for the purposes of this chapter;

(19) "exploration facility" has the meaning given that term at AS 46.04.900;

(20) "facility" or "facility or operation" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, endeavor, or act, and includes an oil terminal facility, tank vessel, oil barge, pipeline, and an exploration or production facility;

(21) "freshwater wetlands" means those environments characterized by rooted vegetation that is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;

(22) "groundwater" means water in the zone of saturation, which is the zone below the water table, where all interstices are filled with water;

(23) "hazardous substance" has the meaning given that term at AS 46.03.826;

(24) "hazardous waste" means wastes within the scope of 18 AAC 62.010 -- 18 AAC 62.020;

(25) "impermeable" means using a layer of manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure, sufficient to contain a discharge until it is detected and cleaned up;

(26) "inside waters of Southeast Alaska" includes all those marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(27) "lightering" means the pumping or transferring of oil from the cargo compartment of one vessel, barge, storage tank, or container to another vessel, barge, storage tank, or container;

(28) "liquefied petroleum gas" means natural gas converted to a liquid state by pressure and cooling, butane, propane, and other light ends which at 70 degrees Fahrenheit and atmospheric pressure revert to the gaseous state;

(29) "local government" means any borough, city, town, village, or other political subdivision of the state, any Indian tribe or authorized tribal organization, and includes any rural community or unincorporated town or village;

(30) "major discharge" means a discharge of oil

(A) over 10,000 gallons on inland waters;

(B) over 100,000 gallons on coastal waters; or

(C) in any amount that results in a release that

(i) might require evacuation or sheltering of nearby residents or businesses; or

(ii) causes a serious environmental threat;

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

(32) "mechanical response method" means the use of containment booms, skimmers, and other apparatus and equipment required for mechanical containment and removal of a discharge;

(33) "new installation" means storage and surge tanks, secondary containment, piping and any other operational appurtenances constructed, installed, or placed into service after the effective date of this section, including reconstructed storage and surge tanks, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992;

(34) "noncrude oil" means any refined petroleum product derived from crude oil;

(35) "oil" has the meaning given that term at AS 46.04.900;

(36) "oil barge" has the meaning given that term at AS 46.04.900;

(37) "oil storage tank", for the purposes of 18 AAC 75.065 and 18 AAC 75.075 means all containers, including storage and surge tanks, used to store bulk quantities of oil which have a capacity greater than 10,000 gallons, but does not include process pressure vessels or underground storage tanks;

(38) "oil terminal facility" has the meaning given that term at AS 46.04.900 and includes vessels classified as oil terminal facilities under 18 AAC 75.280;

(39) "oily waste" means any material, including water, that has been contaminated by or mixed with oil in other than naturally occurring circumstances;

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

(41) "open water" means marine waters below mean low low water and freshwaters of the state, excluding wetlands and the wetland or shoreline perimeter of lakes, rivers, and streams;

(42) "operator" has the meaning given that term at AS 46.04.900;

(43) "owner or operator" means the owner or operator of a facility or operation that is subject to the requirements of AS 46.04.030, 46.04.040, or this chapter;

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

(45) "persistent product" means a refined oil product with a common name such as bunker C, Number 6, Chevron Residual, lube oil, or any other product with similar viscosity, degradability, and dispersibility;

(46) "person" has the meaning given that term at AS 46.04.900;

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

(A) for a vessel, the master;

(B) for a vehicle, the operator; and

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

(48) "pipeline" has the meaning given that term at AS 46.04.900;

(49) "plan" means an oil discharge prevention and contingency plan approved under this chapter;

(50) "plan holder" means an applicant who has received department approval for an oil discharge prevention and contingency plan and who is responsible for compliance with the plan as approved;

(51) "ppm" means parts per million;

(52) "Prince William Sound" includes all marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(53) "Prince William Sound towing package" means a towing gear assembly that consists of

(A) 400 feet of $2^1/_4$ inch tow reaching wire;

(B) 720 feet of six-inch polypropylene floating pickup line;

(C) one floating pickup buoy; and

(D) a "D" shackle, $2^1/_4$ inches in diameter, with a $4^1/_8$ inch jaw opening, and a breaking strain of 55 tons, to connect the floating line to the tow reaching wire;

(54) "production facility" has the meaning given that term at AS 46.04.900;

(55) "realistic maximum operating limitation" means the upper limit of a combination of environmental factors that might occur at a facility or operation beyond which an operator would be unable to mount a mechanical response to a discharge event;

(56) "response planning standard" means a planning standard against which the adequacy of an oil discharge prevention and contingency plan will be judged by the department and does not constitute a cleanup standard that must be met by the holder of a contingency plan;

(57) "resource agencies" means, in addition to the Alaska Department of Environmental Conservation, the Alaska Department of Natural Resources and the Alaska Department of Fish and Game;

(58) "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(59) "sensitive gauging system" means the best demonstrated available gauging technology at the time of tank construction or substantial reconstruction, or initial gauging system installation;

(60) "sensitive receiving environment," for the purposes of 18 AAC 75.075(d), means fresh or marine waters supporting anadromous fish or used for drinking or food processing, waters susceptible to eutrophication, a stream with low or intermittent flow, tundra, or lands which permit exposure of wastewater to the public;

(61) "significant change" means

(A) a change in operational readiness or removal from designated storage of significant equipment or materials;

(B) a management or ownership change resulting in new chain-of-command or lead response personnel;

(C) a change in response contractors;

(D) a change in spill control or cleanup strategies; or

(E) any factor that significantly alters or reduces the ability of the plan holder to respond according to the provisions of the approved contingency plan;

(62) "state waters" means waters of the state;

(63) "storage capacity," means, for a vessel, the maximum amount of oil that the vessel can legally carry as cargo while in state waters, or as certified by the American Bureau of Shipping, Certificate of Inspection by United States Coast Guard, or an equivalent classification by a society or agency in a foreign country or a lesser amount upon proof and verification to the department's satisfaction; for a tank, "storage capacity" means the full physical volume of the tank; the storage capacity of pipes at a facility is considered part of the storage capacity of that facility;

(64) "sufficiently impermeable" means, for a secondary containment system, that the design and construction of the system is such that it has the impermeability necessary to protect groundwater from contamination and to contain a discharge until it can be detected and cleaned up; for design purposes for a new installation, this means using a layer of natural or manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-6} cm per second at a maximum anticipated hydrostatic pressure, unless an alternate design standard is approved by the department;

(65) "surety" includes a surety bond;

(66) "tank vessel" has the meaning given that term at AS 46.04.900;

(67) "transmission pipeline" means a pipeline, whether interstate or intrastate subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through October 1, 1990, through which crude oil moves in transportation, including line pipe, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units; "transmission pipeline" does not include gathering lines, flow lines, or facility piping;

(68) "ultimate disposal" includes disposal into or upon the waters or the surface or subsurface land of the state;

(69) "vessel" has the meaning given that term at AS 46.04.900; and

(70) "waters of the state" has the meaning given that term at AS 46.04.900.

(71) "oil spill primary response action contractor," for the purposes of 18 AAC 75.425 and 18 AAC 75.445, has the meaning given at 18 AAC 75.500(a). (Eff. 5/14/92, Register 122; am 9/25/93, Register 127)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.04.030	
	AS 46.03.710	AS 46.04.035	

Alaska Department of Environmental Conservation

Discharge Notification and Reporting Requirements

AS 46.03.755 and 18 AAC 75.300-.307

Notification of a discharge must be made to the **nearest DEC office** during working hours

or

24-Hour Emergency Reporting Number during non-working hours

1-800-478-9300 In-state

907-269-5711 Out-of-state

Notification Requirements

DISCHARGE TO WATER

Any discharge of Hazardous Substance	—As soon as the person has knowledge of any discharge.
Any discharge of Oil	—As soon as the person has knowledge of any discharge.

DISCHARGE TO LAND

Any discharge of Hazardous Substance	—As soon as the person has knowledge of any discharge.
Any discharge of Oil in excess of 55 gallons	—As soon as the person has knowledge of any discharge.
Any discharge of Oil in excess of 10 gallons but 55 gallons or less	—Within 48 hours after the person has knowledge of any discharge.
Any discharge of Oil from 1 to 10 gallons	—A person in charge of a facility or operation shall maintain, and provide to the department on a monthly basis, a written record of any discharge including a cumulative discharge.

DISCHARGE TO IMPERMEABLE SECONDARY CONTAINMENT AREAS

Any discharge of oil in excess of 55 gallons	—Within 48 hours after the person has knowledge of any discharge.

Reporting Requirements

A written final report must be submitted to the Department for any discharge within 15 days after cleanup is completed or, if no cleanup occurs, within 15 days after the discharge. The Department may require interim reports until cleanup is completed.

rev. 8/92

ALASKA LAW REQUIRES THE REPORTING OF ALL

OIL AND HAZARDOUS SUBSTANCES SPILLS

During normal working hours call the nearest office of the

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Southeast Region	
Juneau District	465-5340
Ketchikan District	225-6200
Sitka District	747-8614

Northern Region	
Interior District	451-2360
Nome District	443-2600
Tok District	883-4381

Pipeline Region	
Coordinator's Office	278-8595
Prince William Sound District	835-4698

Southcentral Region	
Anchorage District	349-7755
Kenai District	262-5210
Matanuska Susitna District	376-5038
Valdez Field Office	835-4698
Cordova Field Office	424-4385
Western District	349-7755
Bethel Field Office	543-3215
Kodiak Field Office	486-6760
Unalaska Field Office	581-1822

Or Call: 1-800-478-9300 In State

(907) 269-5711 Out of State

24 hours/day

Alaska Department of Environmental Conservation
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1795

Alaska Statute 46.03.755

History of the 470 Fund by the Sponsor

By Mike Davis

There have been a number of editorials, advertisements and statements to the press regarding the original intent of the "470" fund (the Oil and Hazardous Substance Release Response Fund). Much of the information is misleading and inaccurate. As the original sponsor of HB 470 which passed in 1986, I thought I should set the record straight.

In 1985, during my second term in the legislature, I was Chairman of the Special Committee on Oil and Gas. A young woman came to me with an issue: A number of people on the Kenai Peninsula had polluted wells which were located near gravel pits containing drilling muds caused by previous oil and gas development.

I agreed to conduct a hearing to see if the state was doing everything possible to protect the water supply of Kenai residents. At the hearing we heard from concerned citizens, the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC). We found that the Kenai did have significant contamination in some areas and that the state had spent few resources to address the problem. However, we also found that the money in the existing Oil Spill Fund probably could not be used to assist these people even though the problem was directly related to the oil and gas industry.

As a result of the hearing, my staff and I spent the summer and fall reviewing statutes in other states, as well as federal laws, to develop legislation that would begin to address issues which we, as an oil and gas state, were beginning to face.

I decided to introduce a bill that expanded the existing oil spill fund to include hazardous substances. This would then enable us to address situations such as those on the Kenai or tank car spills in my home town.

The legislation received broad-based support. Mayors from Anchorage, Kenai and Fairbanks all supported the legislation, as did firefighters, citizens groups, Native, fishing and environmental groups. I also got enthusiastic statewide support from both Democratic and Republican legislators.

There were a number of incidents in the communities of key legislators which illustrated the need for such a fund. These included a chemical spill from the Railroad in Moose Pass and a problem with benzene in an Eagle River subdivision. The only public opposition to the fund came from Chevron.

In spite of Chevron's concerns, the legislation received overwhelming support. The legislation addressed the need to have a comprehensive approach to spills and other releases that occur in our oil-producing state. We were not able to pass legislation providing for funding during that session. In actuality, there was very little money appropriated to the 470 Fund from fiscal year 1987 to fiscal year 1989. Not an adequate amount to deal with all of the problems that we knew existed in Alaska. Unfortunately, it wasn't until 11 million gallons of oil were spilled in Prince William Sound that a funding mechanism was put in place.

In 1989, after the *Exxon Valdez* oil spill, the legislature adopted SB 260 that placed a nickel per barrel surcharge on every barrel of oil going through the pipeline. All SB 260 did was to set up the funding mechanism for the already existing 470 Fund, it did not in any way alter the fund or the original purposes for which it was established. The funding mechanism was set up such that the tax would be temporarily suspended when the 470

fund reached $50 million but re-imposed when the fund fell below $50 million. The legislative record shows that the legislature agreed that funding should be available for both oil and hazardous substance spills that pose a threat to public health or the environment. Other legislation passed in 1989 and 1990 that expanded the uses of the 470 fund to include, review of oil spill contingency plans, spill drills and inspections. In addition, a bill requiring annual review and revision of the state master spill contingency plan and regional plans and the establishment of a spill response office, equipment depots and response corps were all passed as a result of the *Exxon Valdez* oil spill and were are funded by the 470 Fund.

Now, perhaps because the climate is right and the spill occurred almost five years ago, history is being re-written. Industry is presenting arguments regarding what the fund should and shouldn't be used for. They are saying that the fund was not intended to be used for hazardous waste site clean ups -- that is not true. They are arguing that the 470 fund is supposed to be only an emergency fund used for cleaning up catastrophic oil spills -- that is not true. They are saying the surcharge was supposed to be a temporary one -- that, again is not true.

Senate Bill 215 and House Bill 238 were introduced based on these untruths. These bills were introduced on behalf of the oil industry by Representative Joe Green in the House and Senator Mike Miller in the Senate. These bills reduce the surcharge and therefore jeopardize funding for the critical spill prevention and response programs funded by the 470 Fund. We currently have something that works and we should continue to be prepared for all types of oil and hazardous spills. It took a catastrophic oil spill for us to put in place a funding mechanism to prevent and respond to spills. Only five years later the legislature is proposing to dismantle the important programs put in place after the spill.

One has to ask, who gains from the passage of SB 215 and HB 238? I think, upon examination, you would find that only the oil industry gains and the citizens of Alaska lose. I join the chorus of Alaskans opposing SB 215 and Joe Green's version of HB 238. If you share this concern write the legislature or call the Legislative Information Office at 452-4448 and send a public opinion message.

Mike Davis

P.O. Box 81435

Fairbanks, AK 99708

455-6430

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

December 29, 1993

Mark Prussing
Department of Revenue
Treasury Division
P.O. Box 110405
Juneau, AK 99811-0405

Don Wanie
Department of Administration
Division of Finance
P.O. Box 110204
Juneau, AK 99811-0204

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Charlie Hunter	From Mark Pfeffer
Co. DEC Finance	Co. Finance
Dept.	Phone # 5606
Fax #	Fax #

Re: EXXON VALDEZ Reimbursement

Dear Gentlemen:

On September 1, 1993, the State received a reimbursement payment of $20,000,000 from Exxon pursuant to the terms of the Exxon Consent Decree and the Memorandum of Agreement between the State and United States ("MOA"). As provided in AS 37.14.410, these reimbursements are to be initially deposited in the general fund with a percentage to be credited to the oil and hazardous substance release mitigation account ("mitigation account"). That percentage is determined by dividing the amount of reimbursed expenses which were initially paid from the oil and hazardous substance release response fund ("470 Fund") by the total amount of the reimbursed expenses.

To determine these numbers I requested Peterson Consulting, the firm under contract with the Department of Law to perform oil spill accounting services, to evaluate the expenses to which this reimbursement should be attributed. Specifically, we took those expenses subject to the $75 million cap found in paragraph VI.B.2. of the Memorandum of Agreement ("base allowed expenses" and expenses for response and cleanup costs incurred by the State before January 1, 1991), deducted that portion reimbursed in previous payments and thereby determined that $7,852,407 remained to be reimbursed under the $75 million cap. The amount of that remainder originating with the 470 Fund is $4,899,882 and the amount originating from other sources is $2,952,525.

The remaining $12,147,593 from this year's reimbursement is for post-cap expenses authorized by the MOA to be reimbursed to the State. In attributing this sum to specific expenses we were

cc:CSLH

mindful of the legislature's preference, as expressed in sec. 13 ch 79 SLA 1993, that $15,000,000 in general fund reimbursements this year be appropriated for design, engineering work and construction of a road connecting the Seward Highway and the Port of Whittier. Accordingly, in attributing these post-cap reimbursements, we first elected to reimburse those expenses originally paid from a source other than the 470 Fund and therefore required to be reimbursed to the general fund. That amount was $11,810,175. The remaining $337,415 in reimbursements for post cap expenses came from 470 Fund expenditures.

Therefore, of the $20,000,000 reimbursement, $5,237,297, should be credited to the mitigation account and $14,762,703 should remain in the general fund. Please contact me if any questions arise regarding this allocation.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Craig J. Tillery
Craig J. Tillery
Assistant Attorney General

CJT:akb

House Finance Committee Action - Section 20 (a), (b)

Front Section	FY94 Auth	FY95 Gov	FY95 Gov Amd	FY95 House
3/30/94 Balance of the OHSRRF Mitigation Account:				5,751.2
Section 20 (b) - Gov. proposed OHSRRF Mitigation Acct to STAF	4,991.5	5,545.0	5,545.0	5,545.0
246.1 to DEC for Environmental Crimes				(246.1)
1,500.0 to DOT/PF M&O-Highways and Aviation				(1,500.0)
1,000.0 for deficit reduction				(1,000.0)
Total House Action: STAF back to OHSRRF Mitigation Acct.				*(2,746.1)*
Section 20(b) House Action to Date - from Mitigation Acct. to STAF:	4,991.5	5,545.0	5,545.0	2,798.9
Adjust for House Finance Subcommittee decrements to Underground StorageTanks component, STAF (return to OHSRRF Mitigation Account)				(336.3)
Total necessary STAF balance per House action to date:				2,462.6
Section 20 (a) 3/30/94 OHSRRF Mitigation Account balance to be transferred to the OHSRRF after House action on section 20(b) ($5,751.2 - $2,462.6)				**3,288.6**

MEMORANDUM

RECEIVED
ALASKA DEPARTMENT OF REVENUE
JAN 25 1994
COMMISSIONER'S OFFICE

STATE OF ALASKA
Department of Administration

To: Darrel J. Rexwinkel
Commissioner
Department of Revenue

Date: January 25, 1994

File Ref:

From: Nancy Bear Usera
Commissioner
Department of Administration

Phone: 465-2200

Subject: Fourth Quarter 1993 Report for the Oil Surcharge Account

AS 43.55.230(b) requires that I report to you the difference between the cumulative amount received in the General Fund Oil Surcharge account and the cumulative amount expended from the Oil and Hazardous Substance Release Response Fund (OHSRRF) on a quarterly basis.

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by $50,000,000. As of December 31, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by $12,992,160. The calculation is as follows:

Oil Surcharge Account cumulative revenue	$115,704,042
Oil and Hazardous Substance Release Response Fund cumulative expenditures	128,696,202
Difference AS 43.55.230 (b)	($ 12,992,160)

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2240.

cc: John A. Sandor
Commissioner
Department of Environmental Conservation

Don Wanie, Director
Division of Finance
Department of Administration

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 — 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

Office of the Governor

NEWS CLIPPINGS IN
Anchorage Daily News

Audit finds spill fund used correctly

By IAN MADER
The Associated Press

JUNEAU — The state has properly spent its oil-spill response fund on spill prevention, small waste-site cleanups and related programs, contrary to industry claims, a legislative audit says.

But the audit also criticizes the Department of Environmental Conservation for its inability to keep adequate track of what other agencies spend from the fund. And the agency has been lax in recovering money from polluters for cleanup costs paid from the fund, the audit says.

The recently released audit says DEC's programs to protect against future spills through inspections, contingency plan reviews and drills are staffed at bare-bones levels.

Further staff reductions in the Spill Prevention and Response Division would be dangerous and would reflect the kind of complacency that allowed the Exxon Valdez disaster to occur five years ago, the audit says.

"We wonder whether complacency is again taking root," auditors wrote.

Please see Back Page, SPILL

SPILL: Legislative audit finds funds used correctly on prevention, cleanups

Continued from Page A-1

The industry, led by the Alaska Oil and Gas Association, has charged that nonemergency expenditures were improper as part of its campaign to get rid of a nickel-a-barrel tax on oil production. The tax goes into the fund and can be repealed after years when spending from the fund is below a certain level.

But of the $120 million spent from the fund since the tax was created in 1989, only $200,000 spent on an advisory panel was inappropriate, the audit determined.

Industry-supported bills introduced last year would phase out some of the tax and save companies as much as $114 million in the next five years. The tax raises about $26 million a year. DEC says it needs at least about half that amount to run prevention programs properly.

The industry has said many of those expenses are not supposed to come out of the fund.

"There have been abuses to the oil-spill fund since it was established in 1989," Ardie Gray, spokeswoman for the association, wrote to a newspaper in November. "Money from the fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil-spill emergencies."

The fund was created by the legislature in 1986, before the tax existed, the audit notes. It not only was intended for cleaning up future oil spills, but also to investigate and deal with past hazardous waste sites, the audit says. The tax was added after the Exxon Valdez oil spill in 1989.

The audit also notes that the legislature vastly expanded the uses of the fund to include reviews of spill-contingency plans, research, grants to municipalities for cleanup expenses, and payments on ferries that would have spill-response capabilities.

"It clearly shows that nothing the DEC has done through the years was illegal or improper," DEC administrator Bob Poe said Wednesday.

What has led to the oil industry claim and confusion over the fund is wording of the legislation that created the tax, the audit says.

It indicates the legislature's intent was for the "state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance."

But state law and legislation to expand the uses of the fund were the "overriding authority on appropriate uses of the fund," the audit says.

"I think the oil companies have a legitimate point," auditor Jim Griffin said. "This may be a situation where both parties may be right. But again, the wording they point to was slid into legislation that had an earlier intent."

The issue of the intent of a tax is moot anyway, the audit says. The legislature can use tax revenue any way it pleases.

Gray said the oil industry nonetheless feels it is inappropriate to spend a tax on crude oil on cleanups unrelated to the oil industry. But the industry is supporting legislation that would keep part of the tax indefinitely to help pay for such cleanups and for prevention programs.

Date: 3/17/1994

ska

WILLIAMS

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
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March 15, 1994

The Honorable Bill Williams
Chairman, House Resources Committee
Room 128, Capitol Building
Juneau, AK 99801

Dear Representative Williams:

I want to thank you for the amount of time you have given to HB 238, and the issues surrounding the Oil and Hazardous Substance Release Response Fund. Throughout the hearings, the public testimony has been at times pointed, but reflective of a concern that deserves the attention you have given it.

There have been a number of statements (paraphrased below in italics) made regarding the uses to which the Fund has been put that require clarification.

•*We have heard that the Fund has been used to cleanup a campground.* In fiscal year 1993, $38,000 from the Response Fund was appropriated to DNR to address drinking water contamination at the Tok River Campground. A water sample showed 0.35 ppm (parts per million) petroleum hydrocarbons and trace amounts of xylene, and the source was suspected to be an old military fuel line between Haines and Fairbanks. Because this site is owned by the state and is used by both residents and tourists, it was included in the state owned contaminated sites to be addressed through the State Memorandum of Agreement. Whether the military fuel line is the source of contamination and the federal government is responsible for the associated cleanup costs has not yet been determined. If it is, we will seek cost recovery.

• *We have heard that the Fund was used to cleanup a greenhouse.* The state, through DNR, leased land for a commercial greenhouse in Soldotna. In 1984, the site was foreclosed upon, and management reverted back to DNR. The site is contaminated with dioxin, PCB, lead, and pesticides. There are also miscellaneous drums of waste oil. Starting in FY 90 under Kenai Special Projects funding (which were general funds) and continuing through FY 94, a total of $306,191 has been spent on remediation, with $219,000 coming from the Response Fund. There have been no funds expended on the construction of the greenhouse, as has been implied. All funds were expended on site assessment and cleanup of hazardous substances. The responsible party is insolvent.

• *We have heard that the Fund was used to build an airport.* In 1993, DNR removed underground fuel tanks at the airport in McGrath, and discovered extensive soil and groundwater contamination. In FY 93, $42,613 from the Response Fund was appropriated to do a site assessment. In FY 94, $123,000 from the Fund was appropriated to begin remediation, but this has not been spent while the project's priority is being conducted by DNR, who would be responsible for cost recovery. No drinking water wells appear to be threatened by this contamination but adjacent freshwater habitat may be impacted.

• *We have heard that the Fund was used to build a fish hatchery.* The only project we can identify is a project funded by the Exxon Valdez oil spill restoration fund. As part of the legislation which passed last session appropriating Exxon Valdez oil spill settlement funds (HCS CSSB 183 (FIN)), $3,250,000 was included for development of a shellfish hatchery on the lower Kenai Peninsula, $4,000,000 was included for a water delivery system connecting the Anchorage Municipal Water Utility with the Fort Richardson hatchery, and $2,000,000 was included as a grant to the Prince William Sound Aquaculture Corporation for upgrade of the Main Bay Hatchery.

• *We have heard that only the oil companies pay for all oil and hazardous substance release cleanups.* In fact, all cleanup activities that take place using the Response Fund are subject to cost recovery, even when the activity is overseeing the remediation efforts of the party responsible for the release. Where the state is the responsible party, cost recovery is not sought.

While the responsible party is notified immediately that they will be required to repay the state's costs, demand letters are normally generated at the end of the project, once most or all the state's costs are known. Therefore, it can be several months before a demand letter is sent. For example, Defense Fuels (DFSC) was the responsible party for a spill that occurred in Indian last August. The demand letter, for more than $64,000, was sent to the DFSC just a few weeks ago.

• *Finally, we have heard that the Response Fund has been mis-managed by DEC, and that it has been used as the Department's "slush fund."* To these charges, I would simply ask that you read the Audit recently completed by the Division of Legislative Audit on the Response Fund (Audit Control Number 18-4463-94). A copy has been sent to you and the members of this committee under separate cover. What the Audit will show you is that in fact the Fund has been used by DEC appropriately and within both the bounds of the statutes which govern it and the appropriations made by the Legislature.

I trust this information will be useful to the Committee as it continues its deliberations. If anything additional is needed, please do not hesitate to let me know.

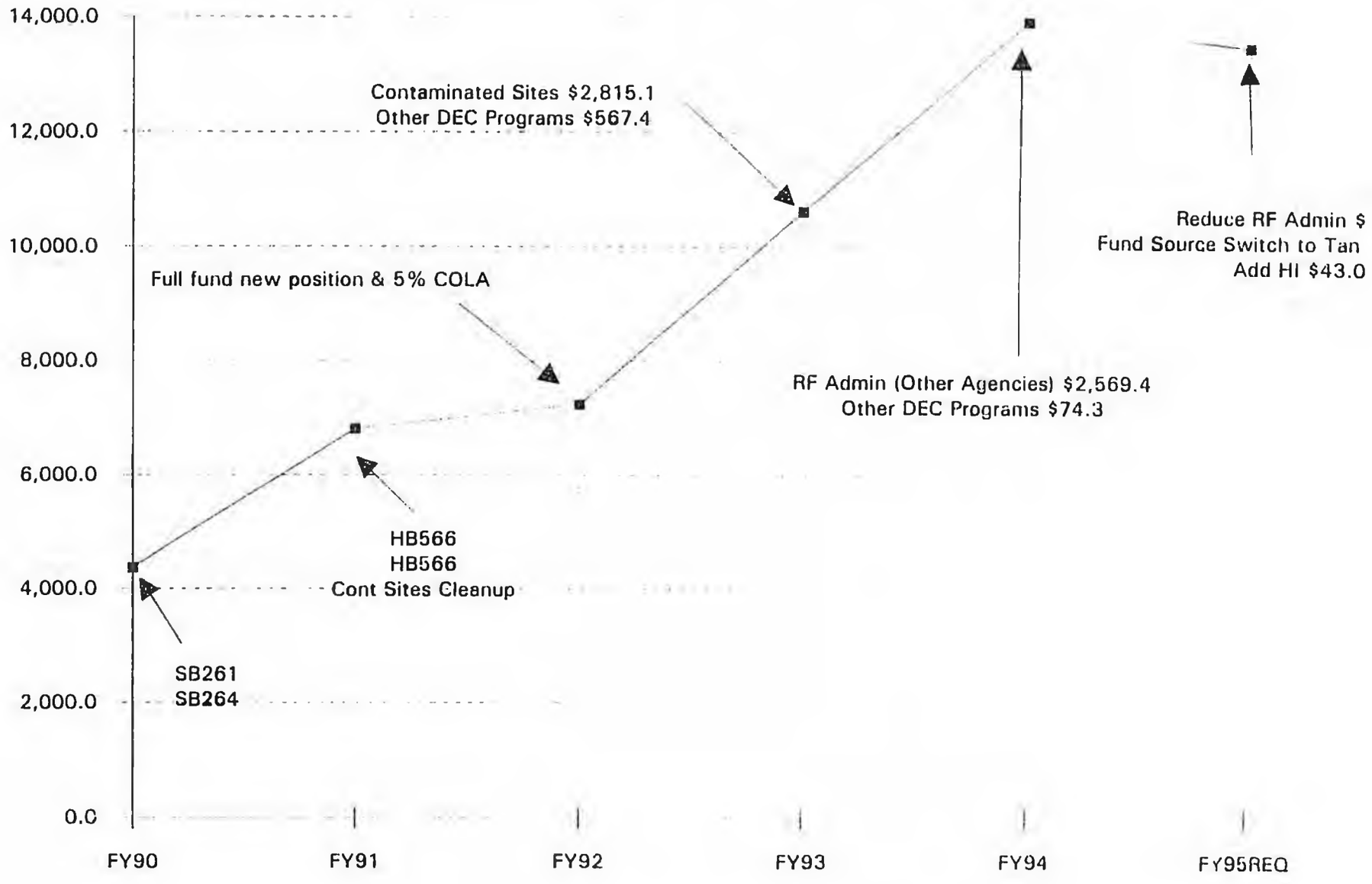
Sincerely,

John A. Sandor
Commissioner

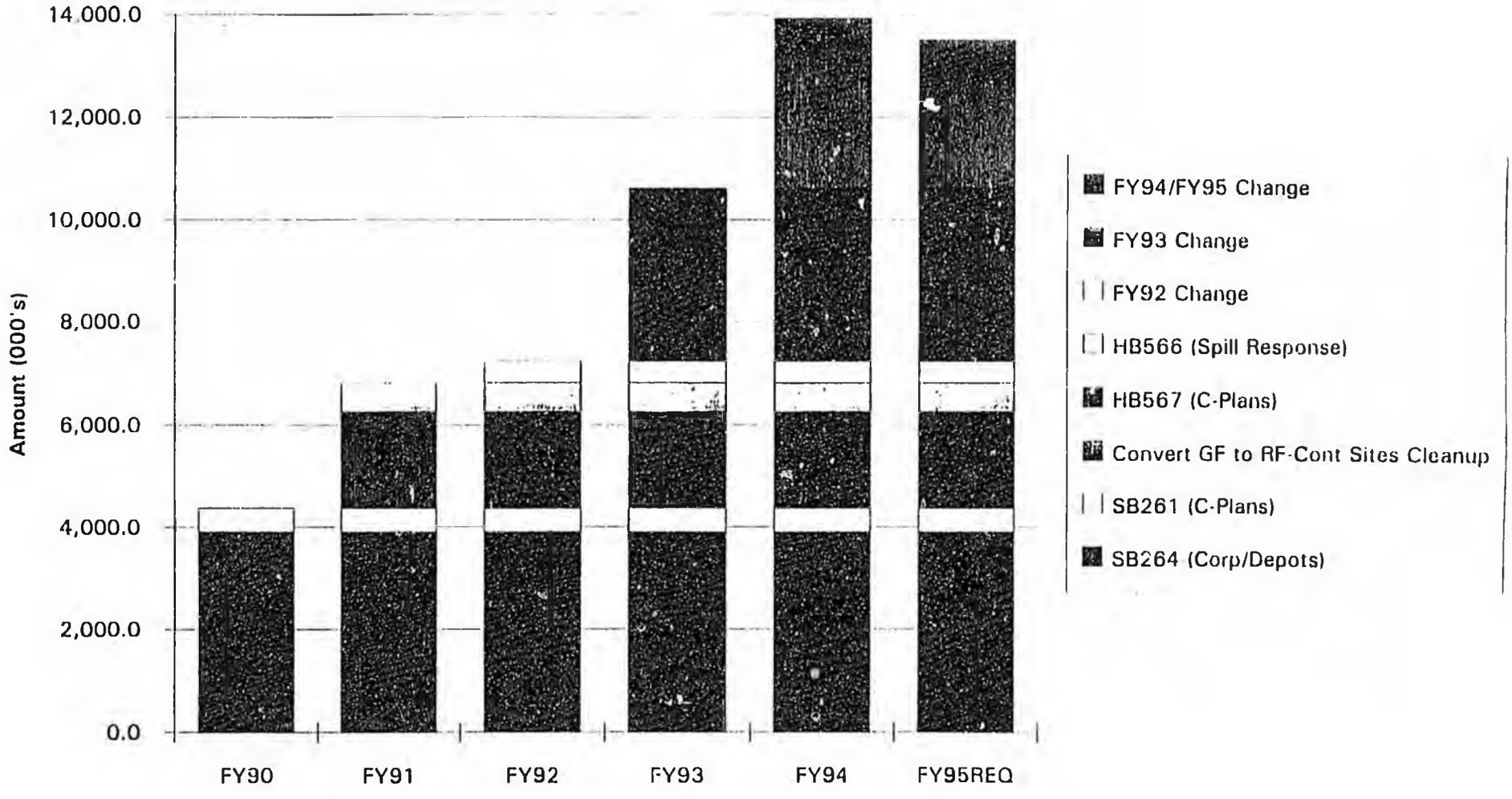
JA/MT/re (CO-COMM\REFUTE.RF)

cc: All Members, House Resources Committee
All Members, Senate Finance Committee
Pat Ryan, Chief of Staff, Office of the Governor
Shelby Stastny, Director, OMB
Raga Elim, Office of the Governor
Dick Eliason, Legislative Liaison, Office of the Governor

Department of Environmental Conservation
Response Fund Operating Budget Growth



Department of Environmental Conservation
Response Fund Operating Budget Growth



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Response Fund Appropriations
Department of Environmental Conservation
3/1/94

Operating Budget Only

Funding Auth	Operating Budget Items RF	GF	OTHER	Comments
FY90	4,371.8			
	3909.9			SB264(Corps & Depots)
	461.9			SB261(C-Plans)
FY91	2,439.0			
	518.0	(518.0)		Convert GF to RF for Cont Sites cleanup
	1,371.0			HB567(C-Plans)
	550.0			HB566 (Spill Response)
FY92	434.3			
	485.2			Full fund new fiscal note positions & 5% COLA
	182.1	(182.1)		Convert GF to RF for SPAR Director component
	(233.0)			Move Kenai cleanup to front of budget($280.0), $47.0 other miscellaneous
FY93	3,382.5			
	1,582.7			Contaminates Sites conversion from Non-operating to operating budget
	639.1	(639.1)		IAS Component conversion from GF to RF
	181.3	(181.3)		SPAR Director Component conversion from GF to RF
	102.3			SRO(Spill Response Office) component increment for response preparedness, safety & equipment
	(355.3)			SPPM(Spill Prevention/Planning Mgt) component -reduce projects/delete 1PFT to STR Council
	1,232.4			Contaminated Sites
FY94	3,312.4			
	101.5			IAS Component
	123.0			EQ Director Component-Pollution Prevention
	186.5			EQ Monitoring & Lab Component
	108.0			Storage Tanks
	224.0			Increment to SouthCentral Region for Cont Sites & Spill Response
	2,569.4			Response Fund Administration Component-other Agency funding
FY95 Request	(417.4)			
	(358.4)			Reduce RF Admin Component $358.4
	(102.0)		102.0	Fund Source switch to Tanks $102.0
	43.0			Increase Health Insurance - all Components
RF Total	13,522.6			**Less Projected Spill Reserve $49,686.8**

Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									$0.0
Mitigation Account Transfers In	702.7		$135.5	$197.6	$1,695.1	$30.1	$1,823.3	$661.2	$4,847.5
General Fund Transfers In	80.7	$976.2	$10,500.0	$32,600.0					$44,456.9
General Fund Program Receipts Transfer In			$9,469.0	$15,596.7	$2,976.9	($553.0)			$27,489.6
Total General Fund Transfers In	$683.4	$976.2	$20,105.5	$48,394.3	$4,673.0	($522.9)	$1,823.3	$661.2	$76,794.0
.05 Surcharge Receipts Transfer In					$27,000.0	$28,500.0	$27,000.0	$26,700.0	$109,200.0
TOTAL REVENUE	$683.4	$976.2	$20,105.5	$48,394.3	$31,673.0	$27,977.1	$28,823.3	$27,361.2	$185,994.0
Expenditures From The Response Fund									
Statewide Programs	$428.7	$329.9		$1,702.0	$6,034.7	$8,617.3	$23,785.2	$14,083.0	$54,552.1
Exxon Valdez Oil Spill			$6,271.6	$31,775.6	$24,912.1	$15,702.8	$297.0		$78,959.1
Capital Budget					$583.7	$555.9	$177.9	$2,774.0	$4,091.5
TOTAL EXPENDITURES	$428.7	$329.9	$6,271.6	$33,477.6	$31,530.5	$24,876.0	$24,260.1	$16,857.0	$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	$428.7	$329.9	$6,271.6	$33,477.6	$4,652.0	($464.9)	$1,534.6	$407.4	$46,636.8
Proportion Expended From Surcharge Funds	$0.0	$0.0	$0.0	$0.0	$26,878.5	$25,340.9	$22,725.5	$16,449.6	$91,394.6
Total Expenditures	$428.7	$329.9	$6,271.6	$33,477.6	$31,530.5	$24,876.0	$24,260.1	$16,857.0	$138,031.4
Reconciliation									
Total Revenue									$185,994.0
Less Total Expenditures									$138,031.4
Subtotal									$47,962.6
Less Reserve For Encumbrances									$10,559.2
Spill Reserve Balance									$37,403.4

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EXECUTIVE SUMMARY

The Nickel-Per-Barrel Conservation Surcharge: A Review of Legislative History and Intent

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF). Similar legislation, Senate Bill 215, was introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the $0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for ***catastrophic crude oil*** spill response;
- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;
- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

It is clear from the legislative history of Senate Bill 260, which created the $0.05 per-barrel surcharge, that the intent of the legis - lation was to use the $0.05 per-barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances All versions of the legislation, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the "spill bill" package funded with the nickel-per-barrel surcharge.

In addition, **Senate and House committees did not limit use of the response fund based on the size of the spill nor did the final version of the bill.** No amendments were considered in either body to limit use of the Fund based on spill size. It was also clear that the **legislation was intended to be used to fund DEC annual operating costs of spill prevention programs for oil and hazardous substances.**

It appears that **despite recognition that the mechanism for calculating the response fund cap was complicated, there was no discussion regarding how the calculation would work under different appropriation scenarios** . All examples of the surcharge on/off switch assumed that the only source of funds into the OHSRRF would be appropriations of surcharge proceeds. However, it was recognized that in the initial years there would be insufficient revenue generated from the surcharge to pay for the other spill prevention and response legislation passed accompanied by fiscal notes showing the OHSRRF as the funding source. There was no discussion regarding the impact on fund cap calculations of general fund appropriations into the OHSRRF to fund these programs or "loans" made to the OHSRRF to pay for *Exxon Valdez* clean-up efforts.

Since 1989, the legislature has passed a number of pieces of legislation that have expanded the use of the response fund . These include development, review and revision of state and regional spill response master contingency plans; verification of financial responsibility; review of vessel and facility discharge prevention and contingency plans; conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans; development and operation of response corps and depots; grants to communities impacted by spills; operation of the Spill Response Office and the Citizens' Oversight Council on Oil and other Hazardous Substances; and construction of marine response vessels.

A 50-state survey of **other states' response funds** found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms.

Given North Slope producers' profits, **the $0.05 per barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993** . Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

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INTRODUCTION

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF).

Considerable opposition to the bill was expressed by the Alaska Departments of Law and Environmental Conservation at the bill's first hearing on March 24 before the House Resources Committee. With the exception of brief remarks from a representative of British Petroleum, no public testimony was heard. As a result agency concerns, Representative Green, chair, House Special Committee on Oil and Gas, proposed a new committee substitute for HB 238 (the "D" draft) on April 13, 1993.

A House Resources Committee hearing on this proposed committee substitute was held in the on April 17. Again, the Alaska Departments of Law and Environmental Conservation (DEC) voiced concerns regarding the proposed draft which was also strongly opposed by fishing organizations, environmental groups and other members of the public. As a result of continued opposition to the bill, another proposed committee substitute (the "M" draft) was released on April 20. No additional House Resource Committee hearings occurred during the legislative session. During the interim, the House Resource Committee held a hearing on HB 238, "M" draft on November 12. To date, the House Resources Committee has not adopted any of the proposed committee substitutes as the committee's working draft.

The "M" draft of HB 238 forms the basis for Senate Bill 215, introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees. The Senate Resources Committee held a hearing on SB 215 on November 19, 1993. **At this hearing, Senator Miller announced that the Senate Resources Committee would meet and pass SB 215 before the end of January 1994. The Senate Resources Committee is currently holding subcommittee work sessions on SB 215**. Background on this legislation is contained in Appendix A.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the $0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for ***catastrophic crude oil*** spill response;

- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;

- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

This report provides information to address these issues. The first section provides an overview of the development of oil spill response funds in Alaska, including the OHSRRF. The second section examines in more detail the legislative history and intent of Senate Bill 260 which created the severance tax conservation surcharge.[1] The third section examines legislation that impacts the purposes, uses, and annual appropriation from the OHSRRF. The fourth section presents information on response funds in other states. The final section reviews the $0.05 per-barrel surcharge in the context of North Slope oil producers' per barrel profitability.

BACKGROUND ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

In 1976, the Alaska Legislature passed its first major legislation addressing the potential risk of oil spills posed from oil and gas exploration, development and production in Cook Inlet and Prudhoe Bay. This legislation, Senate Bill 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products" (Chapter 266, SLA 1976), required oil spill contingency plans and proof of financial responsibility for clean up efforts, as well as provisions for charges to be paid by terminal users and oil tanker operators based on the degree of spill risk posed by their equipment and operations. Funds collected from the program were deposited into the Coastal Protection Fund, which served as a reserve to meet cleanup costs in the event of a major spill. Also deposited into the fund were penalties collected from spillers.[2]

In 1977, the Oil Spill Mitigation Account (Chapter 129, SLA 1977) was established within the general fund. Civil penalties for discharges of oil received by the state were to be deposited into the account. The legislation provided that the Legislature may annually appropriate funds received during

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[1] Information on the legislative history is based on a thorough review of the House and Senate Journals, committee minutes of all hearings, and committee bill packets on SB 260 and other bills in the "spill bill package."

[2] Alaska Department of Environmental Conservation, memorandum from Keith Kelton to Bill Ross, "Spill Expense Reserve Account History and Status Report," February 19, 1985.

the prior calendar year for the purpose of restoring and enhancing environments affected by oil pollution.[3]

In 1978, the Coastal Protection Fund was found to be in violation of the constitutional prohibition against the dedication of funds. As a result, in 1979 Governor Hammond introduced House Bill 265, "An Act relating to the prevention and control of oil pollution." The program was to be funded by levying an assessment on oil terminal facilities. However, provisions for the assessment on terminal facilities was deleted prior to passage of House Bill 205 in 1980 (Chapter 116, SLA 1980). As a result of dedication of funds prohibitions, the non-lapsing fund was to be capitalized by annual appropriations and cost recovery from responsible parties.[4]

In 1986, House Bill 470 and Senate Bill 375, both entitled "An Act relating to the release of oil and hazardous substances" were introduced. That same year, the Alaska Legislature enacted House Bill 470 (Chapter 59, SLA 1986) which added two new chapters within Alaska Statutes (AS) 46. Alaska Statutes 46.08 established the Oil and Hazardous Substance Release Response Fund, and AS 46.09 established a Hazardous Substance Release control chapter. The legislation also repealed the pre-existing "oil spill mitigation account" and created the "oil and hazardous substance mitigation account."

Purposes of the Oil and Hazardous Substance Release Response Fund

The original purposes of the Oil and Hazardous Substance Release Response Fund (OHSRRF), commonly referred to as the "470 Fund," as stated in AS 46.08.040 were:

1) to contain, cleanup and take other necessary actions, such as monitoring, assessing, investigating and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or the environment;

2) to provide matching funds for participation in federal oil discharge cleanup activities under CERCLA for hazardous waste site investigation, evaluation, and clean up; and

3) to recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

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[3] "Oil Pollution Control Programs in Alaska: Legislative and Fiscal History," House Bill 470, House Finance Committee Bill File, March 10, 1986.
[4] Ibid.

The legislation directed the Alaska Department of Environmental Conservation (DEC) to manage the Fund, and required DEC to maintain accounting records to document income and expenditures from the Fund and provide an annual report to the legislature.

Financing of the Oil and Hazardous Substance Release Fund

House Bill (HB) 470 identified several sources of potential revenue for the OHSRRF including:

- federal and state revenues;
- moneys recovered by the state from responsible parties to cover the state's cost in the cleanup of oil and hazardous substance releases; and
- fines, penalties, and damage awards.

Under the terms of HB 470, money recovered by the state from responsible parties or as a result of fines, penalties or damage awards were to be deposited into the state general fund and credited to the newly created "Oil and Hazardous Substance Release Mitigation Account." Once in the Mitigation Account, these funds could be appropriated to the OHSRRF.

Under the terms of the original law and consistent with the Alaska constitutional prohibition against dedicated funds, it was left to the legislature to determine appropriate funding levels on an annual basis. Appropriations could be made from the general fund, the Oil and Hazardous Substance Release Mitigation Account or other sources, as needed, to the OHSRRF. However, HB 470 included a statement of legislative intent in AS 46.08.030, which states, "It is the intent of the legislature and declared to be public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available."

IMPOSITION OF THE SEVERANCE TAX CONSERVATION SURCHARGE

On April 4, 1989, following the March 24 *Exxon Valdez* oil spill in Prince William Sound, Senate Bill (SB) 260, "An Act levying a severance tax on oil" was introduced. The sponsors of the legislation were Senators Kertulla and Szymanski. In the Senate, the bill was referred to the Senate Special Committee on Oil and Gas and the Resources and Finance Committees. In the House of Representatives the bill was referred to the Resources and Finance Committees. Senate Bill 260 was one of numerous pieces of oil spill related legislation introduced after the *Exxon Valdez* spill.

As introduced, the stated purpose of the Act was "to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger." The fee was $0.05 per barrel on all crude oil produced in the state. The fee was to be deposited in to the general fund and then appropriated on an annual basis by the legislature to the OHSRRF. There was no cap on the collection of the fee.

From the date of SB 260's first committee hearing to its transmittal to the governor was less than one month; this bill moved quickly through the legislature. However, it should be noted that many of the issues currently before the Eighteenth Legislature in House Bill 238 and Senate Bill 215 were deliberated by the legislature in 1989. Committee and floor actions on Senate Bill 260 are discussed in the next section of this report.

Committee Action on Senate Bill 260

The **Senate Special Committee on Oil and Gas** , chaired by Senator Drue Pearce, met April 11, 12 and 13, 1989 on SB 260. At these hearings, SB 260 was discussed in the context of SB 271, SB 261, HB 68, SB 264 and SB 266 which pertained to civil penalties for oil spills, state and regional oil and hazardous substances contingency plans, liability for oil and hazardous substances spills, oil and hazardous substances spill response corps and depots, and an oil spill emergency containment fund, respectively. These bills are commonly referred to as the "spill bill package."[5]

The Senate Oil and Gas Committee made three major changes to SB 260. First, it adopted the funding mechanism contained in Senator Halford's SB 266. Second, a $100 million maximum fund balance was added. Third, Senator Halford's SB 266 "blackmail clause" that sought to insure appropriations from future legislatures was also added. The blackmail clause would suspend the $0.05 per-barrel fee if the legislature failed to appropriate proceeds of the fee to the OHSRRF, or if the governor vetoed the appropriation and the veto was not overridden by the legislature. With the exception of the amount of the cap, these changes remained part of SB 260 when it was passed by the Legislature.

Senate Bill 266, sponsored by Senator Rick Halford, was another oil spill related bill before the Legislature in 1989. It imposed a $0.02 per barrel levy on crude oil production to be paid to the general fund then appropriated to the oil spill emergency containment fund. The surcharge would be suspended when the fund balance reached $20 million. The fund was to be used for oil spill emergency containment of catastrophic oil spills and to support an oil spill containment strike team. This bill had provisions similar to SB 260, the

[5]Senate Special Committee on Oil and Gas minutes, April 11, 1989, pp. 1-6; April 12, 1989, pp. 1-8; April 13, 1989, pp. 1-15.

surcharge bill, and SB 264, the response corps and response depots bill. Senate Bill 266 was passed by the Senate Special Committee on Oil and Gas and the Senate Resources Committee, then withdrawn by the sponsor. When passed, however, SB 260 contained many of the provisions originally contained within SB 266. However, **provisions of Senator Halford's SB 266 which limited response to catastrophic spills and could have been interpreted to limit response to crude spills (language in the bill was unclear) were not part of SB 260.**

Another of the spill bills considered by the legislature was SB 261, relating to state and regional contingency planning. Initially, SB 261 was to have its own separate tax levy to fund state and regional master contingency plan review. The Senate Special Committee on Oil and Gas also adopted the funding mechanism from SB 266 (Senator Halford's bill) for the funding of the development and review of state and regional master contingency plans. This was later removed and the nickel per barrel conservation surcharge, 470 Fund, became the source of funding for state and regional contingency planning.

The **Senate Resources Committee**, chaired by Senator Bettye Fahrenkamp, heard SB 260 on April 19 and 21, 1989. Compared to the Senate Oil and Gas and Finance Committees, there was relatively little discussion on the bill at the Senate Resources Committee meetings. Some discussion of increasing the levy to $1 per barrel and increasing the cap to $200 million did occur. Conceptual changes were suggested for the bill but it was passed out of committee before a new committee substitute could be drafted. It was also noted by the committee chair that the set of bills---SB 260, 261, 264, 266, 271 and HB 68 would need to be changed and better coordinated by future committees. The fund maximum was set at $100 million by the Senate Oil and Gas Committee. The Senate Resource Committee contemplated increasing the cap to $200 million but informally adopted a $25 million cap which was contained in the proposed draft resources committee substitute recommended to the Senate Finance Committee.[6]

The **Senate Finance Committee** heard SB 260 on April 22 (?) and 28.[7] At the April 22 (or 26) meeting, Senator Fahrenkamp, chair, Senate Resources Committee, came before the Finance Committee and directed her remarks to SB 260, SB 261, SB 264 and SB 266. She explained that the Senate Resources Committee had a proposed draft committee substitute for SB 260 that the Resources Committee had not adopted because of insufficient time to draft the changes. Senator Uehling, co-chair of the Senate Finance Committee assigned

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[6]Senate Resources Committee bill packets and minutes, April 19, 1989, pp. 1-6; April 21, 1989, pp. 1-9.

[7]There is some confusion because the Senate Finance Committee minutes indicate that the meeting occurred on April 22, 1989 but the proposed CS is dated April 26. It is likely that the committee meeting was actually on April 26.

SB 260 to a Finance subcommittee chaired by Senator Pearce and consisting of Senators Duncan and Uehling.[8]

At the April 28 Finance Committee hearing, SB 260 was heard with SB 261, SB 264, and SB 271. There was a more in-depth overview and lengthy discussion of the bill. The proposed Resources Committee Substitute was adopted as a working document. Principal points of discussion were as follows:

- The purpose section ("....to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger.") was expanded to a findings and purpose section that was similar to the findings and purpose sections contained in the other oil spill bills. It added the finding that "the March 24, 1989 oil spill disaster in Prince William Sound demonstrates the need for the state to have an independent spill containment and clean up capability in the event of future discharges of oil or hazardous substances." The purpose was expanded to "provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substances releases of a magnitude that presents a grave and substantial threat to the economy and environment of the state."

- The fee would not be charged to fuel barges on rivers because they transport refined products rather than crude oil.

- Senator Pearce explained that Sections 42.59.050 and 42.59.60, the "blackmail clause sections," were included to ensure that the legislature appropriate money into the response fund on a long-term basis--that in the past **the legislature has not demonstrated "a great deal of staying power"** when it comes to setting up a new fund and ensuring annual appropriations as evidenced by the current balance of the oil and hazardous substance release response fund.

- Jack Chenoweth, legislative council, gave a lengthy explanation of how the "on/off" provisions of the bill would work. This was explained in the context of the fiscal notes for SB 261 and SB 264 which would use approximately $4.5 million annually during the initial years.

- Senator Uehling noted that 13 different pieces of legislation were pending, and that if they all passed, more than $4.5 million would be needed from the fund.

- Senator Pearce noted that the effect of additional expenditures would be that the tax would remain on for a longer period of time. If the cap were

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[8]Senate Finance Committee bill packet and minutes, April 22, 1989, pp. 1 and 17-26; April 28, 1989, pp. 1-2, 6-21, and 31-32.

raised from $25 million to $70 million, as discussed, it would have the same effect.

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statutes.

- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.

- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the wellhead and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.

- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.

- Senator Zharoff voiced that the $25 million cap was inadequate. He suggested that the cap be $50 million. Following a review of Department of Revenue projection of revenues, the $50 million cap was adopted without objection.

- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

Senate Bill 260 was passed out of the Senate Finance Committee on April 28, 1989. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The final finance committee substitute changed the title, the findings and purpose section, defined the levy more

specifically as a surcharge, established the fund cap at $50 million, clarified that the surcharge does not diminish the liability of a responsible party, and added a severability section.

The only **public testimony presented to the Senate Finance Committee** was by the Alaska Environmental Lobby which voiced support for the bill but preferred the original bill. In addition, they preferred a larger fee as well as a higher cap.

Senate Bill 260 was passed by the **Senate** on April 29, 1989. Three amendments were offered and two were passed on the floor. The first amendment was offered by Senator Adams to increase the surcharge to $0.50 per barrel. This failed on a vote of 2 yeas and 18 nays. Amendment number two, removing the severability clause, was offered by Senators Pearce, Halford and Faiks.[9] It passed on a vote of 12 yeas and 8 nays. Amendment number three, inserting the surcharge amount of $0.05 per barrel in the bill title was offered by Senator Pearce. This amendment passed by a vote of 13 yeas and 7 nays. The effect of the title change amendment was to make it more difficult for the House to change the per barrel amount of the surcharge because it would require a three-quarters vote to change a senate bill title in the house.[10]

Senator Halford gave a notice of reconsideration. At reconsideration, Senator Adams asked to return to second reading for the purpose of a specific amendment. Senator Adams offered amendment number four, which would delete the $0.05 per barrel reference from the title, establish an interim surcharge of $0.50, and make the law effective immediately. Amendment number four failed 8 yeas to 12 nays.

The **House Resource Committee** heard SB 260 on May 4, 1989. There was little discussion on the bill and no changes. The one topic of discussion was the complicated mechanism for the surcharge to be imposed or suspended depending on the fund balance. There was a memorandum from the Legislative Affairs Agency, Division of Legal Services in the committee packet explaining how the mechanism worked. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The Alaska Environmental Lobby testified in support of the bill; no other public testimony was presented.[11]

The **House Finance Committee** heard SB 260 on May 6. The bill was heard with SB 261, state and regional master plans, and SB 264, response corps and depots. There was relatively little discussion regarding SB 260. Senate Bill

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[9]Severability allows a portion of law that is found to be invalid by the courts, to be "severed" from the remainder of the law. Specifically regarding SB 260, the Senate Finance Committee was concerned that the blackmail clause may be found invalid.

[10]Information on floor debate is from the Senate Journal, 1989, pp. 1526-1529, 1536-1538.

[11]House Resources Committee bill packet and minutes, May 4, 1989, pp. 1, 6-7, 14-15.

260 was identified as the funding source for the programs contained in other pieces of legislation. There was discussion regarding whether the planning and response corps and depot programs should be funded with general funds or response funds (i.e. whether the funding should be contained with the rest of DEC's annual budget or be in the front section of the annual budget where funding for the 470 Fund is located). A motion to amend SB 261's fiscal note to identify general funds as the funding source failed.[12]

Senator Kertulla, prime bill sponsor of SB 260, gave a brief overview of the legislation. Representative Koponen asked if the "blackmail clause" was constitutional; he was told that legal counsel had advised that the bill would be viable without the severability clause that was removed on the Senate floor. The bill was moved from committee with a do pass recommendation. The same April 28 "indeterminate" (uncertain) fiscal note from the Department of Revenue was attached. No public testimony occurred.

Senate Bill 260 was scheduled on the **House Floor** on May 8, 1989. It passed with a vote of 26 yays and 10 nays and received a notice of reconsideration.[13] On reconsideration, the bill passed 30 yeas and 10 nays. No amendments were offered on the House floor.

It is clear that the intent of the legislation was to use the $0.05 per - barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances. All versions of SB 260, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the spill package funded with the nickel-per-barrel surcharge .

In addition, the legislation that passed the Senate and House did not limit use of the response fund based on the size or type of the spill. It was also clear that the legislation was intended to be used to fund DEC spill prevention programs for oil and hazardous programs because the 470 Fund is the funding source on the fiscal notes attached to the legislation that created these programs. This topic was also discussed at the Senate Special Committee on Oil and Gas,[14] and in the context of the other spill bills in the other committees of referral.

It is also clear that **despite recognition that the mechanism for calculating the fund cap was complicated, there was no discussion as to how the calculation would work if mitigation money or general funds were appropriated to the OHSRRF. All examples of the**

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[12]House Finance Committee packet and minutes, May 6, 1989, a.m., pp. 1-12.

[13]Information on floor debate is from the House Journal, 1989, pp. 1629, 1722, 1737-1738, 1774, 1776-1777, 1846-1848.

[14]Senate Special Committee on Oil and Gas, minutes, April 12, 1989, p. 6.

surcharge on/off switch assumed that the only source of funds appropriated to the OHSRRF would be proceeds of the surcharge .

However, Senator Bettye Fahrenkamp recognized that in the first years there would be insufficient revenue generated from the surcharge to fund the other pieces of legislation passed with fiscal notes showing the OHSRRF as the source of funds. In addition, at the April 22, 1989 Senate Finance Committee hearing, Senator Halford also raised concerns as to whether enough thought had gone into the funding mechanism--that he perceived there could be problems. He stated that if others wanted to adopt sections of his SB 266, that was fine but he was disassociating himself with SB 266 and the other bills. **There was no discussion of the impact of general fund appropriations into the OHSRRF on fund cap calculations.**

Public Testimony on Senate Bill 260

There was relatively little public testimony on the bill. The only oil industry testimony on SB 260 occurred on April 13, 1989 in the Senate Special Committee on Oil and Gas when persons representing Exxon, Alyeska and ARCO Alaska testified generally in opposition to the surcharge. It was recommended that causes of the *Exxon Valdez* spill be studied before the Legislature enact any new legislation. In contrast, Jim Palmer, representing British Petroleum testified that penalties for spillers could be increased to support a spill containment fund. Testimony from the public and environmental groups generally advocated increasing the per barrel surcharge and the cap on the fund; this was expressed at most of the hearings.

LEGISLATION EXPANDING USE OF THE RESPONSE FUND

In 1986 the legislation which created the OHSRRF stated that it was the intent of the legislature that "funds for the abatement of a release of oil or a hazardous substance will always be available." Until FY 89, the Response Fund received money from the general fund and from responsible parties of spills. After the *Exxon Valdez* accident in March 1989, special appropriations were made including money from program receipts (money loaned from the general fund). Since fiscal year (FY) 91, however, the primary funding source has been the $0.05 per barrel conservation surcharge (AS 43.55.200).

Amendments to Uses of the Fund

The legislature made changes to the fund in 1989, 1990, and 1991. These changes expanded use of the OHSRRF to include funding for:

- spill response during emergency disasters declared by the governor;
- operation of the spill response office;
- preparation of state and regional discharge prevention and contingency plans;
- development and operation of response corps and depots managed by the state Division of Emergency Services, Department of Military and Veteran Affairs;
- review of vessel and facility discharge prevention and contingency plans;
- grants issued by the Alaska Department of Community and Regional Affairs for spill impacted communities;
- state Emergency Response Commission and the Local Emergency Planning Committees;
- conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans;
- verification of proof of financial responsibility;
- operation of the Citizens' Oversight Council on Oil and Hazardous Substances; and
- refurbishment or construction of marine response vessels by the state Department of Transportation and Public Facilities.

Table 1 shows the year, session law, bill number and primary impact of the legislation passed.

Table 1

Legislation Expanding the Uses of the Oil and Hazardous Substance Release Response Fund, 1989 through 1991.

Legislation Enacted 1989 Session

SLA 89 Chapter 29 **SB 256**
Expanded Municipal reimbursements for Response Fund

SLA 89 Chapter 112 **SB 260**
Established nickel-per-barrel surcharge on oil industry production.

SLA 89 Chapter 90 **SB 261**
Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay cost of Sate and Regional Plans.
Expanded use of the Response Fund to include restoration of the environment.

SLA 89 Chapter 90 **SB 264**
Established Response Office in DEC for catastrophic or declared emergency spills.
Established emergency response equipment depots in DEC's Response Office.
Established emergency response volunteer corps in DEC's Response Office.
Expanded use of the Response Fund to pay for Response Office and Depot and Corps.

Legislation Enacted 1990 Session

SLA 90 Chapter 190 **HB 566**
Added incident command system requirement to State and Regional Plans.
Required DEC to use State plan to designate depot and response office locations.
Required DEC to submit the State Master and Regional Plans and revisions to the State Emergency Response Commission for review and approval.
Transferred responsibility to establish depots and corps to the Dept. of Military & Veteran Affairs, Division of Emergency Services (DES).
Established Sate Emergency Response Commission (SERC).
Established Local Emergency Planning Committees (LEPCs).
Established Hazardous Substance Spill Technology Review Council (HSSTRC).

SLA 90 Chapter 191 **HB 567**
Required industry contingency plans to include prevention measures.
Added certification requirement for approved contingency plans.
Clarified proof of financial responsibility and limits liability for tank vessel or oil barge operations.
Established DEC participation in structural integrity of vessels, barges, pipelines and facilities.

Table 1 continued

Expanded use of Response Fund to include:

Review of oil discharge prevention and contingency plans
Conduct training, response exercises, inspections, tests to verify approved contingency plans.
Verify financial responsibility.

SLA 90 Chapter 199 **HB 578**
Established Citizens' oversight council.
Expanded use of Response Fund to include Citizens' Oversight Council costs.

Legislation Enacted 1991 Session

SLA 91 Chapter 48 **SB 165**
Expanded use of Response Fund to include construction of marine response vessels.

SLA 91 Chapter 83 **SB 25**
Expanded uses of Response Funds to municipal grants.

SLA 91 Chapter 31 **SB 194**
Required the Board of Marine Pilots to cooperate w/ DEC in the review and approval of training programs for pilots of tanker vessels.

SLA 91 Chapter 92 **SB 196**
Required the Citizens' Oversight Council to submit a report on response action contractor liability.

SLA 91 Chapter 90 **SB 263**
Provided a one-year delay for compliance of non-crude oil operation with financial responsibility requirements.
Authorized DEC to issue interim approval for contingency plans.

Source: Alaska Department of Environmental Conservation, unpublished funding history information.

OTHER STATES' RESPONSE FUNDS

In March 1993, the *Oil Spill U.S. Law Report* published an article containing information from a 50-state survey entitled "State fees on oil for spill response and administrative costs." In April 1993, the Alaska Legislative Research Agency released a research memorandum containing the *Oil Spill U.S. Law Report* article as well as results of interviews conducted with spill response fund administrators in California, Florida, Louisiana,, New Jersey, Texas, and Washington. These reports are contained in Appendix B. This section summarizes the results of the survey and interviews and provides additional analysis.

In summary, the 50-state survey found that **agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the U.S. charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.**

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administrative costs to the reimbursement of cleanup/remediation expenditures.[15] Some funds are treated as insurance policies, while others are financed primarily through the collection of penalties. Likewise, some fee/fund systems are designed so that the fund can reach a cap at which point the fee is shut off, while others are designed to generate the same amount of available money each year.[16]

At the time of publication, the states of Montana, New Hampshire, Virginia and Idaho were either changing the mechanism for collecting the fee or increasing or expanding the applicability of the charge. In addition, Hawaii House Bill 1194 would establish a 6-cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at $7 million.

Types of Response Funds

Of the 28 states that assess a per-gallon or per-barrel fee, the types of fees generally fall into three categories. The first type is assessed by nine of the states (Alaska, California, Florida, Louisiana, New Jersey, New York, Oregon, Texas, and Washington) that are major oil producers and/or processors. In addition, all of these states are coastal states, most of which have extensive programs to protect their marine environments and communities from potential oil spill impacts. These states assess a per-barrel charge on oil produced in, entering, or transported through the state. The volume of oil transported through these states or along their coastlines is significantly greater than other states which increases the risk of spills.

The second type of state program is a broader-based assessment charged on a per-gallon basis for all petroleum products entering or sold in the state. These funds appear to be used for a wider range of cleanup activities as opposed to the third type of program that is directed primarily toward leaking underground storage tanks. Twelve states (Delaware, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, South Dakota, Vermont, Wisconsin and Wyoming) have this second, broader type of program.

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[15] *Oil Spill U.S. Law Report*, March 1993, p. 12.
[16] Ibid.

The third type of program is primarily a per-gallon assessment on all petroleum products entering or sold in the state but the proceeds of the funds are directed primarily toward underground storage tank release clean up. Seven (Arizona, Idaho, Maryland, Michigan, Missouri, Oklahoma, South Carolina, and Virginia) of the 28 states have this type of program.

Of the latter two types of programs, Wyoming is the only state that assesses the fee directly on retail fuel consumers. Most of the states charge the fee to the first importer of fuels into the state or to fuel distributors. The latter two types of fees are primarily assessed on non-crude products because that is the predominate, if not only, form of petroleum products in the state.

Nine states (Arizona, California, Florida, Kansas, Maine, Maryland, New Hampshire, Washington, and Wyoming) have more than one account or fund. In five of the nine states (California, Florida, Maine, Maryland, and New Hampshire), separate assessments are collected to provide revenue to the different accounts. In the remaining states, the assessments are funneled into separate funds or accounts to be used for different purposes.

The next sections on other states' response funds focuses on the nine states with the first type of fund discussed above. Alaska's OHSRR Fund is included in this first type.

Response Funds Tax Rates

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.**

Florida and New Jersey have variable rate assessments. In Florida, the two cent charge can be increased to ten cents in the event of a major spill. Similarly, in New Jersey the one and one half cent assessment can be increased to four cents. Calculation of the mean rate using the Florida and New Jersey maximum rates results in an average charge of 7.1 cents per barrel. Similarly, if California's combined fee (29 cents) and Florida and New Jersey's maximum fee are used to calculate the average fee, the average increases to 7.6 cents per barrel. It should be noted that Oregon is not included in these calculations because it assesses a per-trip, as opposed to a per-barrel, fee.

Types of Products Assessed Response Fees

The states of Alaska, Louisiana and Texas per-barrel charges are only on crude oil; in each of these states, spill prevention and response programs

include crude oil, other petroleum products and hazardous substances. In California, Florida and Washington, all petroleum products are assessed the per-barrel fee and are included in response. The state of New Jersey's per-barrel assessment includes charges on hazardous substances as well as crude and refined petroleum products. Oregon's assessment, as well as its spill prevention and response programs, is on both crude and non-crude products.

Uses of Response Funds

In all of the nine states, **the charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs** . In California and Washington, a separate assessment is charged for operating costs while a response fund with a maximum balance is collected under a separate assessment. **None of these states limit use of response funds based on the size of a spill.** The only exception to this is Washington where spill responses costing less than $50,000 total are to be paid from agency operating budgets. Alaska's fund has a similar provision for DEC response costs below $25,000.

Of the nine states with a primary revenue source being a per-barrel assessment on crude oil, the purposes of the funds include spill clean up, as well as operating prevention programs and administering the fund. **In none of the nine states is spill response limited to crude oil or to catastrophic spills.**

CONSERVATION SURCHARGE IN THE CONTEXT OF NORTH SLOPE PROFITABILITY

In October 1993, Dr. Richard A. Fineberg presented a paper entitled "Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures" at the 15th Annual North American Conference of the International Association for Energy Economics (Appendix C). This paper was a continuation of Mr. Fineberg's research for the Alaska Senate Finance Committee completed in November 1992 and a study by Dr. Edward B. Deakin for the Alaska Department of Revenue completed in March 1989.[17]

The focus of the October 1993 study is the **balancing of environmental risks against the costs of prevention and mitigation measures** . Specifically, Dr. Fineberg's study compares the costs of 1) installation of a vapor emissions recovery system to capture potentially toxic emissions vented

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[17]Richard Fineberg, "North Slope Profits and Production Prospects," report to the Alaska Senate Finance Committee, November 11, 1992 and Edward B. Deakin, "Oil Industry Profitability in Alaska 1969 through 1987," prepared for the Alaska Department of Revenue, March 15, 1989.

during loading and off-loading tankers at Valdez, and 2) specially designed tractor tugs to handle a disabled tanker. These costs are reviewed within the context of North Slope oil producer profits. The North Slope profit calculations presented in Dr. Fineberg's study are used to review the relative impact of the severance tax conservation surcharge on North Slope producers' profits.

In summary, Dr. Fineberg estimates that for the calendar years (CY) 1987 through 1992, the average profit on North Slope production was approximately $5.05 per-barrel. Total North Slope producers' profits for the years 1986 through 1992 are estimated to be $25.9 billion, or $3.7 billion per year (in 1993 dollars). In CY 1991, the industry average profits are estimate to be $4.77 per-barrel (Table 3). In CYs 1992 and 1993, profits are estimated to be $4.80 and $4.11 per-barrel, respectively. Using December 1993 Alaska Department of the Revenue data and an average price per-barrel of $10.40, Dr. Fineberg's recent estimate of North Slope profits is $1.62 per-barrel.

For comparison, Dr. Deakin estimated 1969 through 1987 average profits of $6.69 per barrel and 1977 through 1987 average profits of $5.81 per barrel. His 1986 "low-price estimate" was an average profit of $2.40 per barrel.

Given North Slope producers' profits, the $0.05 per-barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993 (Table 3). Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

Table 2.
Nickel-per-Barrel Surcharge in the Context of Estimated North Slope Profits

Year	Estimated Average Price /---------1993 $ / barrel---------/	North Slope Production and Pipeline Profits	Conservation Surcharge % of Profits
CY 1987-92		$5.05	1.0%
CY 1992	$17.66	$4.80	1.0%
CY 1993	$15.40	$4.11	1.2%
Dec-93	$10.40	$1.62	3.1%
FY 2000 (low)	$17.86	$4.94	1.0%
FY 2000 (mid)	$20.20	$5.90	0.8%
FY 2000 (high)	$21.17	$6.39	0.8%

Source: Fineberg 1992, 1993 and recent estimates by Fineberg for December 1993 oil prices.

CONCLUSION

In conclusion, the OHSRRF was developed in 1986 to respond to releases and threatened releases of oil and hazardous substances, to fund clean up of sites contaminated by oil and hazardous substances, and to recover costs of response and clean up from responsible parties. After the *Exxon Valdez* oil spill, the nickel-per-barrel conservation surcharge legislation was enacted to ensure adequate funding would be available in the OHSRRF for response to any future spills.

While the surcharge is a per-barrel tax on crude oil production in Alaska, it is clear from the legislative history that the surcharge levy is not intended to fund only crude oil response. Nor is response limited to large or "catastrophic" spills.

A number of pieces of legislation have been passed since 1989 that expand the Alaska Department of Environmental Conservation spill prevention, clean up, and oversight programs. These pieces of legislation have expanded the purposes and use of the OHSRRF and increased expenditures from the fund.

A 50-state survey of other states' response funds found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms. In the context of other states' response funds and Alaska North Slope producers' profits, Alaska conservation surcharge is not unreasonable.

Appendix A

Senate Bill 215 and Background Information

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR MILLER

Introduced: 5/8/93
Referred: RES, FIN

A BILL

FOR AN ACT ENTITLED

"An Act relating to and redesignating the oil and hazardous substance release response fund and to its use in the event of a disaster emergency; repealing the authority in law by which marine highway vessels may be designed and constructed to aid in oil and hazardous substance spill cleanup in state marine water using money in the oil and hazardous substance release response fund; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures related to oil or hazardous substances; amending the authority to contract to provide personnel to respond to a release or threatened release of oil or a hazardous substance and to contract to conduct spill related research; reassigning responsibility for the oil and hazardous substance response corps and for the emergency response depots to the Department of

Environmental Conservation, and for the operation of the state emergency response commission and its attendant responsibilities for the local emergency planning commissions to the Department of Military and Veterans' Affairs; and modifying definitions of terms relating to the preceding provisions; terminating the nickel-per-barrel oil conservation surcharge; levying and collecting two new oil surcharges; and providing for the suspension and reimposition of one of the new surcharges; and providing for an effective date."

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

*** Section 1.** AS 26.23.020(g) is amended to read:

(g) In addition to any other powers conferred upon the governor by law, the governor may, under AS 26.23.010 - 26.23.220,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for all news media other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state, if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing;

(10) allocate or redistribute food, water, fuel, or clothing; and

(11) use money from the oil and hazardous substance release **prevention and** response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

*** Sec. 2.** AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster,

(1) in the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance release prevention and response fund, and thereafter the governor may have second recourse to money regularly appropriated to state and local agencies and third recourse to money available in the disaster relief fund;

(2) if the disaster does not involve an oil or hazardous substance release or discharge,

(A) the **governor shall have** first recourse [SHALL BE] to money regularly appropriated to state and local agencies**; and**

(B) the governor shall have further [. THE SECOND] recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE

DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED BY AS 37.07.080(e),

(1) TRANSFER AND SPEND MONEY APPROPRIATED FOR OTHER PURPOSES; OR

(2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO YEARS].

* Sec. 3. AS 26.23.050 is amended by adding a new subsection to read:

(d) If money available from a source identified in (b) of this section is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

(1) transfer and spend money appropriated for other purposes; or

(2) borrow money for a term not to exceed two years.

* Sec. 4. AS 29.60.510(a) is amended to read:

(a) The commissioner may use money from the oil and hazardous substance release **prevention and** response fund to make grants to a municipality or village that is affected by the release or by the response to the release and that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the current revenue sources of the municipality or village if

(1) the governor determines that a release of oil or a hazardous substance exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance that, when released into the environment, presents a threat to the economy and public welfare of the municipalities and villages affected by it at least equivalent in effect to the effect of a release of oil in an amount defined by this paragraph;

(2) the release has been proclaimed a disaster emergency by the governor under AS 26.23.020; and

(3) the governor finds that

(A) the release of the oil or hazardous substance into the environment presents a real and substantial threat to the economy and public

welfare of the municipalities and villages that are affected by the release and by the resultant activities to contain and clean up the release; and

(B) it is in the best interest of the state to pay the expenses incurred by municipalities and villages to mitigate the social and economic effects that arise out of the release of the oil or the hazardous substance and the resultant cleanup activities.

* **Sec. 5.** AS 29.60.510(b) is amended to read:

(b) For each disaster emergency declared by the governor under AS 26.23.020 **that involves a catastrophic oil release or threatened catastrophic oil release**, and subject to agreement with the commissioner of environmental conservation as to the amount of money in the fund that may be used by the department to make grants, the commissioner may expend not more than $10,000,000 [OF THE BALANCE OF THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the unrestricted balance of the **catastrophic oil release response account in the** fund for grants authorized under this section. **For each disaster emergency declared by the governor under AS 26.23.020 that involves a release or threatened release of oil or a hazardous substance, except a catastrophic oil release, and subject to appropriation of money in the fund that may be used by the department to make grants, the commissioner may expend not more than the amount appropriated from the oil and hazardous substances release contingency and abatement account in the fund for grants authorized under this section.** If the commissioner and the commissioner of environmental conservation do not agree on the amount of money in the **catastrophic oil release response account in the** fund that may be used by the department to make grants under AS 29.60.500 - 29.60.599 **for a catastrophic oil release or threatened catastrophic oil release**, the governor shall make the determination.

* **Sec. 6.** AS 29.60.560(e) is amended to read:

(e) Expenditures made under this section may be made only from the amount transferred to the commissioner under AS 29.60.510(c), unless

(1) the commissioner and the commissioner of environmental conservation mutually agree that payment may be made from money in the oil and

hazardous substance release **prevention and** response fund not transferred under AS 29.60.510(c); or

(2) the commissioner pays them from another source.

* **Sec. 7.** AS 29.60.599(4) is amended to read:

(4) "fund" means the oil and hazardous substance release **prevention and** response fund established by AS 46.08.010;

* **Sec. 8.** AS 37.14.410 is amended to read:

Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred by the state on or before December 31, 1992, shall be deposited in the general fund and, except as required under (b) of this section, may not be credited to the oil and hazardous substance release mitigation account under AS 46.04.010 or **to an account established in** AS 46.08.020 **or 46.08.025**.

(b) A percentage of each payment deposited in the general fund under (a) of this section shall be credited to the **oil and hazardous substances release contingency and abatement account established in** [OIL AND HAZARDOUS SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020. That percentage is determined by dividing

(1) the amount of the expenses for which the state may be reimbursed under (a) of this section that were paid from the [OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

(2) the total amount of expenses for which the state may be reimbursed under (a) of this section.

* **Sec. 9.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay a surcharge of $.03 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to

(1) and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and

(2) the surcharge imposed by AS 43.55.300 - 43.55.320.

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.150.

* **Sec. 10.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge that are deposited into the general fund.

* **Sec. 11.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The legislature may appropriate the annual estimated balance of the account established under AS 43.55.211 to the catastrophic oil release response account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

* **Sec. 12.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE SURCHARGE. (a) Except when a different time for making a determination is required under (f) of this section, not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money that has been

(1) deposited through that calendar quarter, or was received through that calendar quarter and is subject to deposit, into the catastrophic oil release response account of the oil and hazardous substance release prevention and response fund established by AS 46.08.010;

(2) deposited through the calendar quarter, or was received through the calendar quarter and is subject to deposit, into the catastrophic oil release response mitigation account under AS 46.08.025(b);

(3) expended through that calendar quarter from the catastrophic oil release response account of the oil and hazardous substance release prevention and response fund.

(b) Within 15 days after making the determinations required by (a) of this section, the commissioner of administration shall

(1) add the amounts determined under (a)(1) and (2) of this section;

(2) determine the difference between the amount determined under (1) of this subsection and the amount determined under (a)(3) of this section; and

(3) report the amount determined under (2) of this subsection to the commissioner.

(c) In making the determination required by (b) of this section, the commissioner of administration may not consider within the calculation money described in (a) of this section that was received subject to a dedication imposed by the federal government that restricts the use of the money to a specific purpose.

(d) If the commissioner of administration reports that the difference determined under (b) of this section equals or exceeds $50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of a suspension authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be paying the surcharge under AS 43.55.201 that the surcharge will be suspended.

(e) Except as provided in AS 43.55.241, if the commissioner of administration reports that the difference determined under (b) of this section is less than $50,000,000, the commissioner of revenue shall require imposition and collection of the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of reimposition of the surcharge authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be required to pay the surcharge under AS 43.55.201 that the surcharge will be reimposed.

(f) Notwithstanding the requirement of (a) of this section that the cumulative determination of receipts and expenditures be made quarterly, when the amount determined under (b) of this section is $45,000,000 or more, the commissioner of

administration shall make the determinations required by this section not later than 30 days before each calendar quarter and every 30 days thereafter.

* **Sec. 13.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from the surcharge would be sufficient to restore the balance of the oil and hazardous substance release prevention and response fund on the first day of the fiscal year to at least $50,000,000, and

(1) the legislature does not, during the regular legislative session preceding the first day of the fiscal year, appropriate money from the general fund to the catastrophic oil release response account in the oil and hazardous substance release prevention and response fund sufficient to restore the balance of that account on the first day of the fiscal year to at least $50,000,000; or

(2) the legislature, during the regular legislative session preceding the first day of the fiscal year, appropriates money from the general fund to the catastrophic oil release response account in the oil and hazardous substance release prevention and response fund sufficient to restore the balance of that account on the first day of the fiscal year to at least $50,000,000 and, because of gubernatorial veto or reduction in the amount of the appropriation, restoration of the balance of the fund to at least $50,000,000 does not become law.

* **Sec. 14.** AS 43.55 is amended by adding new sections to read:

ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay a surcharge of $.02 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to

(1) and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and

(2) the surcharge imposed by AS 43.55.201 - 43.55.241.

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under AS 43.55.011 - 43.55.150.

Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general fund.

Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The legislature may appropriate the annual estimated balance of the account established under AS 43.55.310 to the oil and hazardous substance release contingency and abatement account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

* Sec. 15. AS 43.55.900(3) is amended to read:

(3) "catastrophic oil discharge" **means**

(A) an oil release or discharge in excess of 100,000 barrels; or

(B) any other oil release or discharge that the governor determines presents a grave and substantial threat to the economy or environment and for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c) [HAS THE MEANING GIVEN IN AS 46.04.900];

* Sec. 16. AS 43.55.900(15) is amended to read:

(15) "surcharge" means

(A) when used in AS 43.55.201 - 43.55.241, the surcharge levied by **AS 43.55.201** [AS 43.55.200]**;**

(B) when used in AS 43.55.300 - 43.55.320, the surcharge levied by AS 43.55.300;

* Sec. 17. AS 46.04.030(e) is amended to read:

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas, [AND] to **take containment and cleanup and**

other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

* **Sec. 18.** AS 46.04.030(e) as amended by sec. 11, ch. 83, SLA 1992, is amended to read:

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas, [AND] to **take containment and cleanup and other necessary action to** [CONTAIN, CLEAN UP, AND] mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

(1) periodic training;

(2) response team exercises; and

(3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

* **Sec. 19.** AS 46.04.200(a) is amended to read:

(a) The department shall

(1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide master oil and hazardous substance discharge prevention and contingency plan;

(2) annually review the statewide master oil and hazardous substance discharge prevention and contingency plan; and

(3) revise the statewide master oil and hazardous substance discharge prevention and contingency plan; the department shall revise the statewide master plan whenever, in the judgment of the commissioner, revision is necessary.

* **Sec. 20.** AS 46.04.200(c) is amended to read:

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations; and

(2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW AND COMMENT;

(3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

(4)] require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section [; AND

(5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW AND APPROVAL UNDER AS 46.13.045].

* **Sec. 21.** AS 46.04.200 is amended by adding a new subsection to read:

(d) In preparing a revision of the statewide master plan, the commissioner shall submit

(1) the draft plan to the

(A) public for review and comment; and

(B) Alaska State Emergency Response Commission for its review and approval under AS 46.13.045; and

(2) the proposed revision of the plan to the legislature for review not later than the 10th day following the convening of each regular session.

* Sec. 22. AS 46.04.210(a) is amended to read:

(a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall

(1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional master oil and hazardous substance discharge prevention and contingency plan;

(2) annually review the regional master oil and hazardous substance discharge prevention and contingency plan; and

(3) revise the regional master oil and hazardous substance discharge prevention and contingency plan; the commissioner shall revise a regional master plan whenever, in the judgment of the commissioner, revision is necessary.

* Sec. 23. AS 46.04.210(b) is amended to read:

(b) The provisions of **AS 46.04.200(b) - (d)** [AS 46.04.200(b) AND (c)] apply to preparation and review of a regional master plan under this section.

* Sec. 24. AS 46.04.900(2) is amended to read:

(2) "catastrophic oil discharge" means

(A) an oil **release or** discharge in excess of 100,000 barrels; [,] or

(B) any other **oil release or** discharge **that** [WHICH] the governor determines presents a grave and substantial threat to the economy or environment **and for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c)** [OF THE STATE];

* Sec. 25. AS 46.08.005 is amended to read:

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the

catastrophic release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a [READILY AVAILABLE] fund **containing two accounts. Within the fund,**

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the Department of Environmental Conservation **during an emergency first response to a catastrophic release or threatened** [AND THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE STATE FROM THE] release of oil **and for related purposes intended to address catastrophic oil releases;**

(2) the other account consists of money that the state may use during a response to a release or threatened release of oil or a hazardous substance, other than a catastrophic oil discharge, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law [OR HAZARDOUS SUBSTANCES].

*** Sec. 26.** AS 46.08.010(a) is amended to read:

(a) There is established in the state general fund the oil and hazardous substance release **prevention and** response fund. The fund shall be administered by the commissioner. **The fund is composed of two accounts,**

(1) the oil and hazardous substances release contingency and abatement account;

(2) the catastrophic oil release response account.

*** Sec. 27.** AS 46.08.010(b) is amended to read:

(b) Money from an appropriation made to **an account in** the fund remaining in **that account** [THE FUND] at the end of a fiscal year remains available for expenditure in successive fiscal years.

*** Sec. 28.** AS 46.08.010(c) is amended to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in **AS 46.08.040(a)(2)(D)(ii) for the equipment that is required for and placed in the oil and hazardous substance response depots** [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

* **Sec. 29.** AS 46.08.020 is amended to read:

Sec. 46.08.020. FINANCING OF THE **OIL AND HAZARDOUS SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT** [FUND]. (a) The legislature may appropriate from the following sources to the **oil and hazardous substances release contingency and abatement account in the** fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site**, to the extent that the money recovered or otherwise received had been paid out of the oil and hazardous substances contingency and abatement account**, but excluding

(A) money recovered or otherwise received due to a catastrophic oil discharge; and

(B) money [FUNDS] from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action; **and**

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance**, but excluding fines, penalties, or damages recovered or otherwise received due to a catastrophic oil discharge**.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous **substances** [SUBSTANCE] release **contingency and abatement** mitigation account." The legislature may annually appropriate to the **oil and hazardous substances release contingency and abatement account in the** fund from **the oil and hazardous substances release contingency and abatement mitigation** [THIS] account a sum equal to the amount received under (a)(2) and (a)(3) of this section

during the calendar year preceding the legislative session in which the appropriations are to be made.

* **Sec. 30.** AS 46.08 is amended by adding a new section to read:

Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE RESPONSE ACCOUNT. (a) The legislature may appropriate from the following sources to the catastrophic oil release response account in the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of a catastrophic oil discharge, but excluding money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil discharge.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "catastrophic oil release response mitigation account." The legislature may annually appropriate to the catastrophic oil release response account in the fund from the catastrophic oil release response mitigation account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

* **Sec. 31.** AS 46.08.040(a) is amended to read:

(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money

(1) from the **catastrophic oil release response account in the** fund to

(A) [(1)] investigate and evaluate **a catastrophic oil** [THE] release or threatened **catastrophic oil** release [OF OIL OR A HAZARDOUS SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take **containment and**

cleanup and other necessary action, such as monitoring and assessing, to address a catastrophic oil release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(B) [(2) PAY ALL COSTS INCURRED TO

(A) ESTABLISH AND MAINTAIN THE OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE;

(B) REVIEW OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

(C) CONDUCT TRAINING, RESPONSE EXERCISES, INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY, OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN; AND

(D) VERIFY OR ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY REQUIRED BY AS 46.04.040;

(3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY THE DIVISION;

(4)] provide matching funds in the event of a catastrophic oil release for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) [(5)] recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the catastrophic oil release or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE];

(2) from the oil and hazardous substances release contingency and abatement account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a catastrophic oil release, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a catastrophic oil release, that poses an imminent and substantial threat to the public health or welfare;

(B) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance, except a catastrophic oil release;

(C) pay all costs incurred to

(i) establish and maintain the oil and hazardous substance response office;

(ii) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(iii) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(iv) verify or establish proof of financial responsibility required by AS 46.04.040;

(D) pay the expenses incurred by the department for

(i) the oil and hazardous substance response corps;

and

(ii) the oil and hazardous substance response depots:

(E) provide matching funds in the event of the release of oil or a hazardous substance, except a catastrophic oil release, for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(F) [(6)] prepare, review, and revise

(i) [(A)] the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(ii) [(B)] a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210

[; AND

(7) RESTORE THE ENVIRONMENT BY ADDRESSING THE EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

*** Sec. 32.** AS 46.08.040(b) is amended to read:

(b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF THE DISASTER EMERGENCY,] use money from the catastrophic oil release response account in the fund to respond to a [THE] disaster emergency based upon a release or discharge of oil or a hazardous substance

(1) in circumstances when the actual or imminent occurrence of a catastrophic oil discharge constitutes a condition of disaster emergency, as authorized by AS 46.04.080(a); or

(2) when the governor has declared a condition of disaster emergency under AS 26.23.020(c).

*** Sec. 33.** AS 46.08.040(b) is amended to read:

(b) **The** [WHEN THE GOVERNOR DECLARES A DISASTER RELATED TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF THE DISASTER EMERGENCY,] use money from the **catastrophic oil release account in the** fund to respond to **a** [THE] disaster emergency **based upon a release or discharge of oil or a hazardous substance when the governor has declared a condition of disaster emergency under AS 26.23.020(c)**.

*** Sec. 34.** AS 46.08.040(c) is amended to read:

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in **(a)(1)(B) - (D) or (a)(2)** [(a)(2) - (7) AND (d)(2)] of this section unless money is available from an appropriation made specifically for that purpose.

*** Sec. 35.** AS 46.08.060(a) is amended to read:

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020 **and 46.08.025**;

(3) a summary of municipal participation in the department's responses that were **paid for** [FUNDED] by the fund;

(4) a detailed summary of department activities in responses **paid for** [FUNDED] by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH, "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION, EACH CONTRACT IN EXCESS OF $20,000, AND EACH PURCHASE IN EXCESS OF $10,000;] and

(5) the projected cost to the department for the next fiscal year of

monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

* **Sec. 36.** AS 46.08.075(a) is amended to read:

(a) The state has a lien for expenditures by the state from the oil and hazardous substance release **prevention and** response fund, or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance **release or** spill, or, with respect to response costs, **for the costs of response to a threatened** [THE SUBSTANTIAL THREAT OF A] release of oil or a hazardous substance, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

* **Sec. 37.** AS 46.08.075(e) is amended to read:

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release **or spill,** or **from the threatened** [THREAT OF] release, of oil or a hazardous substance.

* **Sec. 38.** AS 46.08.110 is amended to read:

Sec. 46.08.110. RESPONSE CORPS. (a) The **department** [DIVISION OF EMERGENCY SERVICES, DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS,] shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the **department** [DIVISION] and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the **department** [DIVISION] for training and for days spent in service to the state in containment and cleanup actions.

*** Sec. 39.** AS 46.08.120 is amended to read:

Sec. 46.08.120. RESPONSE DEPOTS. The **department** [DIVISION] shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

*** Sec. 40.** AS 46.08.150 is amended to read:

Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS APPLICABLE,] may

(1) enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(A) [(1)] provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness; **and**

(B) [(2)] train members of response corps; and

(2) contract with persons to provide personnel, including members of the emergency response corps, to assist them with a nongovernmental response to a release or threatened release of oil or a hazardous substance [(3) CONDUCT RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY; THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

*** Sec. 41.** AS 46.08.900(5) is amended to read:

(5) "fund" means the oil and hazardous substance release **prevention and** response fund;

* **Sec. 42.** AS 46.08.900(9) is amended to read:

(9) "release"

(A) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(B) [, EXCEPT THAT "RELEASE"] does not include

(i) a permitted release; or

(ii) an act of nature;

* **Sec. 43.** AS 46.08.900(11) is amended to read:

(11) "threatened release" means [AN IMMINENT DANGER] that a release **is imminent; a release is imminent if**

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to cause personal injury, other injury to life, or loss of or damage to property, including the environment [WILL OCCUR];

* **Sec. 44.** AS 46.08.900 is amended by adding a new paragraph to read:

(13) "catastrophic oil discharge" and "catastrophic oil release" have the meaning given the term "catastrophic oil discharge" in AS 46.04.900.

* **Sec. 45.** AS 46.09.900(8) is amended to read:

(8) "threatened release" means [AN IMMINENT DANGER] that a release **is imminent; a release is imminent if**

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to

cause personal injury, other injury to life, or loss of or damage to property, including the environment [WILL OCCUR].

* **Sec. 46.** AS 46.13.010(a) is amended to read:

(a) There is established in the Department of Military and Veterans' Affairs [ENVIRONMENTAL CONSERVATION] the Alaska State Emergency Response Commission.

* **Sec. 47.** AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

* **Sec. 48.** TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the reference to which is repealed by sec. 5 of this Act, is not an expenditure.

* **Sec. 49.** APPLICABILITY. The definition of "catastrophic oil discharge" in AS 46.08.900, added by sec. 44 of this Act, applies to discharges occurring after the effective date of this section.

* **Sec. 50.** TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the effective date of this section, every producer of oil who is required by AS 43.55.200 - 43.55.240, repealed by this Act, to pay the oil conservation surcharge of $.05 per barrel of oil shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received after June 30, 1993, and before the effective date of this section, if so appropriated by the legislature and notwithstanding any other provision of law relating to the deposit of and accounting for those receipts,

(1) on the effective date of this section, the commissioner of revenue shall allocate

(A) 60 percent of the amount received to the catastrophic oil release response account established by AS 46.08.010(a)(2), added by sec. 26 of this Act; and

(B) 40 percent of the amount received to the oil and hazardous substances release contingency and abatement account established by

AS 46.08.010(a)(1), added by sec. 26 of this Act; and

(2) the allocations made under (1) of this section are credited to the respective accounts for purposes of determination of the suspension and reimposition of the surcharge under AS 43.55.231 and 43.55.241, added by secs. 12 and 13 of this Act.

*** Sec. 51.** TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response Commission from the Department of Environmental Conservation to the Department of Military and Veterans' Affairs made by sec. 46 of this Act does not affect the term of office of a person serving as a member of the commission on the effective date of this section.

*** Sec. 52.** Section 33 of this Act takes effect only if Senate Bill 90 am H becomes law.

*** Sec. 53.** If sec. 33 of this Act takes effect, sec. 32 of this Act does not take effect.

*** Sec. 54.** Section 18 of this Act takes effect January 1, 1994.

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Overview of Senate Bill 215 (5/8/93)

In its basic mission of restricting the use of the Oil and Hazardous Substance Release Response Fund and replacing the Fund with a new fund composed of two accounts, Senate Bill (SB) 215 differs slightly from HB 238, 4/20/93 "M" draft which differs little from the HB 238, 4/13/93 "D" draft. Specifically, the 2-cent, 3-cent split is maintained. This overview discusses the principle features of SB 215. Sections of the bill are included to facilitate reference. This is followed by a brief discussion of the three predominant difference between SB 215 and HB 238.

Purposes of the Fund. The purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release." [sections 25, 26]

"Two Cent" and "Three Cent" Accounts. The proposal divides the new fund into two accounts---the "catastrophic oil release account" and the "oil and hazardous substances release contingency and abatement account." The catastrophic account would receive 3 cents of the surcharge. Uses of this account would be restricted to crude oil catastrophic spill response [section 25]. Catastrophic oil spills are defined as those equal to or greater than 100,000 barrels or 4.2 million gallons [section 15, 24]. When the $50 million cap is reached, the 3 cent portion of the surcharge would be suspended [section 12].

The contingency and abatement account would receive 2 cents of the 5-cent surcharge [section 14]. Spill response for all non-crude oil and hazardous substances spills, and crude oil spills less than 100,000 barrels or 4.2 million gallons would be paid for from this account. In addition, all funding for spill prevention programs would be from this account. The 2-cent surcharge would be paid indefinitely with no capping mechanism.

There are two major problems with this proposal. The first is that the 2 cent portion of the surcharge is insufficient to fund DEC spill prevention programs. It is insufficient with current oil production levels and the problem becomes more acute as North Slope production continues to decline. The proposal would force a continued reduction in DEC programs or the supplementing of general fund money at the same time state revenues are also declining.

The second major problem is that a spill reserve for "smaller" spills would not exist. Given the definition of "catastrophic oil spill," it is highly probable that most spills would be below the catastrophic threshold. To access the catastrophic account would require a governor's disaster declaration. To continue use of the account after 30 days would require a special legislative session (unless the legislature were in session). This is hardly an efficient system.

In addition to these two major problems, the proposal makes little sense given the $1 billion response fund established under the federal Oil Pollution Act of 1990 (OPA 90). The Act provides funding in the event of catastrophic oil spills. Given this spill reserve, it makes the

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most sense for Alaska to focus its spill reserve funds on the statistically more likely sub catastrophic spills.

Fiscal Impact. According to a Alaska Department of Environmental Conservation (DEC) analysis, the 2 cent account is insufficient to fund the department's core prevention and response programs. This analysis was conducted using the DEC's FY 94 budget, which was significantly reduced from prior years. According to DEC, inverting the allocation of surcharge revenues to provide 3 cents of each nickel for core spill prevention programs is still insufficient.

Contingency Plan Review. An **important change** in SB 215 is contained in Section 17, a new section that **modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans**. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

State and Regional Plan Review and Revision. Senate Bill 215 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Senate Bill 215 leaves revision to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision [sections 19 and 22). Public review is limited to plan revisions [sections 20, 21, 23].

Definition of Threatened Release. In current statute, the definition of threatened release is "an imminent danger that a release will occur." In both proposals, the new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." [sections 43, 45]

Response Corps and Depots. Senate Bill 215 transfers the response corps and depots from the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to the Alaska Department of Environmental Conservation (DEC) [sections 38, 39] and the state emergency response commission and the local emergency planning commissions from DEC to DMVA [section 47]. Despite transferring the response depots authority to DEC, SB 215 limits purchases of response depot equipment from the contingency and abatement account [section 31].

Restricted Mitigation Funds. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account [section 30].

Restoration. Under both proposals, **funds may not be used from either account for restoration of the environment** "by addressing the effects of an oil or hazardous substance release." [section 31]

Comparison with House Bill 238

Senate Bill 215 is almost identical to the "M" draft of the proposed House Resource committee substitute for HB 238. However, there are three important differences. The first is in SB 215 **section 15** ("M" draft section 15) where the **definition of "catastrophic oil discharge" is changed**. This change 1) limits the use of the catastrophic oil release response account (the three cent account) to oil, excluding hazardous substance discharges and 2) requires that when the "governor determines that an oil discharge less than 100,000 barrels presents a grave and substantial threat to the economy or environment," that the governor "issue a proclamation declaring a condition of disaster emergency under AS 26.23.020(c)." The issuing of a proclamation results in a series of potential actions including a special session of the legislature.

Under both SB 215 and the "M" draft of HB 238, the oil and hazardous substances contingency and abatement account is used to pay for all hazardous substance releases regardless of size. The catastrophic oil release response account is used only for oil release or discharges.

The second difference is in **section 29** ("M" draft section 31) regarding the **financing of the oil and hazardous substances release contingency and abatement account** (the two cent account). The insertion of "to the extent that the money recovered or otherwise received had been paid out of the oil and hazardous substances contingency and abatement account" on lines 13 through 15 results in cost recovery going to the two cent account only if money had been paid out of the account for containment and cleanup at the specific site. There is no parallel restriction on financing of the catastrophic oil release response account (the three cent account).

The third difference is **section 31** ("M" draft section 33) regarding the **uses of the catastrophic oil release response account**. In the "M" draft of HB 238, this account can be used to **purchase equipment for the response depots**. In SB 215, operating costs of response corps and depots would be paid for from the oil and hazardous substances contingency and abatement account. Purchase of equipment for the response depots could be paid for by the catastrophic account.

January 23, 1994

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Sectional Analysis of Senate Bill 215, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund (5/8/93)

Section 1. This is a technical change amending the powers of the Governor to allow for use of money from the oil and hazardous substance release *prevention and* response fund, consistent with the renaming of the fund adding the words "prevention and." Similar renaming occurs in sections 4, 6, 7, and 41.

Section 2. In this version, the changes revise the priority order in which the governor may have access to money to respond to a disaster. In the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance prevention and response fund, then money regularly appropriated to state and local agencies and the disaster release fund.

Section 3. This section makes a drafting change relating to section 2 in order to address circumstances in which there may be insufficient money available for response. It authorizes the governor to spend money appropriated for other purposes or to borrow money for a term not to exceed two years.

Section 4. Similar to section 1, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

Section 5. Makes additional changes reflecting the division of the fund into two accounts. However, direct access to local impact grants are restricted to catastrophic oil releases. If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated· significantly limiting access to local impact grant money.

Sections 6 and 7 that provide technical changes resulting from the renaming of the fund, adding the words "prevention and."

Section 8 is consistent with the renaming of the accounts within the funds.

Section 9. This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

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Section 10 carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge.

Section 11 directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

Section 12. Requires the commissioner of administration to determine the balance of the catastrophic oil release account within 30 days after the end of each calendar year, for the purpose of computing the $50 million account cap. Once the $50 million cap is reached, the $0.03 per barrel portion of severance tax conservation surcharge deposited into the general fund is suspended.

This section alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account.

This amended provision to calculating the fund balance also reflects the substitution of the catastrophic oil release account. Under subsection (e), in lieu of quarterly determination of the trigger mechanism, when the catastrophic oil release account reaches $45 million, the determination is to be made more frequently.

This section relates also to **section 48** of the bill, which clarifies how appropriations, if any, made to the spill reserve fund mentioned within the context of former AS 29.60.510(b), are to be treated for purposes of determining the suspension or re imposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

Section 13 amends the mechanism by which the surcharge on/off trigger shall be computed.

Section 14 imposes a 2 cents per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substances release contingency and abatement account."

Section 15 is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges. The redrafting of this version tends to emphasize that a catastrophic spill can be less than 4.2 million gallons if "the governor determines it presents a grave and substantial threat to the economy or environment."

Section 16 provides a revised definition for the term "surcharge."

Section 17 modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

Section 18 is consistent with **section 17** and addresses the review and approval of contingency plans when a response action contractor is identified in a contingency plan for the provision of containment and clean up services.

Section 19 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Plan revision is left to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision.

Section 20 would eliminate the participation of the public and other agencies in the annual review of the state master plan. Federal, state, and Oil Spill Commission recommendations all identified the necessity of public input to eliminate complacency in spill prevention. This was the premise for the federal and state laws establishing citizens' advisory councils. Due to the diverse and unique coast line and communities potentially affected by oil and hazardous substance spills, site specific community input is essential in creating a workable plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

Section 21 allows for public and SERC review when a revision is made to the state plan. Current statute allows for public input during the annual review and revision process.

Section 22 essentially does for regional plans what section 21 did to the state master plan. Again, plan revision occurs at the discretion of the commissioner of DEC.

Section 23 is a technical amendment that incorporates the changes made in section 21 for master plans to the regional plan changes in section 22.

Section 24 offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 4.2 million gallons of oil.

Section 25. Amends the statement of purpose of the oil and hazardous substance release response fund in light of the amendments made to the chapter and related provisions by this bill. Specifically, the purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."

This section allows for use of the fund "to pay for expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law."

Section 26 identifies the two accounts that constitute the fund.

Section 27 makes a related substitution of a reference to "account" for fund.

Section 28. Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 31. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. This section allows the fund to be used for the purchase of equipment to be placed in the oil and hazardous substance response depots.

Section 29 amends AS 46.08.020 and the financing of the Oil and Hazardous Substances Release Contingency and Abatement Account. It excludes money recovered or received due to a catastrophic oil discharge and money from performance bonds, and fines, penalties, and damages recovered by the state. These funds are to be deposited into the general fund and credited to the oil and hazardous substances release contingency and abatement mitigation account. Funds from the mitigation account can be appropriated annually to the oil and hazardous substances release contingency and abatement account.

Section 30. Similar to section 29 which requires non-catastrophic spill cost recovery to be credited to a mitigation account, with the exception of performance bonds, all fines, penalties, or damages recovered from catastrophic oil spills are credited to the catastrophic oil release response mitigation account and may be appropriated annually to the catastrophic oil release response account.

Section 31. This section eliminates the authority to use funds in the catastrophic oil release response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response preparedness; and 4) verification of financial responsibility. These functions are to be funded by the oil and hazardous substances release contingency and abatement account. This section repeals use of funds by Alaska Department of Military Affairs, Division of Emergency Services for the Oil and hazardous substances response corps and depots. Section 38 authorizes DEC use of funds for response corps and depots.

Money from the catastrophic oil release response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release, and 4) purchase of equipment for response depots.

Funds may not be used from either account for restoration of the environment "by addressing the effects of an oil or hazardous substance release."

Sections 32 and 33 relate to the governor's use of money in the oil and hazardous substance release prevention and response fund in the face of a disaster emergency. The sections are alternatives to each other, with appropriate related contingency provisions set out in **bill sections 52 and 53**, relating to whether Senate Bill 90 is passed. As SB 90 was passed, section 33 would be effective and section 32 would not be.

Section 33. Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

Section 34. Requires specific appropriation for the following uses of the fund. Money for federal matching or cost recovery from the catastrophic oil release response account or ***all*** uses of the oil and hazardous substances release contingency and abatement account can not be used unless an appropriation has been made specifically for that purpose.

Section 35. Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill. It reduces the DEC auditing requirements for uses of the fund.

Section 38 transfers the responsibility of maintaining emergency response depots to DEC.

Sections 39 reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

Section 40. Eliminates funding for the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Section 41 is a technical change consistent with the renaming of the fund adding the words "prevention and."

Sections 42, 43 and 45. These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 42 provides a technically revised definition of "release" and section 43 substantially amends the definition of "threatened release." In current statute, the definition of threatened release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent.

A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." **Sections 36 and 37** are conforming changes to these revised definitions. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

Section 45. Modeled after the definition made in bill section 44 mentioned earlier, this section revises the definition of the term "threatened release" applicable to AS 46.09. Similar to the change in section 43, this definition explicitly includes damages to the environment.

Section 46 moves the Alaska State Emergency Response Commission from DEC to DMVA.

Section 47. Repeals a number of provisions in law regarding activities for which the fund can be used to support including:

- state ferry construction, AS 19.65.025 and AS 46.08.040(d);
- the Citizens Oversight Council, AS 46.08.040(d)
- the repeal of the Conservation Surcharge on Oil replaced by this bill, AS 43.55.200-240---these three are the same as the previous "D" draft, plus
- removes DES's authority to contract for personnel to respond to releases, AS 26.23.195(b); and
- reference to the Division of Emergency services in AS 46.08.190(3), a technical change to reflect the shift in department assignments.

Section 48 is inserted to clarify how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures for the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or re imposition of the severance tax conservation surcharge. Since, in **bill section 5**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Section 49. Explains the applicability of the new definition of "catastrophic oil discharge."

Section 50 sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effective date of this Act.

Section 51 protects or "holds harmless" the terms of members of the response commission despite transfer of the commission by **bill section 47**.

January 23, 1994

Appendix B

Oil Spill U.S. Law Report
Legislative Research Agency Memorandum

U.S. LAW REPORT

RECEIVED
MAR 1993
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
PREVENTION & RESPON

in this issue ... march 1993, volume 3, number 3

page 2... **Officials Are Inundated With Last-Minute Response Plans.** Thousands of plans poured into Washington, DC, and various regional offices around the country within days of the February 18 deadline. Now it's up to the federal agencies to review the plans by August 18, or to issue interim letters of approval that will be valid for two years.

In the interim, the agencies are still plowing through the rulemaking process: the **USCG** published interim final rules for vessels and marine transportation-related facilities on February 5; **EPA** published its proposed rule for non-transportation-related onshore facilities on February 17; the **RSPA** put an interim final rule for onshore pipelines into effect on January 5; and **MMS** published an interim final rule for offshore facilities on February 8. **Also:** the USCG has classified 22 OSROs to date (see column on page 3).

page 7... **First Settlements Under OPA 90 Total $14.7 Million.** DOJ filed the first two judicial settlements under OPA 90 with a US district court in Washington State on February 10. DOJ resolved complaints concerning oil spills in 1991 against Texaco and US Oil that totaled $14.7 million — an amount attorneys say they could never have gotten under the Clean Water Act.

page 8... **Congressional Committees Vie for Jurisdiction Over OPA 90.** The recent shifts in Congress have caused a stir between the House Merchant Marine and Fisheries (MM&F) Committee and the House Natural Resources (NR) Committee. On February 4, an NR subcommittee held a hearing on the status of oil spill response in light of the Shetland Islands spill. Then on February 17, an MM&F subcommittee held its own hearing to discuss progress on the implementation of OPA 90.

page 10... **Attorneys Consider Ways to Avoid International Liability Limits in the Braer Case.** Speculation has mounted in recent weeks over whether US attorneys may be able to try a case for damages from the January 5 Shetland Islands spill in US courts. They think it may be possible to show that the owner of the tanker Braer has some US connection.

page 11... **Study of Leak Detection Devices on Tankships Precedes NPRM.** On February 5, the USCG made available its report entitled *Tank Level Detection Devices for the Carriage of Oil.* The USCG said it would use the study to develop a notice of proposed rulemaking to implement section 4110 of OPA 90. The study evaluates leak scenarios and suggests an approach to developing standards for the approval of devices.

page 11... **Alaska AG Raises Concerns About the Exxon Valdez Trustee Council.** Alaska Attorney General Charles Cole is a member of the trustee council that must determine how the Exxon Valdez settlement money must be spent. He spoke at the *Exxon Valdez Oil Spill Symposium* on February 2-5 in Anchorage on some of the problems inherent in the current system of using trustees to determine restoration projects.

page 12... **More States Are Charging Fees for Oil Spill Response.** The OSLR staff has put together a chart comparing state per-barrel/per-gallon fees on oil that help fund the cleanup of oil spills. We learned during our research that a few states currently have bills in committee that deal with this issue. HB 1194 in Hawaii, for example, proposes a 6-cents-per-barrel tax on oil to support a $7 million fund for prevention and response.

page 16... **News Briefs**

- State and Federal Agencies Work with Industry to Schedule Drills in Washington
- USCG to Regulate the Transfer of Oil to or from Motor Carriers and Railroads

page 16... **Hotline**

on the proposed restoration plan. Cole said many people were concerned that the trustees and restoration team are "too closely associated with the state and federal agencies involved with the damage assessment and restoration process." Currently, each trustee appoints a member of the restoration team, whose purpose is to take on the day-to-day management and administrative functions of implementing the restoration program.

They raised interesting questions, Cole said, such as: Do the projects recommended by the restoration team include work that the government agencies should be doing as part of normal agency operations? Are the proposed projects related to the assessment of damage from the oil spill, or are they directed to the study of decreases in species observed before the spill? Is the amount of funding sought for the projects designed to supplement the agencies' legislative appropriations, particularly in the area of overhead? and Does the fact that restoration team members propose projects that will be performed by the agencies that employ them inhibit their ability to make critical evaluations of other projects?

"I think we should give consideration as trustees to providing more balance in the restoration team and perhaps having it composed of a lesser proportion of members from state and federal agencies," advised Cole. "If this restoration process is not viewed as wholesome by the public, it will not be successful."

Cole also reminded the audience that no one, by way of legislation or otherwise, can change the terms of the settlement. "I say that because there has been support, particularly in the environmental community, to have Congress enact legislation that would require the trustees as part of their duties under the agreement to spend between 70% and 80% of the available funds for the acquisition of habitat." Under the agreement, the trustee council can only deal with resources affected by the spill. "Unless lands were affected, we can't consider acquiring them," he said.

More States Are Charging Fees for Oil Spill Response

In response to a hotline call concerning a comparison of state fees on oil for spill response purposes, the *OSLR* staff decided to research the issue. We collected some interesting findings. For one, agencies in nearly all of the states charge some sort of fee on facility and/or vessel owners and operators for oversight activities (e.g., annual licensing fees), and the majority of states in the US charge a per-gallon or per-barrel fee on the oil itself (either on crude oil, motor fuels, or on all types of petroleum) to be used in the event of a leak or spill. (Unlike any other state, Oregon charges a substantial annual fee of $3,000 for facilities and a per-trip fee for vessels.)

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administration costs to the reimbursement of cleanup/remediation expenditures. Some funds are treated as insurance policies, while others are financed primarily through the collection of penalties. Likewise, some fee/fund systems are designed so that the fund could reach a cap at which point the fee would be shut off, while others are designed to generate the same amount of available money each year.

During our research, we also found that a number of states have bills in committee that deal, in some way, with the issue of fees on oil for spill response. Among them are: SB 228 in Montana that would charge ¾ of a cent per gallon on diesel and other oil products in addition to gasoline; HB 172 and HB 434 in New Hampshire that would allow the state to collect the fee at the time of import rather than at the time of sale to ease the collection process; HB 1739 in Virginia that would also change how the state collects the fee; HB 228 in Idaho that would impose an additional 1 cent-per-gallon fee on petroleum to finance the Idaho Petroleum Remediation Fund; and HB 1194 in Hawaii that would establish a 6 cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at $7 million (officials expect that the fund will not reach the $7 million cap for eight years). (The Washington State Office of Marine Safety's legislative proposal to charge a per-trip fee on vessels coming into Puget Sound died in its early stages.)

The accompanying chart provides a run-down of each state's fee policies. Note: to keep things simple, we only included information concerning fees on oil (not on hazardous substances) and fees specifically meant for spill/leak response or remediation (we did not include information, for example, on New Mexico's fund for abandoned wells).

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State Fees on Oil for Spill Response and Administration Costs*

State	Fee**	Who Must Pay	Where the Money Goes
Alabama	None	—	—
Alaska	5 cents per barrel	Every oil producer in the state	The Oil and Hazardous Substance Release Response Fund (now at about $40 million; capped at $50 million)
Arizona	1 cent per gallon of gasoline (all kinds), diesel, and kerosene	The UST owner when oil is purchased or when the annual tax return is due	10% goes into a Loan Account, the rest goes into the State Assurance Fund (now at about $40 million; no cap)
Arkansas	None	—	—
California	25 cents per barrel for response (this has not been collected since Feb 1991 when the fund reached its cap); 4 cents per barrel for administration (this may be reduced by the administrator in future years)	Every marine terminal operator for oil delivered through the terminal; every pipeline operator for oil transported into the state; and just the 25-cent fee for refinery operators for crude oil received at the refinery	The Oil Spill Response Trust Fund ($50 million) and the Oil Spill Prevention and Administration Fund (meant to generate about $20 million annually)
Colorado	None	—	—
Connecticut	None	—	—
Delaware	6/10 of a % of the gross receipts tax	The wholesaler of petroleum and petroleum products (an exemption is allowed for crude oil)	The DE Hazardous Substance Cleanup Act Fund (now at about $4 million; no cap)
Florida	2 cents per barrel	Any person who engages in the production or importation of oil	The Coastal Protection Trust Fund (now at about $18 million; capped at $50 million)
Georgia	None	—	—
Hawaii	None	—	—
Idaho	1 cent per gallon (42 cents/barrel)	The first licensed distributor who transfers a petroleum product to another legal entity within the state	The Petroleum Clean Water Storage Tank Trust Fund (now at about $20 million; capped at $30 million)
Illinois	None	—	—
Indiana	None	—	—
Iowa	None	—	—
Kansas	16 cents per barrel	The first purchaser of the oil	A portion funds the conservation division of the Kansas Corporation Commission, and the rest goes into the Conservation Fee Fund (now at least $500,000; capped at $1 million)
Kentucky	None	—	—
Louisiana	2 cents per barrel	Every person owning crude oil in a vessel at the time the oil is transferred to a marine terminal within the state (except for at LOOP)	The Oil Spill Contingency Fund (now at about $10-12 million; capped at $15 million, but only if that amount is reached through the collection of fees)

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

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State Fees on Oil for Spill Response and Administration Costs*

State	Fee**	Who Must Pay	Where the Money Goes
Alabama	None	—	—
Alaska	5 cents per barrel	Every oil producer in the state	The Oil and Hazardous Substance Release Response Fund (now at about $40 million; capped at $50 million)
Arizona	1 cent per gallon of gasoline (all kinds), diesel, and kerosene	The UST owner when oil is purchased or when the annual tax return is due	10% goes into a Loan Account, the rest goes into the State Assurance Fund (now at about $40 million; no cap)
Arkansas	None	—	—
California	25 cents per barrel for response (this has not been collected since Feb 1991 when the fund reached its cap); 4 cents per barrel for administration (this may be reduced by the administrator in future years)	Every marine terminal operator for oil delivered through the terminal; every pipeline operator for oil transported into the state; and just the 25-cent fee for refinery operators for crude oil received at the refinery	The Oil Spill Response Trust Fund ($50 million) and the Oil Spill Prevention and Administration Fund (meant to generate about $20 million annually)
Colorado	None	—	—
Connecticut	None	—	—
Delaware	9/10 of a % of the gross receipts tax	The wholesaler of petroleum and petroleum products (an exemption is allowed for crude oil)	The DE Hazardous Substance Cleanup Act Fund (now at about $4 million; no cap)
Florida	2 cents per barrel	Any person who engages in the production or importation of oil	The Coastal Protection Trust Fund (now at about $18 million; capped at $50 million)
Georgia	None	—	—
Hawaii	None	—	—
Idaho	1 cent per gallon (42 cents/barrel)	The first licensed distributor who transfers a petroleum product to another legal entity within the state	The Petroleum Clean Water Storage Tank Trust Fund (now at about $20 million; capped at $30 million)
Illinois	None	—	—
Indiana	None	—	—
Iowa	None	—	—
Kansas	16 cents per barrel	The first purchaser of the oil	A portion funds the conservation division of the Kansas Corporation Commission, and the rest goes into the Conservation Fee Fund (now at least $500,000; capped at $1 million)
Kentucky	None	—	—
Louisiana	2 cents per barrel	Every person owning crude oil in a vessel at the time the oil is transferred to a marine terminal within the state (except for at LOOP)	The Oil Spill Contingency Fund (now at about $10-12 million; capped at $15 million, but only if that amount is reached through the collection of fees)

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
Maine	4 cents per barrel for coastal and inland cleanup; 44 cents (gasoline), 25 cents (#2, kerosene, jet fuel, and diesel), and 10 cents (#6) per barrel for groundwater cleanup	For coastal and inland cleanup: every person that first transports oil in Maine. For groundwater cleanup: terminal facilities that first transfer the products and any person that first transports oil into the state (no fee on exports)	The Maine Coastal and Inland Surface Oil Cleanup Fund (now at about $4 million; capped at $6 million), and the Groundwater Oil Cleanup Fund (now at about $12 million; capped at $15 million)
Maryland	¾ of a cent per barrel for cleanup; 5 cents per barrel for upgrading underground storage tanks	The tank owner	The Maryland Oil Disaster Containment, Cleanup, and Contingency Fund (capped at $5 million), and the Underground Storage Tank Upgrade and Replacement Fund (now at about $4.5 million; capped at $5 million)
Massachusetts	None	—	—
Michigan	⅞ of a cent per gallon of petroleum products (36.75 cents/barrel)	All those selling refined oil for resale	The MI Underground Storage Tank Financial Assurance Fund (now at about $52 million; no cap)
Minnesota	None	—	—
Mississippi	None	—	—
Missouri	$25 per 8,000 gallons	The tank owner upon delivery of gasoline	The Underground Storage Tank Insurance Fund (capped at $8 million)
Montana	¾ of a cent per gallon (the fee is currently shut off until the fund drops below $4 million)	The gasoline distributor	The Petroleum Tank Release Cleanup Fund (now at about $5 million; capped at $8 million)
Nebraska	3/10 of a cent per gallon on motor fuels (although now it is at 6/10 of a cent per gallon on motor fuels plus 1/10 of a cent per gallon on all other petroleum since the fund dropped down to $2 million; the fee will return to 3/10 of a cent when the fund reaches $4 million)	The refiner, importer, or distributor that first sells within the state	The Petroleum Release Remedial Action, and Reimbursement Fund (now at about $3.1 million; capped at $5 million)
Nevada	6/10 of a cent per gallon on most petroleum products (25.2 cents/barrel)	The refiner or importer	The State Petroleum Fund (now at about $4 million; capped at $7.5 million)
New Hampshire	6/10 of a cent per gallon for the ODD Fund; 1/10 of a cent per gallon for the OPC Fund	The distributor of motor fuels at the time of sale (for the 6/10 of a cent fee); the distributor of all oil at the time of sale (for the 1/10 of a cent fee)	The Oil Discharge, Disposal, and Cleanup Fund (the ODD Fund: now at about $9.1 million; capped at $10 million); The Oil Pollution Control Fund (the OPC Fund: now at about $3.5 million; capped at $5 million)
New Jersey	1½ cents per barrel for major facility owners	The operator or owner of the receiving or transferring major facility	The NJ Spill Compensation Fund (now at about $72 million; no cap)
New Mexico	None	—	—

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State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
New York	Currently at 4 cents per barrel for major facility owners	The major facility owner at the point of import or receipt	The NY Environmental Protection and Spill Compensation Fund (now at about $17 million; capped at $25 million)
North Carolina	None	—	—
North Dakota	None	—	—
Ohio	None	—	—
Oklahoma	1 cent per gallon (42 cents/barrel)	The fuel distributor	The OK Petroleum Underground Release Indemnity Fund (now at about $6-$7 million; no cap)
Oregon	$650 per trip for tank vessels; $28 per trip for barges; and $25 per trip for cargo vessels (facilities must pay $3,000 per year)	All vessels and facilities	The Oil Spill Prevention Fund (capped at $153,600)
Pennsylvania	None	—	—
Rhode Island	None (There is an Oil Release Response Fund)	—	—
South Carolina	½ cent per gallon on all petroleum (21 cents/barrel)	The refiner or tank owner that first sells the oil in the state	The State Underground Petroleum Response Bank (capped at $15 million)
South Dakota	1 cent per gallon	The oil distributors	The SD Petroleum Release Compensation Fund (now at about $100,000; capped at $5 million)
Tennessee	None	—	—
Texas	2 cents per barrel	Every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal	The Coastal Protection Fund (now at about $20 million; capped at $25 million)
Utah	None	—	—
Vermont	1 cent per gallon	Motor fuels distributors	The Vermont Petroleum Cleanup Fund
Virginia	⅕ of a cent per gallon	Any importer of gasoline, special fuels, and heating oil	The VA Petroleum Storage Tank Fund (now at about $17 million; no cap)
Washington	5 cents per barrel	The owner of the crude oil or petroleum product immediately after receipt into a storage tank of a marine terminal from a vessel	The State Oil Spill Response Account (now at about $4.5 million; capped at $25 million and the Administration's Account (no cap)
West Virginia	None	—	—
Wisconsin	1.4 cents of every 2 cents per gallon collected	—	The Petroleum Environmental Cleanup Fund
Wyoming	1 cent per gallon	Fuel consumers	The State Corrective Account (now at about $1.5 million) and the State Financial Responsibility Account (now at about $6.2 million); there must be a total of $20 million in both accounts before the fee is shut off

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Alaska State Legislature

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April 16, 1993

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski and Paula d. Scavera
Legislative Analysts

RE: **Other States' Funds Similar to Alaska's Oil and Hazardous Spill Response Fund**
Research Request 93.186

You asked for information about funds established in other states that are similar to Alaska's Oil and Hazardous Spill Response Fund (the so-called "470 Fund"). We contacted six states (California, Florida, Louisiana, New Jersey, Texas and Washington) to obtain comparative information. Although other states have similar funds, these are a sample of those that tax oil, petroleum products or other pollutants to pay for a cleanup or response fund.

The attached table summarizes key features of oil spill funds in those states. We listed only those funds which are financed primarily by a tax and not by pollution fines or settlements. In a preliminary version of this memorandum, we provided copies of relevant statutes from the six states listed above and a report from Texas, *Oil Spill Prevention and Response Act Progress Report*.

Attached to this memorandum is an article from the *Oil Spill U.S. Law Report* (March 1993) containing information on a 50-state survey of state fees on oil for spill response and administrative costs.[1] This table, along with the information compiled by our office, show that state taxes on petroleum products for spill response vary from zero to the 87 cents per barrel in Florida.[2]

We hope this information is useful for your purposes. Please do not hesitate to contact us if you have additional questions.

Attachments

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[2]It appears that in Florida some petroleum products are taxed for three separate funds--80 cents per barrel plus 2 to 5 cents per barrel plus 2 cents per barrel (totaling 87 cents per barrel). No single state official in Florida seemed to know about all three funds listed on the table prepared by this agency. Florida officials with whom we spoke were able to speak only about the fund they administered and were unable to confirm with 100 percent certainty that petroleum fuels (gasoline, diesel, kerosene, aviation fuel, heating oil, etc.) were taxed by all three funds. They all, however, "thought it was true" that some petroleum products were taxed three times.

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
California Oil Spill Response Trust Fund	25 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	for cleanup of oil in marine waters or cleanup of oil that will impact marine waters	Fund has reached its cap of $50 million	Department of Fish and Game, Oil Spill Prevention and Response Office (916) 445-9338
California Oil Spill Prevention Administrative Fund	4 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	administering, operating, managing, staffing, and plan reviewing of oil spills in marine waters or impacting marine waters	Approximate annual revenue = $20 million Approximate number of personnel funded = 190 Approximate annual expenditures = $18 million	
Florida Inland Protection Trust Fund (Chapter 376, Section 3071)	30, 60, or 80 cents/barrel tax on pollutants (petroleum fuels) produced or imported into the state (rate varies with unobligated balance of fund); tax is currently at the highest level and is expected to remain there indefinately (annual revenue at 80 cents is still not sufficient to pay all the claims against the fund)	cleanup of discharges of petroleum or petroleum products from stationary petroleum storage facilities; investigation and assessment of contaminated sites; restoration or replacement of potable water supplies; rehabilitation, maintenance and monitoring of contaminated sites; cost recovery expenses; administrative expenses including costs incurred by the Department of Health in providing field and laboratory services; some activities related to the removal and replacement of petroleum storage systems	Approximate annual revenue = $155 million Approximate number of personnel funded = 50 Approximate annual expenditures = $155 million	Department of Environmental Regulation, Division of Petroleum Cleanup (904) 487-3299
Florida Water Quality Assurance Trust Fund (Chapter 376, Section 307)	varies with type of product and amount in fund; $1 or $2/lead acid battery; 2.3 or 5.9 cents/gallon solvents; 1 or 2.5 cents/gallon motor oil; 2 to 5 cents/barrel petroleum products	to restore or replace potable water supplies; for the investigation, assessment, cleanup, restoration, maintenance, and monitoring of any site contaminated with hazardous wastes, hazardous substances as defined by CERCLA, pollutants, substances suspected to be carcinogenic or toxic to humans, or substances which pose a serious danger to public health or welfare	Approximate annual revenue = $25 million Approximate number of personnel funded = 35 Approximate annual expenditures = $25 million	Department of Environmental Regulation, Bureau of Waste Management (904) 488-0190
Florida Coastal Protection Trust Fund (Chapter 376, Section 11)	2 cents/barrel tax on pollutants (includes pesticides ammonia, chlorine, and other oil products) produced or imported into the state; tax suspended when fund reaches $50 million, reimposed at $40 million	to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages	Approximate annual revenue = n/a Approximate number of personnel funded = 17 Approximate annual expenditures = n/a	Department of Natural Resources, Office of Coastal Protection (904) 488-2974

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
Louisiana Oil Spill Contingency Fund (RS 30: 2451–2496)	2 cents/barrel fee on all crude oil transferred to or from a vessel at a marine terminal within the state; fee suspended when fund reaches $15 million, reimposed at $8 million; under certain conditions, fee can double to 4 cents until fund reaches $30 million	administrative expenses of the office of the coordinator (not to exceed $350,000 annually); removal costs and damages related to actual or threatened discharges of oil; removal costs related to abatement and containment of actual or threatened discharges of oil; protection, assessment, restoration, rehabilitation, or replacement of ormitigation of damage to natural resources; operating costs and contracts for response prevention (not to exceed $5000,000 annually); other costs and damages authorized by statute; grants to universities for Research and Development (not to exceed $750,000 annually)	Approximate annual revenue = $9 million Approximate number of personnel funded = 10 Approximate annual expenditures = $500,000	Office of the Louisiana Oil Spill Coordinator (504) 922–3230
New Jersey Spill Compensation Fund (NJSA 58:10–23.11)	1.5 cents/barrel tax on oil and petroleum products transferred within state; 1.75 to approximately 4 cents per barrel tax on all hazardous substances transferred within the state	all direct/indirect costs for oil and hazardous substance spills; research and development; administrative costs of oil spill plan reviews	Approximate annual revenue = $14 million Approximate number of personnel funded = 100 Approximate annual expenditures = $5 million Approximately $70 million currently in fund; interest from fund pays for research (approximately $500,000 annually)	Department of Environmental Protection, Bureau of Discharge Prevention (609) 984–4306
Texas Coastal Protection Fund (Texas Natural Resource Code, Section 40.152)	2 cents/barrel tax on all crude oil loaded or off–loaded in Texas ports; tax suspended when fund reaches $25 million, reimposed at $14 million	administrative expenses, personnel and training expenses, equipment maintenance, and operating costs related to implementation and enforcement of statute; response costs related to abatement and containment of actual or threatened discharges of oil; damages related to actual or threatened discharges of oil; assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; interagency contracts (not to exceed $1.25 million annually); purchase of response equipment (not to exceed $4 million) and the purchase of replacement equipment as necessary; other costs and damages authorized by statute	Approximate annual revenue = $12 million Approximate number of personnel funded = 40 Approximate annual expenditures = $6 million	General Land Office, Oil Spill Prevention and Response (512) 463–5329

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
Washington Oil Spill Response Account (RCW Chapter 90.56)	2 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for cleanup costs of oil and petroleum product spills, when the spill costs exceed $50,000	Approximate annual revenue = $3 million Approximate number of personnel funded = 0 Approximate annual expenditures = n/a	Department of Ecology, Response to Hazardous Material Spills (206) 459-6658
Washington Oil Spill Administration Account (RCW Chapter 90.56)	3 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for routine cleanup response, management, staff, enforcement, plan review, coordination and public outreach.	Approximate annual revenue =$4 million Approximate Number of personnel funded = 35 Approximate annual expenditures =$4 million	

n/a = not available at this time

Sources: Statutes of, and interviews with officials in, states listed.

Prepared by the Legislative Research Agency, April 1993 (93.196).

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Oil Spill, U.S. Law Report
March 1993
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Appendix C

Alaska North Slope Oil Profits Report

Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures

Richard A. Fineberg
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Ester, Alaska 99725

(Advance copy of a paper prepared for presentation at the 15th Annual North American Conference of the International Association for Energy Economics, Westin Hotel, Seattle, Washington, Oct. 11-13, 1993 [revised 8/18/93])

ABSTRACT

This paper describes a model that uses available public information on North Slope production economics to place proposed expenditures on environmental measures in the context of North Slope per-barrel costs and profits. It is estimated that after-tax profits from North Slope production and pipelining operations exceed $3 billion annually. If these operations were controlled by one firm (in fact, three companies control more than 90% of Alaska's production and pipeline facilities), that company would rank among the five most profitable industrial corporations in the nation. Using the per-barrel model and Alaska Department of Revenue forecast scenarios, it is also possible to estimate future North Slope profits. It is estimated that currently debated expenditures of $150 million for spill prevention and environmental mitigation measures would reduce industry profits in the year 2000 by approximately one cent per barrel, compared to total after-tax profits in excess of $5.00 per barrel.

INTRODUCTION

Alaska is often the reluctant host to intense public policy battles between environmental protection and development. These issues are frequently cast in economic terms: How much can the proponents of a proposed project afford to pay for environmental protection measures? Or: What will be the economic consequences of going forward with, delaying or halting the project? Because economics frequently frames these questions, it seems appropriate to ask whether economics can also provide answers. Certainly economics is the correct discipline for analyzing the costs. At the same time, it must be recognized that assessment of environmental risk is not turf on which economists are necessarily expert. With this background in mind, we will look at one manifestation of Alaska's perpetual debate: How much spending on environmental protection — principally on prevention of oil spills and mitigation of other potential environmental hazards — should the owners of the Trans-Alaska Pipeline[1] (TAPS) be required to bear?

This question frequently finds its way into the public policy arena, especially since March 24, 1989, when the tanker Exxon Valdez banged into Bligh Reef in Prince William Sound. The ruptured tanker caused the largest oil spill in the history of this nation.[2] It is widely understood by all but oil industry attorneys and officials that the oil companies that were charged with responsibility for safe shipment of Alaska North Slope (ANS) oil failed miserably on their long-standing promises to

build and operate the safest system in the world, and to respond promptly and effectively to any spill that should occur.[3] It is also undisputed that since 1989, the owners have spent hundreds of millions of dollars in repairing pipeline problems and upgrading their inadequate prevention and response systems.

Two currently debated proposed environmental mitigation measures are a vapor emissions recovery system to capture potentially toxic emissions vented during loading and off-loading tankers at Valdez and specially-designed tractor tugs to handle a disabled tanker. Both measures are in place at other ports, but not at the Alaska terminal that ships approximately 20 percent of the nation's domestic crude oil production. Together, it is estimated that these improvements would cost the North Slope owners up to $150 million. Should these measures be required, or has Alaska's leading industry and revenue producer spent enough? To answer this question requires balancing environmental risks against the costs of prevention and mitigation measures. This paper focuses on the second half of this equation.

THE PROBLEM: WILL ENVIRONMENTAL EXPENDITURES KILL ALASKA'S GOLDEN GOOSE?

Each year the nation's largest oil shipment facility, situated three miles across Port Valdez from the town of Valdez, puts one million pounds of benzene, a known carcinogen, into the atmosphere. Alyeska asserts that no serious documentable health risk exists from the pipeline terminal. Unpersuaded by its review of the industry-funded scientific study on which Alyeska relies, in September 1992 the Congressionally-mandated Prince William Sound Regional Citizen's Advisory Council passed a unanimous resolution asking Alyeska to install immediately a vapor recovery system to capture and incinerate the gasses vented when tankers deballast and load at Valdez. Alyeska declined. In his response to the oversight group, Alyeska's then-President J.B. Hemmiller cited current regulations that do not require the venting system, current health risk information and the $120 million cost as the driving factors in his rejection of the petition.[4]

Special escort vessels known as tractor tugs have been commissioned to accompany tankers in and out of port at the Louisiana Off-Shore Oil Port facility (LOOP), Puget Sound and San Francisco Bay. With a special, mid-ship propulsion system that allows the tractor tug to apply power in any direction, not just forward, the tractor tug is judged by many experts as superior to the conventional tug because it can provide both retarding forces and effective steering assistance. Two tractor tugs would cost approximately $25 million. Alyeska's owners have deferred obtaining for Prince William Sound the vessels they have procured for other ports.[5]

The motivation for these decisions is reflected in the statements of Alyeska officials, who have warned repeatedly that the costs of the environmental protection measures at Port Valdez and on the TAPS line itself must be weighed carefully against the fact that oil production is now declining and increased costs will cut into long-term North Slope production, inevitably hastening the demise of Alaska's golden goose. For example, speaking at an international conference on energy issues in Anchorage in July 1992, Alyeska Vice President for Environment and Contingencies M.F.G. Williams pointed out that "there comes a time when all of those small costs [on environmental measures] become factors in future operating or investment decisions." As an example, Williams turned to his experience in coal mining to suggest that foreign coal producers seemed to undercut their U.S. competitors "by the amount we had to pay to the U.S. for end of mine reclamation."[6]

In a January 6, 1992 speech to the Anchorage Chamber of Commerce, Alyeska's Hermiller warned that North Slope production was declining and put out his usual strong plug for a cost-benefit approach to environmental regulation. "If the state imposes excessive financial burdens on the owners of the production going through the line or on the pipeline system itself," Hermiller said, "the line will close sooner than later." As an example of a cost Alyeska should not be asked to bear until unacceptable harm to the environment or to public health is shown, Hermiller cited the vapor recovery system he later rejected.

"We must live within our means," Hermiller said. "If as throughput declines one third over the next six years and our costs are reduced by less than one third during the same period, our cost per barrel will increase. Accordingly, we must find ways to reduce costs to be able to keep the pipeline a viable economic enterprise for as long as possible in the coming years."[7]

To assess the economic validity of the Alyeska position, it is necessary to ask what level of expenditures might — or might not — be within the means of Alyeska and its owner companies.

ANS PRODUCTION AND PIPELINE PROFITS

Although profits from Alaska North Slope production and pipelining are not reported by the producing companies or any government entity, using a variety of published sources it is possible to estimate average profits with a fair degree of precision. Once the data are assembled, profits to the North Slope owners can be estimated by subtracting production and shipping costs, taxes and royalties from the market price of oil. An example of profit calculations for 1991 is provided in Table 1 on the following page. That table begins with the Lower-48 sales price of oil (line 1), then subtracts pipeline charges (lines 4 and 5) and marine transportation (line 12) to establish a field or basis price (line 13) for calculating state royalties and production and property taxes (line 14). After those payments are calculated, operating and capital costs (line 15) are removed. State income tax, estimated from published figures (line 17), is then subtracted. The resulting net revenue figure is the basis for estimating federal income tax (line 18). The producers also own TAPS and the feeder pipelines in shares roughly equal to their production shares, with the exception of Conoco (which produces the Milne Point field — less than two percent of total ANS production — but has no ownership share in TAPS). To develop a comprehensive picture of North Slope profitability, TAPS profits (line 11) and feeder line profits (line 8) therefore must be added to production profits. The resulting total appears at line 22. To account for different market and transportation prices for West and Gulf Coast oil, calculations are made for each destination. The weighted average of West Coast and Gulf Coast ANS dispositions appears at line 23.[8]

Where official data are not available or are in dispute, the model relies on conservative estimates that tend to understate ANS profits. For example, the property tax is based on a gross Alaska tax figure that includes Cook Inlet facilities and therefore overestimates the tax on ANS production and, correspondingly, underestimates industry profits. Similarly, the federal income tax is estimated at 32.1% -- very near the nominal rate of 34% and much higher than the rate that the limited information available from published studies indicates that oil companies actually pay.[9]

Table 1. Estimated Alaska North Slope Production & Pipeline Profits for 1991

North Slope Profit Analysis: ALL FIELDS	/ - - ANS Avg. ($/bbl.) - - / Gulf Coast	W. Coast	Notes
1 Average Price for ANS (Spot)	$18.35	$17.21	Alaska Dept. of Revenue (ADOR) data
2 Quality Adjusted Price			[Used for individual field analysis]
3 Production / Disposition *MM bbls. yr./day*			
a Production 664.870 / 1.822			Alaska Dept. of Natural Resources data
b. Volume to East / West Coast (%)	21.93%	78.07%	From ADOR data
4 Feeder Pipeline Tariffs	($0.10)	($0.10)	Wghtd. avg. sum of items 4a thru 4g
a Operating & capital costs	($0.04)	($0.04)	Alaska Dept. of Law (ADL 7/29/92) less 4b
b State & local property tax (pipelines)	$0.00	$0.00	30% of total ADOR property tax
c State income tax (pipelines)	$0.00	$0.00	4d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	($0.01)	($0.01)	ADL (7/29/92) less item 4c
e After-tax margin	($0.02)	($0.02)	ADL (7/29/92)
f Recovery of deferred return	($0.01)	($0.01)	"
g DR&R allowance	$0.00	$0.00	"
5 TAPS Pipeline Tariff	($3.41)	($3.41)	Sum of items 5a thru 5h
a Operating & capital costs	($1.31)	($1.31)	Alaska Dept. of Law (ADL; 7/29/92) less 5b
b State & local property tax (pipelines)	($0.15)	($0.15)	30% of total ADOR property tax
c State income tax (pipelines)	($0.09)	($0.09)	5d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	($0.65)	($0.65)	ADL (7/29/92) less item 5c
e After-tax margin	($0.49)	($0.49)	ADL (7/29/92)
f Recovery of deferred return	($0.64)	($0.64)	"
g DR&R allowance	($0.08)	($0.08)	"
h Pumpability Charge			[Used for individual field analysis]
6 State Share (Feeder Lines)	($0.01)	($0.01)	Sum of items 4b, 4c
7 Federal Share (Feeder Lines)	($0.01)	($0.01)	Item 4d
8 Industry Profit (Feeder Lines)	$0.03	$0.03	Sum of items 4e, 4f
9 State Share (TAPS)	($0.25)	($0.25)	Sum of items 5b, 5c
10 Federal Share (TAPS)	($0.65)	($0.65)	Item 5d
11 Industry Profit (TAPS)	$1.13	$1.13	Sum of items 5e, 5f
12 Tanker (to Gulf / West Coast)	($3.83)	($1.07)	USFRA data (ADOR)
13 Wellhead value	$11.02	$12.64	Sum of items 1, 4, 5, 12
14 State Royalties, Production & Property Taxes	($3.01)	($3.41)	Sum of items 14a thru 14d
a Royalty	($1.30)	($1.50)	Item 13 less field costs * est. field royalty
b Severance tax	($1.31)	($1.51)	Item 13 *.875 * nominal severance* ELF
c Spill Response & Conservation Taxes	($0.05)	($0.05)	$.054 * .875
d State & local property tax (production)	($0.36)	($0.36)	70% of total DOR property tax
15 Production costs	($3.49)	($3.49)	Sum of items 15a, 15b
a Lifting Costs	($1.19)	($1.19)	Derived from trade publication estimates
b Depletion., Depreciation & Amortization	($2.30)	($2.30)	Derived from trade publication estimates
16 Net Revenue (production)	$4.52	$5.74	Sum of items 13, 14, 15
17 State Income Tax (production)	($0.15)	($0.15)	From ADOR Spr. 92 fcst. less items 4c, 5c
18 Federal Income Tax (production)	($1.40)	($1.79)	Est. 32.1% of items 16 + 17
19 Industry Profit (production)	$2.96	$3.79	Sum of items 16 thru 18
20 Total State Share (production + pipelines)	$3.42	$3.82	Sum of items 6, 9, 14, 17
21 Total Federal Share (production + pipelines)	$2.06	$2.45	Sum of items 7, 10, 18
22 Total Industry Profit (production + pipelines)	$4.12	$4.95	Sum of items 8, 11, 19
23 CY 91 Industry Avg. per-barrel ANS Profit		$4.77	(Gulf [line 22 * line 3b] + West Coast [line 22* line 3b])

[From: North Slope Profits and Production Prospects, p. 43]

As Table 1 indicates, in 1991 after all costs, royalties and taxes were paid, North Slope owners earned an estimated profit of $4.77 per barrel on their Alaska production and pipeline operations. TAPS profits accounted for approximately $1.13 per barrel, or 23.7 percent of this total.[10]

Daily profits can be derived from Table 1 by multiplying the daily per-barrel estimated profits (line 23) by the average daily production (line 3a). At an average 1991 daily production rate of 1.82 million barrels per day, after-tax net profits on Alaska operations totalled approximately $8.7 million per day. Of this amount, TAPS profits of $1.13 per barrel contributed approximately $2.0 million per day. Total ANS production and pipeline profits for 1991, estimated by multiplying the daily average by 365 days, were $3.17 billion.

Insofar as the profits from ANS production and pipelining are concerned, was 1991 a typical year? As indicated above, profitability of North Slope operations is not tabulated in any form that will answer that question. ANS production and pipeline profits for the years 1977 through 1987 were estimated in a 1989 accountancy study commissioned by the Alaska Department of Revenue. That report was prepared by Dr. Edward Deakin, Price-Waterhouse Professor of Petroleum Accounting at the University of Texas. The per-barrel profits model was tested against Deakin's results for 1987 and the results tracked quite closely, producing a nearly identical division of the economic rents.[11] To fill the gap between 1988 and the present, a simplified version of the model in Table 1 was created for the years 1988-90 and 1992.[12] The results of this exercise are shown, with the Deakin's 1977-87 figures and the 1991 estimate, in Tables 2 and 3 on the following pages.

From these data, it is clear that the 1991 results were not unusual. As Table 3 indicates, estimated ANS production and pipeline profits for the seven-year period between 1986 and 1992 averaged approximately $3. 7 billion in 1993 dollars.

When the 1977-87 profits estimates from the earlier study are summed with the 1988-92 profits estimated in this report, the North Slope producers have earned a cumulative after-tax profit of approximately $58.6 billion (nominal) from their Alaska production and pipeline operations since 1977. Of this sum, $42.3 billion is from production and $16.3 billion is from pipeline operations.

Expressed in inflation-adjusted (1993) dollars, estimated North Slope production and pipelining profits exceed $85 billion.

Table 2.

Estimated Alaska North Slope Production and Pipeline Profits (Nominal $)

(1)	(2)	(3)	(4)
Year	North Slope Production & Feeder Line Profits	TAPS Profits	North Slope Production & Pipeline Profits (Nominal $)
1977	$260,000,000.00	$0.00	$260,000,000.00
1978	$639,000,000.00	$570,000,000.00	$1,209,000,000.00
1979	$3,030,000,000.00	$1,019,000,000.00	$4,048,000,000.00
1980	$3,212,000,000.00	$949,000,000.00	$4,161,000,000.00
1981	$3,443,000,000.00	$1,046,000,000.00	$4,490,000,000.00
1982	$3,483,000,000.00	$1,250,000,000.00	$4,733,000,000.00
1983	$4,026,000,000.00	$1,457,000,000.00	$5,483,000,000.00
1984	$4,313,000,000.00	$1,686,000,000.00	$5,999,000,000.00
1985	$3,468,000,000.00	$1,386,000,000.00	$4,854,000,000.00
1986	$1,250,000,000.00	$1,768,000,000.00	$3,018,000,000.00
1987	$1,989,000,000.00	$1,226,000,000.00	$3,215,000,000.00
1988	$1,806,922,980.00	$877,278,080.00	$2,684,201,060.00
1989	$2,591,784,520.00	$811,221,680.00	$3,403,006,200.00
1990	$3,966,079,950.00	$790,558,650.00	$4,756,638,600.00
1991	$2,420,126,800.00	$751,303,100.00	$3,171,429,900.00
1992	$2,357,119,971.00	$709,052,349.00	$3,066,172,320.00
1993			
Totals:	$42,255,034,221.00 (or) $42.3 billion nominal $	$16,296,413,859.00 (or) $16.3 billion nominal $	$58,551,448,080.00 (or) $58.6 billion nominal $

Notes

(2) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Table III-1, III-3); 1988-92 profits calculated by the author from published sources..

(3) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Table IV-3); 1988-92 profits calculated by the author from published sources.

(4) = (Col. 2) + (Col. 3)

Table 3.

Estimated Alaska North Slope Production and Pipeline Profits (Nominal and Inflation-Adjusted $)

(1)	(2)	(3)	(4)		(5)
Year	Inflation Rate	Index Factor	N. Slope Production & Pipeline Profits (Nominal $)		N. Slope Production & Pipeline Profits (1993$)
1977	6.5%	2.4636	$260,000,000.00	=	$640,533,059.05
1978	7.6%	2.3132	$1,209,000,000.00	=	$2,796,693,638.12
1979	11.3%	2.1498	$4,048,000,000.00	=	$8,702,555,990.47
1980	13.5%	1.9316	$4,161,000,000.00	=	$8,037,275,842.70
1981	10.3%	1.7018	$4,490,000,000.00	=	$7,641,201,239.06
1982	6.2%	1.5429	$4,733,000,000.00	=	$7,302,579,412.79
1983	3.2%	1.4528	$5,483,000,000.00	=	$7,965,875,475.50
1984	4.3%	1.4078	$5,999,000,000.00	=	$8,445,287,367.71
1985	3.6%	1.3497	$4,854,000,000.00	=	$6,551,655,202.82
1986	1.9%	1.3028	$3,018,000,000.00	=	$3,931,974,942.87
1987	3.6%	1.2785	$3,215,000,000.00	=	$4,110,534,516.59
1988	4.1%	1.2341	$2,684,201,060.00	=	$3,312,627,556.22
1989	4.8%	1.1855	$3,403,006,200.00	=	$4,034,312,887.15
1990	5.4%	1.1312	$4,756,638,600.00	=	$5,380,785,880.80
1991	4.2%	1.0733	$3,171,429,900.00	=	$3,403,768,854.47
1992	3.0%	1.0300	$3,066,172,320.00	=	$3,158,157,489.60
1993	–	1.0000			
Total Profits (ANS Production and Pipelines):			$58,351,448,080.00	=	$85,415,819,355.91
			(or)		(or)
			$58.6 billion nominal $	=	$85.4 billion 1993 $

Notes

(2) Consumer Price Index (CPI-U); annual % change from previous annual U.S. city average, all items (U.S. Department of Labor, CPI Detailed Report: Data for January 1993, p. 80).

(3) = (Subsequent year index factor) * (current year inflation)

(4) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Appendix E); 1988-92 profits calculated by the author from published sources.

(5) = (Col. 3) * (Col. 4)

DISCUSSION

This analysis indicates that the disputed vapor recovery system could be purchased at a cost of approximately four percent of one year's after-tax profits. Tractor tugs could be purchased for less than one percent — approximately three days' profits. Put otherwise: Spread across the 6.8 billion barrels forecasted North Slope production between now and 2010,[13] the combined expenditure for these environmental amenities would come to less than $0.0225 (2-1/4 cents) per barrel.

How big is the 1986-93 average annual ANS production and pipelining profit of $3.7 billion, anyway? To answer that question, it will be useful to look at the annual "Fortune 500" ranking of the nation's largest industrial corporations. If ANS production and pipelining profits were controlled by one firm instead of three, that company would have equalled the performance of the second most profitable company on the Fortune 500 in 1991 and would have ranked fourth in 1992.[14]

What about the thesis of Alyeska's Hermiller's that the pipeline operator must cut costs in order to "keep the pipeline a viable economic enterprise" because production is declining? First of all, since the TAPS line is wholly owned by the North Slope producers, its sole function is to transport ANS and there is no alternative means of transport, it is fatuous to consider TAPS on a stand-alone basis. The pipeline is an integral part of North Slope operations.[15] Hermiller's warning, then, is properly analyzed in terms of production and pipeline profits together, as shown in the previous tables. To examine Hermiller's argument, ANS operations for the year 2000 can be analyzed in terms of Table 1, using the Alaska Department of Revenue's forecast assumptions for price and volume.[16] The results are summarized in Table 4.

Table 4. Estimated ANS Production and Profits in 2000 A.D.
(1992 $ per barrel)

Forecast Production 355.4 million barrels (971,000 barrels per day)

Forecast Price	$19.54
Forecast TAPS, Feeder Line Tariffs	($2.80)
Forecast Tanker Costs	($1.44)
State Royalties, Production & Property Taxes	($3.87)
Production Costs	($4.45)
State, Federal Income Tax	($2.36)
Industry Production Profit	$4.62
Industry TAPS, Feeder Line Profit	$0.71
Total Industry Profit per-barrel	$5.34

Source: North Slope Profits and Production Prospects. p. 72 (using Alaska Dept. of Revenue Spring 1992 forecast assumptions for state fiscal year 2000).

In the year 2000, additional costs of $0.0225 (2-1/4 cents) per barrel for hard-piping and tractor tugs would have a negligible effect on profits. Because these costs are effectively shared with state and federal governments, the loss to the producers would

amount to approximately one cent per barrel, compared to estimated tax-paid North Slope production and pipeline profits of $5.34 per barrel. Over the course of that year, those expenditures would result in a reduction of less than $4 million to estimated net profits totalling $1.9 billion. In making long-term production decisions, a two to three cent per-barrel change in costs is apt to be lost in the noise of the much larger uncertainty about prices. Long-range planning forecasts often consider price changes in $5-per-barrel increments. Finally, these data indicate that in terms of net income, at the end of the century profits from North Slope operations would still be on a par with the seventh most profitable corporation in the nation in 1991.

In the absence of information the industry treats as proprietary, it is difficult to make useful internal rate of return calculations. However, it is interesting to note that Deakin's accountancy study estimated the internal rate of return through 1987 at 43.7% if 75 percent of the total investment were financed with debt. Asuming 100% equity financing, Deakin estimated an after-tax rate of return on cash flow of 29.7%.[17] These data indicate that Hermiller's thesis, although logically correct, is practically useless. Due to the extraordinary profit from ANS operations, the environmental costs against which Alyeska officials habitually rail are virtually irrelevant to long-term planning.

Many pieces of the oil market price puzzle are not reported publicly. Even those that are published are often subject to dispute. These results should therefore be regarded as estimates rather than precise statements of North Slope profits. After reviewing the effects of changing key factors, Deakin estimated that with better public information, his estimate might range downward by 4% or upward by 10%.[18] Similar revisions to the 1985-92 numbers are possible, although upward revision in industry profits seems much more likely than downward. In sum, while the North Slope producers have consistently declined to make profit figures public, it is believed that the data used in this analysis produce an estimate of profits that is quite conservative.

This analysis considers only the profits earned from North Slope production, feeder line shipments to Prudhoe Bay and TAPS shipments to Valdez. These figures do not include the profits North Slope producers derive from transportation from Valdez to the Lower 48, or from refining and marketing of ANS. One reason for excluding these downstream profit sources is that even without ANS, the producers arguably could realize similar profits using non-ANS crude oil sources to run equivalent transportation and essentially identical refining and marketing operations.

Two other values of ANS have been identified. One is the value of a stable supply of crude oil that North Slope development provides the owner companies. Without ANS, the companies would have to rely for their oil supply on the shifting sources of the open market. Ownership of ANS production enables the major North Slope producers to plan and design their refineries with an assured supply. Quantification of this advantage, however, would require the introduction of assumptions whose bases would be difficult to validate.

The second additional benefit of North Slope operations resides in the collection by TAPS owners, through the TAPS tariff, of funds for the eventual dismantling and removal and restoration (DR&R) of the 800-mile pipeline corridor. This is the item cited by Alyeska's Williams as the kind of environmental cost that could cause

Alaska's golden goose to cackle its last. In fact, DR&R has turned into a hidden or off-book cash cow for the North Slope producers of uncelebrated but astonishing proportions. Instead of requiring that the funds collected against this vague legal obligation be held in an identifiable reserve account or placed in escrow to ensure their availability for future use, the 1985 TAPS tariff settlement[19] allows the TAPS owners to co-mingle this money with internal accounts, re-invest it for profit or distribute it to shareholders. According to the terms of the 1985 settlement, the money collected for DR&R was supposed to equal the amount required to restore the pipeline corridor to its previous condition. Due to changes in calculating factors such as inflation, tax rates and estimated corporate earnings on internally-held funds over the 35-year estimated life of the pipeline, it has been estimated that if dismantling actually takes place in the second decade of the next century, TAPS DR&R collections will exceed requirements by $11.7 to $22.1 billion in 1992 dollars.[20] This projected gain to the TAPS owners from TAPS DR&R is in excess of — over and above — the annual after-tax profits calculated in this report. Many industry observers believe the pipeline will be in operation for a much longer period, further increasing the value of the precollected DR&R payments to the owner companies.

One of the surprising facets of North Slope economics is that its extraordinary profitability is so dimly understood by the public. In a lengthy front-page report in May 1993, the Anchorage Daily News explained ARCO's presence and prospects in Alaska this way:

> ARCO is here, [CEO Lodwrick] Cook and analysts said, because it has to be: because it understands Alaska and Alaskans, because it owns so many oil leases in the state and because its enormously profitable refining and retailing system is geared for North Slope crude.[21]

All of this may be true, but the article omitted all reference to North Slope profits, which are roughly twice that of the company's "enormously profitable refining and retailing system."

CONCLUSIONS

Alaska is the frequent scene of intense debates in which environmental and economic values are pitted against each other. In those debates, crucial facts about energy and the environment are frequently obscured. The public, groping blindly in the absence of meaningful data, looks to its elected officials and bureaucrats for leadership and information. Public officials, in turn, seem perpetually impaled on the horns of the environment v. development dilemma. Even development spokesmen sometimes seem to be confused about key facts that underlie the central issues.

A straight-forward approach to North Slope profitability cuts through rhetoric to produce estimates of the extraordinary per-barrel net profitability of Alaska's North Slope operation. These data indicate that the North Slope producers have ample room to make additional environmental expenditures, if warranted, despite public pronouncements to the contrary by industry officials.

Decisions involving energy and the environment inevitably involve a balancing of economic and ecological factors. In view of the statements of Alyeska Pipeline Service Co. officials on Alaska North Slope economics, it is to be hoped that industry's environmental assessments are better than its public economic analyses.

NOTES

1. Seven major oil companies own the 800-mile TAPS pipeline, which transports Alaska North Slope crude oil from Prudhoe Bay to Valdez, where the oil is loaded on tankers for the Lower 48 states. Three companies — ARCO, BP and Exxon — own approximately 91.5% of TAPS and 93% of ANS production (the latter figure is net of royalty). For specific field and TAPS ownership percentages, see British Petroleum, Prudhoe Bay and Beyond [7th Edition; n.d.], p. 2.

2. Damage from the Exxon Valdez spill is the subject of debates among oil spill specialists. See, for example, "Information on Valdez Oil Spill — Scientific Studies Sponsored by Exxon" (Exxon press packet summarizing materials presented at the Symposium on Environmental Toxicology and Risk Assesment, sponsored by the American Society for Testing And Materials), April 26-29, 1993 and "NOAA Response to Exxon Challenge to Exxon Valdez Natural Resource Damage Assesament Database" (National Oceanic and Atmospheric Administration), April 27, 1993.

3. In 1971, British Petroleum's head of Environmental Studies promised "[f]or any oil spill . . . prompt and effective containment. . . . .The best equipment, materials and expertise . . . will make operations and Port Valdez and in Prince William Sound the safest in the world." In subsequent years industry officials frequently made similar promises. However, by 1989 Exxon had entrusted the newest and largest ship in its Alaska fleet to a Captain who had been barred from driving in two states for drunk driving. The Captain, in turn, left the supertanker in control of an inexperienced and overworked Third Mate with a helmsman at the wheel who was felt by colleagues to be incapable of painting a wall without close supervision. When the spill occurred, the Valdez-based response barge, which was supposed to have been ready to go on immediate notice, was out of the water for repairs. Key response equipment, such as pumps and containment boom, were either unavailable or buried under several feet of snow. (For promises: Alyeska Pipeline Service Co., Hearing Testimony [at U.S. Department of Interior hearings, Anchorage, February 1971], pp. 32-33. For spill and botched response, see: National Transportation Safety Board, Hearings May 1989 and Marine Accident Report—Grounding of the U.S. Tankship EXXON VALDEZ on Bligh Reef, Prince William Sound, near Valdez Alaska, March 24, 1989, esp. Findings and Probable Cause, pp. 166-170 [Report No. NTSB/MAR-90/04] and Alaska Oil Spill Commission, Final Report [State of Alaska, Feb. 1990], pp. 5-59.)

4. See: Regional Citizens Advisory Council, Resolution 92-2, Sept. 28, 1992; and letter from J.B. Hemmiller, President, Alyeska Pipeline Service Co., to Scott Sterling, President, Regional Citizens Advisory Council, Nov. 16, 1992.

5. See: Analysis of Tanker Escort Services for San Fraciaco Bay, July 1992 (prepared for Harbor Safety Committee of the San Francisco Bay Region by Robert Allan Ltd.); Foss/ARCO Tanker Escort Study (Puget Soud), Sept. 1991; Crowley Maritime Corporation, "Crowley Marine Services to Purchase Eight New 9,000 h.p. Tractor Tugs," Feb. 9, 1993 (press release).

6. M.F.G. Williams, "Economic Regulations and Development" (Conference on Energy Issues for the 1990s [University of Alaska Anchorage School of Business and Organization of Petroleum Exporting Countries conference], Anchorage, July 23-24, 1992), p. 2. Mr. Williams omitted mention of the fact that TAPS owners have already collected a sizable fortune for this purpose through the liberal terms of the 1985 TAPS tariff settlement (see "Discussion," below).

7. Anchorage Times, Jan. 12, 1992 (speech reprinted in its entirety by Alyeska Pipeline Service Co.]

8. For a more detailed discussion of the sources and factors employed in this spreadsheet, see the author's North Slope Profits and Production Prospects (report to the Alaska State Senate Finance Committee, Nov. 11, 1992), pp. 30-41. The approach used in this analysis is similar to the model of per-barrel profitability laid out by Charles Logsdon, Ph. D., Alaska Dept. of Revenue Chief Economist, in a July 1992 paper. ("Alaska's Relationship with the Major Oil Producers," Conference on Energy Issues for the 1990s [University of Alaska School of Business and OPEC; Anchorage, July 23-24, 1992], p. 6.) However, Dr. Logsdon's table delineates production revenue and therefore omits pipeline profits.

9. A 1984 study found the North Slope's three major producers paid an average of 23.25% in federal taxes from 1981 to 1983. In a 1988 update, ARCO and BP were not reported but Exxon paid approximately 23% from 1981 through 1987. (Robert S. McIntyre ad Robert Folen, Corporate Income Taxes in the Reagan Years: A Study of Three Years of Legalized Tax Avoidance [Citizens for Tax Justice, 1984], pp. 32-33, 36; Robert S. McIntyre, Johathan M. Crystal and David C. Wilhelm, The Corporate Tax Comeback [Citizens for Tax Justice and the Institute on Taxation and Economic Policy, 1988], p. 43.

10. TAPS profits include both the after-tax margin and the recovery of deferred return (lines 5e and 5f, Table 1).

11. Edward B. Deakin, Oil Industry Profitability in Alaska, 1969 through 1987 (Alaska Dept. of Revenue, March 15, 1989). For a comparison of the results produced by the two models, see North Slope Profits and Production Prospects, p. 60.

12. The 1991 data in Table 1 were produced from separate calculations for each of the five major North Slope producing fields, each of which has its own operating, capital and pipelining costs, as well as its own market value (based on the quality of the oil produced). A simplified version of the model was developed, using estimating factors to produce average North Slope profit figures for 1988 through 1990, and for 1992. Results from the 1992 field model closely matched those of the simplified version.

13. Alaska Department of Revenue, Spring 1993 Revenue Source Book, mid-scenario simulated oil production, p. 47.

14. According to the Fortune 500, the five most profitable companies in the United States in 1991 and 1992 (followed by their net after-tax income, in millions of dollars) were: 1992: (1) Phillip Morris, $4,939.0; (2) Exxon, $4,770.0; (3) General Electric, $4,725.0; (4) Merck, $1,984.2; (5) Bristol Meyers-Squibb, $1,962.0. 1991: (1) Exxon, $5,600.0; (2) Phillip Morris, $3,006.0; (3) General Electric, $2,636.0; (4) Merck, $2,121.7; (5) Bristol Meyers-Squibb $2,056.0.

15. In fact, it is conceivable that TAPS profits, which are guaranteed in the tariff agreement, could enable the owners to continue producing profitably despite short-term production revenue losses due to relatively low oil prices. Whether Alyeska officials actually misperceive TAPS as a stand-alone economic entity, as their public pronouncements indicate, is beyond the scope of this paper.

16. The price and production assumptions used in this analysis, from the Alaska Department of Revenue's Spring 1992 forecast, are rather conservative. For example, that forecast assumed a 50% production decline at Kuparuk by the year 2000 with little or no replacement production from the West Sak reservoir. ARCO, which has the major interest in both fields, has indicated that Kuparuk will probably hold at current levels through the end of the century, and that West Sak production may be brought on line when Kuparuk does slow down. (For a detailed look at the assumptions used and the results, see North Slope Profits and Production Prospects, pp. 69-79.)

17. Oil Industry Profitability in Alaska, 1969 through 1987, pp. T74-75.

18. Oil Industry Profitability in Alaska, 1969 through 1987, pp. 20, T58-T63.

19. "Settlement Agreement between the State of Alaska and ARCO Pipe Line Co. [et al.]," June 28, 1985, p. 14.

20. For the history of the DR&R provision in the TAPS settlement and an analysis of its economic consequences, see the author's Hidden Billions: The TAPS DR&R Provision (report prepared for Stan Stephens, PO Box 1297, Valdez, Alaska, 99686, August 21, 1992).

21. Kim Ferraro, "Stuck on Alaska: Arco's bet pays off for state, company," Anchorage Daily News (May 23, 1993), p. A-1.

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Freelance research and writing (October 1989 - present). Primary focus: Alaska North Slope oil and gas economics, production prospects and environmental policy.

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Policy Analyst, Office of Management and Budget, Office of the Governor of Alaska (1987-89). Duties: special advisor to the governor on oil and gas issues; member of state oil and gas litigation policy working group; member of state revenue forecasting group; special assignments.

Senior Analyst, Office of Management and Budget, Office of the Governor of Alaska (1983-1987). Duties: compilation of state revenue and budget totals, preparation and publication of annual report on same; special assignments.

Freelance investigative reporting and research (1976-1982).

Resources and Staff Investigative Reporter, Fairbanks Daily News-Miner (1975-1976).

Freelance investigative reporting (19

Assistant Professor of Political Science, University of Alaska (1969-71). Duties: Teaching undergraduate and graduate courses in government; setting up and leading Master's in Public Administration Program at the University's Juneau branch.

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Academic Awards: National Defense Foreign Language Fellowship, 1966-67; National Endowment for the Humanities Post-Doctoral Fellowship, 1971 (declined); Danforth Fellowship for Economic Reporting, University of Missouri School of Journalism, 1976.

Print Journalism (partial list of publications):[1] Articles on a wide range of subjects ranging from the use of chemical and biological warfare in Southeast Asia to investigation of a U.S. Senator's mismanagement of the bank he previously headed have appeared in magazines such as Alaska, Alaska Business, Lithopinion, The Nation, The New Republic, The Progressive, Saturday Review / World and newspapers including The All-Alaska Weekly, The Anchorage Daily News, The Boston Globe, The Chicago Tribune, The Miami Herald, The St. Louis Post-Dispatch and The Washington Star.

Print Journalism (awards): Amos Tuck Award for Excellence in Economic Reporting ($5,000 first prize, 1979, for a series on the Northwest Energy Co.'s efforts to build a natural gas pipeline from Alaska's North Slope to the Lower 48); best weekly column, Alaska Press Club (1975, for coverage of construction of the trans-Alaska oil pipeline); best reporting (weekly) and second best reporting (daily), Alaska Press Club (1979, for reporting on workers' compensation problems).

Research Reports, Monographs:

"Cook Inlet Oil Platform Hiring Practices," Alaska State Legislature (1980);

"Fatalities during Construction of the Trans-Alaska Pipeline," Alaska Science Conference (1980);

"Workers' Compensation Problems in Alaska," Alaska State Legislature (1981);

"Chaos in the Capitol: The Alaska State Budget System in Crisis," Alaska Public Interest Research Group (1982);

"Oil and Gas Revenue Disputes: Status Report and Recommendations," Alaska State Legislature (1990);

"The 1985 TAPS Tariff Settlement: A Case Study in the Effects of Confidentiality on Information Available to Decision Makers" (supplemental report to "Oil and Gas Revenue Disputes"), Alaska State Legislature (1990);

"Corexit 9580: Report and Recommendations," Alaska Department of Environmental Conservation Oil Spill Response Center (1990);

"North Slope Production Prospects, 1990-2010," Alaska State Legislature (1990);

"Worker Safety and the Dutch Harbor Fishery Boom," Alaska State Department of Labor (1991);

"Alyeska Pipeline Terminal Ballast Water Treatment and Northbound Shipments: Final Report," Prince William Sound Regional Citizens' Advisory Council (1991);

"Hidden Billions: The TAPS DR&R Provision," under contract to Stan Stephens, Valdez, Alaska (1992);

"North Slope Profits and Production Prospects," Alaska State Legislature (1992);

"Alaska North slope Oil Profits and Proposed Environmental Mitigation Measures," for presentation to the N. Amer. Conference, International Association for Energy Economics (1993).

Book chapters:

"Cambodia: The Struggle Continues," in Vietnam: What Kind of Peace? (Washington, D.C.: Indochina Resource Center, 1973);

"The Press in Alaska," in McBeath and Morehouse (eds.), Alaska State Government and Politics (Fairbanks, Alaska: University of Alaska Press, 1987).

Additional Experience in Oil & Gas:

1. Legal and Accounting: In addition to extended field trips to assist the Alaska Department of Law and its consultants on disputes over payments to the state due from (or related to) North Slope oil production and income taxes, royalties and pipeline tariffs while working for the State of Alaska, I furthered my professional training in these areas by attending the following meetings or professional conferences of special note:

Oil Pipeline Ratemaking Workship, Executive Enterprises, Inc. (Houston, Texas, May 1985);

Short Course on the Fundamentals of Oil and Gas Law and Taxation , Southwestern Legal Foundation (Dallas, Texas, May 1988);

OPEC Meeting (observer for State of Alaska; Vienna, Austria, November 1988).

2. Environmental: In 1989 I spent more than a month in Prince William Sound assisting the State Department of Environmental Conservation in the cleanup of the Exxon Valdez oil spill. In addition to frequent follow-up visits to Prince William Sound, I subsequently attended the following major conferences (partial list);

Arctic Marine Oil Pollution Conference (Calgary, Alberta, June 1989; and Vancouver, B.C., June 1991);

International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), American Petroleum Institute, U.S. Coast Guard and U.S. Environmental Protection Agency (San Diego, California, March 1991;

Third American Society for Testing and Materials (ASTM) Symposium on Environmental Toxicology and Risk Assessment — Exxon Valdez oil spill (Atlanta, Georgia, May 1993).

References: Available on Request.

Conference Announcement and Call for Papers

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- Pacific NW and California energy plans
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- Mexican oil and gas exports
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- U.S. energy exports and imports

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