

HB

238

Version

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Chenoweth  
4/20/93

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 and to its use in the event of a disaster emergency; repealing the  
3 authority in law by which marine highway vessels may be designed and  
4 constructed to aid in oil and hazardous substance spill cleanup in state marine  
5 water using money in the oil and hazardous substance release response fund;  
6 amending requirements relating to the revision of state and regional master  
7 prevention and contingency plans; altering requirements applicable to liens for  
8 recovery of state expenditures related to oil or hazardous substances; amending  
9 the authority to contract to provide personnel to respond to a release or  
10 threatened release of oil or a hazardous substance and to contract to conduct  
11 spill related research; reassigning responsibility for the oil and hazardous substance  
12 response corps and for the emergency response depots to the Department of

1 Environmental Conservation, and for the operation of the state emergency response  
2 commission and its attendant responsibilities for the local emergency planning  
3 commissions to the Department of Military and Veterans' Affairs; and modifying  
4 definitions of terms relating to the preceding provisions; terminating the nickel-per-  
5 barrel oil conservation surcharge; levying and collecting two new oil surcharges;  
6 and providing for the suspension and reimposition of one of the new surcharges;  
7 and providing for an effective date."

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

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

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

12 (1) suspend the provisions of any regulatory statute prescribing  
13 procedures for the conduct of state business, or the orders or regulations of any state  
14 agency, if compliance with the provisions of the statute, order, or regulation would  
15 prevent, or substantially impede or delay, action necessary to cope with the disaster  
16 emergency;

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

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

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

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

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

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

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

7 (9) make provisions for the availability and use of temporary  
8 emergency housing;

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

10 (11) use money from the oil and hazardous substance release  
11 prevention and response fund, established by AS 46.08.010, to respond to a declared  
12 disaster emergency related to an oil or hazardous substance discharge.

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

14 (b) Whenever, and to the extent that, money is needed to cope with a disaster,

15 (1) in the event of an oil or hazardous substance release or  
16 discharge, the governor shall have first recourse to the appropriate account within  
17 the oil and hazardous substance release prevention and response fund, and  
18 thereafter the governor may have second recourse to money regularly  
19 appropriated to state and local agencies and third recourse to money available in  
20 the disaster relief fund:

21 (2) if the disaster does not involve an oil or hazardous substance  
22 release or discharge.

23 (A) the governor shall have first recourse [SHALL BE] to  
24 money regularly appropriated to state and local agencies; and

25 (B) the governor shall have further [ THE SECOND]  
26 recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR  
27 OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND  
28 HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE  
29 GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE  
30 FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR  
31 FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE

1 DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE  
2 GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED  
3 BY AS 37.07.080(e),

4 (1) TRANSFER AND SPEND MONEY APPROPRIATED FOR  
5 OTHER PURPOSES; OR

6 (2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO  
7 YEARS].

8 \* Sec. 3. AS 26.23.050 is amended by adding a new subsection to read:

9 (d) If money available from a source identified in (b) of this section is  
10 insufficient, and if the governor finds that other sources of money to cope with the  
11 disaster are not available or are insufficient, the governor may, notwithstanding the  
12 limitations imposed by AS 37.07.080(e),

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

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

15 \* Sec. 4. AS 29.60.510(a) is amended to read:

16 (a) The commissioner may use money from the oil and hazardous substance  
17 release prevention and response fund to make grants to a municipality or village that  
18 is affected by the release or by the response to the release and that demonstrates that  
19 the release or response to the release involves extraordinary expenditures that are  
20 beyond the reasonable capability of the municipality or village to meet from the  
21 current revenue sources of the municipality or village if

22 (1) the governor determines that a release of oil or a hazardous  
23 substance exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance  
24 that, when released into the environment, presents a threat to the economy and public  
25 welfare of the municipalities and villages affected by it at least equivalent in effect to  
26 the effect of a release of oil in an amount defined by this paragraph;

27 (2) the release has been proclaimed a disaster emergency by the  
28 governor under AS 26.23.020; and

29 (3) the governor finds that

30 (A) the release of the oil or hazardous substance into the  
31 environment presents a real and substantial threat to the economy and public

1 welfare of the municipalities and villages that are affected by the release and  
2 by the resultant activities to contain and clean up the release; and

3 (B) it is in the best interest of the state to pay the expenses  
4 incurred by municipalities and villages to mitigate the social and economic  
5 effects that arise out of the release of the oil or the hazardous substance and  
6 the resultant cleanup activities.

7 \* Sec. 5. AS 29.60.510(b) is amended to read:

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

27 \* Sec. 6. AS 29.60.560(e) is amended to read:

28 (e) Expenditures made under this section may be made only from the amount  
29 transferred to the commissioner under AS 29.60.510(c), unless

30 (1) the commissioner and the commissioner of environmental  
31 conservation mutually agree that payment may be made from money in the oil and

1 hazardous substance release prevention and response fund not transferred under  
2 AS 29.60.510(c); or

3 (2) the commissioner pays them from another source.

4 \* Sec. 7. AS 29.60.599(4) is amended to read:

5 (4) "fund" means the oil and hazardous substance release prevention  
6 and response fund established by AS 46.08.010;

7 \* Sec. 8. AS 37.14.410 is amended to read:

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

14 (b) A percentage of each payment deposited in the general fund under (a) of  
15 this section shall be credited to the oil and hazardous substances release contingency  
16 and abatement account established in [OIL AND HAZARDOUS SUBSTANCE  
17 RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020.  
18 That percentage is determined by dividing

19 (1) the amount of the expenses for which the state may be reimbursed  
20 under (a) of this section that were paid from the [OIL AND HAZARDOUS  
21 SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

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

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

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

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

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

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

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

3 \* Sec. 10. AS 43.55 is amended by adding a new section to read:

4 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The  
5 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into  
6 the general fund.

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

9 \* Sec. 11. AS 43.55 is amended by adding a new section to read:

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

14 \* Sec. 12. AS 43.55 is amended by adding a new section to read:

15 Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE  
16 SURCHARGE. (a) Except when a different time for making a determination is  
17 required under (f) of this section, not later than 30 days after the end of each calendar  
18 quarter, the commissioner of administration shall determine the cumulative total of  
19 money that has been

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

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

27 (3) expended through that calendar quarter from the catastrophic oil  
28 release response account of the oil and hazardous substance release prevention and  
29 response fund.

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

1 (1) add the amounts determined under (a)(1) and (2) of this section;  
2 (2) determine the difference between the amount determined under (1)  
3 of this subsection and the amount determined under (a)(3) of this section; and  
4 (3) report the amount determined under (2) of this subsection to the  
5 commissioner.

6 (c) In making the determination required by (b) of this section, the  
7 commissioner of administration may not consider within the calculation money  
8 described in (a) of this section that was received subject to a dedication imposed by  
9 the federal government that restricts the use of the money to a specific purpose.

10 (d) If the commissioner of administration reports that the difference determined  
11 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue  
12 shall suspend imposition and collection of the surcharge levied and collected under  
13 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on  
14 the first day of the calendar quarter next following the commissioner's receipt of the  
15 commissioner of administration's report under (b) of this section. Before the first day  
16 of a suspension authorized by this subsection, the commissioner shall make a  
17 reasonable effort to notify all persons who are known to the department to be paying  
18 the surcharge under AS 43.55.201 that the surcharge will be suspended.

19 (e) Except as provided in AS 43.55.241, if the commissioner of administration  
20 reports that the difference determined under (b) of this section is less than  
21 \$50,000,000, the commissioner of revenue shall require imposition and collection of  
22 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins  
23 on the first day of the calendar quarter next following the commissioner's receipt of  
24 the commissioner of administration's report under (b) of this section. Before the first  
25 day of reimposition of the surcharge authorized by this subsection, the commissioner  
26 shall make a reasonable effort to notify all persons who are known to the department  
27 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be  
28 reimposed.

29 (f) Notwithstanding the requirement of (a) of this section that the cumulative  
30 determination of receipts and expenditures be made quarterly, when the amount  
31 determined under (b) of this section is \$45,000,000 or more, the commissioner of

1 administration shall make the determinations required by this section not later than 30  
2 days before each calendar quarter and every 30 days thereafter.

3 \* Sec. 13. AS 43.55 is amended by adding a new section to read:

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

9 (1) the legislature does not, during the regular legislative session  
10 preceding the first day of the fiscal year, appropriate money from the general fund to  
11 the catastrophic oil release response account in the oil and hazardous substance release  
12 prevention and response fund sufficient to restore the balance of that account on the  
13 first day of the fiscal year to at least \$50,000,000; or

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

21 \* Sec. 14. AS 43.55 is amended by adding new sections to read:

22 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

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

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

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

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

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

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

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

7           Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The  
8 legislature may appropriate the annual estimated balance of the account established  
9 under AS 43.55.310 to the oil and hazardous substances release contingency and  
10 abatement account in the oil and hazardous substance release prevention and response  
11 fund established by AS 46.08.010.

12 \* Sec. 15. AS 43.55.900(3) is amended to read:

13           (3) "catastrophic oil discharge" means

14                     (A) an oil discharge in excess of 100,000 barrels; or

15                     (B) any other discharge that the governor determines  
16 presents a grave and substantial threat to the economy or environment

17 [HAS THE MEANING GIVEN IN AS 46.04.900];

18 \* Sec. 16. AS 43.55.900(15) is amended to read:

19           (15) "surcharge" means

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

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

24 \* Sec. 17. AS 46.04.030(e) is amended to read:

25           (e) The department may attach reasonable terms and conditions to its approval  
26 or modification of a contingency plan that the department determines are necessary to  
27 ensure that the applicant for a contingency plan has access to sufficient resources to  
28 protect environmentally sensitive areas, [AND] to take containment and cleanup and  
29 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil  
30 discharges from the facility or vessel as provided in (k) of this section, and to ensure  
31 that the applicant complies with the contingency plan. The contingency plan must

1 provide for the use by the applicant of the best technology that was available at the  
 2 time the contingency plan was submitted or renewed. The department may require an  
 3 applicant or holder of an approved contingency plan to take steps necessary to  
 4 demonstrate its ability to carry out the contingency plan, including

- 5 (1) periodic training;
- 6 (2) response team exercises; and
- 7 (3) verifying access to inventories of equipment, supplies, and  
 8 personnel identified as available in the approved contingency plan.

9 \* Sec. 18. AS 46.04.030(e) as amended by sec. 11, ch. 83, SLA 1992, is amended to read:

10 (e) The department may attach reasonable terms and conditions to its approval  
 11 or modification of a contingency plan that the department determines are necessary to  
 12 ensure that the applicant for a contingency plan has access to sufficient resources to  
 13 protect environmentally sensitive areas, [AND] to take containment and cleanup and  
 14 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil  
 15 discharges from the facility or vessel as provided in (k) of this section, and to ensure  
 16 that the applicant complies with the contingency plan. If a contingency plan submitted  
 17 to the department for approval relies on the services of an oil spill primary response  
 18 action contractor, the department may not approve the contingency plan unless the  
 19 primary response action contractor is registered and approved under AS 46.04.035.  
 20 The contingency plan must provide for the use by the applicant of the best technology  
 21 that was available at the time the contingency plan was submitted or renewed. The  
 22 department may require an applicant or holder of an approved contingency plan to take  
 23 steps necessary to demonstrate its ability to carry out the contingency plan, including

- 24 (1) periodic training;
- 25 (2) response team exercises; and
- 26 (3) verifying access to inventories of equipment, supplies, and  
 27 personnel identified as available in the approved contingency plan.

28 \* Sec. 19. AS 46.08.040(b) is amended to read:

29 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED  
 30 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER  
 31 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF

1 THE DISASTER EMERGENCY,] use money from the fund to respond to a [THE]  
2 disaster emergency based upon a release or discharge of oil or a hazardous  
3 substance

4 (1) in circumstances when the actual or imminent occurrence of a  
5 catastrophic oil discharge constitutes a condition of disaster emergency, as  
6 authorized by AS 46.04.080(a); or

7 (2) when the governor has declared a condition of disaster  
8 emergency under AS 26.23.020(c).

9 \* Sec. 20. AS 46.08.040(b) is amended to read:

10 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED  
11 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER  
12 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF  
13 THE DISASTER EMERGENCY,] use money from the fund to respond to a [THE]  
14 disaster emergency based upon a release or discharge of oil or a hazardous  
15 substance when the governor has declared a condition of disaster emergency  
16 under AS 26.23.020(c).

17 \* Sec. 21. AS 46.04.200(a) is amended to read:

18 (a) The department shall

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

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

23 (3) revise the statewide master oil and hazardous substance  
24 discharge prevention and contingency plan; the department shall revise the  
25 statewide master plan whenever, in the judgment of the commissioner, revision  
26 is necessary.

27 \* Sec. 22. AS 46.04.200(c) is amended to read:

28 (c) In preparing and annually reviewing the state master plan, the  
29 commissioner shall

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

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

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

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

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

13 \* Sec. 23. AS 46.04.200 is amended by adding a new subsection to read:

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

16 (1) the draft plan to the

17 (A) public for review and comment; and

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

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

22 \* Sec. 24. AS 46.04.210(a) is amended to read:

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

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

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

31 (3) revise the regional master oil and hazardous substance

1 discharge prevention and contingency plan: the commissioner shall revise a  
2 regional master plan whenever, in the judgment of the commissioner, revision is  
3 necessary.

4 \* Sec. 25. AS 46.04.210(b) is amended to read:

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

7 \* Sec. 26. AS 46.04.900(2) is amended to read:

8 (2) "catastrophic oil discharge" means

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

10 or

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

16 \* Sec. 27. AS 46.08.005 is amended to read:

17 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the  
18 catastrophic release of oil or hazardous substances into the environment presents a  
19 real and substantial threat to the public health and welfare, to the environment, and to  
20 the economy of the state. The legislature therefore concludes that it is in the best  
21 interest of the state and its citizens to provide a [READILY AVAILABLE] fund  
22 containing two accounts. Within the fund.

23 (1) one account consists of money readily available to the  
24 commissioner for the payment of the expenses incurred by the Department of  
25 Environmental Conservation during an emergency first response to a catastrophic  
26 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND  
27 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE  
28 STATE FROM THE] release of oil and for related purposes intended to address  
29 catastrophic oil releases:

30 (2) the other account consists of money that the state may use  
31 during a response to a release or threatened release of oil or a hazardous

1 substance, other than a catastrophic oil discharge, to pay the expenses of making  
2 preparations for the possibility of a release or threatened release of oil or  
3 hazardous substances, to reduce the amount, degree, or intensity of a release or  
4 threatened release, and for other related purposes identified in law [OR  
5 HAZARDOUS SUBSTANCES].

6 \* Sec. 28. AS 46.08.010(a) is amended to read:

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

10 (1) the oil and hazardous substances release contingency and  
11 abatement account:

12 (2) the catastrophic oil release response account.

13 \* Sec. 29. AS 46.08.010(b) is amended to read:

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

17 \* Sec. 30. AS 46.08.010(c) is amended to read:

18 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.  
19 Except as provided in AS 46.08.040(a)(1)(B) for the equipment that is required for  
20 and placed in the oil and hazardous substance response depots  
21 [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

22 \* Sec. 31. AS 46.08.020 is amended to read:

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

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

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

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

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

6                    (3) fines, penalties, or damages recovered under AS 46.08.005 -  
 7                    46.08.080 or other law for costs incurred by the state as a result of the release or  
 8                    threatened release of oil or a hazardous substance. but excluding fines, penalties, or  
 9                    damages recovered or otherwise received due to a catastrophic oil discharge.

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

19                    \* Sec. 32. AS 46.08 is amended by adding a new section to read:

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

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

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

29                    (3) fines, penalties, or damages recovered under AS 46.08.005 -  
 30                    46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil  
 31                    discharge.

1 (b) Money received by the state under (a)(2) and (a)(3) of this section shall  
2 be deposited in the general fund and credited to a special account called the  
3 "catastrophic oil release response mitigation account." The legislature may annually  
4 appropriate to the catastrophic oil release response account in the fund from the  
5 catastrophic oil release response mitigation account a sum equal to the amount received  
6 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative  
7 session in which the appropriations are to be made.

8 \* Sec. 33. AS 46.08.040(a) is amended to read:

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

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

14 (A) [(1)] investigate and evaluate a catastrophic oil [THE]  
15 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
16 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and  
17 cleanup and other necessary action, such as monitoring and assessing, to  
18 address a catastrophic oil release or threatened catastrophic oil release [OF  
19 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and  
20 substantial threat to the public health or welfare, or to the environment;

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

22 (A) ESTABLISH AND MAINTAIN THE OIL AND  
23 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

24 (B) REVIEW OIL DISCHARGE PREVENTION AND  
25 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

26 (C) CONDUCT TRAINING, RESPONSE EXERCISES,  
27 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT  
28 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL  
29 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO  
30 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR  
31 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,

1 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED  
2 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;  
3 AND

4 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL  
5 RESPONSIBILITY REQUIRED BY AS 46.04.040;

6 (3) pay the expenses incurred by the department to obtain  
7 equipment required for and placed in [ALASKA DIVISION OF EMERGENCY  
8 SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS  
9 AND] the oil and hazardous substance response depots;

10 (C) [WHEN PRESENTED WITH APPROPRIATE  
11 DOCUMENTATION BY THE DIVISION;

12 (4) provide matching funds in the event of a catastrophic oil release  
13 for participation

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

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

18 (D) [(5)] recover the costs to the state, a municipality, or a  
19 village of a containment and cleanup resulting from the catastrophic oil release  
20 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
21 SUBSTANCE];

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

24 (A) investigate and evaluate the release or threatened release  
25 of oil or a hazardous substance, except a catastrophic oil release, and  
26 contain, clean up, and take other necessary action, such as monitoring and  
27 assessing, to address a release or threatened release of oil or a hazardous  
28 substance, except a catastrophic oil release, that poses an imminent and  
29 substantial threat to the public health or welfare;

30 (B) recover the costs to the state, a municipality, or a village  
31 of a containment and cleanup resulting from the release or the threatened

1 release of oil or a hazardous substance, except a catastrophic oil release:

2 (C) pay all costs incurred to

3 (i) establish and maintain the oil and hazardous  
4 substance response office:

5 (ii) review oil discharge prevention and contingency  
6 plans submitted under AS 46.04.030:

7 (iii) conduct training, response exercises, inspections,  
8 and tests, in order to verify equipment inventories and ability to  
9 prevent and respond to oil and hazardous substance release  
10 emergencies, and to undertake other activities intended to verify or  
11 establish the preparedness of the state, a municipality, or a party  
12 required by AS 46.04.030 to have an approved contingency plan to  
13 act in accordance with that plan; and

14 (iv) verify or establish proof of financial  
15 responsibility required by AS 46.04.040:

16 (D) pay the expenses incurred by the department for

17 (i) the oil and hazardous substance response corps:

18 and

19 (ii) the oil and hazardous substance response depots,  
20 except the expenses incurred by the department to obtain  
21 equipment that is required for and placed in the response depots:

22 (E) provide matching funds in the event of the release of oil  
23 or a hazardous substance, except a catastrophic oil release, for  
24 participation

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

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

28 and

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

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

1 and

2 (ii) [(B)] a regional master oil and hazardous substance  
3 discharge prevention and contingency plan required by AS 46.04.210  
4 [; AND

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

7 \* Sec. 34. AS 46.08.040(b) is amended to read:

8 (b) When the governor declares a disaster related to an oil or hazardous  
9 substance discharge emergency under AS 26.23.020(c), the governor may, during the  
10 effective period of the disaster emergency, use money from the catastrophic oil  
11 release response account in the fund to respond to the disaster emergency.

12 \* Sec. 35. AS 46.08.040(c) is amended to read:

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

17 \* Sec. 36. AS 46.08.060(a) is amended to read:

18 (a) The commissioner shall submit a report to the legislature not later than the  
19 10th day following the convening of each regular session of the legislature. The report  
20 may include information considered significant by the commissioner but must include:

21 (1) the amount of money expended by the department under  
22 AS 46.08.040(a) during the preceding fiscal year,

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

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

28 (4) a detailed summary of department activities in responses paid for  
29 [FUNDED] by the fund during the preceding fiscal year, including response  
30 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,  
31 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL

1 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,  
2 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS  
3 OF \$10,000;] and

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

7 \* Sec. 37. AS 46.08.075(a) is amended to read:

8 (a) The state has a lien for expenditures by the state from the oil and  
9 hazardous substance release prevention and response fund, or from any other state  
10 fund, for the costs of response, containment, removal, or remedial action resulting from  
11 an oil or hazardous substance release or spill, or, with respect to response costs, for  
12 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release  
13 of oil or a hazardous substance, against all property owned by a person who is  
14 determined by the commissioner to be liable for the expenditures under this chapter,  
15 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes  
16 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the  
17 expenditures. The state may file an action in a court of competent jurisdiction in order  
18 to foreclose on the lien.

19 \* Sec. 38. AS 46.08.075(e) is amended to read:

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

27 \* Sec. 39. AS 46.08.110 is amended to read:

28 Sec. 46.08.110. RESPONSE CORPS. (a) The department [DIVISION OF  
29 EMERGENCY SERVICES, DEPARTMENT OF MILITARY AND VETERANS'  
30 AFFAIRS,] shall establish an oil and hazardous substance response corps.

31 (b) The corps consists of volunteers who register with the department

1 [DIVISION] and agree to be trained by the division in techniques for containment and  
2 cleanup and to be available on short notice to assist in containment and cleanup  
3 consistent with the responsibilities assigned to the corps under an applicable incident  
4 command system.

5 (c) Members of the corps are entitled to per diem and expenses as determined  
6 by the department [DIVISION] for training and for days spent in service to the state  
7 in containment and cleanup actions.

8 \* Sec. 40. AS 46.08.120 is amended to read:

9 Sec. 46.08.120. RESPONSE DEPOTS. The department [DIVISION] shall  
10 maintain emergency response depots in areas of the state determined in the plans  
11 prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened  
12 releases of oil or hazardous substances. The depots shall be equipped and staffed in  
13 a manner that ensures prompt response when containment and cleanup actions are  
14 necessary.

15 \* Sec. 41. AS 46.08.150 is amended to read:

16 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS  
17 APPLICABLE,] may

18 (1) enter into agreements with agencies of the state and federal  
19 government, political subdivisions, the University of Alaska, or private persons or  
20 entities to

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

24 (B) [(2)] train members of response corps; and

25 (2) contract with persons to provide personnel, including members  
26 of the emergency response corps, to assist them with a nongovernmental response  
27 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT  
28 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;  
29 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT  
30 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS  
31 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL

1 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

2 \* Sec. 42. AS 46.08.900(5) is amended to read:

3 (5) "fund" means the oil and hazardous substance release prevention  
4 and response fund;

5 \* Sec. 43. AS 46.08.900(9) is amended to read:

6 (9) "release"

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

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

11 (i) a permitted release; or

12 (ii) an act of nature;

13 \* Sec. 44. AS 46.08.900(11) is amended to read:

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

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

17 (B) though not impending, in the judgment of the  
18 commissioner

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

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

24 \* Sec. 45. AS 46.08.900 is amended by adding a new paragraph to read:

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

27 \* Sec. 46. AS 46.09.900(8) is amended to read:

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

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

31 (B) though not impending, in the judgment of the

1 commissioner

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

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

7 \* Sec. 47. AS 46.13.010(a) is amended to read:

8 (a) There is established in the Department of Military and Veterans' Affairs  
9 [ENVIRONMENTAL CONSERVATION] the Alaska State Emergency Response  
10 Commission.

11 \* Sec. 48. AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230,  
12 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

13 \* Sec. 49. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR  
14 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by  
15 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the  
16 reference to which is repealed by sec. 5 of this Act, is not an expenditure.

17 \* Sec. 50. APPLICABILITY. The definition of "catastrophic oil discharge" in  
18 AS 46.08.900, added by sec. 45 of this Act, applies to discharges occurring after the effective  
19 date of this section.

20 \* Sec. 51. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION  
21 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND  
22 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the  
23 effective date of this section, every producer of oil who is required by AS 43.55.200 -  
24 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil  
25 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply  
26 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts  
27 received after June 30, 1993, and before the effective date of this section, if so appropriated  
28 by the legislature and notwithstanding any other provision of law relating to the deposit of and  
29 accounting for those receipts,

30 (1) on the effective date of this section, the commissioner of revenue shall  
31 allocate

1 (A) 60 percent of the amount received to the catastrophic oil release  
2 response account established by AS 46.08.010(a)(2), added by sec. 28 of this Act; and

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

6 (2) the allocations made under (1) of this section are credited to the respective  
7 accounts for purposes of determination of the suspension and reimposition of the surcharge  
8 under AS 43.55.231 and 43.55.241, added by secs. 12 and 13 of this Act.

9 \* Sec. 52. TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE  
10 COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response  
11 Commission from the Department of Environmental Conservation to the Department of  
12 Military and Veterans' Affairs made by sec. 47 of this Act does not affect the term of office  
13 of a person serving as a member of the commission on the effective date of this section.

14 \* Sec. 53. Section 20 of this Act takes effect only if Senate Bill 90 am H becomes law.

15 \* Sec. 54. If sec. 20 of this Act takes effect, sec. 19 of this Act does not take effect.

16 \* Sec. 55. Section 18 of this Act takes effect January 1, 1994.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
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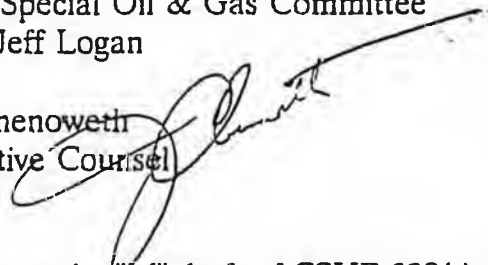
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

April 27, 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\M, draft, 4/20/93)

**TO:** Representative Joe Green, Chair  
House Special Oil & Gas Committee  
Attn: Jeff Logan

**FROM:** Jack Chenoweth  
Legislative Counsel 

This sectional analysis addresses the "M" 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, reassigns responsibilities for the oil and hazardous substance response corps, depots, and Emergency Response Commission, and makes a series of related changes.

I

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

The bill establishes 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;

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-- 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.

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

With reference to this collection of funds and accounts:

**Bill section 27** 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 28** identifies the two accounts that constitute that fund.

**Bill section 29** makes a related substitution of a reference to "account" for fund.

The deletion made in **bill section 30** 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 31**, 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 32**, 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 33:** 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. New in this version is the directive that the catastrophic oil release response account be used to acquire the equipment for the response depots.

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**Bill section 34** limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

**Bill section 35:** 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 8 and 36** make additional changes reflecting the division of the fund into two accounts. **Bill section 36** removes a requirement relating to the contents of the commissioner of environmental conservation's annual report.

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 43** provides a technically revised definition of "release" and **bill section 44** substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by **bill sections 37 and 38**.

Under one of the repealer sections set out in **bill section 48**, 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, 4, 6, 7, and 42** of the bill, and elsewhere as appropriate.

**Bill section 5** differentiates between the two accounts for the purpose of making disaster emergency grants to municipalities.

**Bill section 45** provides a definition of "catastrophic oil discharge" into AS 46.08, while **bill section 50** explains that definition's applicability.

## II

### Amendments 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 9:** This section imposes a new conservation surcharge at the rate of \$.03 per barrel.

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**Bill sections 10 - 13** 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 11** directs the deposit of the three cent per barrel surcharge to the catastrophic oil release response account in the fund.

**Bill section 12** 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 13** amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

**Bill section 14** 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 15** maintains the current definition of "catastrophic oil discharge" and makes it applicable to both oil conservation surcharges.

**Bill section 16** provides a revised definition for the term "surcharge."

A related provision of the bill, **bill section 49**, is inserted by way of clarification of 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 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, 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.

Another related provision, **bill section 51**, 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.

### III

**Amendments related to reassignments of agency responsibilities:**

**Bill section 39** reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

**Bill section 40** transfers the responsibility for maintaining the emergency response depots to that department.

**Bill section 47** moves the Alaska State Emergency Response Commission from that department to the Department of Military and Veterans' Affairs.

**Bill section 52** protects or "holds harmless" the terms of members of the response commission despite the transfer of the commission by bill section 47.

### IV

**Related matters:**

The measure proposes a series of changes related to the governor's authority to declare disaster emergencies.

**Bill section 2:** The changes revise the priority order in which the governor may have access to money to respond to a disaster.

**Bill section 3** makes a drafting change related to the handling of the current material in the immediately preceding bill section.

**Bill sections 19 and 20** make changes that 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 contingent provisions set out in bill sections 53 and 54.

**Bill sections 17 and 18** conform language of AS 46.04.030(e) to the definition of the phrase "containment and cleanup" already provided for that chapter. AS 46.04.030(a) is amended, effective January 1, 1994. **Bill section 55** reflects that amendment.

\*

**Bill section 21:** 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.

**Bill section 22:** 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 23:** 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 24 and 25:** 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 26** 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.

V

Other topics:

**Bill section 41** eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research, and assigns the office authority to contract to provide personnel for certain release-related work.

Modeled after the revision of the definition made in bill section 44 mentioned earlier, **bill section 46** revises the definition of the term "threatened release" applicable to AS 46.09.

JBC:gc:pl  
93-375.glc



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## Overview of the Proposed House Resources Committee Substitute for HB 238 (4/20/93, "M" draft)

In its basic mission of restricting the use of the response fund and replacing the fund with a new fund composed of two accounts, the 4/20/93 "M" draft differs only slightly from the 4/13/93 "D" draft. Specifically, the 2 cent, 3 cent division is maintained. According to 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 FY 94 budget reductions. According to DEC, inverting the accounts to provide 3 cents for core programs is still insufficient.

This overview identifies the most significant changes between the proposed committee substitutes. The accompanying sectional analysis for the 4/20/93 "M" draft provides more detail and identifies new sections and changes to old sections.

**Response Corps and Depots.** The most significant difference in the "M" is the transfer of 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) and the transfer of the state emergency response commission and the local emergency planning commissions from DEC to DMVA. In addition to transferring the response depots authority to DEC, the "M" draft provides for the purchasing of response depot equipment from the catastrophic oil release response account.

**Contingency Plan Review.** An important change in the "M" draft 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.** Both drafts remove the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan. The bill as introduced and the "D" draft limited revision 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. The "M" draft still 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.

**Purposes of the Fund.** Under both proposals, 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."

The "M" draft also 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." This addition addresses the ambiguity of the "D" draft regarding DEC response costs.

**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. In the "D" draft, mitigation money that may have restricted uses and not be usable for spill response was not segregated. This is similar to the bill as introduced. This problem is remedied in the "M" draft.

**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."

## Regional Citizens' Advisory Council of Prince William Sound

In the "D" draft, if "property" referred only to tangible personal property, this definition would exclude damage to environmental values (e.g. spawning habitat). In the "M" draft, **section 44** specifically includes "including the environment" to address this concern. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

**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."



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## **Sectional Analysis of the Proposed CS for House Bill 238, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund (4/20/93, "M" draft)**

**Section 1** ("D" draft 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 42.

**Section 2** (revised "D" draft 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** (new). This new 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** (new). Similar to section 1, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

**Section 5** ("D" draft 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.

**Sections 6 and 7** are new sections, again providing technical changes resulting from the renaming of the fund, adding the words "prevention and."

**Section 8** is a slightly modified "D" draft section 4. It is consistent with the renaming of the accounts within the funds.

Regional Citizens' Advisory Council of Prince William Sound

**Section 9** ("D" draft section 5). This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

**Section 10** (section 6, "D" draft) 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** (section 7, "D" draft) directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

**Section 12**, (modified "D" draft section 8, HB 238 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.

Similar to the "D" draft, 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. In the "D" draft, mitigation money that may have restricted uses and not be usable for spill response was not segregated. This is similar to the bill as introduced. This problem is remedied in the "M" draft.

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 are to be made more frequently.

This section relates also to **section 49** ("D" draft section 38, introduced 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 13** ("D" draft section 9) amends the mechanism by which the surcharge on/off trigger shall be computed.

## Regional Citizens' Advisory Council of Prince William Sound

**Section 14** ("D" draft 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 15**, slightly modified "D" draft section 11 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** ("D" draft section 12) provides a revised definition for the term "surcharge."

**Section 17** is 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 **action that reduces impacts can be argued to mitigate impacts and meet** 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 a new section 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.

**Sections 19 and 20** are new and make changes that 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 53 and 54**, relating to whether Senate Bill 90 is passed. As SB 90 was passed, section 20 would be effective and section 19 would not be.

**Section 21** ("D" draft section 13, HB 238 section 4) removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan. The bill as introduced and the "D" draft limited 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. The "M" draft still leaves revision to the discretion of the

## Regional Citizens' Advisory Council of Prince William Sound

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 22** ("D" draft section 14, HB 238 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 plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

**Section 23** ("D" draft section 15, HB 238 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 24** ("D" draft section 16, HB 238 section 7) essentially does for regional plans what section 21 did to the state master plan. Again, in the "M" draft, plan revision is not limited to once per year but at the discretion of the commissioner of DEC.

**Section 25** ("D" draft section 17, HB 238 section 8) is a technical amendment that incorporates the changes made in section 24 for master plans to the regional plan changes in section 25.

**Section 26** ("D" draft section 18) 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 27** (modified "D" draft section 19, HB 238 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

## Regional Citizens' Advisory Council of Prince William Sound

a release or threatened release of oil or hazardous substance, other than a catastrophic release."

The "M" draft also 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." This addition addresses the ambiguity of the "D" draft regarding DEC response costs.

**Section 28** (modified "D" draft section 20) identifies the two accounts that constitute the fund.

**Section 29** (modified "D" draft section 21) makes a related substitution of a reference to "account" for fund.

**Section 30** (modified "D" draft section 22, HB 238 section 11). Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 32. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. However, this section is modified in the "M" draft to allow the fund to be used for the purchase of equipment to be placed in the oil and hazardous substance response depots.

**Section 31** ("D" draft 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.

**Section 32** ("D" draft section 23). Similar to section 31 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 33** (modified "D" draft section 25, HB 238 section 12). 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

## Regional Citizens' Advisory Council of Prince William Sound

preparedness; and 4) verification of financial responsibility. 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, 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.

As mentioned in 4 above, this "M" draft expands the use of the account for the purchase of equipment for the response depots and reflects the transfer of this function from the Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to DEC.

**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 34** ("D" draft section 26). Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

**Section 35** ("D" draft 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 36** (modified "D" draft 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. The "M" draft reduces the DEC auditing requirements for uses of the fund.

**Sections 37, 38, 43 and 44** ("D" draft sections 29, 30, 33, and 34; HB 238 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 43 provides a technically revised definition of "release" and section 44 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.

## Regional Citizens' Advisory Council of Prince William Sound

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." In the "D" draft, if "property" referred only to tangible personal property, this definition would exclude damage to environmental values (e.g. spawning habitat). In the "M" draft, section 44 specifically includes "including the environment" to address this concern. Sections 37 and 38 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.

Sections 39, 40, 47, and 52 relate to the reassignment of agency responsibilities. Bill section 39 reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

Section 40 transfers the responsibility of maintaining emergency response depots to DEC.

Section 47 moves the Alaska State Emergency Response Commission from DEC to DMVA.

Section 52 protects or "holds harmless" the terms of members of the response commission despite transfer of the commission by bill section 47.

Section 41 (slightly modified "D" draft section 31, HB 238 section 16). Eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research. Changes in the "M" draft reflect transfer of response depots to DEC.

Section 45 ("D" draft section 35). Technical cross reference section to add definitions of catastrophic oil discharge and catastrophic oil release.

Section 46 (slightly modified "D" draft section 36, HB 238 section 22). 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 44, this definition explicitly includes damages to the environment.

Section 48 (modified "D" draft section 37). 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);

## Regional Citizens' Advisory Council of Prince William Sound

- 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.

Unlike the "D" draft, the "M" draft does not amend DEC authority to collect fees, AS 44.46.025(a)(5) and (a)(6).

**Section 49** 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 50** ("D" draft section 39). Explains the applicability of the new definition of "catastrophic oil discharge."

**Section 51** ("D" draft 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.

May 18, 1993



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## **Comparison of Senate Bill 215 with the House Resources Proposed Committee Substitute for House Bill 238 (4/20/93 "M" draft)**

Senate Bill 215 was introduced May 8 by Senator Miller, R, North Pole, and referred to the Senate Resources and Finance Committees. According to the Legislative computer system, BASIS, Senator Tim Kelley, R, Anchorage is a co-sponsor. This comparison highlights the major differences in the bills and assumes the reader is familiar with HB 238 or has accompanying background information.

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).

Regional Citizens' Advisory Council of Prince William Sound

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, all cost of response corps and depots must be paid from the oil and hazardous substances contingency and abatement account. Given the insufficient funding of this account, it can be assumed that money will not be available for the purchase of equipment without a commensurate reduction in Alaska Department of Environmental Conservation program funding.

May 19, 1993



Official Business

# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

State Capitol

Juneau, Alaska 99801-1182

May 18, 1993

John Sandor, Commissioner  
Alaska Department of Environmental Conservation  
410 Willoughby Ave., Suite 105  
Juneau, AK 99801-1795

Dear Commissioner Sandor:

I would like to thank you and the members of your staff, particularly Janice Adair, for your valuable input during the House Resources Committee deliberations over the last few months on House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund. The information and testimony provided by D.E.C. was very important in helping the committee get an understanding of the "470 Fund," its intended purposes, how it is working, and what the effects would be of proposed statutory revisions.

As you know, the committee has not yet taken any action on HB 238. However, the sponsor of the bill has recently prepared another proposed committee substitute version of the bill, and a similar "companion bill," SB 215, has been introduced in the Senate. In addition, the House Oil and Gas Committee introduced a related measure, House Bill 297.

I am enclosing copies of the three bills: the most recent draft of CSHB 238, and SB 215 and HB 297 as originally introduced. I would like to request, on behalf of the House Resources Committee, that your department review these during the next few months. I would very much appreciate any summaries, comments, suggestions, or concerns that you and your staff could provide to my office. These would be very helpful in preparing for the upcoming legislative session and any future committee work or action on these bills.

As I explained in my opening remarks at our April 17 teleconference on HB 238, it is important that we determine whether there are indeed problems with the "470 Fund," and if so, what is the best way to approach solving them. I look forward to continuing to work with your department in that effort.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Williars".

Rep. Bill Williars, Chairman  
House Resources Committee

Enclosures



# Alaska State Legislature

Official Business

## HOUSE RESOURCES COMMITTEE

State Capitol

Juneau, Alaska 99801-1182

May 18, 1993

Charles E. Cole, Attorney General  
Alaska Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300

Dear Attorney General Cole:

I would like to thank the Department of Law, particularly Assistant Attorney General Craig Tillery, for the valuable input during the House Resources Committee deliberations over the last few months on House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund. The information and testimony provided was very important in helping the committee get an understanding of the "470 Fund," its intended purposes, how it is working, and what the effects would be of proposed statutory revisions.

As you know, the committee has not yet taken any action on HB 238. However, the sponsor of the bill has recently prepared another proposed committee substitute version of the bill, and a similar "companion bill," SB 215, has been introduced in the Senate. In addition, the House Oil and Gas Committee introduced a related measure, House Bill 297.

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As I explained in my opening remarks at our April 17 teleconference on HB 238, it is important that we determine whether there are indeed problems with the "470 Fund," and if so, what is the best way to approach solving them. I look forward to continuing to work with your department in that effort.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Williams".

Rep. Bill Williams, Chairman  
House Resources Committee

Enclosures

cc: Craig Tillery, Assistant Attorney General



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### MEMORANDUM

TO: House Resources Committee members

FROM: Rep. W. K. Williams, Chair *Bill*  
House Resources Committee

DATE: October 29, 1993

RE: House Resources Committee Meeting November 12, 1993  
Overview proposed draft CS for HB 238, re: "470" Fund

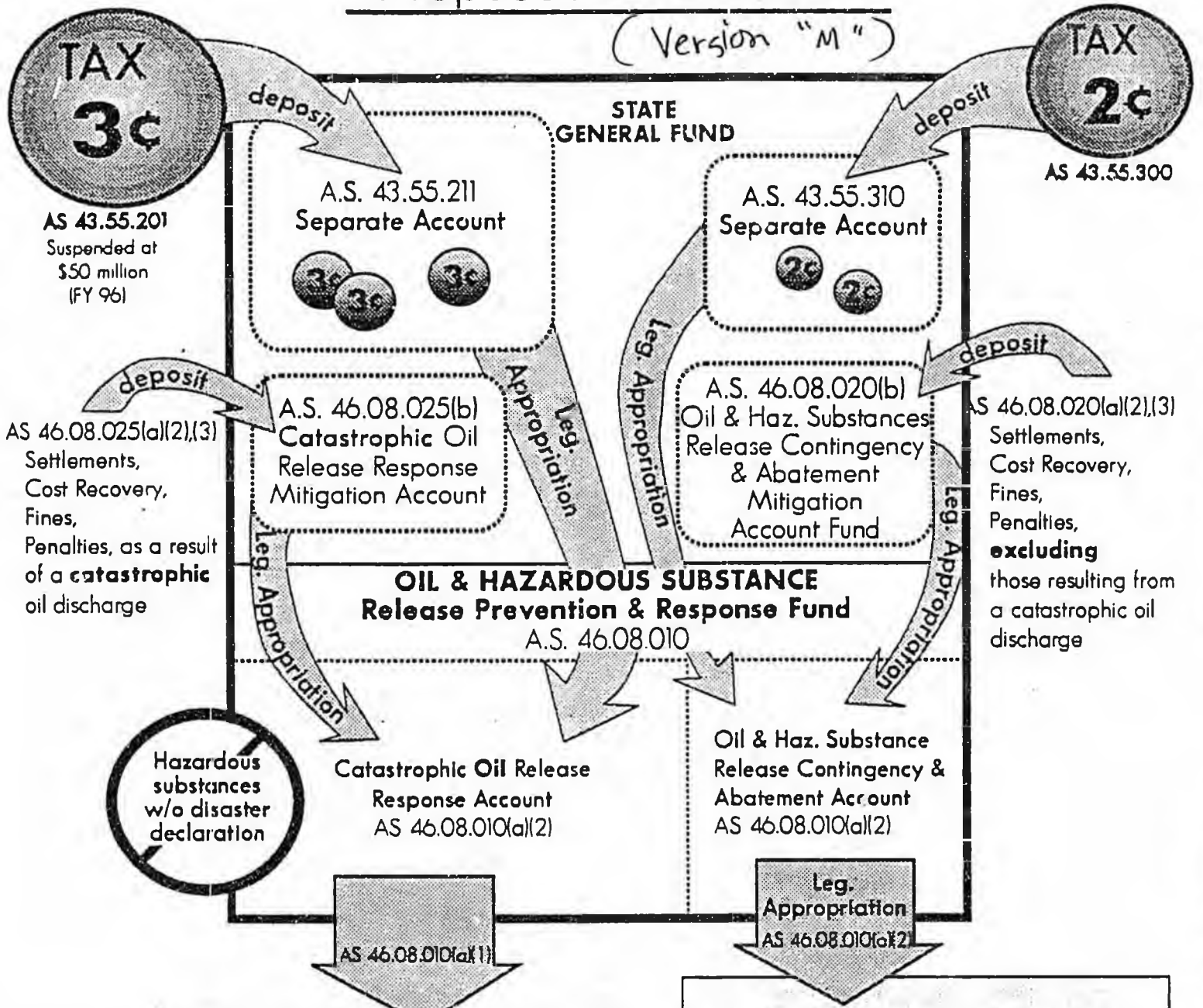
The House Resources Committee will meet at 1:30 p.m. on November 12, 1993, in Anchorage for an overview of the enclosed proposed Committee Substitute for House Bill 238, amending the oil and hazardous substance release response fund ("470 fund"), and making additions and changes to related matters. The meeting will be teleconferenced. Current sites are Anchorage, Juneau, and Fairbanks, and other sites may be added.

Enclosed is a copy of the draft proposed CS (version "M", dated 4/20/93), a sectional analysis prepared by our Legal Services Division, and a "470" Fund graphic prepared by DEC illustrating the way the fund currently works.

Thank you.

# Proposed HB 238 CS

(Version "M")



4,200,000 gallons

30 day max. w/o concurrent resolution; may require special session

Accessed **ONLY** in the event of a catastrophic oil spill - over 100,000 barrels  
AS 46.04.900(2)(a) OR

Declaration of a disaster emergency by the Governor - oil and hazardous substances  
AS 46.04.900(2)(b)

RESTORATION ???

~~RESEARCH & DEVELOPMENT~~

- Investigate and evaluate release or threatened release of oil or a hazardous substance (non-catastrophic)
  - Cost recovery
  - State master plan
  - Oil and Hazardous Substance **Response Office**
  - Contingency plan review
  - Response preparedness and training
  - Depots & corps DMVA/DES
- RESTORATION ???
- ~~RESEARCH & DEVELOPMENT~~

Prepared by Oil Industry

FY 95	Program Revenues	Interest on \$50 Million	Mitigation Account	TOTAL	DEC/OMB FY 95 Budget Request	Funding Surplus
7 Cent Programs / 3 Cent Fund	10.4	2.5	5.7	18.6	13.522	5.08
2.5 Cent Programs / 2.5 Cent Fund	13	2.5	5.7	21.2	13.522	7.68
3 Cent Programs / 2 Cent Fund	15.6	2.5	5.7	23.8	13.522	10.28

FY 99	Program (1) Revenues	Interest on (2) \$50 Million	Mitigation (1) Account	"Funding (1) Need"	Funding Surplus
2 Cent Programs / 3 Cent Fund	7.56	2.50	9.00	14.10	4.96
2.5 Cent Programs / 2.5 Cent Fund	9.45	2.50	9.00	14.10	6.85
3 Cent Programs / 2 Cent Fund	11.34	2.50	9.00	14.10	8.74

(1) Data based on ADEC 11/12/93 presentation to House Resources Committee, page 7

(2) Does not include interest on surcharge collections during the year not yet appropriated into fund.

Exxon Company, U.S.A.  
240 Main Street, Suite 600  
Court Plaza Building  
Juneau, Alaska 99801



CO  
Joe

Facsimile Cover Sheet

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Date: 3/15/94  
Pages: 11

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Draft

SB 215 / HB 238  
 (2 cents for Ongoing Programs/3 cents for \$50 million Fund)  
 (\$ million - all numbers approximate)

6/30/94 Spill Reserve 37.4  
 FY94 collections from 5 cents/bbl surcharge 26.0

Transition and FY95 Funding

	13.5	Appropriated to the new <u>contingency and abatement account</u> in the 470 fund for use by DEC for ongoing spill prevention and response preparedness programs.
26.0 FY94 nickels	-----	
	12.5	Appropriated to the new <u>spill response account</u> in the 470 fund for use by DEC to respond to catastrophic and other spills for which the account may be used.
	37.4	Appropriated from the former spill reserve to the <u>spill response account</u> .
	<u>49.9</u>	Total balance in <u>spill response account</u> available for emergency response to catastrophic and other spills.

4190 = GF

During First Quarter FY95

30 days into Quarter, Commissioner of Administration adds:

0.0	Collected during the prior quarter under the 3 cent <u>spill response surcharge</u>
0.0	Prior quarter recoveries in the spill response mitigation account
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<u>49.9</u>	Total. Spill response surcharge remains in effect for next quarter.

Meanwhile, during that quarter,

2.6 is collected from the permanent 2 cents surcharge and segregated in a separate account in the general fund.

3.9 is collected from the spill response 3 cents surcharge and segregated in a separate account in the general fund.

*Draft*

During Second Quarter FY95

30 days into the quarter, Commissioner of Administration adds

- 3.9 Collected during the prior quarter under the spill response surcharge
- 0.1 Prior quarter recoveries in the spill response mitigation account
- 49.9 Unreserved and unobligated balance in the spill response account of the 470 fund.

---

- 53.9 Total. Spill response 3 cents surcharge is suspended, beginning next quarter.

These numbers assume that no catastrophic or other spill has taken place causing a reduction of the unobligated balance in the response account.

Commissioner of Administration notifies Department of Revenue of result. Department of Revenue notifies oil producers that the 3 cents spill response surcharge is suspended as of the beginning of the third quarter (1/1/95).

Meanwhile, during that Second Quarter,

2.6 is collected from the permanent 2 cents surcharge and segregated in a separate account in the general fund.

3.9 is collected from the spill response 3 cents surcharge and segregated in a separate account in the general fund (because that surcharge is not suspended until the beginning of the next quarter).

Third Quarter FY95

The Department of Administration updates the calculation and notifies Department of Revenue of the result. If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

Assuming no draw down below \$50 million,

2.6 is collected from the permanent 2 cents surcharge and segregated in a separate account in the general fund.

The spill response 3 cents surcharge is suspended.

*draft*

Fourth Quarter FY95

The Department of Administration updates the calculation and notifies Department of Revenue of the result. If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

Assuming no draw down below \$50 million,

2.6 is collected from the permanent 2 cents surcharge and segregated in a separate account in the general fund.

The spill response surcharge remains suspended.

Beginning of FY96

AS TO ONGOING PROGRAMS FOR SPILL PREPAREDNESS

The following is available for appropriation to the "contingency and abatement account" in the 470 fund for DEC's use for ongoing spill prevention and response preparedness programs:

10.4 Amount collected during prior 4 quarters of the 2 cent permanent surcharge.

0.4 Cost recoveries, fines, penalties and other funds in the "contingency and abatement mitigation account".  
*Larger than our assumption*

2.7 Approximate amount of interest accrued during the year on the (1) balance in the 470 fund and (2) amount collected under the spill response surcharge during the prior year.  
*General Funds No Blackmail Clause ???*

Registration and certification fees collected.

13.5 or more (DEC's projected need.)  
*(2.7)*

AS TO THE SPILL RESPONSE ACCOUNT

\$7.8 million (2 quarters of 3 cents surcharge) is added by appropriation to the spill response account in the 470 fund for emergency response to catastrophic and other spills, bringing the total to 57.7 million.

*Comparison to my assumptions for 1st year:*

- 1) uses interest from fund - General Funds, not response funds
- 2) takes all of 37.4 - 4190 is GF unfair distribution
- 3) both reach 50 million in spill reserve in 1st year
- 4) only \$7.8 million in 3¢ is ~~added~~ collected in 1st year as opposed to \$15.7 in my version

*draft*

OVERALL RESULT AFTER FIRST YEAR OF OPERATION UNDER NEW LAW

Funds are available for DEC's ongoing spill planning, prevention, and oversight programs. The 2 cents permanent surcharge continues to be collected.

The 3 cents spill response surcharge suspends as of January 1, 1995 and the balance in the 470 fund for spill response builds from just below \$50 million to \$57.7 million.

Note: The \$57.7 million is an approximate number and would vary depending on when the suspension took place, which could be earlier or later depending on the exact 6/30/94 balance in the spill reserve and the exact amounts collected during FY 94 from the surcharge.

\* There is no "immediate benefit" to oil producers. The only "benefit" to oil producers is due to partial suspension of the 5 cents per barrel surcharges half way during FY95 after funds available for spill response grows to 57.7 million, higher than the \$50 million intended when the nickel surcharge was enacted.

OVERALL RESULT FOR FUTURE

Sufficient funds continue to be available through the 2 cents permanent surcharge, interest, recoveries and other sources for ongoing spill planning, prevention, and oversight programs by DEC.

*Not response funds - no guarantee this is available*

At least \$50 million is "banked" and available for spill response.

\* No immediate benefit - If there is no initial benefit experienced by the oil companies, then how do we explain that on 6/30 under existing law the suspension calculation yields a (\$1.5) & yet through the payment of only \$7.8 the spill reserve equals \$57.7

$$\begin{array}{r} - 7.8 \\ \hline 49.9 \end{array}$$
 benefit at end of 1st year

*Draft*

SB 215 / HB 238  
(2.5 cents for Ongoing Programs/2.5 cents for \$50 million Fund)  
(\$ million - all numbers approximate)

6/30/94 Spill Reserve 37.4  
FY94 collections from 5 cents/bbl surcharge 26.0

Transition and FY95 Funding

	13.5	Appropriated to the new <u>contingency and abatement account</u> in the 470 fund for use by DEC for ongoing spill prevention and response preparedness programs.
26.0 FY94 nickels	-----	
	12.5	Appropriated to the new <u>spill response account</u> in the 470 fund for use by DEC to respond to catastrophic and other spills for which the account may be used.
41% is GF	37.4	Appropriated from the former spill reserve to the <u>spill response account</u> .
	<u>49.9</u>	Total balance in <u>spill response account</u> available for emergency response to catastrophic and other spills.

During First Quarter FY95

30 days into Quarter, Commissioner of Administration adds:

0.0	Collected during the prior quarter under the 2.5 cent <u>spill response surcharge</u>
0.0	Prior quarter recoveries in the spill response mitigation account
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<u>49.9</u>	Total. Spill response surcharge remains in effect for next quarter.

Meanwhile, during that quarter,

3.26 is collected from the permanent 2.5 cents surcharge and segregated in a separate account in the general fund.

3.26 is collected from the spill response 2.5 cents surcharge and segregated in a separate account in the

Draft

general fund.

During Second Quarter FY95

30 days into the quarter, Commissioner of Administration adds

3.26	Collected during the prior quarter under the <u>spill response surcharge</u>
0.1	Prior quarter recoveries in the spill response mitigation account
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<u>53.3</u>	Total. Spill response 2.5 cents surcharge is suspended, beginning next quarter.

These numbers assume that no catastrophic or other spill has taken place causing a reduction of the unobligated balance in the response account.

Commissioner of Administration notifies Department of Revenue of result. Department of Revenue notifies oil producers that the 2.5 cents spill response surcharge is suspended as of the beginning of the third quarter (1/1/95).

Meanwhile, during that Second Quarter,

3.26 is collected from the permanent 2.5 cents surcharge and segregated in a separate account in the general fund.

3.26 is collected from the spill response 2.5 cents surcharge and segregated in a separate account in the general fund (because that surcharge is not suspended until the beginning of the next quarter).

Third Quarter FY95

The Department of Administration updates the calculation and notifies Department of Revenue of the result. If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

Assuming no draw down below \$50 million,

3.26 is collected from the permanent 2.5 cents surcharge and segregated in a separate account in the general fund.

The spill response 2.5 cents surcharge is suspended.

*Draft*

Fourth Quarter FY95

The Department of Administration updates the calculation and notifies Department of Revenue of the result. If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

Assuming no draw down below \$50 million,

3.26 is collected from the permanent 2.5 cents surcharge and segregated in a separate account in the general fund.

The spill response surcharge remains suspended.

Beginning of FY96

AS TO ONGOING PROGRAMS FOR SPILL PREPAREDNESS

The following is available for appropriation to the "contingency and abatement account" in the 470 fund for DEC's use for ongoing spill prevention and response preparedness programs:

13.0 Amount collected during prior 4 quarters of the 2.5 cent permanent surcharge.

*maybe* (0.4) Cost recoveries, fines, penalties and other funds in the "contingency and abatement mitigation account".

2.7 Approximate amount of interest accrued during the year on the (1) balance in the 470 fund and (2) amount collected under the spill response surcharge during the prior year.

13.5  
13.4  
✓

??? Registration and certification fees collected.

16.1 or more (DEC's projected need is \$13.5 million.)

AS TO THE SPILL RESPONSE ACCOUNT

\$6.5 million (2 quarters of 2.5 cents surcharge) is added by appropriation to the spill response account in the 470 fund for emergency response to catastrophic and other spills, bringing the total to 56.4 million.

*Draft*

OVERALL RESULT AFTER FIRST YEAR OF OPERATION UNDER NEW LAW

Funds are available for DEC's ongoing spill planning, prevention, and oversight programs. The 2.5 cents permanent surcharge continues to be collected.

The 2.5 cents spill response surcharge suspends as of January 1, 1995 and the balance in the 470 fund for spill response builds from just below \$50 million to \$56.4 million.

Note: The \$56.4 million is an approximate number and would vary depending on when the suspension took place, which could be earlier or later depending on the exact 6/30/94 balance in the spill reserve and the exact amounts collected during FY 94 from the surcharge.

\* There is no "immediate benefit" to oil producers. The only "benefit" to oil producers is due to partial suspension of the 5 cents per barrel surcharges half way during FY95 after funds available for spill response grows to 56.4 million, higher than the \$50 million intended when the nickel surcharge was enacted.

OVERALL RESULT FOR FUTURE

Sufficient funds continue to be available through the 2.5 cents permanent surcharge, interest, recoveries and other sources for ongoing spill planning, prevention, and oversight programs by DEC.

At least \$50 million is "banked" and available for spill response.

*Comparison to my assumption for 1st year:*

- 1) uses interest from fund - general funds, not response funds
- 2) takes all of 37.4 - 41.90 is GF - unfair distribution
- 3) ~~both~~ reaches 50 million in spill reserve in 1st year  
*fair split reaches 50 million at end of 2nd quarter, 2nd year*
- 4) only \$6.5 million in 2.5¢ is collected in 1st year as opposed to \$13.1. Nothing is collected in second year on the spill side for this version. Fair split version collects \$6.3 in second year. = 19.4 in 1st 2 years.

\* If there is no immediate benefit how do we explain that on 6/30/94 the suspension calculation yields a -1.5 million & by the end of the 1st year the spill account has 56.4 from on 6.5 in 2 1/2 yr.

- 6.5
56.4
<hr/>
49.9

*Draft*

SB 215 / HB 238  
(3 cents for Ongoing Programs/2 cents for \$50 million Fund)  
(\$ million - all numbers approximate)

6/30/94 Spill Reserve 37.4  
FY94 collections from 5 cents/bbl surcharge 26.0

Transition and FY95 Funding

Contingency & Abatement Account (for use by DEC for ongoing spill prevention and response preparedness programs).

15.6 (60% of FY94 nickels) appropriated to the new contingency and abatement account in the 470 fund.

*Significant change in approach does not allow apple to apple comparison although I agree with approach*

? → 22.4 (60% of 6/30/94 spill reserve) appropriated to the new contingency and abatement account in the 470 fund.

38.0 Total appropriated for use by DEC.

Spill Response Account (for response to catastrophic and other spills).

10.4 (40% of FY94 nickels) appropriated to the new spill response account in the 470 fund.

15.0 (40% of 6/30/94 spill reserve) appropriated to the new spill response account in the 470 fund.

25.4 Total for use to respond to catastrophic and other spills.

During First Quarter FY95

30 days into Quarter, Commissioner of Administration adds:

0.0 Collected during the prior quarter under the 2 cent spill response surcharge

0.0 Prior quarter recoveries in the spill response mitigation account

25.4 Unreserved and unobligated balance in the spill response account of the 470 fund.

25.4 Total. Spill response surcharge remains in effect for next quarter.

*Draft*

Meanwhile, during that quarter,

3.9 is collected from the permanent 3 cents surcharge and segregated in a separate account in the general fund.

2.6 is collected from the spill response 2 cents surcharge and segregated in a separate account in the general fund.

During Second Quarter FY95

Repeat of 1st quarter, except that 1st quarter collections would be taken into account. At a \$2.6 million per quarter collection rate, it would take about 7 quarters before the response account builds to \$50 million or more.

OVERALL RESULT

\$38 million is immediately available in Contingency and Abatement Account for use by DEC, compared to DEC's projected annual need of \$13.5 million. In addition, \$15 million plus cost recoveries plus about \$2 million of interest is available for appropriation the next year, about \$3.5 million more than DEC's projected annual need.

Although the 6/30/94 spill reserve is \$37.4 million, the beginning balance of the Response Account would only be \$25.4 million and not grow to \$50 million until 7 or more quarters have passed.

- 1) Since other two versions take all of spill reserve (37.4) & this one splits it 60/40, this version is designed to compare poorly to the other two.
- 2) No wonder this version looks bad - the fund, as shown before, is actually 41% GF & 58% SF
- 3) 50.0 is actually reached in this version in 10 quarters if we compared to comparable split versions
  - 2/3 - 4 quarters
  - 2 1/2 / 2 1/2 - 6 quarters
  - 3/2 - 10 quarters

\* Initial benefit at end of 1st year spill reserve

- 2 -	35.3
	24
	10.5
	24.8

**DEPT. OF ENVIRONMENTAL CONSERVATION**

OFFICE OF THE COMMISSIONER

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Phone: (907) 465-5050

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January 19, 1994

The Honorable Mike Miller, Chairman  
Senate Resources Committee  
State Capitol, Room 423  
Juneau, AK 99801-1182

The Honorable Bill Williams, Chairman  
House Resources Committee  
State Capitol, Room 128  
Juneau, AK 99801-1182

Dear Senator Miller and Representative Williams:

After discussions with other agencies in the executive branch, I would like to state the Administration's current position on legislation both of your committees are considering to improve the Oil and Hazardous Substance Response Fund.

We believe there are features of the Fund, as it is delineated and administered under current law, which could be improved. They include:

**1. Modify the process to suspend and reimpose the "nickel a barrel" crude oil surcharge so that the amount of surcharge collected is only the amount needed to have a fully-funded prevention and response program, as well as to replenish and maintain a \$50 million spill reserve.**

As the legal formula is written now, it is difficult to reach the \$50 million difference between income and expenditures envisioned in the 1989 legislation, as the formula does not take into account other sources of revenue to the Fund. We are working to draft language to suggest amending this formula.

**2. Provide for alternative sources of funding to supplement the revenues of the crude oil surcharge to prevent and respond to both crude and noncrude spills.**

We propose to examine other potential sources to the Fund, including cost recoveries on expenditures made from the Fund to respond to pollution incidents or contaminated sites, fines and penalties on non-crude spills, fees on industry contingency plans, and financial responsibility filings, interest earned on the spill

reserve, or a general fund contribution to the Fund based on some sort of matching formula. We now collect fees for response action contractor filings. While we do not assert that all of the potential fund sources be used, each merits a full examination.

Once other necessary contributions to the Fund are decided upon, they would be included in a formula used to calculate the amount necessary to collect under the "nickel a barrel" surcharge.

The Fund balance now in the spill reserve is approximately \$37.5 million. This sum is derived from surcharge revenues, general fund deposits, cost recoveries, fines and penalties. As we establish a formula for imposition and suspension of the surcharge from this point forward, we believe surcharge revenues already in the spill reserve should be included in the calculation. Those surcharge revenues can be identified by prorating the surcharge revenues against other revenue sources to the Fund.

**3. Eliminate legal authority for some Fund expenditures, and examine recommendations of ongoing audits to legislatively strengthen Fund management.**

Ideas we support for further examination in this context include removing authority for the Citizens Oversight Council on Oil and Hazardous Substances, the Underground Storage Tank Assistance grants and program administration (if the program can be funded by other means, as the Administration has proposed through the motor fuel tax). We support proposals to limit annual planning requirements in the current drafts of legislation, and we also see it possible that SERC funding will gain other sources, besides the Response Fund, if the Legislature passes pending legislation to make the SERC responsibility all hazards, not just oil and hazardous substance emergencies. We do not support eliminating currently authorized restoration or research and development as eligible costs for the Fund. R&D expenditures, for example, are now geared to reduce costs and improve preparedness for many types of spills.

The department has tightened control on Fund expenditures in several different ways in recent years, with many improvements the result of audits conducted on the Fund. As the Legislative Auditor completes this year's audit, we believe we should examine recommendations to further strengthen management.

We will continue to work with all interested parties to fashion legislative improvements to the Response Fund if they meet these goals, discussed with your committees in the interim. Our work should:

- Maintain a strong state-led spill prevention and response program**
- Build and maintain a \$50 million spill reserve**
- Attempt to develop other revenue sources for the Fund.**

In this letter, the Administration also wants to address three major concerns we have with the legislation as it is now proposed in HB 238 and SB 215:

**1. The Fund (including the spill reserve) must remain a vital part of Alaska's ability to prevent and respond to spills of all kinds of hazardous substances, not just crude oil.**

Revenues from the surcharge must not be restricted to crude oil spills. Rather, funds from non-crude sources must be identified to supplement those revenues. If the use of the Fund is restricted to large crude spills or disasters, other funds would need to be identified, including some kind of emergency spill fund for orphan spills of all kinds and contaminated sites.

**2. "Splitting the nickel" drastically reduces the level of environmental protection now enjoyed by Alaskans. The Fund should be kept whole, and other sources added to address equity concerns.**

The proposed legislation restricts use of the spill reserve to very large spills or spills which are declared a disaster by the Governor. It also requires that 60 per cent of the tax now collected be used only for the spill reserve, and that it stop once the spill reserve reaches \$50 million.

Today, the spill reserve not only stands ready to respond to a large disaster, but it is used to respond to small spills which occur all over the state. It is also a "deterrent" force which encourages responsible parties to act quickly if they spill hazardous substances; people know that if they don't clean up a spill the state can --and will-- step in to do the job. If the currently proposed legislation passes, Alaska's ability to respond, or force a response to most of these spills or contaminated sites will be severely diminished.

The proposed requirement of a Governor's disaster declaration on use of the spill reserve does not work either, for many reasons. First, spills are a day-to-day occurrence, ranging from barrels left by the roadside to leaking tanks that are only discovered after long migration times to reach groundwater. Before the Fund grew, the state did not respond as well and we have many long-term sources of contamination to show for it -- affecting the value of property values, public and private, nearby. Also, a disaster declaration lasts but 30 days. To spend longer would require a special session of the legislature -- and we don't believe that is necessary. Yet most spills have remediation, investigation, enforcement, cost recovery, or other activities that last far longer than 30 days.

**3. As the "nickel" is proposed to be split, not enough funds are left to maintain current spill prevention and response programs.**

The state's spill prevention and response program today costs approximately \$18 million per year, and the Administration has proposed reducing this to almost \$14

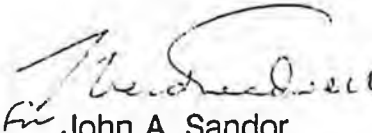
million for FY 95. The state's program is focused on prevention. There are many oil spills every year, but --because of the tough laws Alaska has adopted -- fewer large spills. In even a "small" spill, damages of \$14 million per year are easily reached. As the legislation is now proposed, less than \$10 million per year would be available to run the state's spill prevention and response program from the major source of revenue to the Response Fund. That amount diminishes with crude throughput, but the risks don't diminish in the same manner.

We believe the Fund has been spent responsibly, according to law. We must be cautious, however, in estimating a top limit to the size of the state's spill prevention and response program, given weaknesses that still exist in our overall spill prevention coverage. For example, resource agency coverage on the North Slope is limited (ADEC is there but 12-15 days per month), and the workload is much greater than we are now able to allocate. State coverage at Valdez has diminished in recent years; some has been made up by federal funds supplied by Alyeska directly through the BLM. We have yet to achieve the objective of a 24 hour statewide emergency operations center, joining several agencies, including the Departments of Military and Veterans Affairs and the Department of Public Safety. Spills from unregulated facilities, such as the pipeline in Indian, the Yorktown Clipper incident in Glacier Bay, and the Bethel/BIA fuel tank indicate a need to expand some prevention and oversight activities. Finally, there are many facilities with contingency plans which the state needs to test with organized drills. There is work left to do.

We hope the legislature can give our alternative approach serious consideration in both of your committees.

As always, we are ready, willing and able to work with the legislature to resolve concerns about Alaska's Response Fund and its spill programs. Thank you for your attention to this important matter.

Sincerely,

  
John A. Sandor  
Commissioner

/mt (CO-comm\470.ltr)

cc: The Honorable Rick Halford, President of the Senate  
The Honorable Ramona Barnes, Speaker of the House  
The Honorable Joe Green, Chairman, House Oil and Gas Committee  
Pat Ryan, Chief of Staff, Office of the Governor  
Raga Elim, Legislative Liaison, Office of the Governor  
Shelby Stastny, Director, Office of Management and Budget



**HOUSE RESOURCES COMMITTEE**

Testimony received since  
4-17-93 meeting on HB 238  
which addresses version "M".

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

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April 30, 1993

The Honorable Rick Halford  
President, Alaska State Senate  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear Senator Halford:

I know this is a particularly busy time for you but I hope you have a chance to review this letter and the information provided after you relax from the session.

During the last hearing on HB 238 (Representative Green's bill to curtail the use of the 470, or Response Fund), I was given a copy of a memorandum to you from Maria Gladziszewski at the Legislative Research Agency. The memo contains information that is not clear, and in some cases, incorrect. The intent of this letter is to correctly and clearly answer the four questions you proposed to Legislative Research as noted in Ms. Gladziszewski's memo.

**Question one** asks for a history of the Response Fund and a brief summary of all legislation passed since 1989 that has affected the Fund. In preparation for the first hearing on HB 238, I prepared such a summary for myself, and have enclosed it for your information. It is arranged by authorized use of the Fund, then shows the bill number and year it passed the Legislature (enclosure #1).

Your **second question** asks for the current balance of all accounts associated with the Fund and the amount spent annually from the Fund since 1989. An understanding of how the Fund works is needed before this question can really be adequately answered. Bear with me...

There are two accounts which may be appropriated (and generally have been) into the Response Fund - the Oil Conservation Surcharge Account which consists of the nickels-a-barrel, and the Mitigation Account which consists of fines, penalties, damages and cost recoveries. Between FY 87 and the end of FY 92, a total of \$82,500.0 has been appropriated to the Fund from the Surcharge Account and a total of \$4,346.6 has been appropriated from the Mitigation Account.

However, these two accounts are not the sum total of all appropriations made to the Fund. In 1989 and 1990, the Legislature appropriated a total of 73,100.0 into the Fund. \$30 million of that was program receipts from Exxon, the balance was general fund.

Ms. Gladyszewski's response to you on this question seems to be addressing the issue of the \$50 million cap set in statute (upon reaching this level, the nickel surcharge is suspended). Again, it is important to be clear on how the statute dictates the cap be calculated.

The statute provides that the cap is determined by calculating the difference between the appropriations made to the Fund from only the Conservation Surcharge Account and the total of ALL expenditures from the Fund itself - not just those that may have been made from the nickels. According to the Department of Administration, as of March 31, 1993, a total of \$100,830.0 has been deposited in the Fund from the surcharge and a total of \$112,831.5 has been expended to date from the Fund. *\*Please note these figures are as of March 31, 1993. The prior figures given on appropriations to the Fund are only through June 30, 1992. The difference in time accounts for the different figures.* I have enclosed a breakdown by fiscal year starting with 1989 of the expenditures (enclosure #2). The figures for FY 93 are based on levels appropriated, which may not be totally expended at the end of the fiscal year in June.

Each year, there has been some amount of money left over in the Fund after the Legislature appropriates the money to the various agencies for their operations. This amount has been appropriated to DEC in the front section of the operating budget as the "Spill Reserve." It does not count as an expenditure against the cap as it is merely an appropriation, and is available to DEC in the event there is an emergency release of oil or another hazardous substance which requires quick action. Only then would an expenditure be made from the Reserve.

Ms. Gladyszewski states that at the end of FY 93, the balance in the Fund will be approximately \$100,000. This statement is entirely misleading because she fails to mention that the \$52.0 million in FY 93 appropriations includes the Spill Reserve appropriation of \$23.7 million. DEC spends very little from the Spill Reserve appropriation in any given year and the balance lapses to the Response Fund at the close of the fiscal year.

Your **third question** asks for detailed information regarding Exxon Valdez Oil Spill (EVOS) expenditures and reimbursements. Enclosure #3 is an outline of expenditures by fiscal year on the EVOS project which may be helpful. All appropriations were made from the Response Fund, and we have noted the specific funding sources for the appropriations to the Response Fund.

April 30, 1993

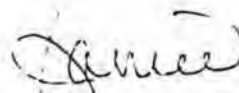
For settlement payments received pursuant to the Exxon Consent Decree and the Memorandum of Agreement between Alaska and United States, reimbursements are initially deposited in the state general fund and the portion that is reimbursing the Response Fund is subsequently credited to the Mitigation Account as required by statute. The formula for reimbursement to the Response Fund was included in SB 478 last year, and can be found at AS 37.14.410. DEC depends on the Department of Law to calculate these reimbursements.

**Question four** - the procedure for reimbursing the Fund - is relatively straightforward. With the exception of the EVOS settlement payments described above, all fines, penalties, cost recovery, legal fees, etc. are deposited into the Mitigation Account (A.S. 46.08.020(b)). The Legislature may appropriate the balance of the Mitigation Account to the Response Fund in its entirety or use it as a funding source for other projects. The limitations on the use of the Response Fund do not apply to the Mitigation Account.

DEC, in conjunction with the Department of Law, is in the process of improving cost tracking practices in order to provide better documentation of expenses and operating costs for cost recovery purposes. An internal Cost Recovery Policy and Procedures manual is being reviewed for finalization and implementation to provide a consistent framework for DEC employees involved in release response or contaminated site containment and cleanup efforts. We have more to do to improve our track record on cost recovery, but we are making a concerted effort in that direction and have already seen some improvements.

I hope these comments are helpful. Please do not hesitate to call if you have any questions. It is our hope to clear up the seemingly perpetual misunderstandings that surround the Response Fund.

Sincerely,



Jarlice Adair  
Assistant Commissioner

JA/SM (ASDIR\HALFORD.LTR)

Enclosures:

- 1) Response Fund Bill history
- 2) Expenditure history
- 3) EVOS Expenditures and Reimbursements

Senator Halford

-4-

April 30, 1993

cc: The Honorable Bill Williams (w/enclosures)  
The Honorable Joe Green (w/enclosures)  
Mike Conway, Director, Spill Prevention & Response  
Shelby Stastny, OMB  
Maria Gladziszewski, Legislative Research Agency

**FINES, PENALTIES, COST RECOVERY, SETTLEMENTS**

**EXXON VALDEZ Settlement**

**STATE GENERAL FUND**

**Oil Surcharge Account  
A.S. 43.55**

**Mitigation Account Fund  
A.S. 46.08.020(b)**

*Leg. Appropriation*

Storage Tank Assistance Fund

AEA Bulk Fuel System Upgrade

**OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND A.S. 46.08.010**

*Legislative Appropriation*

**OTHER AGENCIES**

- Military and Veterans Affairs (DES)
  - Response Preparedness & Planning
  - Response Depots & Corps
  - Hazards Analysis
- Transportation and Public Facilities
  - Oil Response Ferries
- Law
  - Regulations/Guidance
- Public Safety
  - Environmental Crimes
  - 24-Hour Dispatch
- Fish and Game
  - Contingency Plan Reviews
- Natural Resources
  - Contingency Plan Reviews
- Administration
  - Telecommunications Installation/Maintenance
- State Emergency Response Commission
- Citizens' Oversight Council

**ENVIRONMENTAL PRESERVATION**

- State Emergency Response Commission
- Local Emergency Planning Committees
- Hazardous Substance Spill Technology Review Council
- Contaminated Sites
- Government Preparedness and Response
- Industry Preparedness and Response
- Pollution Prevention
- Geographic Information Systems

**SPILL RESERVE (Emergency Reserve)**



**Oil and Hazardous Substance Release Response Fund**  
**("Response Fund" or "470 Fund")**

Created in 1986 (HB 470). Stated purpose:

(1) contain, clean up, and take other necessary action, 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 welfare, or to the environment;

(2) provide matching funds for CERCLA (federal Superfund); and

(3) recover the cost to the state or to a municipality of a containment or cleanup resulting from the release or threatened release of oil or a hazardous substance.

The fund received about \$500,000 a year from the general fund by legislative appropriation.

1989 - Exxon Valdez (first session of the 16th Legislature).

A package of spill bills were introduced during that Legislature including SB 260 which established the nickel-a-barrel "conservation surcharge" on all crude oil produced in Alaska. All spill bills were shown as being funded by the Response Fund, and amendments were made in the statutory purposes of the Fund to include the costs of:

establishing and maintaining the oil and hazardous substance response office (SB 264 - 1989);

review contingency plans (HB 567 - 1990);

conduct training, response exercises, inspection, and tests in order to verify equipment inventories and ability to prevent and respond to releases, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required to file contingency plans (HB 567 - 1990);

verify or establish proof of financial responsibility (HB 567 - 1990);

response depots and corps (SB 264 - 1989);

prepare, review and revise state and regional master oil and hazardous substance contingency plans (SB 261 - 1989);

restore the environment by addressing the effects of an oil or hazardous substance release (SB 261 - 1989);

Enclosure #1

Citizens Oversight Council on Oil and Other Hazardous Substances (HB 578 - 1990).

In 1991, two other bills were passed that further expanded the use of the Fund:

municipal impact grants (so-call Oilled Mayors Program) (SB 25); and

ferries with response capabilities (SB 165).

RESPONSE FUNDS AUTHORIZED AND EXPENDED

BY FISCAL YEAR

This section summarizes the appropriations to, and expenditures from the Response Fund in FY 89 and the first half of FY 90. Expenditures are also projected for the second half of FY 90.

FY 89

Authorizations for FY 89

July 1, 1988 Fund Balance		\$ 1,051.2
FY 88 Mitigation Account	(CHP154, SLA88)	\$ 136.5
FY 89 Capital Appropriation	(CHP172, SLA88)	\$ 500.0
EXXON Valdez GF Appropriation	(CHP13, SLA89)	\$10,000.0
EXXON Valdez PR Appropriation	(CHP13, SLA89)	\$10,000.0
<u>Total FY 89 Authorization</u>		<u>\$21,687.7</u>

Expenditures During FY 89

Site Cleanup and Spill Response		\$ 320.9
EXXON Valdez DEC Response		\$ 5,456.3
EXXON Valdez RSAs		\$ 609.7
EXXON Valdez Local Response		\$ 205.6

Total FY 89 Expenditures \$ 6,592.5

Ending Balance for FY 89 \$15,095.2

FY 90

Authorizations for FY 90

July 1, 1989 Fund Balance		\$15,095.2
FY 89 Mitigation Account	(CHP116, SLA89)	\$ 197.7
FY 90 Capital Appropriation	(CHP117, SLA89)	\$ 600.0
FY 90 GF Appropriation	(CHP117, SLA89)	\$32,000.0
EXXON Valdez PR Appropriation	(RP 1890-0041)	\$20,000.0

Total FY 90 Authorization \$67,892.9

**TABLE 1**  
**RESPONSE FUNDS AUTHORIZED AND EXPENDED**  
**FISCAL YEAR 1990**  
(In Thousands)

<u>Authorizations for FY 90:</u>		<u>Totals</u>
Fund Balance	\$15,095.2	
Mitigation Account (CHP116, SLA89)	\$ 197.7	
FY 90 Capital Appropriation (CHP117, SLA89)	\$ 600.0	
FY 90 GF Appropriation (CHP117, SLA89)	\$32,000.0	
Exxon Valdez PR Appropriation (RP 1890-0041)	\$20,000.0	
 <u>Total FY 90 Authorization</u>		 <u>\$67,892.9</u>
 <u>Actual Expenditures for FY 90:</u>		
State & Regional Contingency Plans	\$ 158.4	
Spill Response Office, Depots & Corps	\$ 199.8	
Spill Response Containment, Safety, Cleanup and Cost Recovery	\$ 211.0	
Exxon Valdez Project		
• DEC Response	\$24,005.4	
• Interagency Response	\$ 4,560.0	
• Local Response	\$ 3,210.2*	
Contaminated Site Investigation, Safety, Cleanup and Cost Recovery	\$ 774.5	
Other	\$ 112.8**	
Spill Reserve	\$ 245.5	
 <u>Total FY 90 Actual Expenditures</u>		 <u>\$33,477.6</u>
 <u>FY 90 Obligations</u>		 <u>\$13,788.5***</u>
 <u>Ending Balance for FY 90</u>		 <u>\$20,626.8</u>

\*In FY 90, municipal participation in the Response Fund was comprised of Local Response in the Exxon Valdez Project, described in Section III.

\*\*Includes expenditures not readily assigned to remaining categories See Section III, "Discussion of Response Funds Expended in Fiscal Year 1990" for detail.

\*\*\*FY 90 Response Fund encumbrances as of 9/1/90.

Table 1

**FY91 EXPENDITURES AND OBLIGATIONS RECORDED**

(In Thousands)



<u>CURRENT YEAR AUTHORIZATION</u>	<u>Authorized</u>	<u>Expended</u>	<u>Obligated</u>	<u>Total</u>
<u>DEC</u>				
State and Regional Contingency Planning	461.9	419.9	42.0	461.9
Response Office, Depots & Corps	3,169.9	807.3	1,070.9	1,878.2
Spill Response Drills	740.0	448.5	291.5	740.0
Contaminated Site Investigation, et. al.	2,632.9	1,443.6	275.6	1,719.2
Spill Response, et. al	1,920.0	662.6	1,152.6	1,815.2
Exxon Valdez Cleanup	10,122.3	7,274.8	1,781.0	9,055.8
Kenai Cleanup Project	940.0	581.8	358.2	940.0
State Emergency Response Commission and Local Emergency Response Planning (HB566)	550.0	399.6	-8.5	391.1
Spill Prevention and Response Preparedness (HB567)	1,371.0	1,056.2	106.0	1,162.2
Spill Reserve	4,867.8	76.6	0.0	76.6
<u>OTHER AGENCIES</u>				
Spill Prevention and Response Preparedness (HB567) [F&G]	156.5	119.8	3.0	122.8
Citizen's Oversight Council [Legislature]	236.7	119.5	2.6	122.1
Exxon Valdez Litigation [Law]	4,100.0	4,100.0	0.0	4,100.0
Exxon Valdez Damage Assessment [F&G]	<u>11,402.0</u>	<u>8,834.4</u>	<u>2,135.4</u>	<u>10,969.8</u>
<u>Subtotal Current Year</u>	<u>42,671.0</u>	<u>28,344.6</u>	<u>7,210.3</u>	<u>33,554.9</u>
<u>PRIOR YEAR(S) AUTHORIZATION</u>				
<u>DEC</u>				
State and Regional Contingency Plan		136.8	0.0	136.8
Response Office, Depots & Corps		160.4	0.0	160.4
Spill Response, et. al.		27.6	16.4	44.0
Site Investigation, et. al.		228.1	0.0	228.1
Kenai Cleanup Project		1.9	0.0	1.9
Exxon Valdez Cleanup Project		4,702.9	3,684.2	8,387.1
Spill Reserve		237.0	0.0	237.0
<u>OTHER AGENCIES</u>				
Redoubt Volcano [DNR]		4.8	0.0	4.8
<u>Subtotal Prior Year(s)</u>		<u>5,499.5</u>	<u>3,700.6</u>	<u>9,200.1</u>
<u>GRAND TOTAL FY91 RECORDED</u>		<u>31,844.1</u>	<u>10,910.9</u>	<u>42,755.0</u>

FY 92

Table 1

## FY92 EXPENDITURES AND OBLIGATIONS

<u>CURRENT YEAR AUTHORIZATION</u>	<u>Authorized</u>	<u>Expended</u>	<u>Obligated</u> [Note 1]	<u>Total</u>
				<u>Expended &amp; Obligated</u>
<u>DEC</u>				
State and Regional Contingency Planning	365.9	197.1	64.1	261.3
Spill Prevention, Response, Planning, et. al.	4,582.0	3,846.2	496.6	4,344.8
State Emergency Response Commission	329.9	257.0	11.5	268.5
Local Emergency Planning Committees	900.0	575.2	324.2	899.4
Response Office, Depots, and Corps	2,453.4	863.6	1,496.8	2,360.4
Hazardous Substance Spill Technology Review Co	238.8	112.4	106.2	218.6
Site Investigation, Safety, Cleanup, and Cost Reco	3,398.2	1,036.5	639.1	1,675.6
Kenai Cleanup Project	807.0	458.0	210.0	667.9
Exxon Valdez-Spill Cleanup	3,954.4	2,337.3	418.9	2,756.1
Exxon Valdez-Assessment and Restoration	12,474.4	6,654.4	3,830.0	10,484.4
Exxon Valdez-Litigation	3,653.1	1,576.9	1,571.4	3,148.3
Arctic Marine Resources Commission	100.0	100.0		100.0
Spill Reserve	12,627.4	71.4	73.3	146.7
Prince William Sound Regional Citizens' Advisory Completion: Non-crude Oil Tanker/Barge Study	175.0	57.2	117.8	175.0
	30.0	29.9		29.9
<u>Other Agency</u>				
Advisory Council/ Transportation of Oil/Hazardous	239.8	120.3		120.3
Fund Transfer to Legislative Council	237.3	237.3		237.3
Ferries with Oil Spill Response Ability	500.0	102.4	157.8	260.2
<u>Subtotal Current Year</u>	<u>47,062.6</u>	<u>18,633.1</u>	<u>9,521.7</u>	<u>28,154.8</u>
<u>PRIOR YEAR AUTHORIZATION</u>				
<u>DEC</u>				
Oil/Hazardous Substance Release Responses		(9.9)		(9.9)
Oil Spill Contingency Plans/Requirements		84.2	15.0	99.2
State & Regional Contingency Plan		26.4	5.0	31.4
Response Office, Depots & Corps		261.5		261.5
Spill Response Drills		105.7		105.7
Spill Response, Containment, et.al.		388.4	71.0	459.4
Exxon Valdez Project		1,123.8	308.4	1,433.2
Kenai Clean-up Project		97.9		97.9
Site Investigation, et.al.		225.9	13.1	239.0
<u>Other Agency</u>				
Oil Spill Contingency Plans/Requirements			59.4	59.4
Natural Resource Damage Assessment		1,358.4		1,358.4
<u>Subtotal Prior Year</u>		<u>3,662.3</u>	<u>472.9</u>	<u>4,135.2</u>
<u>Grand Total FY 92</u>	<u>47,062.6</u>	<u>22,295.4</u>	<u>9,994.6</u>	<u>32,289.9</u>

Note 1: Obligations have been reduced by any overobligated amounts on Reimbursable Services Agreements.

TABLE 5

Summary of FY 93 Appropriations

(In Thousands)

Appropriations From the Response Fund

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	800.0
Depots and Corps	
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
Nearshore 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	1,582.7
Investigation, Safety, Cleanup, and Cost Recovery	

OTHER AGENCIES

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 (DOE)	430.0
Peninsula Greenhouse, Soldotna-Contaminated Site Cleanup (DNR)	178.0
Forward Pad-Contaminated Site Cleanup (DNR)	490.0
Childs Pad-Contaminated Site Cleanup (DNR)	300.0
Tok River Campground-Contaminated Site Cleanup (DNR)	38.0
Boniface/Northern Lights, DeBarr-Contaminated Site Assessment (DOT/PF)	250.0
DOT/PF Maintenance Station, Soldotna-Contaminated Site Cleanup (DOT/PF)	157.0
Extend to FY 93 the FY 92 Appropriation for Ferries with Oil Spill Response Capability (DOT/PF)	239.8
Chatham Strait Fish Company, New Chenega-Contaminated Site Cleanup (DCRA)	30.0
Soldotna Fire Training-Contaminated Site Cleanup (UAA)	320.0
Total Appropriated From Fund For FY 1993	<u>54,532.8</u>

Appropriated to Response Fund

From General Fund	27,000.0
July 1, 1992 Balance of Mitigation Account Fund	1,823.3
Total Appropriated to Fund for FY 1993	28,823.3
Unreserved Fund Balance (Table 2)	<u>23,951.9</u>
Total Available to appropriate	<u>52,775.2</u>

Expenditures from the Oil and Hazardous Substance Release Response (470) Fund  
Exxon Valdez Oil Spill Project

Expenditures by year and funding source:

FY89	1,741.5	General Funds
	4,530.0	GF/Program Receipts
	1.0	Mitigation Account
	6,272.5	TOTAL FY89
FY90	12,028.4	General Funds
	19,685.2	GF/Program Receipts
	31,713.6	TOTAL FY90

- CONSERVATION SURCHARGE TAX COLLECTION BEGAN DURING FY90
- FIRST APPROPRIATED TO THE RESPONSE FUND IN FY91

FY91	12,322.7	General Funds
	3,944.4	GF/Program Receipts
	8,336.0	Surcharge Tax
	24,603.1	TOTAL FY91
FY92	837.9	General Funds
	228.7	GF/Program Receipts
	11,758.1	Surcharge Tax
	12,824.7	TOTAL FY92
FY93(YTD)	4,458.7	Surcharge Tax
	4,458.7	TOTAL FY93

Revenue Source Totals:

26,930.5	State General Fund
28,388.3	GF/Program Receipts
1.0	Mitigation Account
24,552.8	Conservation Surcharge

To date, Exxon has made the following reimbursements:

FY89/90/91	26,743.2	Reimburse Response Fund GF/Program Receipts
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FY90/91	3,508.6	Reimburse Response Fund General Fund Source
FY92	29,200.0	Settlement Payment as follows:
	25,300.0	State General Fund
	3,900.0	Mitigation Account
	(1,800.0 was appropriated to Response Fund)	
FY93	29,000.0	Settlement Payment as follows:
	16,700.0	State General Fund
	12,300.0	Mitigation Account



Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 Anchorage, Alaska 99501-2254 / (907) 277-7222, FAX (907) 277-4523

## Overview of the Proposed House Resources Committee Substitute for HB 238 (4/20/93, "M" draft)

In its basic mission of restricting the use of the response fund and replacing the fund with a new fund composed of two accounts, the 4/20/93 "M" draft differs only slightly from the 4/13/93 "D" draft. Specifically, the 2 cent, 3 cent division is maintained. According to 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 FY 94 budget reductions. According to DEC, inverting the accounts to provide 3 cents for core programs is still insufficient.

This overview identifies the most significant changes between the proposed committee substitutes. The accompanying sectional analysis for the 4/20/93 "M" draft provides more detail and identifies new sections and changes to old sections.

**Response Corps and Depots.** The most significant difference in the "M" is the transfer of 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) and the transfer of the state emergency response commission and the local emergency planning commissions from DEC to DMVA. In addition to transferring the response depots authority to DEC, the "M" draft provides for the purchasing of response depot equipment from the catastrophic oil release response account.

**Contingency Plan Review.** An important change in the "M" draft 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."

## Regional Citizens' Advisory Council of Prince William Sound

In the "D" draft, if "property" referred only to tangible personal property, this definition would exclude damage to environmental values (e.g. spawning habitat). In the "M" draft, section 44 specifically includes "including the environment" to address this concern. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

**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."

Regional Citizens' Advisory Council of Prince William Sound

**Section 9** ("D" draft section 5). This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

**Section 10** (section 6, "D" draft) 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** (section 7, "D" draft) directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

**Section 12**, (modified "D" draft section 8, HB 238 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.

Similar to the "D" draft, 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. In the "D" draft, mitigation money that may have restricted uses and not be usable for spill response was not segregated. This is similar to the bill as introduced. This problem is remedied in the "M" draft.

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 are to be made more frequently.

This section relates also to **section 49** ("D" draft section 38, introduced 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 13** ("D" draft section 9) amends the mechanism by which the surcharge on/off trigger shall be computed.

## Regional Citizens' Advisory Council of Prince William Sound

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 22** ("D" draft section 14, HB 238 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 plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

**Section 23** ("D" draft section 15, HB 238 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 24** ("D" draft section 16, HB 238 section 7) essentially does for regional plans what section 21 did to the state master plan. Again, in the "M" draft, plan revision is not limited to once per year but at the discretion of the commissioner of DEC.

**Section 25** ("D" draft section 17, HB 238 section 8) is a technical amendment that incorporates the changes made in section 24 for master plans to the regional plan changes in section 25.

**Section 26** ("D" draft section 18) 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 27** (modified "D" draft section 19, HB 238 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

## Regional Citizens' Advisory Council of Prince William Sound

preparedness; and 4) verification of financial responsibility. 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, 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.

As mentioned in 4 above, this "M" draft expands the use of the account for the purchase of equipment for the response depots and reflects the transfer of this function from the Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to DEC.

**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 34 ("D" draft section 26).** Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

**Section 35 ("D" draft 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 36 (modified "D" draft 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. The "M" draft reduces the DEC auditing requirements for uses of the fund.

**Sections 37, 38, 43 and 44 ("D" draft sections 29, 30, 33, and 34; HB 238 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 43 provides a technically revised definition of "release" and section 44 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.

## Regional Citizens' Advisory Council of Prince William Sound

- 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.

Unlike the "D" draft, the "M" draft does not amend DEC authority to collect fees, AS 44.46.025(a)(5) and (a)(6).

**Section 49** 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 50** ("D" draft section 39). Explains the applicability of the new definition of "catastrophic oil discharge."

**Section 51** ("D" draft 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.

May 18, 1993

Regional Citizens' Advisory Council of Prince William Sound

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, all cost of response corps and depots must be paid from the oil and hazardous substances contingency and abatement account. Given the insufficient funding of this account, it can be assumed that money will not be available for the purchase of equipment without a commensurate reduction in Alaska Department of Environmental Conservation program funding.

May 19, 1993

# Alaska State Legislature

Legislative Research Agency



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April 16, 1993

## MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski<sup>MC</sup> 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*.

Representative Brown  
April 16, 1993  
Page 2

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. 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.<sup>1</sup>

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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<sup>1</sup>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 indefinitely (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
<p>Louisiana Oil Spill Contingency Fund (RS 30: 2451 - 2496)</p>	<p>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</p>	<p>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 or mitigation 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)</p>	<p>Approximate annual revenue = \$9 million Approximate number of personnel funded = 10 Approximate annual expenditures = \$500,000</p>	<p>Office of the Louisiana Oil Spill Coordinator (504) 922-3230</p>
<p>New Jersey Spill Compensation Fund (NJSA 58:10-23.11)</p>	<p>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</p>	<p>all direct/indirect costs for oil and hazardous substance spills; research and development; administrative costs of oil spill plan reviews</p>	<p>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)</p>	<p>Department of Environmental Protection, Bureau of Discharge Prevention (609) 984-4306</p>
<p>Texas Coastal Protection Fund (Texas Natural Resource Code, Section 40.152)</p>	<p>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</p>	<p>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</p>	<p>Approximate annual revenue = \$12 million Approximate number of personnel funded = 40 Approximate annual expenditures = \$6 million</p>	<p>General Land Office, Oil Spill Prevention and Response (512) 463-5329</p>

**SELECTED STATE FUNDS SIMILAR TO  
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

State Fund	Primary Revenue Source	Purpose / Use	Comments	Contact
<b>Washington Oil Spill Response Account</b> (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
<b>Washington Oil Spill Administration Account</b> (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 (93.186).

# U.S. LAW REPORT

in this issue ... march 1993, volume 3, number 3

RECEIVED  
MAR 19 1993

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
OFFICE OF OIL SPILL PREVENTION & RESPONSE

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 NFRM.** 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 OSLF 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  $\frac{3}{4}$  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).

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	1/10 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 ground-water 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	$\frac{3}{4}$ 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	$\frac{7}{8}$ 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	$\frac{3}{4}$ 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)
Nbraska	$\frac{3}{10}$ of a cent per gallon on motor fuels (although now it is at $\frac{5}{10}$ of a cent per gallon on motor fuels plus $\frac{1}{10}$ of a cent per gallon on all other petroleum since the fund dropped down to \$2 million; the fee will return to $\frac{3}{10}$ 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	$\frac{5}{10}$ 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	$\frac{5}{10}$ of a cent per gallon for the ODD Fund; $\frac{1}{10}$ of a cent per gallon for the OPC Fund	The distributor of motor fuels at the time of sale (for the $\frac{5}{10}$ of a cent fee); the distributor of all oil at the time of sale (for the $\frac{1}{10}$ 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	1 $\frac{1}{2}$ 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	—	—

\*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
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	½ 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

\*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.



## Alaska Environmental Lobby, Inc.

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### HB 238 Fails to Provide for Alaska's Oil Spill Prevention and Response Programs

The key intent of HB 238 is to ensure that there are sufficient funds available to respond to the next *Exxon Valdez*. However, HB 238 reserves the majority of the spill reserve moneys for use when it is too late: after the oil is in the water. HB 238 is unacceptable because it reduces the state's ability to prevent, respond to and clean up oil and hazardous substance spills.

In this new version of HB 238, revenue generated from the nickel-a-barrel conservation surcharge would be divided into two accounts. Three cents of each nickel would be placed in a "catastrophic response" account used *only* for oil spills in excess of 4.2 million gallons or when the governor declares an emergency. The remaining two cents would be deposited into the "release prevention and response account" and would fund all core prevention programs and response, clean up of hazardous substance spills and non-catastrophic oil spills.

- The 2¢ portion of the fund for prevention programs and non-catastrophic spills is not enough, particularly for the long term. A 2¢ cap does not provide or allow for:
  - 1) declining oil production.
  - 2) the increased risk of a spill as oil companies reduce their expenditures for maintenance, training, crews, safety and prevention as oil revenues decline.
  - 3) inflation.
  - 4) the inability to effectively budget for the prevention programs, given the impossibility of predicting the number, severity and cost of non-catastrophic spills.
  - 5) the implementation of additional state or federal spill prevention programs.
  - 6) the possibility that numerous non-catastrophic spills could exhaust the fund.
- Small spills are a serious problem. According to EPA data, 92.4% of all oil spills are equal to or less than 1,000 gallons, and less than 1% of all spills are in excess of 4.2 million gallons. The 2¢ portion of the surcharge is insufficient to fund all prevention programs and provide a spill reserve for all oil and hazardous substance spills less than 4.2 million gallons.
- The 3¢ "catastrophic oil spill" account is redundant and unnecessary. In the event of a catastrophic spill, the state of Alaska can draw on a billion dollar fund established by the federal Oil Pollution Act of 1990. However, Alaska can not draw from the federal fund for spills that are less than catastrophic, but which may be no less threatening to public health or the environment. Alaska must be prepared to respond to these spills by fully funding its prevention and response programs.
- HB 238 restricts the Department of Environmental Conservation's (DEC) response capability to initial or first response, even in catastrophic spills. The state may not use the fund to respond to or ameliorate the continuing aftermath of a spill.

- **HB 238 eliminates the use of reserve funds for restoration of the environment in impacted areas.** Similarly, the bill eliminates the use of funds to investigate or evaluate the effects of a spill on the environment.
- **HB 238 restricts the meaning of "threatened release"** to include only those spills that are imminent, thus limiting DEC's ability to act early to prevent spills.
- **State and federal oil spill commission reports identified public input in the decision-making processes as necessary to eliminate complacency in spill prevention. HB 238 eliminates the opportunity for public participation by:**
  - 1) cutting all funding for the local Citizen's Oversight Council; an organization that oversees DEC's activities.
  - 2) changing the review process for state and regional oil and hazardous substance contingency plans from annually, to the discretion of the commissioner of DEC.
  - 3) restricting public and legislative review of the oil and hazardous substance contingency plans.



## CORDOVA DISTRICT FISHERMEN UNITED

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Cordova, Alaska 99574

Phone (907) 424-3447 Fax (907) 424-3430

April 17, 1993

Representative Bill Williams  
State Capitol Building  
Juneau, Alaska 99801

Dear Representative Williams:

On behalf of Cordova District Fishermen United I wish to express our opposition to HB 238 and the proposed committee substitute. At this point, it appears that Representative Green is proposing a "fix" for something that's not broken. There is no compelling reason to legislatively restructure the 470 Fund outside of the oil industry's desire to increase their bottom line by avoiding a modest conservation surcharge. While there may be some instances where funds have not been appropriately accounted for by DEC, these are administrative problems that are best dealt with at the administrative level. In addition, it is already within the legislature's purview to direct expenditures from the 470 Fund through the appropriation process. If there is any problem with how the 470 Fund is spent, the problem lies with the legislature, not DEC.

The most important thing that we learned from the Exxon Valdez oil spill is that prevention is the most powerful tool we have to protect human health and the environment from oil spills. This lesson is totally lost in HB 238.

The original intent of the 470 Fund was to provide for the cleanup of contaminated hazardous waste sites and to insure a timely response to releases of oil and hazardous substances which pose an imminent and substantial threat to public health and the environment. When HB 238 was first heard in House Resources (ironically on the fourth anniversary of the Exxon Valdez Oil Spill), the primary issue appeared to be that the 470 Fund was nearly empty and that the state did not have the reserves to finance a timely response in the event of another major oil spill. As it turns out, that is not the case. There is at least \$20 million in the current spill reserve account and the \$50 million cap will soon be reached without the provisions of HB 238.

Taking this into consideration, it does not make sense to create two new accounts, as proposed by the CS for HB 238, and divide the nickel surcharge to fund each one. The "catastrophic oil release response account" which would receive 3 cents of the per barrel surcharge is clearly designed to minimize the amount of money that the oil industry pays the state to support spill prevention and response programs. Once the fund reaches the \$50 million cap, the 3 cent surcharge will be suspended. This "catastrophic

account" is also meant to be a proprietary fund that will only be available in the most extreme spill events, and even then, only for "emergency first response." Since the likelihood of an oil spill of 100,000 barrels or more is quite small, we can anticipate that this fund will remain dormant and collecting dust while the state is left without the ability to deal with the catastrophic effects of "smaller" spills.

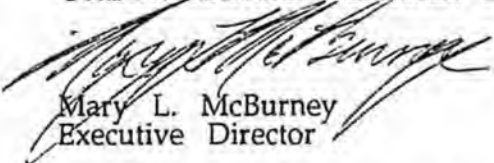
The remaining 2 cents of the surcharge is intended to be paid into a "release prevention and response account" in perpetuity. Unfortunately, this account will not be sufficient to fund the state's basic spill prevention and response programs and will certainly not be adequate to respond to spills less than 100,000 barrels. According to the EPA, 92.4% of all oil spills are less than 1,000 gallons and create chronic and cumulative impacts to public health and the environment. Conversely, spills in excess of 100,000 barrels, or 4.2 million gallons, account for less than 1% of all spills. HB 238 will insure that we have a fund to deal with the highly improbable 100,000 barrel oil spill but will provide little or nothing to deal with the more common spills of less than 1000 gallons.

In addition, it is unconscionable that the bill's sponsor would assume that spills of a magnitude less than 100,000 barrels are not devastating or catastrophic. Any oil spill or release of hazardous substances can be catastrophic, magnitude has little to do with it. It wouldn't take much effort to create a catastrophe by dumping 100 barrels into a source of municipal drinking water or an anadromous fish stream during spawning season.

In closing, the proposed CS for HB 238 will prevent the state from maintaining an adequate level of preparedness to deal with future oil spills and releases of hazardous substances as well as limit DEC's response capabilities. Apathy created the tragedy of the Exxon Valdez oil spill. The state had underfunded DEC year after year so that it was weak and ineffective. No one was watching to be sure that contingency plans were well thought out and up-to-date, and we weren't taking a pro-active role to prevent oil spills. Here we are four years later, considering legislation which will cannibalize the 470 Fund and put us right back in the same vulnerable position.

CDFU urges you to oppose HB 238. It is a pernicious, self-serving piece of legislation. The 470 Fund does not need to be overhauled and re-created to suit the desires of the oil industry. It should be maintained as the state's front line defense against oil spills and releases of hazardous substances.

Sincerely,  
CORDOVA DISTRICT FISHERMEN UNITED



Mary L. McBurney  
Executive Director

cc: Commissioner John Sandor, DEC  
House Resources Committee  
Senator Georgianna Lincoln  
Representative Harley Olberg



HOUSE RESOURCES COMMITTEE

Testimony received since  
4-17-93 meeting on HB 238.  
This batch does not address  
version "M" specifically



**BP EXPLORATION**

BP Exploration (Alaska) Inc.  
P.O. Box 198612  
Anchorage, Alaska 99519-6612

**TELECOPY**

**SATELLITE UNIT**

**TO:** Name: Rep. Bill Williams  
Company: House Resource Committee  
Location: Tunna Fax # 465-3793

**FROM:** Name & Ext.: Frank Baker  
Department: Government & Public Affairs

**NOTES:** Please pass HB 238 470 Ford out  
a committee. It's equitable and will  
work

**PAGES TO FOLLOW** \_\_\_\_\_ (Do not include cover sheet)

**SECURITY CLASSIFICATION**  
PRIVATE \_\_\_\_\_ SECRET \_\_\_\_\_ CONFIDENTIAL \_\_\_\_\_

**SATELLITE FAX MACHINE**

FAX# 907-564-4124 CONFIRM# 907-564-5504

# FACSIMILE TRANSMITTAL FORM

1 Page Only

**DATE:** April 27, 1993

**TO:** Representative Bill Williams  
(907) 465-3793

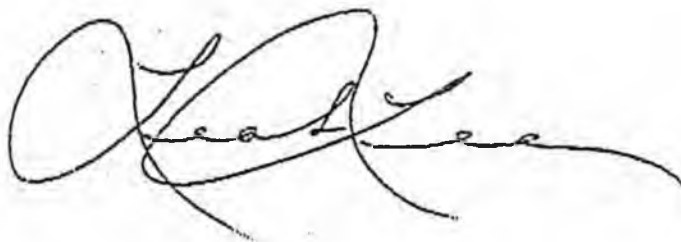
**FROM:** Leah Lee  
(907) 248-5550

**SUBJECT:** HB 238 470 Fund - Nickel a Barrel Tax

*Dear Rep. Williams:*

*Please make every effort to pass the above indicated Bill out of your committee, in its current form, as soon as possible. Though I usually disagree with what appears to be the anti-development mind set of the average environmentalist, it is obviously imperative that adequate reserves be built up to handle the response to substantial spills of any hazardous substance.*

*Thank you for your immediate attention to this serious matter.*



---

# Facsimile Cover Sheet

**To:** BILL WILLIAMS  
**Company:** HOUSE CHAIRMAN RESOURCE  
COMMITTEE  
**Phone:** 465-3424  
**Fax:** 465-3793

**From:** DENNIS SIRIANNI  
**Company:** SIRIANNI ASSOCIATES  
**Phone:** (907) 345-6699  
**Fax:** (907) 345-0893

**Date:** 04/27/93

**Pages including this  
cover page:** 1

**Comments:** AS A MEMBER OF THE ALLIANCE AND PRO  
DEVELOPMENT SUPPORTER I ENCOURAGE YOU TO PASS HB238  
470 FUND - NICKEL A BARREL TAX OUT OF COMMITTEE AS  
QUICKLY AS POSSIBLE.

RESPECTFULLY,



DENNIS SIRIANNI



Alaska Sales and Service  
SERVING ALASKANS SINCE 1944



FLEET SALES DEPARTMENT  
FAX# (907) 265-7507  
PHONE# (907) 265-7542

(FAX) FACSIMILE TRANSMISSION

DATE: 4/27/93

TO: CHAIR - HOUSE RESOURCE Comm.

ATTN: REP. BILL WILLIAMS

FAX# 465-3793

REGARDING: HB238, 470 FUND

FROM: DWARF MATHES

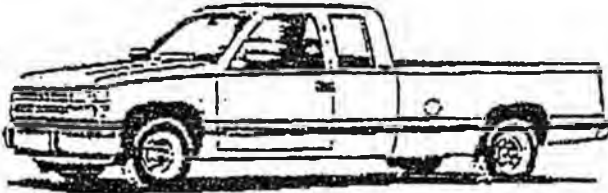
NUMBER OF PAGES (INCLUDING COVER PAGE) 1

MR. WILLIAMS:

WE URGE YOU TO PLEASE PASS THIS BILL, HB238, AND MOVE IT ON AS SOON AS POSSIBLE. THIS LEGISLATION IS VERY IMPORTANT TO THE PEOPLE OF THIS STATE. LET'S PLEASE DO SOMETHING POSITIVE FOR ALASKA!

THANK YOU FOR YOUR HELP.

*DM*





NORTHERN S.E. LEPC  
P.O. Box 1049  
Haines, Alaska 99827

Phone (907) 766-3377 Fax 766-3373

<u>LEPC Coordinator</u> HVFD Chief Roc Ahrens	<u>LEPC Vice Chair</u> HPD Chief Charlie Fannon
--	--

APR 18 1993

**House Bill #238  
TC30509  
Summary from LEPC**

**To Representatives:**

REP. Green (House Bill #238 Sponsor)  
REP. William's (Committee Chair)  
REP. Hudson (Ketchikan)

**Points for consideration:**

1. 4.2 million gal. oil to clean up as a minimum to high, average spill is under 1000 gal.
2. LEPC language is not strong enough. Delegate them the money for response and planning and you will get results. Industry is correct in saying money is supporting government, money should support the planning, prevention and response, not DEC or DES jobs this is not about job security.
3. Capitol purchases must be included, without equipment to respond how can you prevent or contain a disaster.
4. Training is a must for the first responders because the liability is placed on the state.
5. Public review will always be in place with the LEPC involved, it is required by state and federal law.
6. Environmental concerns will always be in place with LEPC involved, it is required by state and federal law.
7. House Bill #238 could work with changes along these lines.

We have already testified and only offer you with these notes for your future consideration. We could support this bill with the appropriate changes and will supply a copy of these notes to Senator Lehman, Senator Duncan, Senator Taylor.



# Alaska Center for the Environment

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-3621

TO: Representative Bill Williams, Chair, House Resources  
Committee  
FROM: Aimee R. Boulanger, Community Coordinator for Pollution  
Issues  
RE: HB 238

April 26, 1993

Dear Representative Williams,

The Alaska Center for the Environment (ACE) is an Alaska-based non-profit advocacy and educational organization representing more than 1000 members. We would like to take this opportunity to commend you on the responsible and judicious manner in which you have dealt with HB 238. Your actions reflect the importance of this bill and the significant ramifications it will have on the ability of Alaskans to protect themselves from catastrophic spills, and contaminated sites in their neighborhoods.

Though the environmental community has certainly had its own criticisms of the "470 Fund" in the past, the most valuable uses of the fund are in prevention of both major and minor spills that cumulatively can be devastating to local and regional environments. In addition, it is vital that funds also be available for restoration efforts in the event of a spill. Alaskans must have a source of assistance if public health and/or fish and wildlife populations are endangered.

ACE opposes HB 238. We appreciate the House Resources Committee's cautious handling of this bill.

Sincerely,

Aimee R. Boulanger  
Community Coordinator for Pollution Issues





# Alaska State Legislature

Please enter into the record my testimony to the HOUSE RESOURCES?  
 committee name  
 committee on HB 238, dated 4-17-93  
 bill/subject

I believe that:

\* the state should be able to use oil industry funds to help clean up ~~the~~ petroleum waste pits in our area, the Kenai Peninsula. <sup>drilling</sup>

\* And on a statewide basis it is very important to keep on top of small spills for groundwater protection. A fund for this should always be available and accessible.

\* HB 238 destroys much of what was good about the 410 Fund (which was not the best for our environment to begin with.) Those who are part of the problem must be part of the solution.

Please don't fall for this industry attempt to exempt itself <sup>from</sup> its responsibilities

Signed: Regan Mullen  
 Testifier  
 self  
 Representing (Optional)  
355 Lindbergh Soldotna AK 99669  
 Address  
262-9225  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Committee on Oil & Gas  
committee name

committee on H.B. 238, dated 4/17/93  
bill/subject

The problem is that the opposition is based  
all on what funds "they" can receive, not what  
"they" can offer. To earn a income for articulated districts  
is a lack of morals, in that is what the dispute is  
about. Since the committee is asking of legal counsel to  
simply the language of H.B. 238 such stands to reason  
that H.B. 238 should stand. This bill is a start to  
a new ~~beginning~~ beginning not a rhetorical cover-up. Here DEC,  
legal sec. do the fact finding. Billie Perkins used to very  
good at such.

Signed: Patrick V. Sinnott  
Testifier

(mailing  
only)  
C/O

Representing (Optional)  
435 Decker, KTN, AK 99901  
Address

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Committee on Oil + Gas  
committee name

committee on H.B. 238, dated 4/12/93  
bill/subject

The only objection I have is the figure of .5. I am convinced that the State would be better off at .3. The .3 figure allows for the State to gradually adjust to decline in revenues + gives incentive to private corp. concerns to employ other State concerns. I admitly am please with the legal opins attached to this bill. The legal counsel should be awarded for a first time example of proper investigative law. I also would like Joe Green to be noted for requesting a legal review.

Signed: Patrick T. Simnett  
Testifier

(mailing) 4/0 435 Dock . ATN. AK. 99901  
Address

Phone No.

From: Eugene A. Levine  
7343 Linden Drive  
Anchorage, Alaska 99502

17 April 1993

To: Representative William Williams  
House Resource Committee

Dear Chairman Williams,

I am writing this letter for the record of House Bill 238 and the committee substitute, both of which I oppose. First, let's look at the 50 million dollar tax cap. To most of us, 50 million dollars does not seem very paltry. However, it is when compared to the 3 billion dollars which Exxon completely wasted in Prince William Sound.

If we, the owners of the owner state, were to ask the oil companies to annually contribute the full amount of the 470 fund cap to prevent a second major oil spill, it would take 60 years before we could protect Prince William Sound to the same monetary extent as the clean up effort. That seems like a bargain to me, and I would think after the horrible mess created four years ago, the oil companies would be happy to pay a small sum up front, instead of paying for the next catastrophe. However, we are not asking them to even donate that much, because in the three years since the 470 fund was established, only a fraction of the total possible amount has been spent.

I am quite astonished that this issue is even being reviewed again, because it was only three years ago that I testified on the very same item. I can still remember all the give and take that went into determining how big a fund to provide, how to spend it, etc, and it seems like we arrived at a fair compromise. This bill currently before us is neither fair, nor a compromise. It is instead a recipe for our next oil spill catastrophe, for without citizen's overseeing the safety of their region, and without constant vigilance over emergency spill response plans, we will have nothing to look forward to, except another catastrophe. Waiting for an imminent spill has absolutely no vision to the future prevention of another major oil spill.

Finally, I wish to defend the process of involving citizen's in public policy, because I believe very strongly that citizens must be allowed and empowered to protect their own livelihoods and lifestyles. I have personally been a volunteer for the past several years on one of the citizens groups formed after the oil spill. We are very careful to insure that volunteers on the committee are both knowledgable and diverse. I am an environmental engineer, working on remediation of hazardous waste sites all over the state, including oil spill sites. Other volunteers include scientists, professors, lawyers, etc., too much knowledge and diversity to mention in this short letter.

In summary, I request and implore you to discard this attempt to revise the 470 fund process, as the bill three years ago already included plenty of compromise. Thank you for your attention to this important matter.

Sincerely,



Eugene A. Levine, P.E.

PO Box 202045  
Anchorage AK 99520  
April 17, 1993

Representative Jackson  
State Capitol  
Juneau AK 99801

Dear Rep. Green,

I remember clearly when I read the morning of March 24<sup>th</sup>, 1989 when I heard on the radio that an oil tanker had hit Dutch Bay and was leaking oil. The accident, the catastrophic event we had all feared when TAPS was built were happening. But industry had betrayed us - they weren't ready. But the state agency we trusted to watch out for us had failed.

All of the reports and assessments afterwards agreed - the public must be actively involved to watch dog our lands, our waters and our oil. Complacency could not be allowed to continue.

The Federal Oil Pollution Act (1990) makes funding available for catastrophic spills only. Other spills can be just as threatening to public health and our waters and lands.

We passed legislation setting up the \$70 fund to make sure that our state government could and will respond to spills (less than

(2)

catastrophic spills) that our state government will make sure nothing is supposed to happen & clean up - that our state government will make sure prevention efforts are happening - that our state government can evaluate a spill's effects and restore habitat - that our state governments will be consistently held accountable by citizen oversight.

Your proposed legislation destroys this system. Destroying what industry agreed to fund and do in return for buying our oil and using our lands and our waters for transporting that oil.

As an elected representative of the people, we expect you to work for us - to protect our lands and our waters - to make industry understand it is our oil and we can make the rules. Our fish, our wildlife, our children need drinkable water for survival.

The Exxon Valdez oil spill clearly showed us that complacency is not the answer - that our state government and industry cannot be trusted to be prepared.

I can only guess from your proposed legislation that you do not care about keeping us safe. Perhaps you were not in Alaska in March 24<sup>th</sup> 1989 when

(2)

so many of us felt betrayed. I would  
wonder that you were instead for stronger  
efforts to protect us and show us  
you learned something from the Exxon  
Valley oil catastrophe

Sincerely,

Cheryl Peris

~~Rep Williams~~

PO Box 302045  
Anchorage AK 99520  
April 17, 1993

Representative Joe Green  
State Capitol  
Juneau AK 99801

Dear Rep. Green,

I remember clearly when I saw the morning of March 24<sup>th</sup>, 1989 when I heard on the radio that an oil tanker had hit Dutch Reef and was leaking oil. The accident, the catastrophic event we had all feared when TAPS was built was happening. But industry had betrayed us - they weren't ready. But the state agency we trusted to watch out for us had failed.

All of the reports and assessments afterwards agreed - the public must be actively involved to watch day one. Cans, our water and our air. Complacency could not be allowed to continue.

The Federal Oil Pollution Act (1990) makes funds available for catastrophic spills only. Other spills can be just be threatening to public health and our water and lands.

We passed legislation setting up the 470 Fund to make sure that our state government could not only respond to small (less than

(2)

catastrophic spills) that our state government will make sure industry is forced to report & cleanup - that our state government will make sure prevention efforts are happening - that our state government can evaluate a spill's effects and restore habitat - that our state governments will be consistently held accountable by citizen oversight.

Your proposed legislation destroys this system. Destroys what industry agreed to fund and do in return for buying our oil and using our lands and our waters for transporting that oil.

As we elect representatives of the people, we expect you to work for us - to protect our lands and our waters - to make industry understand it is our oil and we can make the rules. Our fish, our wildlife, our children and drinkable water for survival.

The Exxon Valley oil spill clearly shows us that complacency is not the answer - that our state government and industry cannot be trusted to be forced.

I can only guess from your proposed legislation that you do not care about keeping us safe. Perhaps you were not in Alaska on August 24<sup>th</sup> 1989 when

(3)

so many of us feel betrayed. I would  
wage that you were instead for stronger  
efforts to protect us and show us  
you learned something from the Exxon  
Valley oil catastrophe

Sincerely,

Cheryl Peris

~~to Rep Williams~~