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Chenoweth
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CS FOR HOUSE BILL NO. 238()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL.

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release
2 response fund, repealing the authority in law by which marine highway vessels
3 may be designed and constructed to aid in oil and hazardous substance spill
4 cleanup in state marine water using money in the oil and hazardous substance
5 release response fund, amending requirements relating to the revision of state and
6 regional master prevention and contingency plans, altering requirements applicable
7 to liens for recovery of state expenditures related to oil or hazardous substances,
8 amending the authority to contract to conduct spill related research, and
9 modifying definitions of related terms; and terminating the nickel-per-barrel oil
10 conservation surcharge, levying and collecting two new oil surcharges, and
11 providing for the suspension and reimposition of one of the new surcharges."

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

1 * Section 1. AS 26.23.020(g) is amended to read:

2 (g) In addition to any other powers conferred upon the governor by law, the
3 governor may, under AS 26.23.010 - 26.23.220,

4 (1) suspend the provisions of any regulatory statute prescribing
5 procedures for the conduct of state business, or the orders or regulations of any state
6 agency, if compliance with the provisions of the statute, order, or regulation would
7 prevent, or substantially impede or delay, action necessary to cope with the disaster
8 emergency;

9 (2) use all available resources of the state government and of each
10 political subdivision of the state as reasonably necessary to cope with the disaster
11 emergency;

12 (3) transfer personnel or alter the functions of state departments and
13 agencies or units of them for the purpose of performing or facilitating the performance
14 of disaster emergency services;

15 (4) subject to any applicable requirements for compensation under
16 AS 26.23.160, commandeer or utilize any private property, except for all news media
17 other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor
18 considers this necessary to cope with the disaster emergency;

19 (5) direct and compel the relocation of all or part of the population
20 from any stricken or threatened area in the state, if the governor considers relocation
21 necessary for the preservation of life or for other disaster mitigation purpose;

22 (6) prescribe routes, modes of transportation, and destinations in
23 connection with necessary relocation;

24 (7) control ingress to and egress from a disaster area, the movement of
25 persons within the area, and the occupancy of premises in it;

26 (8) suspend or limit the sale, dispensing, or transportation of alcoholic
27 beverages, firearms, explosives, and combustibles;

28 (9) make provisions for the availability and use of temporary
29 emergency housing;

30 (10) allocate or redistribute food, water, fuel, or clothing; and

31 (11) use money from the oil and hazardous substance release

1 prevention and response fund, established by AS 46.08.010, to respond to a declared
2 disaster emergency related to an oil or hazardous substance discharge.

3 * Sec. 2. AS 26.23.050(b) is amended to read:

4 (b) Whenever, and to the extent that, money is needed to cope with a disaster,
5 the first recourse shall be to money regularly appropriated to state and local agencies.

6 The second recourse shall be to money available in the disaster relief fund or, for oil
7 or hazardous substances discharges, the oil and hazardous substance release prevention
8 and response fund, as the governor determines appropriate. If money available from
9 these sources is insufficient, and if the governor finds that other sources of money to
10 cope with the disaster are not available or are insufficient, the governor may,
11 notwithstanding the limitations imposed by AS 37.07.080(e),

12 (1) transfer and spend money appropriated for other purposes; or

13 (2) borrow money for a term not to exceed two years.

14 * Sec. 3. AS 29.60.510(b) is amended to read:

15 (b) For each disaster emergency declared by the governor under AS 26.23.020
16 that involves a catastrophic oil release or threatened catastrophic oil release, and
17 subject to agreement with the commissioner of environmental conservation as to the
18 amount of money in the fund that may be used by the department to make grants, the
19 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
20 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
21 unrestricted balance of the catastrophic oil release response account in the fund for
22 grants authorized under this section. For each disaster emergency declared by the
23 governor under AS 26.23.020 that involves a release or threatened release of oil
24 or a hazardous substance, except a catastrophic oil release, and subject to
25 appropriation of money in the fund that may be used by the department to make
26 grants, the commissioner may expend not more than the amount appropriated
27 from the oil and hazardous substances release contingency and abatement account
28 in the fund for grants authorized under this section. If the commissioner and the
29 commissioner of environmental conservation do not agree on the amount of money in
30 the catastrophic oil release response account in the fund that may be used by the
31 department to make grants under AS 29.60.500 - 29.60.599 for a catastrophic oil

1 release or threatened catastrophic oil release, the governor shall make the
2 determination.

3 * Sec. 4. AS 37.14.410 is amended to read:

4 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by
5 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred
6 by the state on or before December 31, 1992, shall be deposited in the general fund
7 and, except as required under (b) of this section, may not be credited to the oil and
8 hazardous substance release mitigation account under AS 46.04.010 or to an account
9 established in AS 46.08.020 or 46.08.025.

10 (b) A percentage of each payment deposited in the general fund under (a) of
11 this section shall be credited to the oil and hazardous substance release mitigation
12 account under AS 46.04.010 or to an account established in AS 46.08.020 or
13 46.08.025. That percentage is determined by dividing

14 (1) the amount of the expenses for which the state may be reimbursed
15 under (a) of this section that were paid from the oil and hazardous substance release
16 prevention and response fund established under AS 46.08.010, by

17 (2) the total amount of expenses for which the state may be reimbursed
18 under (a) of this section.

19 * Sec. 5. AS 43.55 is amended by adding a new section to read:

20 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
21 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
22 less any oil the ownership or right to which is exempt from taxation.

23 (b) The surcharge imposed by (a) of this section is in addition to

24 (1) and shall be paid in the same manner as the tax imposed by
25 AS 43.55.011 - 43.55.150; and

26 (2) the surcharge imposed by AS 43.55.300 - 43.55.320.

27 (c) A producer of oil shall make reports of production in the same manner and
28 under the same penalties as required under AS 43.55.011 - 43.55.150.

29 * Sec. 6. AS 43.55 is amended by adding a new section to read:

30 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The
31 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into

1 the general fund.

2 (b) The commissioner of administration shall separately account for all
3 proceeds of the surcharge that are deposited into the general fund.

4 * Sec. 7. AS 43.55 is amended by adding a new section to read:

5 Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The
6 legislature may appropriate the annual estimated balance of the account established
7 under AS 43.55.211 to the catastrophic oil release response account in the oil and
8 hazardous substance release prevention and response fund established by AS 46.08.010.

9 * Sec. 8. AS 43.55 is amended by adding a new section to read:

10 Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE
11 SURCHARGE. (a) Except when a different time for making a determination is
12 required under (e) of this section, not later than 30 days after the end of each calendar
13 quarter, the commissioner of administration shall determine the cumulative total of
14 money that has been

15 (1) deposited through that calendar quarter, or was received through
16 that calendar quarter and is subject to deposit, into the catastrophic oil release response
17 account of the oil and hazardous substance release prevention and response fund
18 established by AS 46.08.010;

19 (2) deposited during the calendar quarter, or was received during the
20 calendar quarter and is subject to deposit, into the catastrophic oil release response
21 mitigation account under AS 46.08.025(b);

22 (3) expended through that calendar quarter from the catastrophic oil
23 release response account of the oil and hazardous substance release prevention and
24 response fund.

25 (b) Within 15 days after making the determinations required by (a) of this
26 section, the commissioner of administration shall

27 (1) add the amounts determined under (a)(1) and (2) of this section;

28 (2) determine the difference between the amount determined under (1)
29 of this subsection and the amount determined under (a)(3) of this section; and

30 (3) report the amount determined under (2) of this subsection to the
31 commissioner.

1 (c) If the commissioner of administration reports that the difference determined
2 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue
3 shall suspend imposition and collection of the surcharge levied and collected under
4 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on
5 the first day of the calendar quarter next following the commissioner's receipt of the
6 commissioner of administration's report under (b) of this section. Before the first day
7 of a suspension authorized by this subsection, the commissioner shall make a
8 reasonable effort to notify all persons who are known to the department to be paying
9 the surcharge under AS 43.55.201 that the surcharge will be suspended.

10 (d) Except as provided in AS 43.55.240, if the commissioner of administration
11 reports that the difference determined under (b) of this section is less than
12 \$50,000,000, the commissioner of revenue shall require imposition and collection of
13 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins
14 on the first day of the calendar quarter next following the commissioner's receipt of
15 the commissioner of administration's report under (b) of this section. Before the first
16 day of reimposition of the surcharge authorized by this subsection, the commissioner
17 shall make a reasonable effort to notify all persons who are known to the department
18 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be
19 reimposed.

20 (e) Notwithstanding the requirement of (a) of this section that the cumulative
21 determination of receipts and expenditures be made quarterly, when the amount
22 determined under (b) of this section is \$45,000,000 or more, the commissioner of
23 administration shall make the determinations required by this section not later than 30
24 days before each calendar quarter and every 30 days thereafter.

25 * Sec. 9. AS 43.55 is amended by adding a new section to read:

26 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by
27 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from
28 the surcharge would be sufficient to restore the balance of the oil and hazardous
29 substance release prevention and response fund on the first day of the fiscal year to
30 at least \$50,000,000, and

31 (1) the legislature does not, during the regular legislative session

1 preceding the first day of the fiscal year, appropriate money from the general fund to
2 the catastrophic oil release response account in the oil and hazardous substance release
3 prevention and response fund sufficient to restore the balance of that account on the
4 first day of the fiscal year to at least \$50,000,000; or

5 (2) the legislature, during the regular legislative session preceding the
6 first day of the fiscal year, appropriates money from the general fund to the
7 catastrophic oil release response account in the oil and hazardous substance release
8 prevention and response fund sufficient to restore the balance of that account on the
9 first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto
10 or reduction in the amount of the appropriation, restoration of the balance of the fund
11 to at least \$50,000,000 does not become law.

12 * Sec. 10. AS 43.55 is amended by adding new sections to read:

13 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

14 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
15 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
16 less any oil the ownership or right to which is exempt from taxation.

17 (b) The surcharge imposed by (a) of this section is in addition to

18 (1) and shall be paid in the same manner as the tax imposed by
19 AS 43.55.011 - 43.55.150; and

20 (2) the surcharge imposed by AS 43.55.201 - 43.55.241.

21 (c) A producer of oil shall make reports of production in the same manner and
22 under the same penalties as required under AS 43.55.011 - 43.55.150.

23 Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The
24 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into
25 the general fund.

26 (b) The commissioner of administration shall separately account for all
27 proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general
28 fund.

29 Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The
30 legislature may appropriate the annual estimated balance of the account established
31 under AS 43.55.310 to the oil and hazardous substances release contingency and

1 abatement account in the oil and hazardous substance release prevention and response
2 fund established by AS 46.08.010.

3 * Sec. 11. AS 43.55.900(3) is amended to read:

4 (3) "catastrophic oil discharge" means an oil discharge in excess of
5 100,000 barrels, or any other oil discharge which the governor determines
6 presents a grave and substantial threat to the economy or environment [HAS THE
7 MEANING GIVEN IN AS 46.04.900];

8 * Sec. 12. AS 43.55.900(15) is amended to read:

9 (15) "surcharge" means

10 (A) when used in AS 43.55.201 - 43.55.241, the surcharge
11 levied by AS 43.55.201 [AS 43.55.200];

12 (B) when used in AS 43.55.300 - 43.55.320, the surcharge
13 levied by AS 43.55.300;

14 * Sec. 13. AS 46.04.200(a) is amended to read:

15 (a) The department shall

16 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide
17 master oil and hazardous substance discharge prevention and contingency plan;

18 (2) annually review the statewide master oil and hazardous
19 substance discharge prevention and contingency plan; and

20 (3) revise the statewide master oil and hazardous substance
21 discharge prevention and contingency plan; the department shall revise the
22 statewide master plan whenever, in the judgment of the commissioner, revision
23 is necessary, but a revision under this paragraph may not occur more often than
24 once during each fiscal year.

25 * Sec. 14. AS 46.04.200(c) is amended to read:

26 (c) In preparing and annually reviewing the state master plan, the
27 commissioner shall

28 (1) consult with municipal and community officials, and with
29 representatives of affected regional organizations; and

30 (2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW
31 AND COMMENT;

1 (3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER
2 THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR
3 SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

4 (4)] require or schedule unannounced oil spill drills to test the
5 sufficiency of an oil discharge prevention and contingency plan approved under
6 AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section
7 [; AND

8 (5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE
9 ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW
10 AND APPROVAL UNDER AS 46.13.045].

11 * Sec. 15. AS 46.04.200 is amended by adding a new subsection to read:

12 (d) In preparing a revision of the statewide master plan, the commissioner shall
13 submit

14 (1) the draft plan to the

15 (A) public for review and comment; and

16 (B) Alaska State Emergency Response Commission for its
17 review and approval under AS 46.13.045; and

18 (2) the proposed revision of the plan to the legislature for review not
19 later than the 10th day following the convening of each regular session.

20 * Sec. 16. AS 46.04.210(a) is amended to read:

21 (a) For any region of the state, the boundaries of which are determined by the
22 commissioner by regulation, in which the department is required to review and approve
23 an oil discharge prevention and contingency plan submitted by a person under
24 AS 46.04.030, the department shall

25 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional
26 master oil and hazardous substance discharge prevention and contingency plan;

27 (2) annually review the regional master oil and hazardous substance
28 discharge prevention and contingency plan; and

29 (3) revise the regional master oil and hazardous substance
30 discharge prevention and contingency plan; the commissioner shall revise a
31 regional master plan whenever, in the judgment of the commissioner, revision is

1 necessary, but a revision under this paragraph may not occur more often than
2 once during each fiscal year.

3 * Sec. 17. AS 46.04.210(b) is amended to read:

4 (b) The provisions of AS 46.04.200(b) - (d) [AS 46.04.200(b) AND (c)] apply
5 to preparation and review of a regional master plan under this section.

6 * Sec. 18. AS 46.04.900(2) is amended to read:

7 (2) "catastrophic oil discharge" means

8 (A) an oil release or discharge in excess of 100,000 barrels; [,]

9 or

10 (B) any other release or discharge that [WHICH] the governor
11 determines presents a grave and substantial threat to the economy or
12 environment and for which the governor has issued a proclamation
13 declaring a condition of disaster emergency under AS 26.23.020(c) [OF
14 THE STATE];

15 * Sec. 19. AS 46.08.005 is amended to read:

16 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the
17 catastrophic release of oil or hazardous substances into the environment presents a
18 real and substantial threat to the public health and welfare, to the environment, and to
19 the economy of the state. The legislature therefore concludes that it is in the best
20 interest of the state and its citizens to provide a [READILY AVAILABLE] fund
21 containing two accounts. One account consists of money readily available to the
22 commissioner for the payment of the expenses incurred by the Department of
23 Environmental Conservation during an emergency first response to a catastrophic
24 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND
25 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE
26 STATE FROM THE] release of oil [OR HAZARDOUS SUBSTANCES]. The other
27 account consists of money that the state may use during a response to a release
28 or threatened release of oil or a hazardous substance, other than a catastrophic
29 oil discharge, to make preparations for the possibility of a release or threatened
30 release of oil or hazardous substances, and to reduce the amount, degree, or
31 intensity of a release or threatened release.

1 * Sec. 20. AS 46.08.010(a) is amended to read:

2 (a) There is established in the state general fund the oil and hazardous
3 substance release prevention and response fund. The fund shall be administered by
4 the commissioner. The fund is composed of two accounts.

5 (1) the oil and hazardous substances release contingency and
6 abatement account:

7 (2) the catastrophic oil release response account.

8 * Sec. 21. AS 46.08.010(b) is amended to read:

9 (b) Money from an appropriation made to an account in the fund remaining
10 in that account [THE FUND] at the end of a fiscal year remains available for
11 expenditure in successive fiscal years.

12 * Sec. 22. AS 46.08.010(c) is amended to read:

13 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.
14 The [EXCEPT AS PROVIDED IN AS 46.08.040(d)(2), THE] fund may not be used
15 for capital improvements.

16 * Sec. 23. AS 46.08.020 is amended to read:

17 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
18 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT
19 [FUND]. (a) The legislature may appropriate from the following sources to the oil
20 and hazardous substances release contingency and abatement account in the fund:

21 (1) money received from federal, state, or other sources or from a
22 private donor;

23 (2) money recovered or otherwise received from parties responsible for
24 the containment and cleanup of oil or a hazardous substance at a specific site, but
25 excluding

26 (A) money recovered or otherwise received due to a
27 catastrophic oil discharge; and

28 (B) money [FUNDS] from performance bonds and other forms
29 of financial responsibility held in escrow pending satisfactory performance of
30 a privately financed response action; and

31 (3) fines, penalties, or damages recovered under AS 46.08.005 -

1 46.08.080 or other law for costs incurred by the state as a result of the release or
2 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
3 damages recovered or otherwise received due to a catastrophic oil discharge.

4 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
5 be deposited in the general fund and credited to a special account called the "oil and
6 hazardous substances [SUBSTANCE] release contingency and abatement mitigation
7 account." The legislature may annually appropriate to the oil and hazardous
8 substances release contingency and abatement account in the fund from the oil and
9 hazardous substances release contingency and abatement mitigation [THIS]
10 account a sum equal to the amount received under (a)(2) and (a)(3) of this section
11 during the calendar year preceding the legislative session in which the appropriations
12 are to be made.

13 * Sec. 24. AS 46.08 is amended by adding a new section to read:

14 Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE
15 RESPONSE ACCOUNT. (a) The legislature may appropriate from the following
16 sources to the catastrophic oil release response account in the fund:

17 (1) money received from federal, state, or other sources or from a
18 private donor;

19 (2) money recovered or otherwise received from parties responsible for
20 the containment and cleanup of a catastrophic oil discharge, but excluding money from
21 performance bonds and other forms of financial responsibility held in escrow pending
22 satisfactory performance of a privately financed response action;

23 (3) fines, penalties, or damages recovered under AS 46.08.005 -
24 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil
25 discharge.

26 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
27 be deposited in the general fund and credited to a special account called the
28 "catastrophic oil release response mitigation account." The legislature may annually
29 appropriate to the catastrophic oil release response account in the fund from the
30 catastrophic oil release response mitigation account a sum equal to the amount received
31 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative

1 session in which the appropriations are to be made.

2 * Sec. 25. AS 46.08.040(a) is amended to read:

3 (a) In addition to money in the fund that is transferred to the commissioner of
4 community and regional affairs to make grants under AS 29.60.510 and to pay for
5 impact assessments under AS 29.60.560, the commissioner of environmental
6 conservation may use money

7 (1) from the catastrophic oil release response account in the fund to

8 (A) [(1)] investigate and evaluate a catastrophic oil [THE]
9 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS
10 SUBSTANCE], and contain, clean up, and take other necessary action, such as
11 monitoring and assessing, to address a catastrophic oil release or threatened
12 catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE] that
13 poses an imminent and substantial threat to the public health or welfare, or to
14 the environment;

15 (B) [(2)] PAY ALL COSTS INCURRED TO

16 (A) ESTABLISH AND MAINTAIN THE OIL AND
17 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

18 (B) REVIEW OIL DISCHARGE PREVENTION AND
19 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030,

20 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
21 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
22 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
23 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
24 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
25 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
26 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
27 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
28 AND

29 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
30 RESPONSIBILITY REQUIRED BY AS 46.04.040;

31 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION

1 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
2 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
3 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
4 THE DIVISION;

5 (4)] provide matching funds in the event of a catastrophic oil release
6 for participation

7 (i) in federal oil discharge cleanup activities; and

8 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
9 Environmental Response, Compensation, and Liability Act of 1980);

10 and

11 (C) [(5)] recover the costs to the state, a municipality, or a
12 village of a containment and cleanup resulting from the catastrophic oil release
13 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS
14 SUBSTANCE];

15 (2) from the oil and hazardous substances release contingency and
16 abatement account in the fund to

17 (A) investigate and evaluate the release or threatened release
18 of oil or a hazardous substance, except a catastrophic oil release, and
19 contain, clean up, and take other necessary action, such as monitoring and
20 assessing, to address a release or threatened release of oil or a hazardous
21 substance, except a catastrophic oil release, that poses an imminent and
22 substantial threat to the public health or welfare;

23 (B) recover the costs to the state, a municipality, or a village
24 of a containment and cleanup resulting from the release or the threatened
25 release of oil or a hazardous substance, except a catastrophic oil release;

26 (C) pay all costs incurred to

27 (i) establish and maintain the oil and hazardous
28 substance response office;

29 (ii) review oil discharge prevention and contingency
30 plans submitted under AS 46.04.030;

31 (iii) conduct training, response exercises, inspections,

1 and tests. in order to verify equipment inventories and ability to
2 prevent and respond to oil and hazardous substance release
3 emergencies. and to undertake other activities intended to verify or
4 establish the preparedness of the state, a municipality, or a party
5 required by AS 46.04.030 to have an approved contingency plan to
6 act in accordance with that plan: and

7 (iv) verify or establish proof of financial
8 responsibility required by AS 46.04.040:

9 (D) pay the expenses incurred by the Alaska division of
10 emergency services for the oil and hazardous substance response corps and
11 the oil and hazardous substance response depots when presented with
12 appropriate documentation by the division:

13 (E) provide matching funds in the event of the release of oil
14 or a hazardous substance, except a catastrophic oil release, for
15 participation

16 (i) in federal oil discharge cleanup activities: and

17 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
18 Environmental Response, Compensation, and Liability Act of 1980):

19 and

20 (F) [(6)] prepare, review, and revise

21 (i) [(A)] the state's master oil and hazardous substance
22 discharge prevention and contingency plan required by AS 46.04.200;
23 and

24 (ii) [(B)] a regional master oil and hazardous substance
25 discharge prevention and contingency plan required by AS 46.04.210
26]; AND

27 (7) RESTORE THE ENVIRONMENT BY ADDRESSING THE
28 EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

29 * Sec. 26. AS 46.08.040(b) is amended to read:

30 (b) When the governor declares a disaster related to an oil or hazardous
31 substance discharge emergency under AS 26.23.020(c), the governor may, during the

1 effective period of the disaster emergency, use money from the catastrophic oil
2 release response account in the fund to respond to the disaster emergency.

3 * Sec. 27. AS 46.08.040(c) is amended to read:

4 (c) Notwithstanding other provisions of this section, money from the fund may
5 not be used for a purpose specified in (a)(1)(B), (a)(1)(C), or (a)(2) [(a)(2) - (7) AND
6 (d)(2)] of this section unless money is available from an appropriation made
7 specifically for that purpose.

8 * Sec. 28. AS 46.08.060(a) is amended to read:

9 (a) The commissioner shall submit a report to the legislature not later than the
10 10th day following the convening of each regular session of the legislature. The report
11 may include information considered significant by the commissioner but must include:

12 (1) the amount of money expended by the department under
13 AS 46.08.040(a) during the preceding fiscal year;

14 (2) the amount and source of money received and money recovered by
15 or on behalf of the department during the preceding fiscal year as specified in
16 AS 46.08.020 and 46.08.025;

17 (3) a summary of municipal participation in the department's responses
18 that were paid for [FUNDED] by the fund;

19 (4) a detailed summary of department activities in responses paid for
20 [FUNDED] by the fund during the preceding fiscal year, including response
21 descriptions and statements outlining the nature of the threat; in this paragraph,
22 "detailed" includes information describing each personal services position and total
23 compensation for that position, each contract in excess of \$20,000, and each purchase
24 in excess of \$10,000; and

25 (5) the projected cost to the department for the next fiscal year of
26 monitoring, operating, and maintaining sites where response has been completed or is
27 expected to be continued during the fiscal year.

28 * Sec. 29. AS 46.08.075(a) is amended to read:

29 (a) The state has a lien for expenditures by the state from the oil and
30 hazardous substance release prevention and response fund, or from any other state
31 fund, for the costs of response, containment, removal, or remedial action resulting from

1 an oil or hazardous substance release or spill, or, with respect to response costs, for
2 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
3 of oil or a hazardous substance, against all property owned by a person who is
4 determined by the commissioner to be liable for the expenditures under this chapter,
5 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
6 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
7 expenditures. The state may file an action in a court of competent jurisdiction in order
8 to foreclose on the lien.

9 * Sec. 30. AS 46.08.075(e) is amended to read:

10 (e) A person with an ownership interest in property against which a lien is
11 recorded may bring an action in a court of competent jurisdiction to require that the
12 lien be released. The lien may be released to the extent of that person's ownership
13 interest if the court finds that the person is not liable for the expenses incurred by the
14 state in connection with the costs of response, containment, removal, or remedial
15 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or spill, or
16 from the threatened [THREAT OF] release, of oil or a hazardous substance.

17 * Sec. 31. AS 46.08.150 is amended to read:

18 Sec. 46.08.150. CONTRACTS. The office or the division, as applicable, may
19 enter into agreements with agencies of the state and federal government, political
20 subdivisions, the University of Alaska, or private persons or entities to

21 (1) provide the personnel, equipment, or other services or supplies
22 necessary to establish and maintain regional oil and hazardous substances depots and
23 as necessary for response readiness; and

24 (2) train members of response corps [; AND

25 (3) CONDUCT RESEARCH INTO OIL AND HAZARDOUS
26 SUBSTANCES SPILL TECHNOLOGY; THE OFFICE SHALL INCLUDE IN THE
27 RESEARCH TOPICS FOR WHICH IT CONDUCTS OR CONTRACTS FOR
28 RESEARCH, THE RESEARCH TOPICS RECOMMENDED TO IT BY THE
29 HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL UNDER
30 AS 46.13.120].

31 * Sec. 32. AS 46.08.900(5) is amended to read:

1 (5) "fund" means the oil and hazardous substance release prevention
2 and response fund;

3 * Sec. 33. AS 46.08.900(9) is amended to read:

4 (9) "release"

5 (A) means any spilling, leaking, pumping, pouring, emitting,
6 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
7 the environment;

8 (B) [, EXCEPT THAT "RELEASE"] does not include

9 (i) a permitted release; or

10 (ii) an act of nature;

11 * Sec. 34. AS 46.08.900(11) is amended to read:

12 (11) "threatened release" means [AN IMMINENT DANGER] that a
13 release is imminent: a release is imminent if

14 (A) it is impending, or on the point of happening; or

15 (B) though not impending, in the judgment of the
16 commissioner

17 (i) the incident or occurrence may reasonably be
18 expected to culminate in an actual release; and

19 (ii) that actual release may reasonably be expected to
20 cause personal injury, other injury to life, or loss of or damage to
21 property [WILL OCCUR];

22 * Sec. 35. AS 46.08.900 is amended by adding a new paragraph to read:

23 (13) "catastrophic oil discharge" and "catastrophic oil release" have the
24 meaning given the term "catastrophic oil discharge" in AS 46.04.900.

25 * Sec. 36. AS 46.09.900(8) is amended to read:

26 (8) "threatened release" means [AN IMMINENT DANGER] that a
27 release is imminent: a release is imminent if

28 (A) it is impending, or on the point of happening; or

29 (B) though not impending, in the judgment of the
30 commissioner

31 (i) the incident or occurrence may reasonably be

1 expected to culminate in an actual release: and

2 (ii) that actual release may reasonably be expected to
3 cause personal injury, other injury to life, or loss of or damage to
4 property [WILL OCCUR].

5 * Sec. 37. AS 19.65.025; AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240;
6 AS 44.46.025(a)(5), 44.46.025(a)(6); and AS 46.08.040(d) are repealed.

7 * Sec. 38. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
8 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
9 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
10 reference to which is repealed by sec. 3 of this Act, is not an expenditure.

11 * Sec. 39. APPLICABILITY. The definition of "catastrophic oil discharge" in
12 AS 46.08.900, added by sec. 35 of this Act, applies to discharges occurring after the effective
13 date of the Act.

14 * Sec. 40. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
15 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND
16 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the
17 effective date of this Act, every producer of oil who is required by AS 43.55.200 - 43.55.240,
18 repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil shall pay
19 that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the
20 amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received
21 after June 30, 1993, and before the effective date of this Act, if so appropriated by the
22 legislature and notwithstanding any other provision of law relating to the deposit of and
23 accounting for those receipts,

24 (1) on the effective date of this Act, the commissioner of revenue shall allocate

25 (A) 60 percent of the amount received to the catastrophic oil release
26 response account, established by the catastrophic oil release response account
27 established by AS 46.08.010(a)(2), added by sec. 20 of this Act; and

28 (B) 40 percent of the amount received to the oil and hazardous
29 substances release contingency and abatement account established by
30 AS 46.08.010(a)(1), added by sec. 20 of this Act; and

31 (2) the allocations made under (1) of this section are credited to the respective

1 accounts for purposes of determination of the suspension and reimposition of the surcharge
2 under AS 43.55.231 and 43.55.241, added by secs. 8 and 9 of this Act.

Alaska House of Representatives



Special Committee on Oil & Gas

Joe Green, Chairman

TO: Representative Joe Green, Chairman
House Oil & Gas Committee

FR: Jeff Logan, Legislative Assistant
House Oil & Gas Committee

RE: Amendments to proposed CS for HB 238

DATE: April 16, 1993

Janice Adair, Assistant Commissioner of DEC, has suggested changes to the CS for HB 238 work draft. Craig Tillery, Assistant Attorney General, has also made some suggestions. Per your instructions I have begun to incorporate these changes into the work draft.

In this draft a catastrophic spill is defined as a spill of 100,000 barrels, which is current law, or a spill "for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c). Both Ms. Adair and Mr. Tillery have observed that this declaration puts into motion a whole series of actions and timelines required under law, but which may not be required to respond to a spill. As you have instructed, I will consult with the drafter to develop a standard which will allow the fund to be used for a spill of less than 100-thousand barrels, but which will require some action by the governor in order to do so.

Representative Joe Green
April 16, 1993
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Another suggestion - made by many with whom I have consulted on this draft, - is to add language to transfer the responsibility for oil and hazardous substance release response depots from the Division of Emergency Services in the Department of Military and Veterans Affairs to DEC. As you have instructed I have begun that process.

Other suggestions and observations are as follows, by draft section:

Sec. 4 Clarify that Exxon Valdez oil spill reimbursements must be deposited into the contingency and abatement account.

Sec. 8 In calculating the money that has been deposited into the catastrophic account to determine when the \$50-million cap has been reached, at the request of the Dept. of Law, we need to exclude money that is restricted to a certain use by the federal government. For example, awards for natural resource damages are required under the Clean Water Act to be used for restoration. For a catastrophic spill, those awards would be deposited into the catastrophic spill mitigation account, the balance of which is used as part of the calculation of when the \$50-million cap has been reached. Under this scenario, the balance of the catastrophic accounts could reach \$50-million, but not all of the \$50-million could be used for response.

Sec. 9 Technical amendment - Page 6, Line 10.
"(d) Except as provided in AS 43.55.240 ..." should read AS 43.55.241

Sec. 11 We need to include discharges other than oil. This is done by simply deleting the word "oil" from line 5.

Sec.13 At the request of DEC we need to allow DEC revise the plan more than once a year. This can be accomplished by inserting a period after "...is necessary..." on line 23.

Sec. 16 The same change as Sec. 13. Page 10, Line 1.
Insert a period after "...necessary..."

Representative Joe Green

April 16, 1993

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Sec. 19 It is the feeling of Ms. Adair and Mr. Tillery that Sec. 25 of this draft expands the permitted use of the catastrophic account beyond what is spelled out in the purpose section - section 19. This concern can be addressed by adding to the purpose section those functions which are listed in Sec. 25.

Sec. 25 Under 46.08.900 (3) "containment and cleanup" is defined to include "restoration of the environment". In this section of the draft, restoration of the environment is not included as one of the functions of the catastrophic account and is deleted as one of the permitted uses of the contingency and abatement account.

On page 13, line 10 we list "...and contain, cleanup,..." as one of the functions of the fund, which may, under the definition in 46.08.900.(3), mean restoration. However, to express legislative intent as clearly as possible, Mr. Tillery suggests we insert the same language that appears in 46.08.900 (3).

Further, in Sec. 25, again responding to a suggestion made by many people, we need to add to the list of those things on which the commissioner may spend money from the catastrophic account a provision for the capital construction costs associated with installing and stocking the response depots.

Sec. 28 In an effort to reduce the cost of the annual report, Ms. Adair suggests deleting the requirement that the report include an accounting of the money appropriated to the fund for a specific purpose.

Sec. 34 Mr. Tillery suggests that this definition may not conform to federal law. As you have instructed me, I will continue to consult with the drafter and with Mr. Tillery to ensure that we do conform. Further, Mr. Tillery requests that on line 21, after "property" we insert the words "including the environment."

Sec. 37 AS 44.46.025(a)(5) and (a)(6) allow DEC to charge fees for oil discharge financial responsibility approvals and oil discharge contingency plan approvals. Their inclusion in this section is an oversight on my part.

Representative Joe Green
April 16, 1993
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This list may not be totally inclusive of every suggestion or observation, but I can represent it as an honest attempt to address the concerns expressed to me by Ms. Adair and Mr. Tillery.

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

April 14, 1993

SUBJECT: Draft CS for House Bill 238, amending the oil and hazardous substance release response fund ("470 Fund") and making additions and changes to related matters -- sectional analysis (Work Order No. 8-LS0676\D)

TO: Representative Bill Williams, Chair
House Resources Committee
Attn: Mary McDowell

FROM: Jack Chenoweth 
Legislative Counsel

This sectional analysis addresses the "D" draft of CSHB 238(). The bill amends the purposes for which the oil and hazardous substance release response fund ("470 Fund") may be expended, replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges, and makes a series of related changes.

I

Amendments related to the oil and hazardous substance release response fund:

As with the last previous draft, the bill would establish a series of funds and accounts:

-- the oil and hazardous substance release response fund [this is the original "470 Fund" renamed in this bill the oil and hazardous substance release **prevention and response** fund]; the measure does not change the fund's status in that it remains a fund within the general fund; the redesignated fund would have two components:

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020), the first component;

-- the oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020), a holding account from which money is transferred in and out;

-- the catastrophic oil release response account (AS 46.08.010(a)(2) and 46.08.025), the second component; and

-- the catastrophic oil release response mitigation account (AS 46.08.025), also a holding account from which money is transferred in and out.

Carried forward is the reference in current law to the "oil and hazardous substance release mitigation account" in AS 46.04.010, to which this measure makes no change and only a passing reference.

Bearing that in mind:

Bill section 19 amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

Bill section 20 identifies the two accounts that constitute that fund.

Bill section 21 makes a related substitution of a reference to "account" for fund.

The amendment made in **bill section 22** reflects the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill.

Bill section 23, revising AS 46.08.020 spells out the manner in which the oil and hazardous substance release contingency and abatement account is to be financed.

Bill section 24, adding a parallel section, AS 46.08.025, sets out the manner in which the catastrophic oil release response account is to be financed.

Bill section 25: The amendments made by this section to AS 46.08.040(a) revise the objectives for which money in the oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. All the purposes except activity directly related to a catastrophic oil release or threatened catastrophic oil release and use of the fund balance for related oil cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to a catastrophic oil release or threatened catastrophic oil release and those involving related oil cleanup activity cost recovery purposes are to be met from the catastrophic oil release response account.

Bill section 26 limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

Representative Bill Williams

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Bill section 27: Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release response fund would still be required before money could be used for any other purpose than the immediate response action authorized by AS 46.08.040(a)(1)(A) for catastrophic oil spills.

Bill sections 3 and 28 make additional changes reflecting the division of the fund into two accounts.

As in the last previous version, the measure seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." **Bill section 33** provides a technically revised definition of "release" and **bill section 34** substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by **bill sections 29 and 30**.

Under one of the repealer sections set out in **bill section 37**, the oil and hazardous substance release response fund would no longer be available to support ferry construction (authorization to use the fund to build one or more new ferries would be terminated by repeal of AS 19.65.025 and AS 46.08.040(d)).

As I earlier noted, the "oil and hazardous substance release response fund" is renamed the "oil and hazardous substance release **prevention and response fund**." You'll find those changes set out in **bill sections 1, 2, 4, and 32** of the bill and elsewhere as appropriate.

Bill section 35 incorporates a definition of "catastrophic oil discharge" into AS 46.08, while **bill section 39** explains that definition's applicability.

II

Amendment related to the oil conservation surcharge

The bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, one levied at 3 cents per barrel, the other imposed at a rate of 2 cents per barrel.

Bill section 5: This section imposes a new conservation surcharge at the rate of \$.03 per barrel.

Bill sections 6 - 9 essentially carry forward the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but make them applicable to the new surcharge.

Bill section 7 directs the deposit of the three cent per barrel surcharge to the catastrophic oil release response account in the fund.

Bill section 8 Sets out the conditions under which the severance tax surcharge shall be suspended or reimposed. It 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 that have been recovered and redeposited into the mitigation account. The amended provision also reflects the substitution of the catastrophic oil release response account. Under subsection (e), in lieu of quarterly determinations of the trigger mechanism, when the account balance exceeds 45 million dollars, the determinations are to be made more frequently.

Bill section 9 amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

Bill section 10 imposes a two cent per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substance release contingency and abatement account".

Bill section 11 maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges.

Bill section 12 provides a revised definition for the term "surcharge".

A related provision of the bill, **bill section 38**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of former AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. Since the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Another related provision, **bill section 40**, sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effect date of this Act.

III

Related matters:

Bill section 13: The amendment to AS 46.04.200(a) retains the requirement of annual review of the statewide prevention and contingency plan but removes from current law the requirement of annual revision of the plan and substitutes revision

at the discretion of the commissioner of environmental conservation but not more often than once a year.

Bill section 14: The section, amending AS 46.04.200(c), deletes from current law the explicit requirements that, as part of the annual review of the state master plan, the proposed draft revisions of the state master plan be offered for public review and comment, for legislative review, and for review by the state emergency response commission (AS 46.13.010).

Bill section 15: In line with the changes made in the preceding bill section, this bill section restates the requirements applicable to a plan revision, directing submission of the proposed revised master plan to the same three groups.

Bill sections 16 and 17: The changes and addition made by these two bill sections, applicable to regional prevention and contingency master plans, parallel those with respect to the state plan as set out in bill sections 13 and 14.

Bill section 18 offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 100,000 barrels of oil.

IV

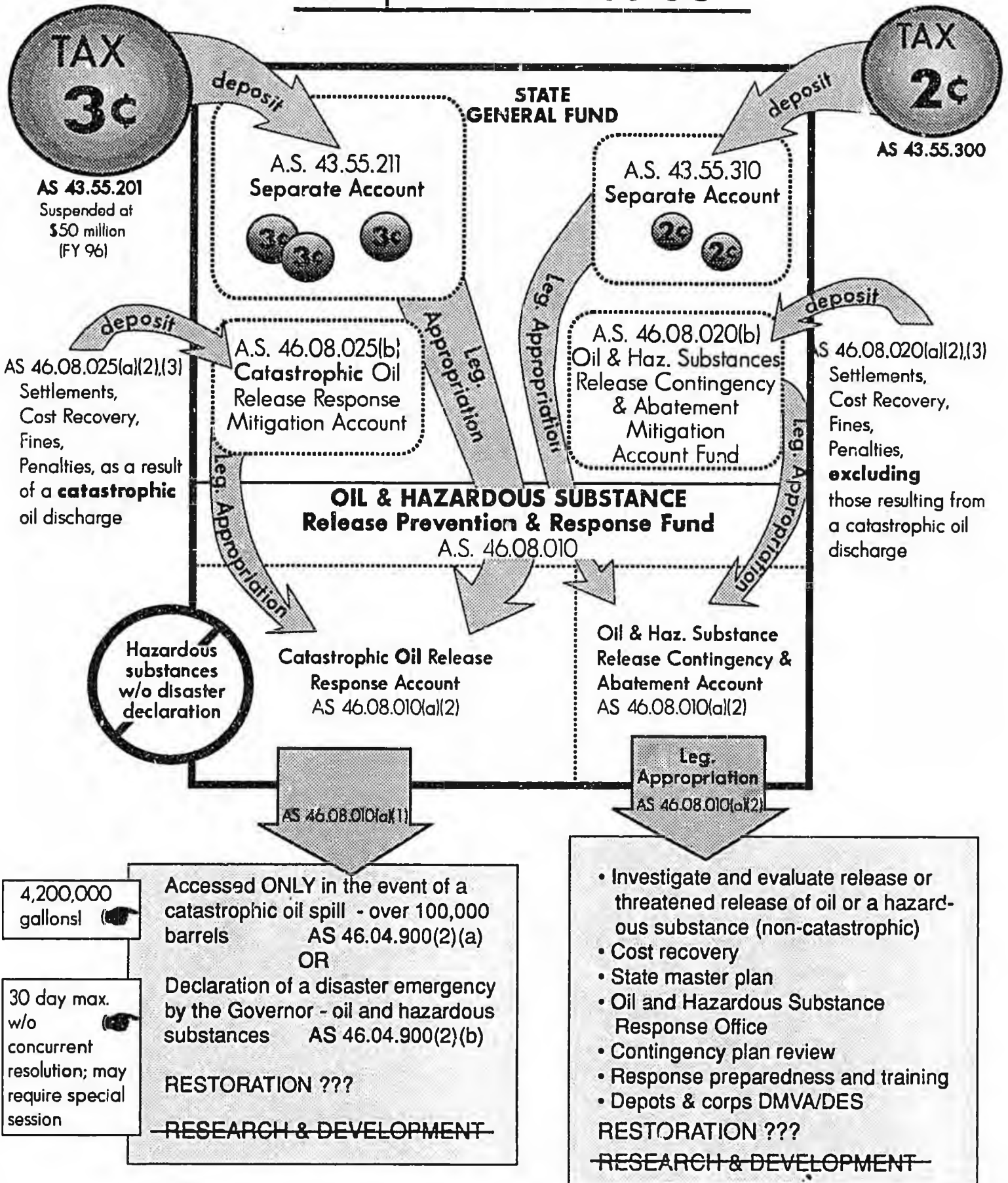
Other topics:

Bill section 31 eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Modeled after the revision of the definition made in bill section 34 mentioned earlier, **bill section 36** revises the definition of the term "threatened release" applicable to AS 46.09.

JBC:pl
93-297.plm

Proposed HB 238 CS



Overview of Proposed CS for House Bill 238, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund

This bill amends the purposes for which the oil and hazardous substance release response fund ("response fund" or "470 fund") may be expended and replaces the nickel-per-barrel oil conservation surcharge with two new surcharges. In addition, the oil and hazardous substance release response fund ("response fund" or "470 fund") is renamed in this bill the "oil and hazardous substance release prevention and response fund." The fund still remains a fund within the general fund.

Within the new fund is established a series of accounts:

- the so called "oil and hazardous substances release contingency and abatement account" which is the "operational" account that receives the new 2 cents surcharge;
- the "oil and hazardous substances release contingency and abatement mitigation account," which is a holding account from which money is transferred in (primarily from cost recovery from spills less than 4.2 million gallons) and out;
- the so called "catastrophic oil release response account" that receives the new 3 cent surcharge; and
- the "catastrophic oil release response mitigation account" which is also a holding account from which money is transferred in and out.

The proposed CS makes the following changes to the uses of the surcharge funds:

- 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."
- **Direct access to local impact grants is 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.

Regional Citizens' Advisory Council of Prince William Sound

- The proposal 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--despite the possibility that **mitigation money may have restricted uses and not be usable for spill response**. It is also unclear how *Exxon Valdez* settlement, cost recovery, and fines money would be accounted for.
- **This proposal limits the response capability of DEC to initial response, even to catastrophic spills.** This change in the use of the fund undermines the state's ability to fully and effectively respond to spills. **Does this mean that for phantom spills or spills with an insolvent responsible party that the state would have to walk away after its "initial response?"**
- The proposal also restricts the state's use of either account for **restoration**.
- The proposed CS removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan and limits revisions to once per year. 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. Leaving discretion for revision of the plan to the DEC commissioner, with limited funding for the process, could result in the plan never being revised again---or not until the next environmental disaster.
- Allows the public and SERC to be involved only if a revision is made to the state plan. Current statute allow for public input during the annual review and revision process. This section is misleading because it seems to allow for public comment, but in actuality it limits public input only to revisions of the plan.

One of the most important sections of the bill is section 25 which transfers funding of the following programs to the oil and hazardous substances release contingency and abatement account:

- municipal impact grants and assessments for spills under 4.2 million gallons. This would significantly reduce the ability of communities to assess impacts, respond to releases, recover response and cleanup costs, and participate in litigation;
- review of oil discharge prevention and response contingency plans;

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- verification of financial responsibility;
- training, spill drill and response exercises, inspections, and verification of equipment inventories and response preparedness;
- response corps and depots and spill response office;
- preparation of the state's master plan and regional master plans; and
- restoration of the environment "by addressing the effects of an oil or hazardous substance release;"
- maintenance of the oil and hazardous substance response office.

A financial analysis of this proposal reveals that the 2 cents surcharge is grossly insufficient to fund these spill prevention and response programs, let alone respond to "smaller" spills under 4.2 million gallons. It is insufficient now and with declining oil production and inflation, the situation will only grow worse.

In addition, the bill:

- 1) reduces oversight by state agencies and the Citizens' Oversight Council,
- 2) reduces Alaska's ability to use its own fund to pay for restoration of damaged resources,
- 3) changes the definition of release and threatened release, and
- 4) eliminates the annual review of the state master and regional response plans.

April 15, 1993

Regional Citizens' Advisory Council of Prince William Sound

**Sectional Analysis of the Proposed CS for House Bill 238,
Relating to and Redesigning the Oil and Hazardous
Substance Release Response Fund**

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."

Section 2. Similar to section 1 and again later in section 32, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

Section 3. 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.

Section 4. Similar to sections 1 and 2, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

Section 5. This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

Section 6 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 7 directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

Section 8, (modified old section 1). 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--despite the possibility

Regional Citizens' Advisory Council of Prince William Sound

that mitigation money may have restricted uses and not be usable for spill response. This is similar to the previous version of the bill. This amended provision 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 are to be made more frequently.

This section relates also to section 38 (old section 26) 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 9 amends the mechanism by which the surcharge on/off trigger shall be computed.

Section 10 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 11 is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges.

Section 12 provides a revised definition for the term "surcharge."

Section 13 (old section 4) removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan and limits revisions to once per year. 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. Leaving discretion for revision of the plan to the DEC commissioner, with limited funding for the process, could result in the plan never being revised again---or not until the next environmental disaster.

Section 14 (old section 5) 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

Regional Citizens' Advisory Council of Prince William Sound

plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

Section 15 (old section 6) allows the public and SERC to be involved only if a revision is made to the state plan. Current statute allow for public input during the annual review and revision process. This section is misleading because it seems to allow for public comment, but in actuality it limits public input only to revisions of the plan. These changes could allow a plan to sit on the shelf unrevised and unpracticed for many years.

Section 16 (old section 7) essentially does for regional plans what section 13 did to the state master plan.

Section 17 (old section 8) is a technical amendment that incorporates the changes made in section 16 for master plans to regional plan changes in section 17.

Section 19 (modified old section 10). 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."

Section 20 identifies the two accounts that constitute the fund.

Section 21 makes a related substitution of a reference to "account" for fund.

Section 22. (old section 11) Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 24. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities.

Section 23 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.

Regional Citizens' Advisory Council of Prince William Sound

Section 24. Similar to section 23 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 25. Is a modified old section 12. It 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; 4) verification of financial responsibility; and 5) pay for Alaska Division of Emergency Services response corps and depots. The latter functions, however, are more appropriately defined as an emergency service to be paid for with funds from the catastrophic oil release response account. These functions are to be funded by the oil and hazardous substances release contingency and abatement account.

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, and 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.

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 26. Technical section to be consistent with section 3.

Section 27. 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 28. Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill.

Sections 29, 30, 33 and 34 (old sections 14, 15, 18, and 19). These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 33 provides a technically revised definition of "release" and section 34 substantially amends the definition of "threatened release."

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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." If "property" refers only to tangible personal property, this definition would exclude damage to environmental values (eg. spawning habitat). Sections 29 and 30 are conforming changes to these revised definitions. By narrowing this definition, DEC's ability to prevent spills is limited.

Section 31 (old section 16). Eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Section 35. Technical cross reference section to add definitions of catastrophic oil discharge and catastrophic oil release.

Section 36. Modeled after the definition made in bill section 34 mentioned earlier, this section revises the definition of the term "threatened release" applicable to AS 46.09.

Section 37 (modified old Section 24). 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);
- DEC authority to collect fees, AS 44.46.025(a)(5) and (a)(6); and
- the Citizens Oversight Council, AS 46.08.040(d)---these three are the same as the previous version, plus
- the repeal of the Conservation Surcharge on Oil replaced by this bill.

Section 39 (old section 26). Explains the applicability of the new definition of "catastrophic oil discharge."

Section 40 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.

April 15, 1993



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April 21, 1993

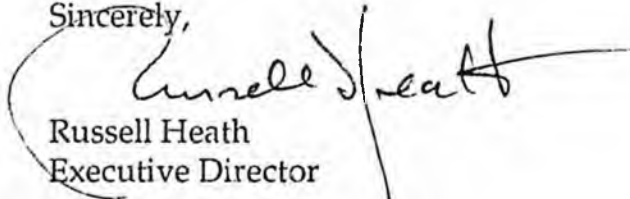
Rep. Bill Williams
Chairman, House Resources Committee
State Capitol, Rm 128
Juneau, AK 99801

Dear Rep. Williams:

I would like to thank you for holding the hearing and statewide teleconference of HB 238 in the House Resources Committee Saturday, April 17. The issues presented in HB 238 are extremely important to the future of Alaska and its citizens, and we greatly appreciate the opportunity to communicate our concerns to the committee. I hope that the overwhelming opposition to the bill will be noted in any further considerations of this issue.

Again, thank you for your judicious handling of this controversial and complex issues.

Sincerely,


Russell Heath
Executive Director



Alaska State Legislature

Legislative Research Agency



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May 5, 1993

MEMORANDUM

TO: Senator Rick Halford

FROM: Gordon S. Harrison, Director *gsh*

RE: Letter from Janice Adair Regarding Legislative Research Agency Memorandum 93.062

For the record, I feel compelled to respond to the letter to you of April 30 from Janice Adair, assistant commissioner of the Department of Environmental Conservation (DEC), regarding Legislative Research Memorandum 93.062 dealing with the 470 fund.

We appreciate the response of Ms. Adair in April to the exact questions first put to DEC last December. Unfortunately, DEC's response to us five months ago was not so complete. Not only were DEC officials asked to respond to the questions on December 9, through repeated telephone conversations and several rounds of facsimiles, DEC officials were provided the opportunity to review the information Ms. Adair now chooses to comment upon.

Ms. Adair complains that it is misleading to project a fund balance of \$100,000 at the end of FY 93. This information came from DEC staff, and we made a special effort to have department staff review and verify the data in draft form before we sent our memorandum out.

Ms. Adair's letter suggests that our report contains other inaccuracies, but she does not identify them and we are not aware of any. If there are "perpetual misunderstandings that surround the Response Fund," the source, unfortunately, is the department.

cc: ✓ Representative Bill Williams
Representative Joe Green
Mike Conway, Director, Spill Prevention and Response
Shelby Stastny, Director, Office of Management and Budget
John Sandor, Commissioner, DEC
Janice Adair, Assistant Commissioner, DEC