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

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the oil and hazardous substance release response fund and
2 to its administration; amending the nickel-per-barrel oil conservation surcharge and
3 amending the oil and gas properties production tax to authorize a credit for
4 certain tax payments; amending requirements relating to the revision of state and
5 regional master prevention and contingency plans; and altering requirements
6 applicable to liens for recovery of state expenditures related to oil or hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 29.60.510(b) is amended to read:

10 (b) For each disaster emergency declared by the governor under AS 26.23.020,
11 and subject to agreement with the commissioner of environmental conservation as to
12 the amount of money in the fund that may be used by the department to make grants,
13 the commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF

1 THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
2 unrestricted balance of the fund for grants authorized under this section. If the
3 commissioner and the commissioner of environmental conservation do not agree on the
4 amount of money in the fund that may be used by the department to make grants
5 under AS 29.60.500 - 29.60.599, the governor shall make the determination.

6 * Sec. 2. AS 43.55 is amended by adding a new section to read:

7 Sec. 43.55.022. EXCESS SURCHARGE PAYMENT CREDIT. (a) A
8 producer of oil is entitled to a credit against the tax due under AS 43.55.011 -
9 43.55.150 of an amount equal to the amount determined and reported by the
10 commissioner under AS 43.55.235 for that taxpayer.

11 (b) A taxpayer may apply the credit to which the taxpayer is entitled under (a)
12 of this section only during a tax year in which the credit is calculated and reported
13 under AS 43.55.231(d).

14 * Sec. 3. AS 43.55.220 is repealed and reenacted to read:

15 Sec. 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE. The
16 legislature may appropriate the annual estimated balance of the account maintained
17 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
18 levied under AS 43.55.200 to the oil and hazardous substance release prevention and
19 response fund established by AS 46.08.010.

20 * Sec. 4. AS 43.55 is amended by adding new sections to read:

21 Sec. 43.55.231. ADMINISTRATION OF THE SURCHARGE. (a) Not later
22 than 30 days after the end of each calendar quarter, the commissioner of administration
23 shall determine for that fiscal year, as of the end of that quarter,

24 (1) the unreserved and unobligated balance of the oil and hazardous
25 substance release prevention and response fund established in AS 46.08.010; for
26 purposes of this paragraph, the "unreserved and unobligated balance" means the cash
27 balance of the fund less the sum of

28 (A) reserves for outstanding appropriations from the fund;

29 (B) encumbrances of money in the fund; and

30 (C) other liabilities of the fund;

31 (2) the balance of the account maintained under AS 37.05.142 to

1 account for the proceeds of the surcharge that are deposited into the general fund;

2 (3) the balance of the oil and hazardous substance release mitigation
3 account established by AS 46.08.020(b) that originated from the sources described in
4 AS 46.08.020(a)(2) and that is available for appropriation to the oil and hazardous
5 substance release prevention and response fund established in AS 46.08.010;

6 (4) the total appropriations from the oil and hazardous substance release
7 prevention and response fund established in AS 46.08.010; in calculating total
8 appropriations under this paragraph, the commissioner of administration may not
9 consider money appropriated from the fund for a purpose described in
10 AS 46.08.040(a)(1).

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

13 (1) add the amounts determined under (a)(1) - (3) of this section;

14 (2) determine the difference between the amount determined under (1)
15 of this subsection and the amount determined under (a)(4) of this section; and

16 (3) report the amount determined under (2) of this subsection to the
17 commissioner.

18 (c) In making the determination required by (a) of this section, the
19 commissioner of administration may not consider money described in (a) of this
20 section that is subject to a dedication imposed by law that restricts the use of the
21 money to a specific purpose for which the fund established in AS 46.08.010 may not
22 be lawfully expended.

23 (d) When the commissioner of administration determines that the difference
24 determined under (b)(2) of this section equals or exceeds \$50,000,000, the
25 commissioner of administration shall calculate and report to the commissioner of
26 revenue the amount by which money collected from the surcharge levied and collected
27 under AS 43.55.200 exceeds \$50,000,000.

28 Sec. 43.55.235. CALCULATION OF OVERAGE AND ALLOCATION
29 AMONG TAXPAYERS. When, under AS 43.55.231(d), the commissioner of
30 administration calculates and reports that the amount of money collected from the
31 surcharge levied and collected under AS 43.55.200 exceeded the amount necessary to

1 maintain the calculation made under AS 43.55.231(b) and reported under
2 AS 43.55.231(b)(3) at \$50,000,000, the commissioner of revenue shall

3 (1) calculate, for each taxpayer that is subject to the tax levied and
4 collected under this chapter, the percentage of the payment in excess of \$50,000,000
5 contributed by the taxpayer; the calculation is made by multiplying the amount
6 calculated and reported under AS 43.55.231(d) by the percentage of the total revenue
7 derived from the surcharge levied and collected under AS 43.55.200 during the
8 calendar quarter for which the commissioner of administration issues the report
9 required by AS 43.55.231(d); and

10 (2) report the calculation to the taxpayer.

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

12 Sec. 43.55.241. SURCHARGE SUSPENDED AND REIMPOSED. (a) The
13 surcharge authorized by AS 43.55.200 is not levied during any fiscal year for which

14 (1) the legislature does not, during the regular or a special legislative
15 session preceding the first day of the fiscal year, appropriate at least an amount equal
16 to the amount determined under (b) of this section from the general fund to the oil and
17 hazardous substance release prevention and response fund; or

18 (2) the legislature, during the regular or a special legislative session
19 preceding the first day of the fiscal year, appropriates at least the amount of money
20 equal to the amount determined under (b) of this section from the general fund to the
21 oil and hazardous substance release prevention and response fund and that
22 appropriation is vetoed or reduced by the governor.

23 (b) The amount of money required to be appropriated from the general fund
24 to the oil and hazardous substance release prevention and response fund by (a) of this
25 section is the amount, determined for the last day of the preceding fiscal year, that is
26 the sum of the actual or estimated balance of

27 (1) the account maintained under AS 37.05.142 to account for all
28 proceeds of the surcharge that are deposited into the general fund; and

29 (2) the portion of the balance of the oil and hazardous substance release
30 mitigation account established by AS 46.08.020(b) that originated from sources
31 described in AS 46.08.020(a)(2) that represents amounts recovered for expenditures

1 originally made from

2 (A) the oil and hazardous substance release prevention and
3 response fund; or

4 (B) the former oil and hazardous substance release response
5 account if the expenditure was made for a release or threatened release of oil
6 or a hazardous substance before the effective date of this Act.

7 (c) If the commissioner of administration reports that the difference determined
8 under AS 43.55.231(b) is less than \$50,000,000, the commissioner of revenue shall
9 require imposition and collection of the surcharge authorized under AS 43.55.200.
10 Reimposition of the surcharge begins on the first day of the fiscal year next following
11 the commissioner's receipt of the commissioner of administration's report under
12 AS 43.55.231(b). Before the first day of reimposition of the surcharge authorized by
13 this subsection, the commissioner shall make a reasonable effort to notify all persons
14 who are known to the department to be required to pay the surcharge under
15 AS 43.55.200 that the surcharge will be reimposed.

16 * Sec. 6. AS 46.04.200(a) is amended to read:

17 (a) The department shall

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

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

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

26 * Sec. 7. AS 46.04.200(c) is amended to read:

27 (c) In

28 (1) preparing [AND ANNUALLY REVIEWING] the initial state
29 master plan, the commissioner shall

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

1 (B) [(2)] submit the draft plan to the public for review and
2 comment;

3 (C) [(3)] submit the plan to the legislature for review, not later
4 than the 10th day following the convening of a [EACH] regular session [, THE
5 PLAN AND ANY ANNUAL REVISION OF THE PLAN];

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

10 (E) [(5)] submit the plan [AND ANY ANNUAL REVISION]
11 to the Alaska State Emergency Response Commission for its review and
12 approval under AS 46.13.045; and

13 (2) annually reviewing the state master plan, the commissioner shall

14 (A) consult with municipal and community officials, and
15 with representatives of affected regional organizations; and

16 (B) require or schedule unannounced oil spill drills to test
17 the sufficiency of an oil discharge prevention and contingency plan
18 approved under AS 46.04.030 or of the cleanup plans of a party identified
19 under (b)(2) of this section.

20 * Sec. 8. AS 46.04.200 is amended by adding a new subsection to read:

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

23 (1) the draft plan to the

24 (A) public for review and comment; and

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

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

29 * Sec. 9. AS 46.04.210(a) is amended to read:

30 (a) For any region of the state, the boundaries of which are determined by the
31 commissioner by regulation, in which the department is required to review and approve

1 an oil discharge prevention and contingency plan submitted by a person under
2 AS 46.04.030, the department shall

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

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

7 (3) revise the regional master oil and hazardous substance
8 discharge prevention and contingency plan; the commissioner shall revise a
9 regional master plan whenever, in the judgment of the commissioner, revision is
10 necessary.

11 * Sec. 10. AS 46.04.210(b) is amended to read:

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

14 * Sec. 11. AS 46.08.010(a) is amended to read:

15 (a) There is established in the state general fund the oil and hazardous
16 substance release prevention and response fund. The fund shall be administered by
17 the commissioner.

18 * Sec. 12. AS 46.08.010(b) is amended to read:

19 (b) Money from an appropriation made to the fund remaining in the fund at
20 the end of a fiscal year does not lapse and remains available for expenditure in
21 successive fiscal years.

22 * Sec. 13. AS 46.08.020 is amended to read:

23 Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may
24 appropriate from the following sources to the fund:

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

27 (2) money recovered or otherwise received from parties responsible for
28 the containment and cleanup of oil or a hazardous substance at a specific site for costs
29 incurred by the state, a municipality, or a village, but excluding

30 (A) money [FUNDS] from performance bonds and other forms
31 of financial responsibility held in escrow pending satisfactory performance of

1 a privately financed response action; and

2 (B) money recovered or otherwise received to the extent that
3 the money recovered or otherwise received had not been paid out of the
4 fund:

5 (3) fines, penalties, or damages recovered [UNDER AS 46.08.005 -
6 46.08.080 OR OTHER LAW FOR COSTS INCURRED] by the state as a result of the
7 release or threatened release of oil or a hazardous substance, but excluding money
8 described in (2) of this subsection:

9 (4) interest accrued on

10 (A) the balance of the fund:

11 (B) the account maintained under AS 37.05.142 for deposits
12 into the general fund from the proceeds of the surcharge levied under
13 AS 43.55.200; and

14 (C) the oil and hazardous substance release mitigation
15 account described in (b) of this section:

16 (5) fees for services collected under AS 44.46.025(a)(4) and (5):

17 (6) fees for services collected under AS 44.46.025(a)(8), to the extent
18 those fees involve certification of laboratories conducting environmental analyses
19 of oil or hazardous substances or other related analyses required by the
20 department; and

21 (7) fees collected by the department for the registration of oil spill
22 response action contractors under AS 46.04.035.

23 (b) Money received by the state under (a)(2) - (7) [(a)(2) AND (a)(3)] of this
24 section shall be deposited in the general fund and credited to a special account called
25 the "oil and hazardous substance release mitigation account." The legislature may
26 annually appropriate to the fund from this account a sum equal to the amount received
27 under (a)(2) - (7) [(a)(2) AND (a)(3)] of this section during the calendar year
28 preceding the legislative session in which the appropriations are to be made.

29 * Sec. 14. AS 46.08.050(b) is amended to read:

30 (b) A [THE] department that is appropriated or allocated money from the
31 fund, either directly or through a reimbursable service agreement with the

1 department, shall develop procedures governing the expenditure of, and accounting
2 for, money it expends [EXPENDED] from the fund. The department may not
3 transfer or pay money to another state agency for the agency's activities under
4 AS 46.08.040 unless the state agency provides to the department the information
5 necessary to complete the report required by AS 46.08.060 [, AND MAY NOT
6 DELAY IMPLEMENTATION OF THIS CHAPTER PENDING THE EFFECTIVE
7 DATE OF THE PROCEDURES].

8 * Sec. 15. AS 46.08.060(a) is amended to read:

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

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

14 (2) the amount and source of money received and money recovered by
15 or on behalf of the department during the preceding fiscal year under

16 (A) AS 46.04.010 (reimbursement for expenses in cleaning
17 up or containing a discharge of oil);

18 (B) AS 46.08.020(a)(2) (money recovered from parties
19 responsible for oil or hazardous substance containment or cleanup); and

20 (C) AS 46.08.020(a)(3) (recovery of fines, penalties, and
21 damages) [AS SPECIFIED IN AS 46.08.020];

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

24 (4) [A DETAILED SUMMARY OF DEPARTMENT ACTIVITIES IN
25 RESPONSES FUNDED BY THE FUND DURING THE PRECEDING FISCAL
26 YEAR, INCLUDING RESPONSE DESCRIPTIONS AND STATEMENTS
27 OUTLINING THE NATURE OF THE THREAT; IN THIS PARAGRAPH,
28 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
29 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
30 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
31 OF \$10,000; AND

1 (5) the projected cost to the department for the next fiscal year of
2 monitoring, operating, and maintaining sites where response [HAS BEEN
3 COMPLETED OR] is expected to be continued during the fiscal year, to the extent
4 the costs of monitoring, operating, and maintaining these sites would be paid for
5 from the fund.

6 * Sec. 16. AS 46.08.060(b) is amended to read:

7 (b) As part of the department's on-going identification efforts associated with
8 oil spill, [OR] hazardous substance release, or waste sites, the commissioner shall
9 include in the report under this section

10 (1) the number [A SUMMARY] of [THE] sites identified by the
11 department that are included in the department's contaminated sites data base,
12 whether the site is active or closed; and

13 (2) a prioritized listing of those sites, both statewide and by
14 community, based on their [THE] immediate and long-term threats to the public
15 health or welfare or to the environment [POSED BY THESE SITES; AND

16 (3) THE APPROPRIATE ACTIONS NEEDED TO ABATE THESE
17 THREATS, AND THEIR ESTIMATED COST].

18 * Sec. 17. AS 46.08.070 is amended by adding a new subsection to read:

19 (d) The department shall adopt regulations to implement the requirements of
20 (a) and (b) of this section.

21 * Sec. 18. AS 46.08.075(a) is amended to read:

22 (a) The state has a lien for expenditures by the state from the oil and
23 hazardous substance release prevention and response fund, or from any other state
24 fund, for the costs of response, containment, removal, or remedial action resulting from
25 an oil or hazardous substance release [SPILL], or, with respect to response costs, for
26 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
27 of oil or a hazardous substance, against all property owned by a person who is
28 determined by the commissioner to be liable for the expenditures under this chapter,
29 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
30 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
31 expenditures. The state may file an action in a court of competent jurisdiction in order

1 to foreclose on the lien.

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

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

10 * Sec. 20. AS 43.55.210, 43.55.230, 43.55.240; and sec. 3, ch. 112, SLA 1989 are
11 repealed.

12 * Sec. 21. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the
13 following, the revisor of statutes shall delete references to "oil and hazardous substance release
14 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
15 release prevention and response fund": AS 26.23.020(g)(11); AS 29.60.510(a),
16 29.60.560(e)(1), 29.60.599(4); AS 37.14.410(b)(1); AS 46.08.900(5).

17 * Sec. 22. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
18 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
19 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
20 reference to which is repealed by sec. 1 of this Act, is not an expenditure.

21 * Sec. 23. APPLICATION OF AS 43.55.241. (a) AS 43.55.241, added by sec. 5 of this
22 Act, does not apply to prevent the levy and collection of the surcharge imposed by
23 AS 43.55.200 until the first day of the fiscal year next following the day on which the balance
24 of the oil and hazardous substance release response fund first exceeds \$50,000,000.

25 (b) The commissioner of administration shall certify to the commissioner of
26 environmental conservation, the commissioner of revenue, the revisor of statutes, and the
27 division of legislative finance the date on which the balance of the oil and hazardous
28 substance release response fund first exceeds \$50,000,000.

29 * Sec. 24. This Act takes effect July 1, 1994.



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3715

M E M O R A N D U M

TO: Members of the House Resources Committee

FROM: Rep. Bill Williams, Chairman *BKW*

DATE: Feb. 23, 1994

RE: Proposed committee substitute for House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund (Work Draft Number 8-LS0676\Y)

As you will recall, our committee has met three times (last session and during the interim) and has taken many hours of testimony on House Bill 238. The Senate Resources Committee has also held a number of hearings on a similar measure, Senate Bill 215. Many draft versions of these two controversial bills have been written and circulated.

While I believe that there are indeed some concerns regarding the Oil and Hazardous Substance Release Response Fund ("470 Fund") which ought to be addressed, I am concerned that the various versions presented to date go beyond "fixing what is broken." These proposals may even further confuse and complicate the issues. Any erosion of Alaska's capability to address the risks of oil and hazardous substance spills not only endangers the environment, but also undermines public faith in government and relations between the public and the oil industry. Because of those concerns, I am proposing the attached draft committee substitute for the committee's consideration.

In proposing revisions to the 470 Fund I have tried to keep some general concepts in mind --- Alaska's statutes need to provide for a fair business atmosphere for the oil industry while also providing for adequate spill prevention, preparedness, and response. "Doing it right," is vital for ensuring the peace of mind of Alaskans, and securing the confidence, trust, and respect of the rest of the nation as we look forward to further oil development in Alaska in the future.

More specifically, the attached draft version of HB 238 (work draft number 8-LS0676\Y) is aimed at fulfilling the following goals:

- * Keep it as simple as possible.
- * Fix the "accounting" - The formula in current law for imposition and suspension of the nickel-a-barrel surcharge is confusing and misleading.
- * Quickly accumulate, and then maintain, the \$50 million spill reserve savings account.
- * Ensure continuation of adequate funding for Alaska's prevention, preparedness, and response programs.
- * Provide for a sound process for appropriation/ spending of funds , and flexibility to accommodate changing circumstances.
- * Provide equity for the crude oil industry, and reduce their costs when feasible

I am optimistic that the attached draft meets those goals without getting into other areas that are not in need of revision. I believe that the provisions in this draft can save the oil industry many millions of dollars while also protecting and maintaining both our "ounce of prevention" (prevention, preparedness, and response programs) AND our "pound of cure" (spill reserve savings account).

Since this draft differs significantly from previous versions of both HB 238 and SB 215, I wanted to circulate it in advance of a hearing for the review and consideration of the committee, industry, and the public. I plan to schedule a House Resources Committee hearing on HB 238 in the near future, and hope that this draft will be useful in our deliberations.

BRIEF EXPLANATION OF DRAFT VERSION 8-LS0675\Y OF CS HB 238 (RES)

By Rep. Bill Williams, Chairman
House Resources Committee

The formula for accumulating and maintaining the reserve is revised to work the way most of public has believed it was intended to work all along: it accumulates to \$50 million (by the second half of FY 95) and is then maintained at that level.

The single fund approach is maintained rather than splitting the "470 Fund" into two funds.

Although the nickel-per-barrel surcharge is kept intact (no "splitting of the nickel"), a significant portion of that surcharge is effectively "refunded" to the oil industry at the end of each year in the form of a tax credit. The total amount credited back to the industry will be the amount in excess of that needed to maintain the spill reserve at \$50 million, and fund the prevention, preparedness, and response programs at levels determined by the legislature through the appropriation process. The credit will be apportioned among those who have paid the surcharge, proportional to the amount each has paid. (Thus, unless a situation arises when funding above current levels is necessary, this provides a savings to industry approximately equivalent to reducing the nickel-per-barrel surcharge to less than 3 cents-per-barrel).

Provision is made for returning to the fund any costs incurred from the fund which are later recovered. This allows more of the "surcharge nickels" to be returned to industry.

The combination of a continued surcharge with the annual credit avoids having to impose and suspend the surcharge repeatedly, keeps the funding mechanism in place in case the full "nickel" is needed (for example due to a large spill), provides for enough flexibility among various uses of the money to meet changing circumstances, and allows for the savings to be returned to the oil industry.

History and logic behind drafting new proposal

Believed some changes to 470 Fund probably needed - primarily the formula for how the \$50 million fund was to fill and be maintained.

Watched progress and revisions in Senate -- bill got progressively more complex, controversial, and went far off the track of fixing what is really broken.

As coastal legislator, concerned about impacts of the underfunding of program side of 470 Fund.

Sought "win-win" approach that will save considerable money for oil industry without risking harm to critical prevention, preparedness and response programs, or harm to public image of Alaska and our oil industry.

Wanted to put version in front of House Resources that was more simple, straightforward, corrected main problems, and left the rest of the fund and programs alone.

At time decided to draft own version, DEC had just proposed their "whole nickel" approach. Seemed like best starting point for ours. Began by working from that, called in Sandor and his staff for technical assistance.

GOAL:

Use this simple version as the starting point for committee work. All discussion will be based on WHAT IS BROKEN, broken either with current law, or shortcomings of this draft version. If something can be clearly shown as a problem that must be addressed, then we will look at how to best address it. Don't want to just start amending current law willy-nilly at whim of industry, government, or public. (Could even mention that you've seen the draft audit of the 470 fund, and it does not reveal abuse of the fund) Amending law because someone guesses that something COULD be a problem is not wise.

POINTS:

While the Williams version saves the oil industry over \$100 million dollars over the next five years, it has a ZERO D.E.C. FISCAL NOTE. The Senate version has a \$21.5 MILLION DOLLAR D.E.C. fiscal note over the next five years.

Bill is GOOD for oil industry -- saves it millions of dollars, AND preserves better comfort level of public and better public relations and image for industry.

All oil producing states have similar surcharges - most are higher than nickel-per-barrel. Certainly not unreasonable that the state that has produced the biggest and most damaging spill should maintain responsible prevention and preparedness programs funded by a reasonable surcharge.

Good politically for legislature and administration -- fix what is broken without public outcry.

DEBATE OVER APPROACH AND DETAILS NOW BELONGS IN THE PUBLIC DELIBERATION PROCESS OF THE FULL HOUSE RESOURCES COMMITTEE.

HOUSE RESOURCES COMMITTEE MEETING -- MARCH 2, 1994
COMMENTS OF CHAIRMAN, REP. BILL WILLIAMS

Today, we will be taking up House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund, better known as the 470 Fund.

This committee held two hearings on this bill last session, and a third hearing during the interim in November. Today is our fourth hearing on the bill, and our first this session.

The Senate has introduced and held a number of hearings on a similar measure, Senate Bill 215, which is also aimed at revisions to the 470 fund. Many draft versions of both bills have been proposed. Throughout this process, the public has actively expressed serious concerns about many of the provisions of the various versions. Many hours of testimony have been taken from municipal officials, fishermen, business people, the oil industry, and other Alaskans.

As chairman of the House Committee which currently has possession of House Bill 238, I have followed the various mutations of this legislation and have thought about how this committee might best proceed with it.

I do believe that there are problems with the 470 fund that deserve legislative action. But I am concerned that the changes that really ought to be made, have become entangled in other versions with a lot of other proposed changes that go beyond "fixing what is broken."

In seeking an approach to bring before the committee, I tried to focus on the question of "what is not working well?", and THEN, on finding the simplest and fairest way to fix those things.

The product of that effort is draft version "Y." I distributed this version one week ago to this committee, the oil industry, and the public so that everyone would have ample opportunity to look it over before I brought it before the committee for consideration.

Today, I AM bringing that draft before us.

First, this draft recognizes that the accounting mechanisms for the 470 fund, in current law, need revision. We NEED that fifty-million-dollar spill response fund to fill up quickly, and stay full. That savings account enables us to respond to the many small spills that occur every year in this state, and will enable us to respond, IF, God forbid, we are faced with another big spill in the future.

This bill also recognizes that the prevention and preparedness programs are AT LEAST as important to the well-being of this state, as the ability to respond and clean up if a spill does occur.

This bill acknowledges that the legislature, as the entity empowered by our state laws and constitution to write the state's budget, and make appropriations of state revenues, is the APPROPRIATE entity to decide what programs should be funded and at what levels.

This version of the bill does NOT provide for the constant starting and stopping of the nickel surcharge when the balance of the fund alternately reaches, and then drops below, the \$50 million dollar level.

INSTEAD, in rough general terms, what is proposed in draft version "Y" is this:

The nickel surcharge continues to be collected.

At the end of each tax year, a calculation will be made to determine what percentage of the total nickels collected were actually needed to accomplish the two main goals: 1) Keeping the response fund at the full 50-million-dollar level, and 2) Funding the prevention and preparedness programs at the legislatively appropriated level.

The amount of nickels collected above and beyond the amount required to cover those expenses will then be RETURNED to the oil industry in the form of a tax credit, proportional to the amount of surcharge paid by each company.

Several other "fine-tuning" provisions are also included in the bill. Among those are several items which I modeled after the statutory changes recommended in a draft legislative audit of the 470 fund, which I had the opportunity to preview.

I believe that the approach in draft version "Y" is a sound one. It is fair, uniform, and predictable for industry. While passage of this bill will save the oil industry SUBSTANTIAL amounts of money, it also leaves state revenue spending decisions where they belong, in the hands of the legislative and the administrative branches of government.

And that enables government to fulfill our responsibility to provide for the things that are absolutely basic to any oil-producing state: adequate programs for spill prevention, preparedness, and response. While I am not married to the specifics in this draft, I believe this version of the bill provides us with a win-win approach, for the state and the oil industry.

I would like to point out that there is further information in your committee packets, including a financial analysis of the bill, and a sectional analysis. There are also two draft amendments, Y-1 and Y-2, which I have prepared for consideration to address concerns which have been raised by the oil industry.

DIVISION OF LEGAL SERVICES

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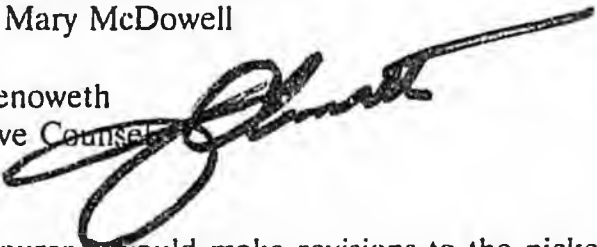
MEMORANDUM

March 1, 1994

SUBJECT: Draft CSHB 238 (Resources) -- Sectional analysis (Work Order No. 8-LS0676\Y)

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

FROM: Jack Chenoweth
Legislative Counsel



The draft of CSHB 238 (Resources) would make revisions to the nickel-per-barrel oil conservation surcharge to the severance tax and make a series of changes relating, generally, to programs and statutes that the surcharge supports.

I

Amendments related to the levy and collection of the nickel-per-barrel oil conservation surcharge:

Bill section 3: The change made by this section conforms the language of accounting for the surcharge's proceeds to language favored by the administration.

Bill section 4: Proposed AS 43.55.231 added in this bill section revises the manner of computation and reporting of the surcharge, shifting from a cumulative to a quarterly determination; amends the factors that bear on ascertaining whether amounts recovered from levy and collection of the surcharge meet or exceed the target \$50,000,000 statutory balance; and changes the description of the mechanics by which the commissioner of administration is to make and report the quarterly calculation. Proposed AS 43.55.235 sets out a mechanism by which, when the commissioner of administration reports an overage of payments above the \$50,000,000 target, the commissioner of revenue may determine, allocate, and report the overage on a per-taxpayer basis.

Representative Bill Williams

March 1, 1994

Page 2

Amounts allocated and reported as "overages" of surcharge payments under AS 43.55.235 may, under the language added by **bill section 2**, be claimed as credits against the severance tax.

Bill section 5 revises the conditions under which the severance tax surcharge may be suspended or reimposed, amending the factors that trigger levy and collection of the surcharge as it supports the oil and hazardous substance release prevention and response fund ("470 fund").

Existing oil conservation surcharge provisions of AS 43.55 that conflict with the changes made in the foregoing sections are repealed by **bill section 20**.

Bill section 22: The provision clarifies 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 the reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.)

Bill section 23 revises and extends a current provision to assure that levy and collection of the surcharge does not stop until the first \$50,000,000 is placed into the oil and hazardous substance release prevention and response fund.

II

Amendments generally related to the oil and hazardous substance release response ("470") fund, AS 46.08:

The change by **bill section 11** renames the original "470 Fund" as the "oil and hazardous substance release prevention and response fund".

Bill section 12: Consistent with the amendments to the surcharge imposed under AS 43.55, the amendment made in this section emphasizes that the fund does not lapse but remains available from one fiscal year to another.

Bill section 13 revises and expands the number of sources from which the fund may be financially supported.

Bill section 14: The language added to AS 46.08.050(b) imposes, as additional limitations on agencies seeking to tap the fund, the requirements applicable to accounting for the money received and expended, and the provision of information to the Department of Environmental Conservation to complete the preparation of the department's annual report addressing the use of the fund in the previous year.

Bill sections 15 and 16 modify the content of the Department of Environmental Conservation's annual report concerning the fund, omitting some information now required and adding other, more relevant information.

Bill section 17 permits the Department of Environmental Conservation to adopt regulations relating to the reimbursement or recovery of money expended from the fund for containment and cleanup.

Bill section 18 incorporates a reference to the fund as renamed and makes corrective or drafting changes.

Bill section 19 makes corrective or drafting changes.

With reference to grants that may be made available by the commissioner of community and regional affairs from the fund balance, **bill section 1** repeals the sole statutory reference to "spill reserve."

The bill renames the "oil and hazardous substance release response fund" as the "oil and hazardous substance release **prevention and** response fund." Rather than set out that change in each other place where it needs to be made in the body of statute law, **bill section 21** directs the revisor of statutes to make the change editorially in places where that change is appropriate.

III

Changes relating to other facets of related program operations, AS 46.04:

Bill section 6, amending AS 46.04.200(a), revises procedural requirements imposed on the Department of Environmental Conservation as they relate to preparation and revision of the statewide discharge prevention and contingency plan.

Bill section 7, amending AS 46.04.200(c), alters public comment and legislative oversight provisions applicable to that state master plan prepared in initial draft form, the content of it, and the subsequent revisions of it.

Bill section 8 carries forward from current law the requirements applicable to opportunity for public comment and legislative oversight provisions applicable to revisions of that state master plan.

Bill sections 9 and 10 make comparable changes applicable to preparation of regional discharge prevention and contingency plans.

Representative Bill Williams
March 1, 1994
Page 4

Bill section 24 gives the measure a July 1, 1994, effective date.

JBC:pl
94-170.plm

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

Phone: (907) 465-5050
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MARCH 2, 1994 HOUSE RESOURCE COMMITTEE HEARING ON CS HB 238
RELATING TO THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
STATEMENT - JOHN SANDOR, COMMISSIONER, DEPT. OF ENVIRON. CONS.

Mr. Chairman, thank you for the opportunity to testify on this proposed legislation. The Department appreciates your efforts to examine the Oil and Hazardous Substance Release Response Fund and determining what opportunities there are to amend and improve the process by which this fund is managed and administered. We appreciate your efforts to develop a consensus approach which is fair to industry, yet also assures a strong prevention program to reduce the risks of oil and hazardous substance spills, and a strong response program which will protect the environment, people and communities from the adverse impacts of such spills.

I want to emphasize the Administration's very positive record of improved management of the Response Fund. In 1991, I ordered an Internal Audit of this fund, and for the past three years have implemented a number of improvements in its management and administration. As a result we have been able to increase the fund balance of 6 million dollars in 1991 to 12 million in 1992, 24 million in 1993 and a projected balance of 37 million at the end of 1994. We are well on our way to achieving our objective of a 50 million dollar fund balance. A report of the Legislative Budget and Audit review of the response fund will soon be issued.

Mr. Chairman, I want to also emphasize the Administration's strong commitment to environmental protection. When Governor Hickel was Secretary of Interior, and the Santa Barbara off-shore spill occurred, he instituted very dramatic changes in governmental oversight to not only clean-up the spill, but to put in place, prevention and response requirements that were tough but reasonable. His liability and financial responsibility requirements prompted some from the oil industry to seek his dismissal. He did not waiver.

We cannot afford to be less vigilant. We cannot afford to forget the lessons of the Exxon-Valdez Oil Spill. We cannot afford to make further reductions in our oversight, prevention and response capabilities. We cannot afford to be satisfied with half-time environmental coverage on the North Slope. We cannot afford to diminish our technical staffs even as we are reviewing the audits of an aging pipeline. At the same time, we do want to continue to improve the management of the Response Fund, and are carefully analyzing various options to achieving that objective.

We continue to support the proposed improvements in the operation and management of the response fund that we presented to the Senate and House Natural Resource Committees. Although several amendments were adopted at the February 16, 1994 Senate Resource Committee Hearing which improved the proposed legislation, the Administration's proposal that the nickel be split on a 3 cent prevention/operations and 2 cent response split was not adopted at that time.

Mr. Chairman, a 2 1/2 Cent Prevention/Operations split is unwise from several standpoints: First, this level of 470 funding would not support the existing prevention/operations program in the future, and would require authorization of appropriated General Funds or new fee programs of \$550.0 in FY 95 and greater amounts in later years. Second, we have had a series of spills and incidents in the last 60 days which clearly show weaknesses in the State's and industry's spill prevention and response programs. Third, this level of funding would not assure adequate support for the combined Department of Military and Veterans Affairs (DMVA), Division of Emergency Services and DEC's emergency programs stemming from natural disasters.

For these and other reasons, the Administration does not support a 2 1/2 cent split of the nickel. The Administration is clearly on record favoring a 3 cent prevention/operations; 2 cent catastrophic fund split. If that is not acceptable, the Administration would favor utilizing a whole nickel approach to make further improvements in the fund.

Accompanying this statement is a Financial Comparison of Response Fund Restructuring Options. Mr. Bob Poe, Response Fund Manager, can provide a detailed briefing of this analysis. DEC's Fiscal Note for CS HB238 is 0.

Mr. Chairman, I made reference to a number of wake-up calls the last sixty days which should remind us of our vulnerability to accidents and natural disasters which will lead to oil and hazardous substance spills. These are some of the incidents which have recently occurred: On December 27-28, 1993 over 15,000 gallons of crude oil were spilled from a storage tank into secondary containment at the Drift River Terminal; on the morning of December 30, 1993 a break in a 6" pipeline in ARCO's North Slope operations was discovered by a workman who also discovered the automatic alarm and shut-off valve systems had been deactivated; On January 2nd, 1994, the Overseas Ohio tanker vessel hit an iceberg in Prince William Sound just 25 miles south of Valdez; And on February 17, 1994, the Overseas Washington tanker lost full power during its approach to the berth in Cook Inlet. The recent Los Angeles Earthquake which resulted in a major crude oil pipeline spill as well as hazardous substance releases, reminds us that we must also be prepared for natural disasters.

Even this past week-end, Saturday, February 26, 1994 a 500 gallon oil spill was reported at Pump Station 10 on the TAPS, when a residual oil tank overflowed - apparently as a result of an alarm system failure. Yesterday, the spill estimate was increased to from 2500 to 3000 gallons.

The Department believes improved prevention and preparedness programs will reduce the number of oil and hazardous substance spills. Because we believe that the State and industry can and should work together in this effort, I have written to the Presidents of ARCO Alaska, Inc., BP Exploration (Alaska) Inc. and the Alyeska Pipeline Service Company suggesting we jointly evaluate and strengthen our spill prevention and response programs and develop a strategy that will result in improvements in these programs.

The State of Alaska must have strong and well-coordinated prevention, response, clean-up and restoration programs to deal with such incidents. The DMVA, DEC and other units of State government are working together to achieve that objective.

Mr. Chairman, the Administration is prepared to work in partnership with the Alaska Legislature to not only improve the management of the response fund, but to also strengthen the State's prevention and response capability.

Thank you for the opportunity to participate in this hearing.

FILE:470FUND4

DRAFT AMENDMENTS FOR DRAFT VERSION "Y" OFCSHB238(RES)

- Y.1 Clarifies/emphasizes that all expenditures from the Fund must be for the purposes established in AS 46.08.040 (existing statute headed, "Purposes of the fund.")
- Y.2 Tightens up the "blackmail clause" to suspend surcharge if the legislature fails to appropriate it into the fund, EVEN if the balance of the reserve has not yet reached the \$50 million level.
- Y.4 Changes the credit to which the surcharge payor is entitled to a credit against the surcharge itself, rather than a credit against other tax liabilities. Thus, payment of any "nickels" in excess of those needed to maintain the reserve at \$50 million, and fund program appropriations, will be returned to the oil industry as a refund of "nickels."
- Y.6 Clarifies the calculation of the tax credit.

AMENDMENT # Y.1

OFFERED IN THE HOUSE

TO: CSHL 238(RES) "Y" Version

Page 3, line 7, after "AS 46.08.010":

Insert "for purposes for which use of money in the fund is authorized by
AS 46.08.040"

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

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

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 — 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

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

(6) prepare, review, and revise:

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

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

AMENDMENT

Y.2

OFFERED IN THE HOUSE
TO: CSHB 238(RES)

Page 5, line 7:

Delete "If"

Insert "Except during a fiscal year when levy and collection of the surcharge is suspended under (a) of this section, if"

Page 11, lines 21 - 28:

Delete all material.

Renumber the following bill section accordingly.

A M E N D M E N T

Y.4

OFFERED IN THE HOUSE

TO: CSHB 238(RES)

Page 1, lines 2 - 4:

Delete "and amending the oil and gas properties production tax to authorize a credit for certain tax payments"

Page 2, lines 6 - 13:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 29, after "TAXPAYERS.":

Insert "(a)"

Page 4, following line 10:

Insert new subsections to read:

"(b) A producer of oil is entitled to a credit against the surcharge levied and collected under AS 43.55.200 of an amount equal to the amount determined and reported by the commissioner under (a) of this section for that taxpayer.

(c) A taxpayer may apply the credit to which the taxpayer is entitled under (b) of this section only during the state fiscal year in which the credit is calculated and reported under (a) of this section. The Department of Administration may, under AS 43.10.210, pay to the taxpayer the amount of an overpayment of surcharge if the amount of the credit exceeds the amount of the surcharge due."

Page 11, line 21:

Delete "sec. 5"

Insert "sec. 4"

A M E N D M E N T

Y.6

OFFERED IN THE HOUSE

TO: CSHB 238(RES)

Page 4, lines 6 - 9:

Delete "calculated and reported under AS 43.55.231(d) by the percentage of the total revenue derived from the surcharge levied and collected under AS 43.55.200 during the calendar quarter for which the commissioner of administration issues the report required by AS 43.55.231(d);"

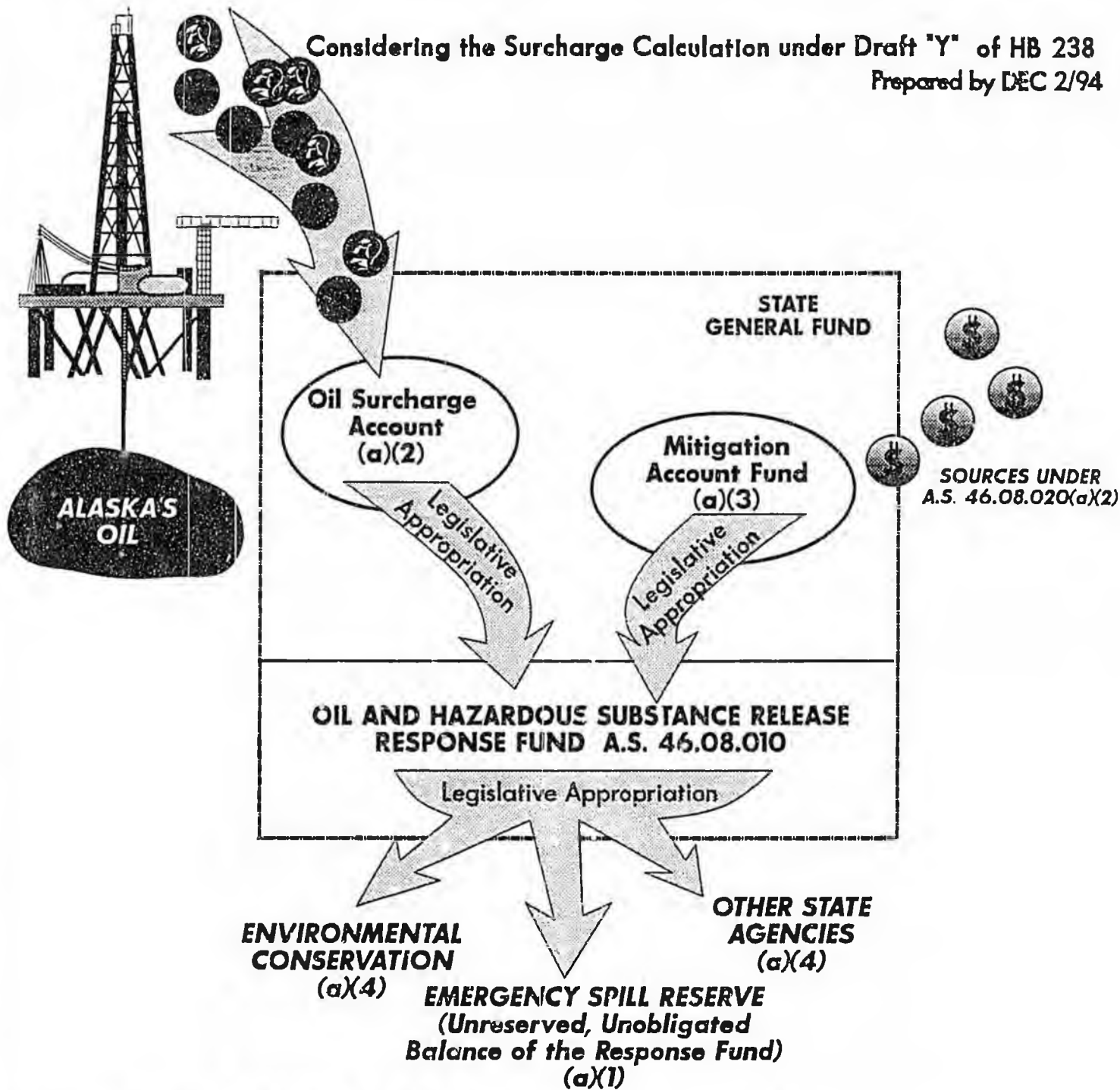
Insert "paid by the taxpayer during the preceding calendar quarter by a percentage, the numerator of which is the overage determined under AS 43.55.231(d) and the denominator of which is the total amount of surcharge paid by all taxpayers during the same calendar quarter;"

Response Fund Restructuring Options
Detailed Financial Comparison

	Option 1 No Change	Option 2 40/60 Split Nickel	Option 3 50/50 Split Nickel	Option 4 60/40 Split Nickel	Option 5 Williams CS Single Fund	Option 6 DEC Proposal Single Fund
Fiscal Year 1995						
Initial Benefit to Surcharge Payee	\$0.0	\$39.4	\$33.1	\$26.8	\$64.7	\$64.7
Beginning Balance of Response Fund	\$63.2				\$63.2	\$63.2
Beginning Balance of Spill Account		\$37.9	\$31.6	\$25.3		
Beginning Balance of Abatement Account		\$25.3	\$31.6	\$37.9		
Ending Balance of Response Fund	\$48.9				\$48.9	\$48.9
Ending Balance of Spill Account		\$37.9	\$31.6	\$24.5		
Ending Balance of Abatement Account		\$11.0	\$17.3	\$24.4		
Total Cost to Surcharge Payee	\$26.2	(\$13.5)	(\$7.2)	(\$0.9)	(\$50.4)	(\$45.1)
Suspension and Reimposition Calculation	NO	YES	NO	NO	YES	YES
Fiscal Year 1996						
Beginning Balance of Response Fund	\$75.1				\$63.5	\$68.8
Beginning Balance of Spill Account		\$53.9	\$45.0	\$35.3		
Beginning Balance of Abatement Account		\$21.5	\$30.4	\$40.1		
Ending Balance of Response Fund	\$60.7				\$48.8	\$54.1
Ending Balance of Spill Account		\$53.9	\$45.0	\$34.5		
Ending Balance of Abatement Account		\$6.8	\$15.7	\$26.2		
Total Cost to Surcharge Payee	\$25.3	\$9.8	\$18.7	\$25.0	\$14.5	\$12.4
Suspension and Reimposition Calculation	NO	YES	YES	NO	YES	YES
Fiscal Year 1997						
Beginning Balance of Response Fund	\$86.0				\$63.9	\$67.1
Beginning Balance of Spill Account		\$54.2	\$51.6	\$44.9		
Beginning Balance of Abatement Account		\$16.9	\$28.3	\$41.4		
Ending Balance of Response Fund	\$71.2				\$48.8	\$52.0
Ending Balance of Spill Account		\$54.2	\$51.6	\$44.1		
Ending Balance of Abatement Account		\$1.8	\$13.2	\$27.1		
Total Cost to Surcharge Payee	\$24.8	\$9.6	\$12.1	\$22.0	\$14.9	\$12.1
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES
Fiscal Year 1998						
Beginning Balance of Response Fund	\$96.0				\$64.3	\$64.7
Beginning Balance of Spill Account		\$54.5	\$51.9	\$51.8		
Beginning Balance of Abatement Account		\$11.7	\$25.6	\$42.0		
Ending Balance of Response Fund	\$80.7				\$48.8	\$49.1
Ending Balance of Spill Account		\$54.5	\$51.9	\$51.0		
Ending Balance of Abatement Account		(\$3.9)	\$10.1	\$27.2		
Total Cost to Surcharge Payee	\$23.8	\$9.2	\$11.6	\$14.0	\$15.4	\$19.0
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES

Response Fund Restructuring Options
Detailed Financial Comparison

	Option 1 No Change	Option 2 40/60 Split Nickel	Option 3 50/50 Split Nickel	Option 4 60/40 Split Nickel	Option 5 Williams CS Single Fund	Option 6 DEC Proposal Single Fund
Fiscal Year 1999						
Beginning Balance of Response Fund	\$104.5				\$64.8	\$68.7
Beginning Balance of Spill Account		\$54.8	\$52.2	\$51.3		
Beginning Balance of Abatement Account		\$5.6	\$22.0	\$41.5		
Ending Balance of Response Fund	\$88.9				\$48.8	13.752.7
Ending Balance of Spill Account		\$54.8	\$52.2	\$50.5		
Ending Balance of Abatement Account		(\$10.4)	\$6.0	\$26.3		
Total Cost to Surcharge Payee	\$22.4	\$8.7	\$10.9	\$13.1	\$15.8	\$13.4
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES
Total Net Cost - 5 Years (no discount)	\$122.5	\$23.8	\$46.1	\$73.2	\$10.2	\$11.8
Total Net Cost After Tax Effect (40% tax)	\$73.5	\$14.3	\$27.7	\$43.9	\$6.1	\$7.1



SURCHARGE CALCULATION (A.S. 43.55.231)

- (a)(1) *Unreserved, Unobligated Balance of the Response Fund*
- + (a)(2) *Balance of the Surcharge Account*
- + (a)(3) *Balance of the Mitigation Account*
- TOTAL**
- (a)(4) *Appropriations to State Agencies*

▪ **CALCULATION DETERMINATOR** ← **WHEN THE CALCULATION DETERMINATOR EQUALS OR EXCEEDS \$50.0 million, A TAX CREDIT IS GIVEN**

Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									\$0.0
Mitigation Account Transfers In	\$302.7		\$136.5	\$197.6	\$1,696.1	\$30.1	\$1,823.3	\$661.2	\$4,847.5
General Fund Transfers In	\$380.7	\$976.2	\$10,500.0	\$32,600.0					\$44,456.9
General Fund Program Receipts Transfer In			\$9,469.0	\$15,596.7	\$2,976.9	(\$553.0)			\$27,489.6
Total General Fund Transfers In	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$4,673.0	(\$522.9)	\$1,823.3	\$661.2	\$76,794.0
.05 Surcharge Receipts Transfer In					\$27,000.0	\$28,500.0	\$27,000.0	\$26,700.0	\$109,200.0
TOTAL REVENUE	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$31,673.0	\$27,977.1	\$28,823.3	\$27,361.2	\$185,994.0
Expenditures From The Response Fund									
Statewide Programs	\$428.7	\$329.9		\$1,702.0	\$6,034.7	\$8,617.3	\$23,785.2	\$14,083.0	\$54,552.1
Exxon Valdez Oil Spill			\$6,271.6	\$31,775.6	\$24,912.1	\$15,702.8	\$297.0		\$78,959.1
Capital Budget					\$583.7	\$555.9	\$177.9	\$2,774.0	\$4,091.5
TOTAL EXPENDITURES	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$4,652.0	(\$464.9)	\$1,534.6	\$407.4	\$46,636.8
Proportion Expended From Surcharge Funds	\$0.0	\$0.0	\$0.0	\$0.0	\$26,878.5	\$25,340.9	\$22,725.5	\$16,449.6	\$91,394.6
Total Expenditures	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Reconciliation									
Total Revenue									\$185,994.0
Less Total Expenditures									\$138,031.4
Subtotal									\$47,962.6
Less Reserve For Encumbrances									\$10,559.2
Spill Reserve Balance									\$37,403.4



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3715

MEMORANDUM

TO: Commissioner John Sandor
Dept. of Environmental Conservation

FROM: Rep. Bill Williams, Chairman *BKW*
House Resources Committee

DATE: Feb. 25, 1994

RE: Request for fiscal note and analyses for CSHB 238 (RES)

On Wednesday, March 2, at 8:15 a.m., the House Resources Committee will be hearing House Bill 238. At that hearing the committee will be discussing draft House Resources Committee substitute version "Y" of the bill, a copy of which is attached.

I would very much appreciate your department providing my office with the following information as soon as possible:

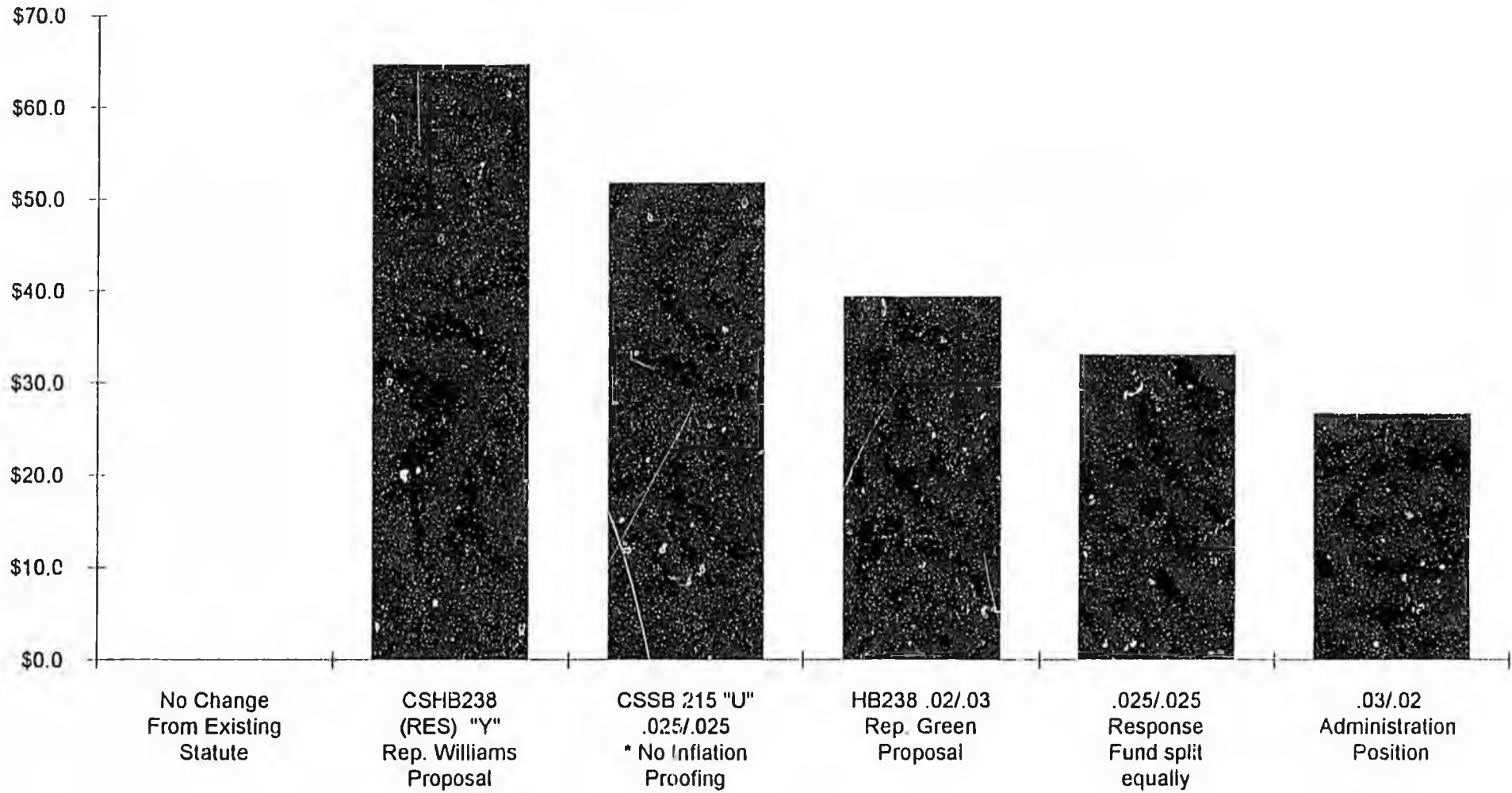
- 1) Fiscal notes addressing draft versions "Y" and "M" of CSHB 238
- 2) Financial analyses comparing the following approaches to amending the "470 Fund"-----
 - * Draft "Y" of CSHB 238(RES)
 - * CSSB 215(RES) passed by Senate Resources
 - * CSSB 215(RES) if amended to split the response fund evenly between the two new funds rather than beginning with the entire current balance going into the Catastrophic Account
 - * Draft version "M" of CSHB 238(), dated 4/20/93 which proposes a 2-cent/ 3-cent splitting of the nickel
 - * A 3-cent/2-cent variation on that version
 - * Passage of no bill

In addition, I would ask that you attend and testify at the hearing on Wednesday. I will be happy to include in the committee member packets, any departmental position paper or written testimony that you would care to submit in advance of the meeting.

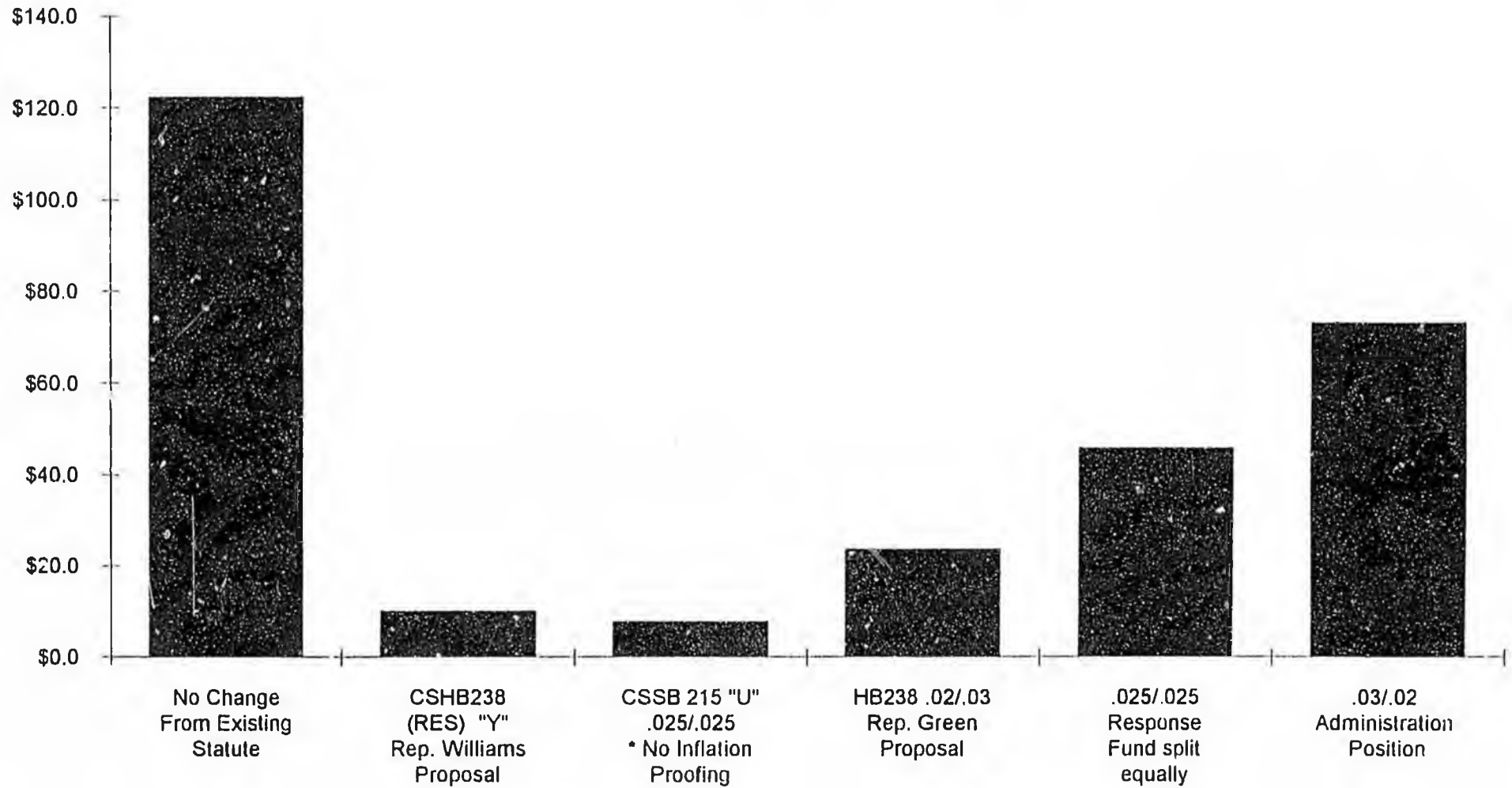
FINANCIAL ANALYSIS OF CSHB238 (RES) DRAFT "Y"
AND COMPARISON WITH OTHER PROPOSALS

PREPARED BY DEPT. OF ENVIRONMENTAL CONSERVATION
AT REQUEST OF HOUSE RESOURCES COMMITTEE

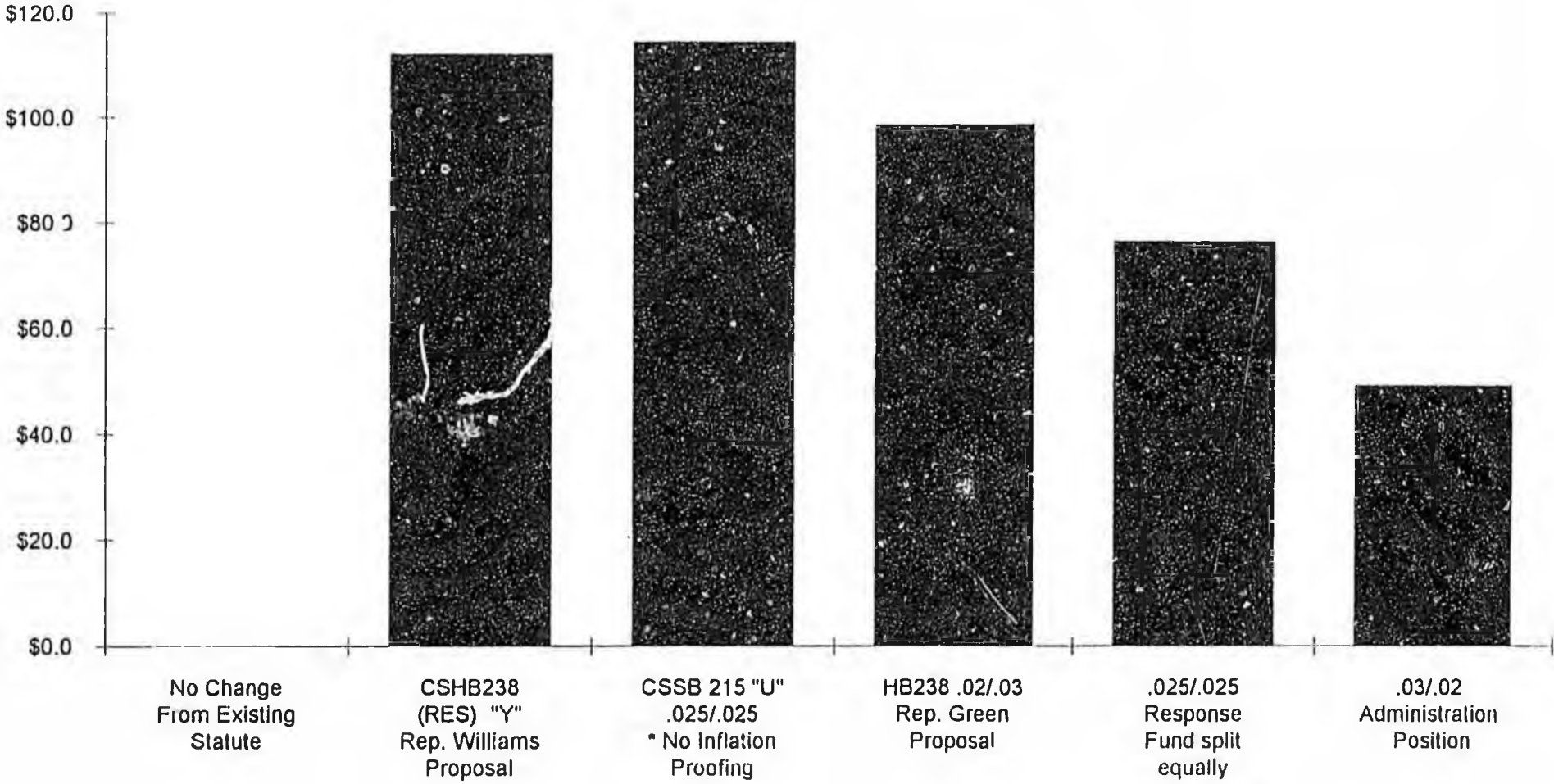
**Response Fund Restructuring Options
Initial Financial Benefit to Surcharge Payee**



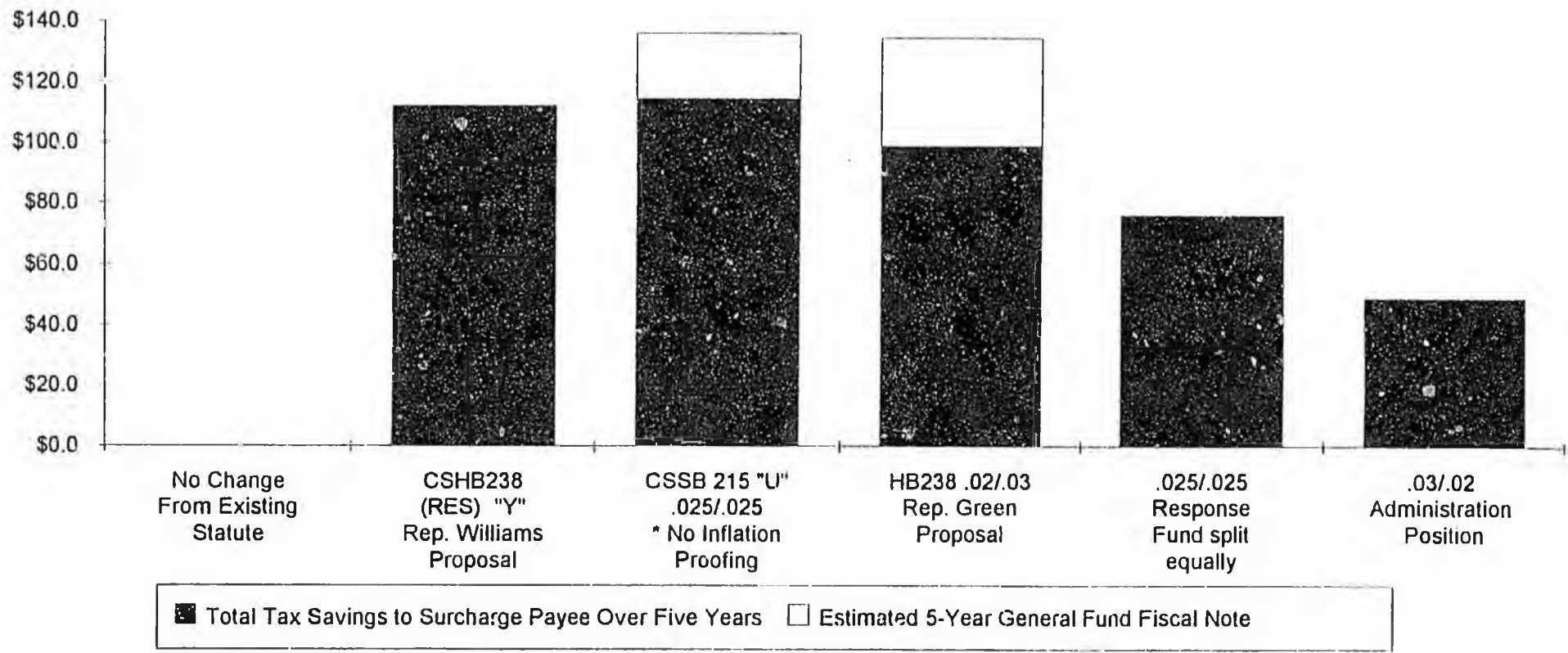
**Response Fund Restructuring Options
Total Net Cost to Surcharge Payees Over 5 Years**



**Response Fund Restructuring Options
Total Tax Savings to Surcharge Payee Over Five Years
When Compared to No Change to Existing Statute**



**Response Fund Restructuring Options
 Total Cost to the State of Alaska Over Five Years
 Total Tax Savings to Surcharge Payee
 Combined With Additional General Funds Required**



Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" 025/025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./025- Catastrophic Acct. Response Fund split evenly	.03-Abatement Acct./02- Catastrophic Acct. Administration Position
Fiscal Year 1995						
Initial Benefit to Surcharge Payee	\$0.0	\$64.7	\$51.8	\$39.4	\$33.1	\$26.8
Beginning Balance of Response Fund	\$63.2	\$63.2				
Beginning Balance of Spill Account			\$50.3	\$37.9	\$31.6	\$25.3
Beginning Balance of Abatement Account			\$12.9	\$25.3	\$31.6	\$37.9
Total .05 Surcharge Collected in FY95	\$26.2	\$26.2				
Total Spill Surcharge Collected in FY95			\$0.0	\$15.7	\$13.1	\$10.5
Total Abatement Surcharge Collected in FY95			\$13.1	\$10.5	\$13.1	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY96 Program		\$13.5				
Surcharge Tax Credit		\$11.9				
Ending Balance of Response Fund	\$48.9	\$48.9				
Ending Balance of Spill Account			\$50.3	\$37.9	\$31.6	\$24.5
Ending Balance of Abatement Account			(\$1.4)	\$11.0	\$17.3	\$24.4
Total Cost to Surcharge Payee	\$26.2	(\$50.4)	(\$39.0)	(\$13.5)	(\$7.2)	(\$0.9)
Suspension and Reimposition Calculation	(\$6.1)	\$50.0	\$50.8	\$53.8	\$45.0	\$35.3
Fiscal Year 1996						
Beginning Balance of Response Fund	\$75.1	\$63.5				
Beginning Balance of Spill Account			\$50.6	\$53.9	\$45.0	\$35.3
Beginning Balance of Abatement Account			\$11.7	\$21.5	\$30.4	\$40.1
Total .05 Surcharge Collected in FY96	\$25.3	\$25.3				
Total Spill Surcharge Collected in FY96			\$0.0	\$0.0	\$6.3	\$10.1
Total Abatement Surcharge Collected in FY96			\$12.7	\$10.1	\$12.7	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY97 Program		\$13.9				
Surcharge Tax Credit		\$10.5				
Ending Balance of Response Fund	\$60.7	\$48.8				
Ending Balance of Spill Account			\$50.6	\$53.9	\$45.0	\$34.5
Ending Balance of Abatement Account			(\$3.0)	\$6.8	\$15.7	\$26.2
Total Cost to Surcharge Payee	\$25.3	\$14.5	\$12.4	\$9.8	\$18.7	\$25.0
Suspension and Reimposition Calculation	\$4.5	\$50.0	\$50.9	\$54.2	\$51.6	\$44.9

Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./ .03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./ .025- Catastrophic Acct. Response Fund split evenly	.03- Abatement Acct./ .02- Catastrophic Acct. Administration Position
Fiscal Year 1997						
Beginning Balance of Response Fund	\$86.0	\$63.9				
Beginning Balance of Spill Account			\$50.9	\$54.2	\$51.6	\$44.9
Beginning Balance of Abatement Account			\$9.6	\$16.9	\$28.3	\$41.4
Total .05 Surcharge Collected in FY97	\$24.8	\$24.8				
Total Spill Surcharge Collected in FY97			\$0.0	\$0.0	\$0.0	\$7.4
Total Abatement Surcharge Collected in FY97			\$12.4	\$9.9	\$12.4	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY98 Program		\$14.3				
Surcharge Tax Credit		\$9.6				
Ending Balance of Response Fund	\$71.2	\$48.8				
Ending Balance of Spill Account			\$50.9	\$54.2	\$51.6	\$44.1
Ending Balance of Abatement Account			(\$5.5)	\$1.8	\$13.2	\$27.1
Total Cost to Surcharge Payee	\$24.8	\$14.9	\$12.1	\$9.6	\$12.1	\$22.0
Suspension and Reimposition Calculation	\$14.2	\$50.0	\$51.2	\$54.5	\$51.9	\$51.8
Fiscal Year 1998						
Beginning Balance of Response Fund	\$96.0	\$64.3				
Beginning Balance of Spill Account			\$51.2	\$54.5	\$51.9	\$51.8
Beginning Balance of Abatement Account			\$6.9	\$11.7	\$25.6	\$42.0
Total .05 Surcharge Collected in FY98	\$23.8	\$23.8				
Total Spill Surcharge Collected in FY98			\$0.0	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98			\$11.9	\$9.5	\$11.9	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY99 Program		\$14.8				
Surcharge Tax Credit		\$8.1				
Ending Balance of Response Fund	\$80.7	\$48.8				
Ending Balance of Spill Account			\$51.2	\$54.5	\$51.9	\$51.0
Ending Balance of Abatement Account			(\$8.6)	(\$3.9)	\$10.1	\$27.2
Total Cost to Surcharge Payee	\$23.8	\$15.4	\$11.6	\$9.2	\$11.6	\$14.0
Suspension and Reimposition Calculation	\$22.4	\$50.0	\$51.5	\$54.8	\$52.2	\$51.3

Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./ .03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./ .025- Catastrophic Acct. Response Fund split evenly	.03- Abatement Acct./ .02- Catastrophic Acct. Administration Position
Fiscal Year 1999						
Beginning Balance of Response Fund	\$104.5	\$64.8				
Beginning Balance of Spill Account			\$51.5	\$54.8	\$52.2	\$51.3
Beginning Balance of Abatement Account			\$3.3	\$5.6	\$22.0	\$41.5
Total .05 Surcharge Collected in FY99	\$22.4	\$22.4				
Total Spill Surcharge Collected in FY99			\$0.0	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY99			\$11.2	\$9.0	\$11.2	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY00 Program:		\$15.2				
Surcharge Tax Credit		\$6.3				
Ending Balance of Response Fund	\$88.8	\$48.8				
Ending Balance of Spill Account			\$51.5	\$54.8	\$52.2	\$50.5
Ending Balance of Abatement Account			(\$12.7)	(\$10.4)	\$5.0	\$26.3
Total Cost to Surcharge Payee	\$22.4	\$15.8	\$10.9	\$8.7	\$10.9	\$13.1
Suspension and Reimposition Calculation	\$28.8	\$50.0	\$51.8	\$55.1	\$52.5	\$50.8
Total Net Cost - 5 Years (no discount)	\$122.5	\$10.3	\$8.0	\$23.8	\$46.1	\$73.3
Total Net Cost After Tax Effect (40% tax)	\$73.5	\$6.2	\$4.8	\$14.3	\$27.6	\$44.0
Total Tax Savings to Surcharge Payee Over Five Years	\$0.0	\$112.2	\$114.6	\$98.7	\$76.4	\$49.2
Estimated 5-Year General Fund Fiscal Note	\$0.0	\$0.0	\$21.5	\$35.8	\$0.0	\$0.0
Total Cost to State of Alaska Over 5 Years	\$0.0	\$112.2	\$136.1	\$134.5	\$76.4	\$19.2

FISCAL NOTE

(Draft Version Y)

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB238 (RES)

Revision Date: _____
Tide: Oil/Hazardous Substance Fund,
Tax, Plans
Sponsor: House Special Committee on Oil & Gas
Requestor: House Resources Committee

Department Affected: Environmental
Conservation
BRU: Spill Prevention and Response
Component: All SPAR Components, Response Fund
Admin. Component in Admin. BRU
COMPONENT SERIAL NO. All of the above.

Expenditures/Revenues: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe, Director
Division: Information & Administrative Services

Phone: 465-5010
Date: 3/1/94

Approved by Commissioner: Bob Poe, Director
Agency: Department of Environmental Conservation

Date: 3/1/94

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Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									\$0.0
Mitigation Account Transfers In	\$302.7		\$136.5	\$197.6	\$1,696.1	\$30.1	\$1,823.3	\$661.2	\$4,847.5
General Fund Transfers In	\$380.7	\$976.2	\$10,500.0	\$32,600.0					\$44,456.9
General Fund Program Receipts Transfer In			\$9,469.0	\$15,596.7	\$2,976.9	(\$553.0)			\$27,480.6
Total General Fund Transfers In	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$4,673.0	(\$522.9)	\$1,823.3	\$661.2	\$76,794.0
.05 Surcharge Receipts Transfer In					\$27,000.0	\$28,500.0	\$27,000.0	\$26,700.0	\$109,200.0
TOTAL REVENUE	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$31,673.0	\$27,977.1	\$28,823.3	\$27,361.2	\$185,994.0
Expenditures From The Response Fund									
Statewide Programs	\$428.7	\$329.9		\$1,702.0	\$6,034.7	\$8,617.3	\$23,785.2	\$14,083.0	\$54,552.1
Exxon Valdez Oil Spill			\$6,271.6	\$31,775.6	\$24,912.1	\$15,702.8	\$297.0		\$78,959.1
Capital Budget					\$583.7	\$555.9	\$177.9	\$2,774.0	\$4,091.5
TOTAL EXPENDITURES	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$4,652.0	(\$464.9)	\$1,534.6	\$407.4	\$46,636.8
Proportion Expended From Surcharge Funds	\$0.0	\$0.0	\$0.0	\$0.0	\$26,878.5	\$25,340.9	\$22,725.5	\$16,449.6	\$91,394.6
Total Expenditures	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Reconciliation									
Total Revenue									\$185,994.0
Less Total Expenditures									\$138,031.4
Subtotal									\$47,962.6
Less Reserve For Encumbrances									\$10,559.2
Spill Reserve Balance									\$37,403.4

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Phone: (907) 465-5050
Fax: (907) 465-5070

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

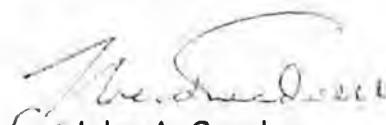
million for FY 95. The state's program is focused on prevention. There are many oil spills every year, but --because of the tough laws Alaska has adopted -- fewer large spills. In even a "small" spill, damages of \$14 million per year are easily reached. As the legislation is now proposed, less than \$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 dLM. 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,


For 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

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

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

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 — 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

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

(6) prepare, review, and revise

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

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release;

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2, ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
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March 18, 1994

The Honorable Jeannette James
Alaska State House of Representatives
Room 501, State Capitol Building
Juneau, AK 99801-1182

Dear Representative James:

Thank you for your interest in response fund issues and for taking the time to express your concerns and questions to me. My letter will provide information you have asked for concerning long-term plans for emergency response depots and volunteer corps and contaminated sites.

In State statutes, the responsibility for establishing and managing the depots and corps rests with the Department of Military and Veterans Affairs (DMVA). I encourage you to contact DMVA directly for their response to this issue. Since our Department has worked with DMVA on this project over the years because of our responsibility to lead the State's response efforts for oil and hazardous substance spills, we are providing the following information as our best estimate at this time.

For the last two years, the Department of Environmental Conservation (DEC) has been working on the "Nearshore Demonstration Project" which was created by the Legislature in our FY 93 budget to develop a prototype nearshore oil spill response equipment package. This project will culminate in the deployment of two different equipment packages -- one for open water, crude spills and the other for inside passage, non-crude spills -- during April and May of this year for testing and evaluation. We expect to have the evaluation completed with recommendations for additional kinds of units not long after the tests. Based on the information we have developed so far, I am providing you estimates for coastal oil spill response packages that could be strategically placed around the State.

One unit, designed for open water coastal areas, consists of a small barge (to receive the product collected), deflection boom, and a skimmer designed to be operated by fishing vessels of opportunity. The estimated unit purchase price for

one of these is \$500,000. Annual operations and maintenance cost will vary by location but can be estimated at \$150,000 each. We think that there could be as many as a dozen sites around the State -- not covered by government or industry, but where spill risk exists -- where this kind of unit could be located. This results in a total purchase price of \$6 million with an annual estimated cost of \$1.8 million.

The other unit we have been working on is a rapid response vessel capable of moving equipment to a spill site in protected waters (like Southeast Alaska). The purchase price of these would be about \$250,000 each with an annual operation and maintenance cost of \$100,000 each. These units could be deployed in about 10 locations in Southeast Alaska and several each in Bristol Bay, Norton Sound and Kotzebue Sound, as well as throughout the Yukon and Kuskokwim Rivers. If the Legislature were to support purchase of 20 of these items, that costs out to \$5 million purchase price and \$2 million annual operations and maintenance.

Through local response agreements, DEC will be entering into partnership with local communities for responding to the routine spills (DEC receives about 2,000 reports of spills annually -- typically, all are non-disaster emergencies.). We will supply local communities with a basic, "first aid" response equipment capability and use the Response Fund ("470 Fund") to pay for the community costs to respond to these kinds of spills. Currently, we have a \$400,000 capital budget request to start the program for FY 9 . We estimate that a total of \$1 million would cover this arrangement and we could seek cost recovery from spillers to maintain that capability in the future.

The Kenai Borough has put together an unsolicited request this year for a direct appropriation from the Response Fund to outfit a hazmat team for \$250,000. This amount does not include personnel costs, operations and maintenance, nor training. Their price tag for equipment seems reasonable, although we were not involved in developing the list. Once the statewide hazards analysis is completed, the State will have the specific information needed to identify the appropriate locations for these teams. My best guess at this time is these hazmat teams could be targeted for Fairbanks, Anchorage, Kenai, Juneau and Ketchikan. The total cost to establish these would be \$1.25 million. The annual training, operations and maintenance, and personnel costs are unknown, but these could be considered the local match.

You have also asked, "When are contaminated sites going to be cleaned up and what will it cost?" The following should answer your questions regarding the Department's role in cleaning up a contaminated site, the time it takes to cleanup a site, and the associated cost to the State.

What does the Department do with contaminated sites?

A contaminated site is a location where there has been a past improper discharge

or disposal of a hazardous substance that could threaten public health or the environment.

The Department oversees the investigation and cleanup of contaminated sites by the responsible party. By overseeing the responsible party's cleanup, the Department can assure Alaskans that the source of contamination has been removed, and that any remaining contamination is below levels that will harm the public or the environment. A strong oversight program conveys to the responsible parties their obligation under State law to clean up their contaminated site.

In addition to responsible party oversight, the Department directly cleans up sites where the responsible party cannot be found or is unwilling or incapable to do the cleanup directly. At these sites, the State hires and supervises term contractors who do the actual investigation and cleanup.

How long will it take to clean up contaminated sites?

The length of time needed to fully assess and clean up an average contaminated site ranges from three to five years. Very simple sites could take less time, while the most complex sites may take much longer. The number of contaminated sites is constantly changing. New sites are discovered and brought to the Department's attention and active sites are cleaned up. We estimate it would take 21 years to clean up the current inventory of 1051 sites and an additional 920 sites which we estimate will be discovered during that period and will need cleanup. Some sites are virtually impossible to clean up cost effectively or require only monitoring while Mother Nature does the job.

Sites that are expected to be added to the inventory in the future include:

- o The Department of Defense (DOD) has estimated it will spend \$1.1 billion to clean up the contaminated military sites in Alaska. To date, 350 sites have been discovered and we estimate an additional 90 sites will be discovered as a result of the high priority DOD has placed on the site discovery process over the next two years.
- o Discovery of approximately 500 contaminated sites is expected to result from the current initiative to bring rural bulk fuel tank facilities into compliance with federal and State spill prevention requirements.
- o Liability for contaminated properties will continue to cause buyers and sellers of real estate to practice due diligence and assess the property prior to completing a land transaction. These assessments are estimated to result in the discovery of 330 contaminated properties.

What will it cost the State to clean up contaminated sites?

Over the next 21 years at current staffing levels, cleanup standards, and technological abilities, we estimate it will cost the State approximately \$220 million to cleanup all the contaminated sites that have been discovered to date and sites which are expected to be discovered. The table below lists the number of sites, average cost per site, and total cost over the next twenty one years to cleanup each type of contaminated site. One of the reasons we support a strong Research and Development program is because we can continue to help reduce these costs with more effective technology.

Projected Contaminated Sites Cleanup Costs

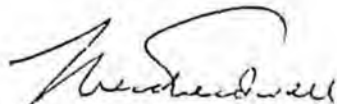
Type of Site	Number	Average State Cost/Site	21 Year Total Cost
RP	836	\$23,429	\$19,586,923
Federal	450	26,566	11,954,700
Orphan	88	644,450	56,711,600
Rural Bulk Orphan	100	644,450	64,154,998
RPs	398	23,429	9,329,561
State Owned	97	600,000	58,200,000
Total	1,969		\$219,937,781

The actual cost to the State differs by the type of contaminated site. The greatest cost to the State is for cleanup of sites where a responsible party is unable or unwilling to clean up or where the State is the responsible party. Where the Department oversees the cleanup of a site by the responsible party the cost to the State is much less. The Department's oversight of federal sites has the least cost to the State since the Department receives federal funds for this work under a cooperative agreement with DOD.

In addition to the contaminated sites situation described above, the Department also manages an underground storage tank program which is funded by the Storage Tank Assistance fund not the Response Fund. Revenue for the Fund comes from the Mitigation Account of the General Fund and collection of registration fees. It is used to make grants and loans available to owners and operators of underground storage tanks for tank testing, closure, upgrade, and cleanup activities. Currently there are 826 unfunded requests for \$43 million in financial assistance. The Administration is working with the Legislature to apply a 1 penny per gallon motor fuel tax for appropriation to the Storage Tank Assistance Fund to replace the mitigation account in the future.

We are sharing this letter with other members of the House Resources Committee.
Thank you for asking.

Sincerely,



Mead Treadwell
Deputy Commissioner

MAC/jsg (G:\SPARIM\AC\REP.JIM)

cc: House Resources Committee Members

Representative Bill Williams, Chair
Representative Bill Hudson
Representative Con Bunde
Representative Joe Green
Representative Eldon Mulder
Representative David Finklestein
Representative Pat Carney
Representative John Davies
John A. Muldor, Commissioner, Department of Environmental Conservation
Major General Hugh L. Cox III, Commissioner, Department of Military and
Veterans Affairs

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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

January 19, 1994

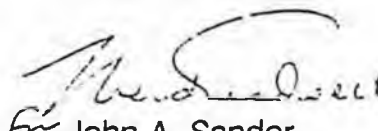
million for FY 95. The state's program is focused on prevention. There are many oil spills every year, but --because of the tough laws Alaska has adopted -- fewer large spills. In even a "small" spill, damages of \$14 million per year are easily reached. As the legislation is now proposed, less than \$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

Currently in Surcharge
Account \$26 M

10.4 = 40% to response
acct

15.6 = 60% to prevention
acct

Currently in Spill Reserve \$38 M

15.2 = 40% to response acct

22.8 = 60% for coys
and depots

Response to Questions About Graphs Comparing Response Fund Restructuring Options

Questions about graph with title, "Net Tax Reduction to Surcharge Payees Over 5 Year"

- 1.) The title probably should read Payors not Payees, good point.
- 2.) All of the analysis performed on the various Response Fund restructuring options begin with the following basic assumptions:
 - All change is measured from where the surcharge payor would be financially if the statute were not changed. As an example, the current surcharge calculation yields a (\$15,105,728) as of November 5, 1994. If this calculation is projected through the end of FY94, the negative balance would be reduced to approximately (\$1,500,000). In the Williams CSHB238(RES) the beginning balance of the Response Fund, which would now be fully applied to the surcharge suspension calculation, would equal approximately \$63,200,000. Since no change in the statute would yield a negative balance of (\$1,500,000) at the beginning of FY95, this represents an initial benefit to the surcharge payor of \$64,700,000. Where before the statute change a negative balance was yielded from the suspension calculation, now there would be a significant improvement for the payor.

The total net cost for the payor would be the total surcharge paid over a five year period less the initial benefit received at the beginning of the five year time period. Therefore, in the Williams proposal the total surcharge payments over five years would be \$74,900,000 less the initial benefit to the surcharge payor of \$64,700,000 which yields \$10,200,000. The difference between this figure and the one in the spreadsheet is due to rounding.
- 3.) The net tax reduction over five years under the "no change" option is zero because after payment of an additional \$122,500,000, the surcharge suspension calculation yields only \$28,800,000. At this

time the Response Fund would actually have a balance of \$104,500,000. So the surcharge never shuts off throughout the entire five year period and no tax reduction is experienced by the surcharge payor.

DEC would project to spend \$75,700,000 over those five years on spill prevention and response programs. This figure includes \$4,000,000 in imminent spill responses which is probably overstated (based on the past five years performance) by \$2,875,000.

Questions about graph with title, "Comparison of Initial Benefit to Surcharge Payee"

- 1.) As described above, the current surcharge suspension calculation would yield a (\$1,500,000) at the beginning of FY95. Since the Williams proposal would immediately change the starting point in the calculation from a negative value to \$63,200,000, this would represent a benefit to the surcharge payor on the first day of FY95 of $\$1,500,000 + \$63,200,000 = \$64,700,000$.

Questions about graph with title, "Total Net Cost to Surcharge Payee - 5 Years (no discount)"

- 1.) The term "no discount" means that the time value of money was not factored into the analysis.
- 2.) As was discussed at the beginning of this response, all analysis was made looking at the current situation under the existing statute. Both of these proposals have very low net cost to the surcharge payors for similar reasons.

CSHB238(RES) "B" yields a very low net cost because it starts with a very high initial benefit to the surcharge payor. This initial benefit comes from applying the entire Response Fund balance and the full amount of surcharge collected in FY94 to the surcharge suspension calculation. This proposal also results in \$46,400,000 in tax credits being generated throughout the five years of this analysis. This option will have a "zero" fiscal note because adequate funding is available to cover the State's current and future spill prevention and response program.

CSSB215(RES) "U" yields a very low net cost because it also starts with a very high initial benefit to the surcharge payor. However, this high initial benefit is only achieved by allocating the entire Response Fund balance of \$37,000,000 and 50% of the surcharge collected in FY94, \$12,900,000, to the spill account to be factored into the surcharge suspension calculation. This has the result of creating an initial balance in the spill account of \$50,300,000 which shuts 50% of the nickel surcharge off for the entire five years of this analysis. This proposal also results in a surcharge reduction of \$61,300,000 over five years.

The analysis of these two versions does not indicate that the entire nickel surcharge is effectively eliminated. The surcharge payor continues to pay a portion of the surcharge throughout these five years. However, the surcharge payor's financial position is so strongly improved under either of these scenarios, that when these factors are "netted out" the result is a very low real cost to the surcharge payors over the five years.

General questions about all of the charts.

- 1.) In all of the "split-nickel" versions analyzed other than CSSB215 "U", the assumption is that the Response Fund balance in FY94 will be split between the two accounts along the same ratio as the nickel is split. The spill reserve simply represents the unexpended and unencumbered balance of the Response Fund. Since approximately \$74,500,000 in general funds and program receipts were appropriated to the Response Fund before the nickel surcharge was established, it is logical to assume that a substantial portion of the balance remaining in the Response Fund came from those general funds as well as the nickel surcharge.

Questions about graphs comparing
RESPONSE FUND RESTRUCTURING OPTIONS

Questions about graph with title, "Net Tax Reduction to Surcharge Payees Over 5 Years"

1. Shouldn't "Payees" say "Payors"?
2. The net tax reduction over 5 years under the Williams proposal is shown to be about \$116 million. Yet total surcharge collections are projected by DEC to be \$129.8 million during that five year period under the 5 cents per barrel surcharge.
 - Does this mean the tax credit provision of the Williams proposal effectively wipes out the surcharge over the next 5 years, yet at the same time the bill will maintain a \$50 million fund balance and provide funds for DEC's ongoing programs over the next 5 years.
 - If so, how is this possible?
3. The net tax reduction over 5 years under the "no change" option is zero.
 - Does this mean that under current law, the 5 cents/bbl tax will not suspend in the next 5 years even though the spill reserve is projected to be \$37.5 million and growing?
Yes
 - Does this mean DEC is going to spend for ongoing programs the entire \$129.8 million projected to be taken in over the next five years by the current 5 cents/bbl surcharge?
This is due to the calculation in law today

Questions about graph with title, "Comparison of Initial Benefit to Surcharge Payee"

1. The term "initial benefit" usually implies a benefit that accrues right away -- not one that would come some years out in the future.
 - How does the Williams proposal give an immediate benefit of \$65 million to the oil producers?
 - Given that projected surcharge collections at 5 cents per barrel will be about \$26 million in FY95 (according to DEC's estimates), and that an immediate outright suspension of the 5 cents per barrel tax (or a full credit of the tax) would only therefore give a benefit of \$26 million, how is the \$65 million derived?

Questions about graph with title, "Total Net Cost to surcharge payee - 5 years (no discount)

1. What does "no discount" mean?

Did not apply time value of money

2. This chart shows a \$10 or \$12 million total net cost to the oil producers under the SB215 "U" version and CSHB 238 "B" version.

1. Compares to - initial benefit.

Given that collections over the next 5 years would be average about \$26 million a year, does this chart mean these two versions effectively wipe out the entire 5 cents per barrel tax?

2. Entire 5¢ is not reduced but large portion is.

If that is the intended result, why not just repeal the 5 cents/bbl surcharge for 4 1/2 years? Wouldn't that be simpler than a tax structure that imposes a tax, but immediately gives most of it back?

General questions about all charts:

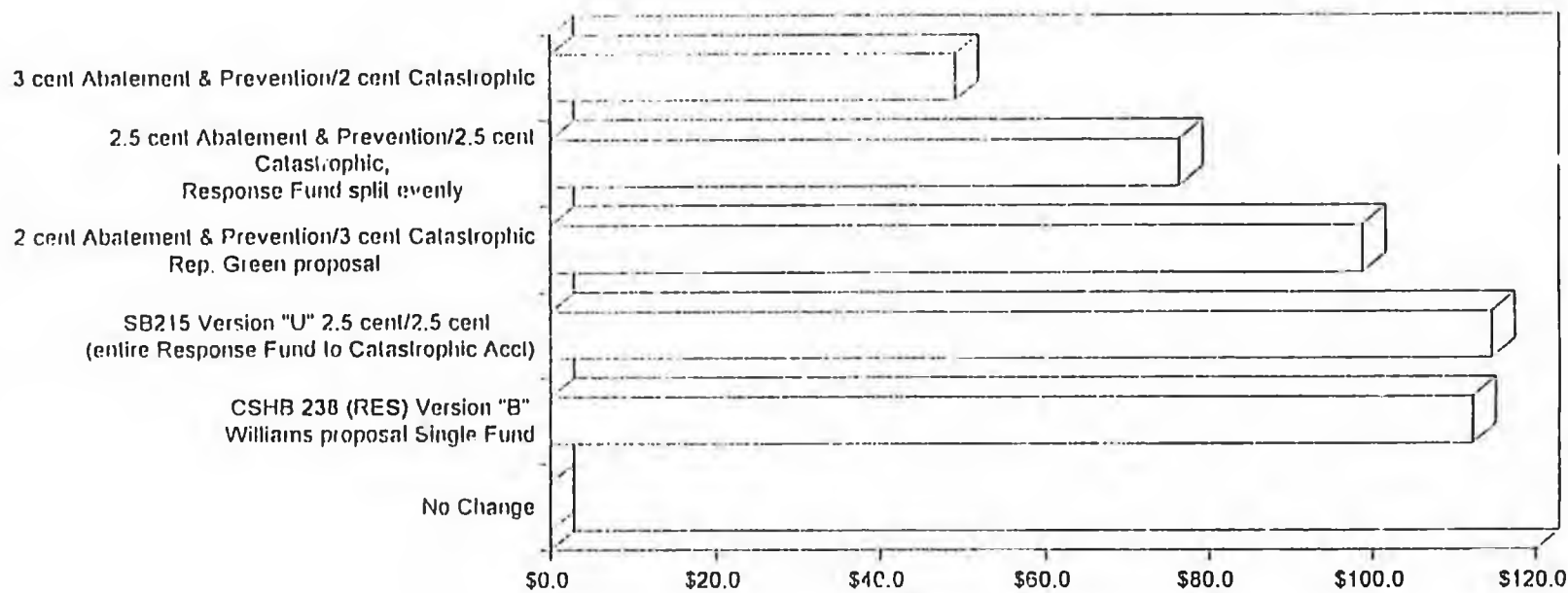
1. Besides the question of how the surcharge should be split (2 cents/3 cents, 2.5 cents/2.5 cents, or 3 cents/2 cents), a comparison of the second bar ("Response Fund Split Evenly") and the fourth bar ("entire Response Fund to Catastrophic Acct"), there is apparently a substantial difference to the as to how the \$37.5 million spill reserve is to be handled during the transition to the new law.

- If the \$37.5 million is in fact a spill reserve -- the amounts left over after funding DEC's ongoing programs -- shouldn't the entire amount be transferred to the new Response Account? Isn't that what the Response Account is for?

- Why should any of the spill reserve be transferred to the contingency and abatement account to be used for DEC's ongoing programs as opposed to being kept as a reserve for spill response?

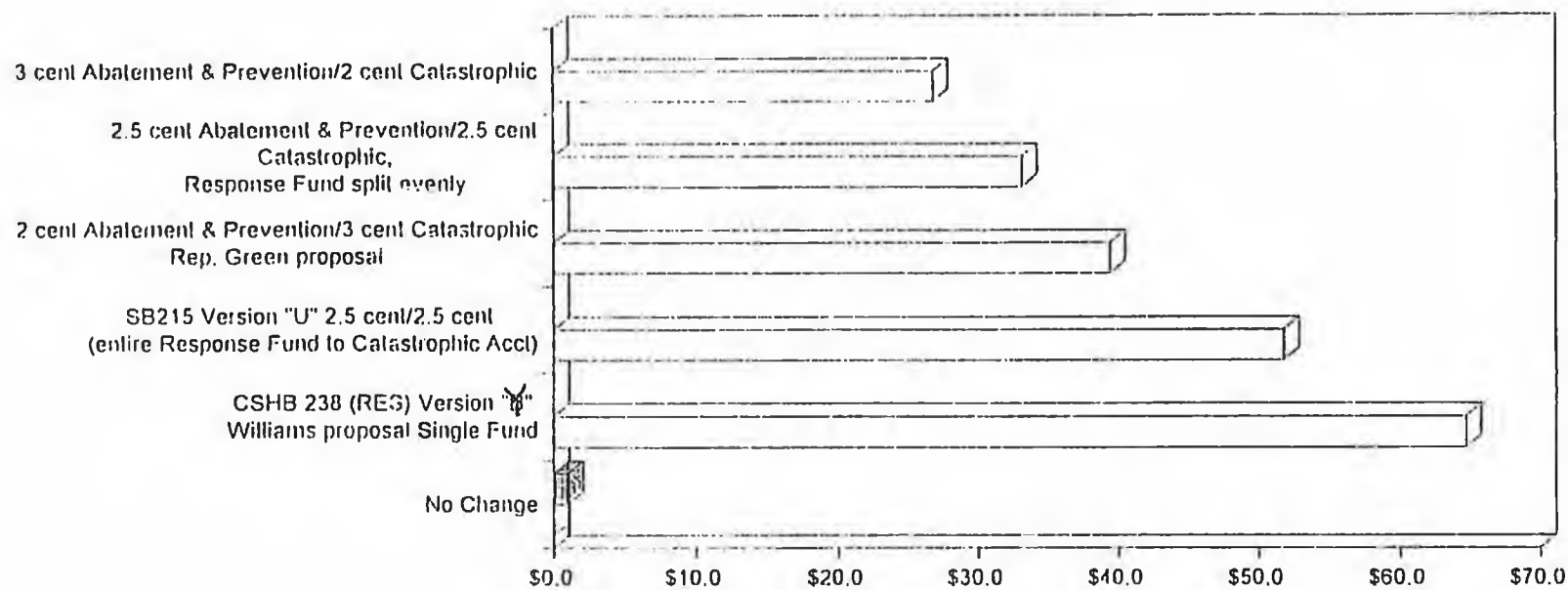
DRAFT

**Response Fund Restructuring Options
Net Tax Reduction to Surcharge Payees Over 5 Years**



DRAFT

Response Fund Restructuring Options
Comparison of Initial Benefit to Surcharge Payee

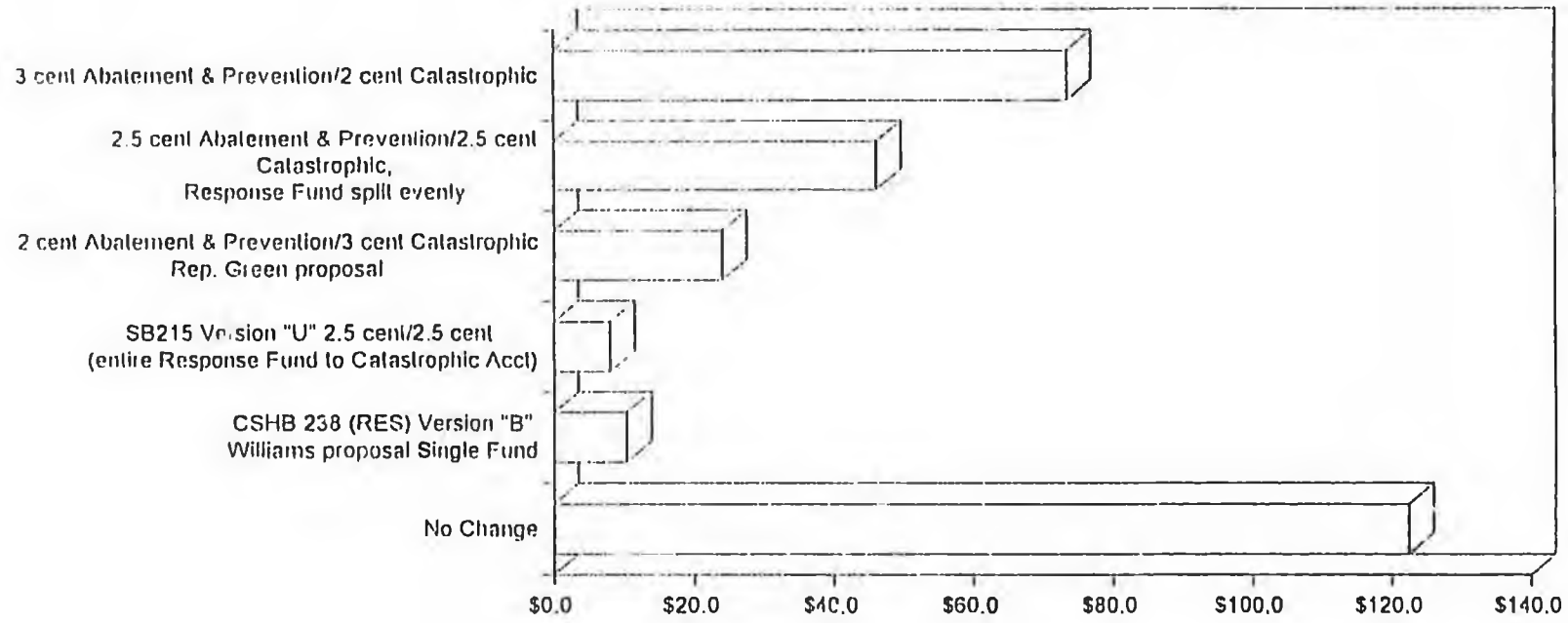


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Chart3

DRAFT

Chart2

^{to surcharge payee}
Total Net Cost - 5 Years (no discount)





Regional Citizens' Advisory Council - 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

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

Overview of the Proposed Committee Substitute for House Bill 238 "Y" draft (2/22/94)

The basic tenet of this proposed committee substitute for House Bill 238 is to fix what is generally agreed to be broken---the mechanism for calculating the balance of the Oil and Hazardous Substance Release Response Fund, reduce some expenditures from the fund, and provide for improvements in the administration of the fund. It is commonly understood that when the calculated balance of the fund is \$50 million or greater, the nickel-per-barrel surcharge is suspended. However under current statute, the calculation for suspending and reimposing the surcharge under calculates the actual balance of the fund because it does not take into consideration general fund appropriations made to the response fund to "front end" clean up costs of the *Exxon Valdez* oil spill.

When the Senate Resources Committee reviewed Senate Bill (SB) 215, the Alaska Departments of Environmental Conservation (DEC) and Law proposed language that would change the mechanism for calculating the balance of the response fund. The DEC proposal also provided for additional revenues, especially cost recovery, to be considered part of the fund balance for purposes of suspending the surcharge. Changing the calculation mechanism is worth approximately \$52 million to the North Slope oil producers---this is how much less surcharge would be paid to reach the \$50 million cap.

The DEC offered this calculation proposal as a compromise for not "splitting the nickel" and dividing the fund into two accounts---one to fund catastrophic oil spill response and the other to fund spill prevention and preparedness programs and response to spills less than 4.2 million gallons. Opposition to splitting the nickel is based on 1) the chronic insufficient funding directed toward spill preparedness and prevention programs and 2) the problems imposed by limiting response to subcatastrophic spills which account for most of spills in Alaska. The Senate Resources Committee Substitute for SB 215 adopted the DEC proposed language but also kept the split nickel provisions---together these provisions provide at least a \$74 million tax break to North Slope producers.

The "Y" draft proposal:

- Would also save North Slope oil producers at least \$52 million in surcharge payments through a new method for calculating the fund balance.
- This proposal differs from previous versions of HB 238 and CSSB 215 (RES), in that it does not give surcharge payers an **automatic** additional \$25 to \$30 million tax break (depending on how the nickel is split) through the under funding of state preparedness, prevention and response programs. The

Regional Citizens' Advisory Council of Prince William Sound

ability of the legislature to set funding levels for these programs is maintained rather than being determined by splitting the nickel and declining North Slope production levels. However, surcharge payments will probably decline by the same \$30 million through the additional response fund revenue sources in this proposal. **Therefore, the ultimate impact on surcharge payers will be the same but without the spill risks to the public and tying of the hands of legislators.**

- This proposal also differs from previous versions of HB 238 and CSSB 215 (RES) in that it does not jeopardize the state's ability to respond to all but the largest spills--over 4.2 million gallons. The response fund continues to be accessible for response to all spills regardless of size. This takes into consideration timing and location that are equally important as spill size.
- Presents a new mechanism for calculating and maintaining the \$50 million cap on the fund--the nickel-per-barrel surcharge stays on throughout the year but any over payment is refunded to surcharge payers in proportion to the amount of surcharge paid. The refund is provided as a credit against the current tax year's severance tax obligations. This proposal is considered more equitable to producers because the amount of surcharge paid is not affected by quarterly oil production fluctuations (sections 2 and 4). However, to avoid potential unintended impacts on tax obligations, the committee may want to consider a direct refund of surcharge over payments rather than a credit on severance tax obligations.
- Similar to the DEC proposal, the "Y" draft proposal also allows additional revenue sources to be included in the calculation of the fund cap (section 13). These include program receipts and mitigation account money (cost recovery from responsible parties for spill response or oversight) received to the extent that the funds originated from the response fund (section 13). Under current statute, these funds are not included in the balance calculation. Nor are they included in the "incentive" clause that encourages the Legislature to annually appropriate these funds into the response fund---in the "Y" draft proposal mitigation account funds, but not program receipts, fall under the incentive clause (section 5).
- Similar to most of the previous versions of SB 215 and HB 238, this proposal eliminates the requirement to annual revise the state master and regional spill contingency plans. Instead, revision is left to the discretion of the DEC commissioner. Similar to the CSSB 215 (RES), this proposal requires DEC to 1) consult with municipal and community officials and representatives of regional organization and 2) require or schedule unannounced oil spill drills to test the sufficiency of these plans (sections 6 through 10).
- Also similar to the CSSB 215 (RES), this proposal stipulates that the balance of the response fund does not lapse (section 12).
- Also similar to the CSSB 215 (RES), this proposal provides for interest on the fund (general fund dollars) to be appropriated to the fund. In this proposal

Regional Citizens' Advisory Council of Prince William Sound

and the CSSB 215 (RES), interest appropriations are not included under the incentive clause. In addition, the legislature currently has the ability to make this appropriation. Therefore, this is a relatively meaningless provision except to "point out" or suggest to the legislature that it has this option (section 13).

- Also similar to the CSSB 215 (RES), this proposal limits to \$10 million per incidence the amount of municipal grants in the event of spills over 2,500 barrels (section 1). Statutory requirements for receiving grants are unchanged.
- A new provision in this proposal is that the DEC may not transfer money to another state agency unless the other agency provides to DEC the information required for annual reporting and auditing of the use of response funds (section 14).
- This proposal identifies specific categories for the annual reporting of expenditures from the response fund. Also similar to the CSSB 215 (RES), other more cumbersome and less meaningful reporting requirements are eliminated (section 15).
- Also new in this proposal is the clarification of the ranking, reporting and selection of contaminated sites for clean up (section 16).
- Sections 18 and 19 pertain to liens on property for state expenditures from the response fund for response to releases or threatened releases. These sections are identical to the CSSB 215 (RES) and the HB 238 "M" draft proposal.



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

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

Sectional Analysis of the Proposed Committee Substitute for House Bill 238 "Y" Draft (2/22/94)

Section 1 limits to \$10 million per incidence the amount of municipal grants in the event of spills over 2,500 barrels. Statutory requirements for receiving grants are unchanged.

Section 2 provides for excess surcharge payments to be credited toward a surcharge payers current calendar year severance tax obligations.

Section 3 carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the renamed response fund---the Oil and Hazardous Substances Release Response *and Prevention* Fund.

Section 4 sets forth a new mechanism for calculating the balance of the fund---provides for quarterly calculation of the fund balance by the commissioner of administration based on the current cash balance minus outstanding appropriations, encumbrances, and liabilities, plus the surcharge collections and the mitigation account balance available for appropriation into the fund. If this amount exceeds \$50 million, the amount of additional surcharge collected is reported to the commissioner of revenue to be credited to surcharge payers in proportion to the amount of surcharge paid.

The nickel-per-barrel surcharge stays on throughout the year but any over payment is refunded to surcharge payers. The refund is provided as a credit against the current tax year's severance tax obligations. This proposal is considered more equitable to producers because the amount of surcharge paid is not affected by quarterly oil productions fluctuations. However, to avoid potential unintended impacts on tax obligations, the committee may want to consider a direct refund of surcharge over payments rather than a credit on severance tax obligations.

Section 5 is a modified incentive or blackmail clause similar to that in current statute. It provides that the surcharge is suspended if surcharge proceeds are not annually appropriated to the response fund. This section amends current statute to include mitigation account proceeds collected as a result of expenditures from the fund. These mitigation funds are used in the calculation of the fund balance and thus reduces surcharge obligations.

Section 6 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was

Regional Citizens' Advisory Council of Prince William Sound

directly related to the lack of a well reviewed and drilled master contingency plan. Plan revision is left to the discretion of the DEC commissioner rather than requiring revision.

Section 7 eliminates public and government agency review in the annual review of the state master plan but requires 1) that the DEC consult with municipal and community officials, and other representatives of affected regional organization and 2) require or schedule unannounced oil spill drills to test the sufficiency of these plans.

Section 8 allows for public and SERC review when a revision is made to the state plan. Current statute allows for public input during the annual review and revision process.

Section 9 essentially does for regional plans what section 6 did to the state master plan. Again, plan revision occurs at the discretion of the commissioner of DEC.

Section 10 is a technical amendment that incorporates the changes made in section 8 for master plans to the regional plan changes in section 9.

Section 11 reflects the renaming of the response fund.

Section 12 provides that appropriations into the fund do not lapse.

Section 13 pertains to the financing of the response fund. Funds available for appropriation include federal, state, or privately donated funds; cost recovery of funds expended from the account; fines, penalties or damages recovered from spills in which response was paid from the fund; interest on the fund; oil and hazardous substance release response and prevention mitigation account funds; and program receipts for contingency plan review, review of financial responsibility filings, the certification of laboratories and response action contractors.

Section 14 does not allow the DEC to transfer money to another state agency unless the other agency provides DEC with the information required for annual reporting and auditing of the use of response funds.

Section 15 provides more specific guidelines for reporting of response fund usage while reducing some of the more trivial auditing requirements of uses of the fund.

Section 16 clarifies the process for ranking, reporting and selection of contaminated sites for clean up.

Section 17 requires the DEC to adopt regulations for the contaminated sites identification process set forth in section 16.

Sections 18 and 19 pertain to liens on property for state expenditures from the response fund for state response to releases or threatened releases.

Regional Citizens' Advisory Council of Prince William Sound

These sections are identical to the CSSB 215 (RES) and the HB 238 "M" draft proposal.

Section 20. Repealer section including:

- repeals of the Conservation Surcharge on Oil replaced by this bill, AS 43.55.200-240;
- repeals section 3 of Senate Bill 260 passed in 1989; to ensure the \$50 million balance is achieved, this section makes ineffective the blackmail clause that suspends the surcharge if the legislature fails to appropriate surcharge proceeds to the response fund until the balance of the fund reaches \$50 million. Similar language, however, is added back in section 23 of this bill.

Section 21 is a note to the reviser of statutes to change the name of the response fund in other sections of law as appropriate.

Section 22. This section 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 23 prevents the incentive or blackmail clause from suspending the surcharge if the legislature fails to appropriate surcharge proceeds until the balance of the fund reaches \$50 million.

Section 24 is the effective date clause of July 1, 1994.



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-2222 / FAX (907) 277-4523

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

March 15, 1994

Representative Bill Williams, Chair
House Resources Committee
State Capitol
Juneau, Alaska 99801

Dear Representative Williams:

Following testimony by Prince William Sound Regional Citizens' Advisory Council (RCAC) on March 9, some members of the House Resources Committee requested more information on the budget chart prepared by the Exxon Corporation. Attached is a copy of the chart. Below are bullets that point out the inconsistencies and inaccuracies of this information.

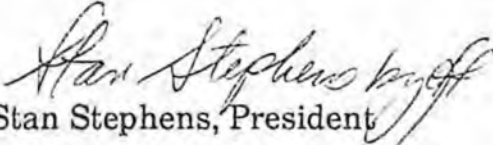
- The chart cites a report completed by BCSB Marketing for RCAC in December 1992 as its source. This suggests that the chart was produced by BCSB. This is not accurate; the chart was produced by the Exxon Corporation.
- The BCSB report provides information on annual appropriations for Alaska Department of Environmental Conservation (DEC) core spill prevention and response programs for the fiscal years (FY) 91 through 93. There is no information on FY 90 and 94. The purpose for showing the FY 91-93 appropriation levels in the BCSB report was to illustrate that despite the availability of response funds, the level of funding for core programs has remained relatively constant during those years.
- In the report, no attempt was made to analyze the adequacy of appropriations to these DEC programs---most of which have not been fully implemented.
- The most glaring error of the Exxon Corporation chart, however, is that it inaccurately compares "apples and oranges" and "credits" the poor analysis to another author. Specifically, the chart line "actual appropriations" includes appropriations for all authorized uses of the response fund. The line "original fiscal notes" includes only a select few fiscal notes---primarily those from the "spill bill package" passed in 1989 and additional legislation passed in 1990. These include SB 261, state and regional contingency planning; SB 264, response corps and depots; and HB 566 and 567, contingency planning and financial responsibility filings. These are only a subset of authorized uses of the response fund.

Prince William Sound Regional Citizens' Advisory Council

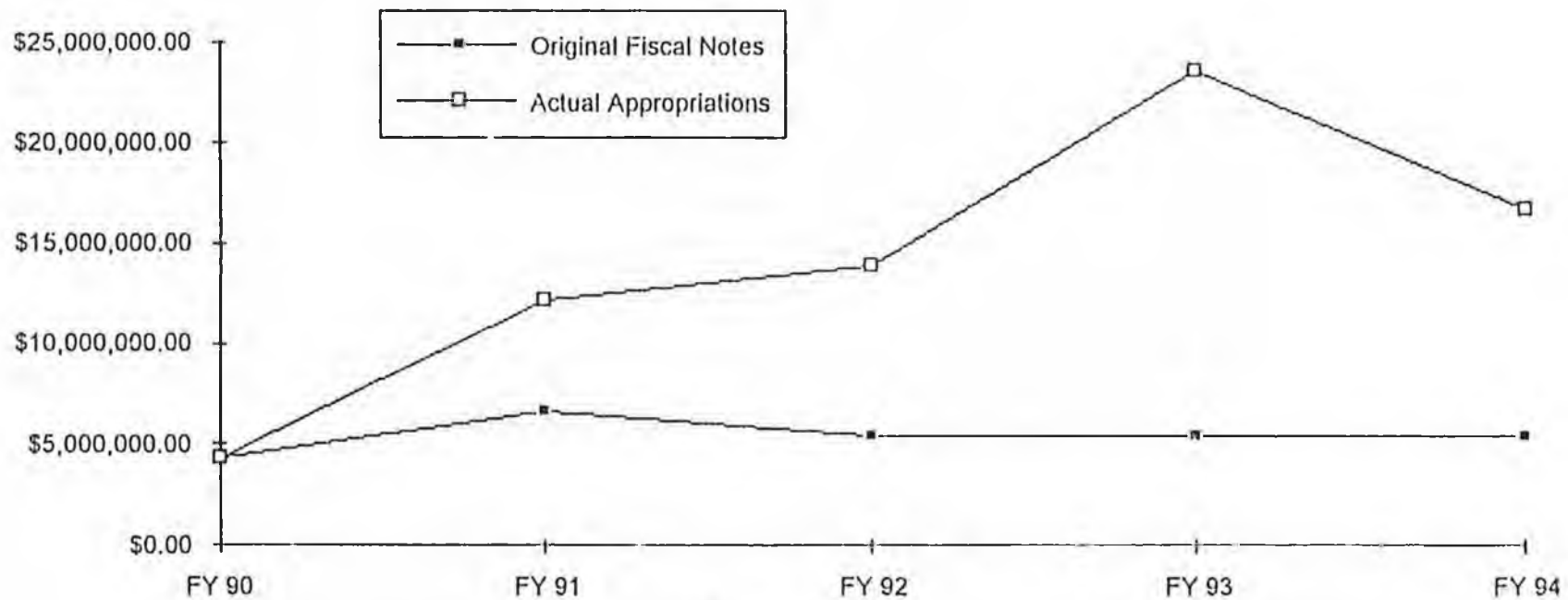
- Conspicuously absent from the analysis is the fiscal note for the Alaska Marine Highway Ferry which causes a jump in the appropriation line in FY 93. The fiscal note line does not include the fiscal note that accompanied that authorizing piece of legislation. When this issue was raised before the Senate Finance Committee on March 1, Senator Drue Pearce also noted this inconsistency and remembered that the Exxon Corporation had not testified in opposition to the legislation that authorized use of the response fund for the ferry.

As stated in RCAC's March 9 testimony, it is extremely unprofessional to produce false information and cite another entity as the source. At the very least, the Exxon Corporation owes RCAC an apology and should withdraw this misinformation from the legislative record.

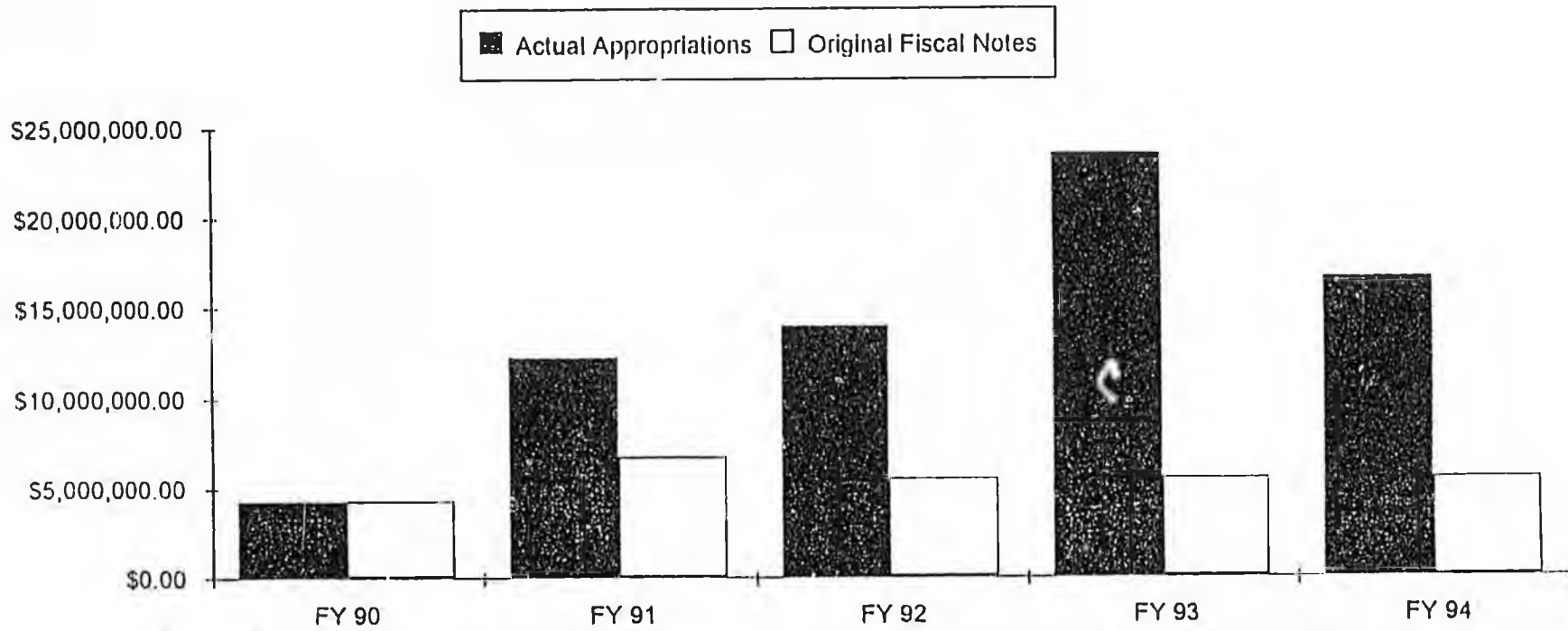
Sincerely,


Stan Stephens, President

Attachment



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report by BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention and Response Committee, December 1992



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention and Response Committee, December 1992.

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS

	DEC/OMB FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation and Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	186.50
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Enviromental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	10,727.30
Revenues on 2 Cent per Barrel (per ADEC Estimate)	10,400.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	16,400.00

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB FY 95 Budget Request
Contaminated Sites	2,747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Review	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Enviromental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	13,514.60
Revenues on 2 Cent per Barrel (per ADEC Estimate)	10,400.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	16,400.00

2.5 CENT BUDGET - PREVENTION RESPONSE PROGRAMS

	DEC/OMB FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation and Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	186.50
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	10,727.30
Revenues on 2.5 Cent per Barrel (per ADEC Estimate)	13,000.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	19,000.00

2.5 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB FY 95 Budget Request
Contaminated Sites	2,747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
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DF&G - SERC	6.50
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TOTAL EXPENDITURES	13,514.60
Revenues on 2.5 Cent per Barrel (per ADEC Estimate)	13,000.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	19,000.00



Cordova District Fishermen United

P.O. Box 939
Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

February 25, 1994

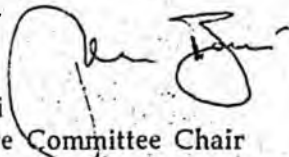
Representative Bill Williams, Chair
House Resources Committee
Room 124
State Capitol
Juneau, AK 99801-1182

Dear Representative Williams:

On behalf of Cordova District Fishermen United (CDFU), I wish to express support for your proposed committee substitute to House Bill 238. CDFU believes this is the only approach to resolving problems with the 470 Fund that is fair to both the people of Alaska and the oil industry. Without this proposed committee substitute, the lessons of the Exxon Valdez oil spill disaster are forgotten and the efforts of organizations throughout the state to prevent pollution and implement response programs are undermined. Your substitute can result in savings to the oil industry by placing a cap on the fund without curtailing the state's ability to respond to the day-to-day spills. In short, this is a win-win compromise by any definition and one that the membership of CDFU can live with.

Thank you for your consideration.

Sincerely,


John Bocci
Legislative Committee Chair

cc: House Resources Committee
Senator Lincoln
Representative Olberg



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

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

Testimony to the House Resources Committee on the Proposed Committee Substitute for House Bill 238, "Y" draft (3/2/94)

My name is Wayne Coleman. I am a member of the executive committee of the Regional Citizens' Advisory Council of Prince William Sound. Thank you for the opportunity to testify. I especially want to thank you for giving the public of Alaska another option to consider. The "Y" draft is a significant improvement over the previously proposed drafts of HB 238 and the CSSB 215 (RES) which is now in the Senate Finance Committee.

The RCAC supports the basic tenet of this proposed committee substitute for House Bill 238 which is to fix what is generally agreed to be broken---the mechanism for calculating the balance of the Oil and Hazardous Substance Release Response Fund, reduce some expenditures from the fund, and provide for improvements in the administration of the fund.

We are opposed to "splitting the nickel" and dividing the response fund into two accounts---one to fund catastrophic oil spill response and the other to fund spill prevention and preparedness programs and response to spills less than 4.2 million gallons. Opposition to splitting the nickel is based on 1) the chronic insufficient funding directed toward spill preparedness and prevention programs and 2) the problems imposed by limiting response to subcatastrophic spills which account for most of spills in Alaska. Despite rhetoric to the contrary by proponents of the split nickel legislation, CSSB 215 (RES) and other HB 238 proposals do little, if anything, to improve how the response fund functions. Instead, these are special interests legislation that provide at least a \$74 million tax break to North Slope producers.

One factor that seems to be lost in this debate is that North Slope oil is a public resource that belongs to Alaskans. If Alaskans choose to assess a nickel-per-barrel surcharge on this resource to ensure adequate spill prevention and response programs, it is indeed our prerogative. As this debate continues, it is beginning to be at best insulting to have representatives of the Exxon Corporation tell the public and elected officials of Alaska what is an "adequate" level of funding for these programs---what they are "willing to pay."

Since the HB 238 "Y" draft proposal was released, it has been attacked as "radical." Let's also keep in mind that Commissioner Sandor, Deputy Commissioner Treadwell, and Representative Williams, who not long ago had the environmental community up in arms for their appointments as commissioners of DEC and chair of the House Resources Committee because of their pro-development philosophies. They may now be considered "radical environmentalists" by some people, as they voice concerns about the impacts of

Regional Citizens' Advisory Council of Prince William Sound

these various proposals. Concerns which for the most part, coincide with those emphatically expressed by many citizens in opposition to HB 238 and CSSB 215 (RES).

Put in perspective the "Y" draft proposal is still extremely generous to industry, but not a complete industry giveaway. Consider the following:

- Would also save North Slope oil producers at least \$52 million in surcharge payments through a new method for calculating the fund balance.
- This proposal differs from previous versions of HB 238 and CSSB 215 (RES), in that it does not give surcharge payers an **automatic** additional \$25 to \$30 million tax break (depending on how the nickel is split) through the under funding of state preparedness, prevention and response programs. The ability of the legislature to set funding levels for these programs is maintained rather than being determined by splitting the nickel and declining North Slope production levels. However, surcharge payments will probably decline by the same \$30 million through the additional response fund revenue sources in this proposal. **Therefore, the ultimate impact on surcharge payers will be the same but without the spill risks to the public and tying of the hands of legislators.**
- The "Y" draft proposal also allows additional revenue sources to be included in the calculation of the fund cap. These include program receipts and mitigation account money (cost recovery from responsible parties for spill response or oversight) received to the extent that the funds originated from the response fund.

This proposal, however, does differ from previous versions of HB 238 and CSSB 215 (RES) in that it does not jeopardize the state's ability to respond to all but the largest spills--over 4.2 million gallons. The response fund continues to be accessible for response to all spills regardless of size. This takes into consideration timing and location that are equally important as spill size.

3/2/44

Chairman Williams and House Resources Committee Members:

I am Jim Carlton, the Mayor of the Ketchikan Gateway Borough, and I would like to speak in support of the current House Resources draft of House Bill 238.

There seems to be a general understanding among those knowledgeable of the so-called 470 Fund that the accounting mechanism embodied in the current law is indeed broken. It was the original intent to provide a fund of \$50 million to pay for spill response, preparedness and prevention programs. This draft attempts to fix those accounting problems and leaves the other working provisions of the fund in place.

This legislation takes into consideration concerns that coastal communities had expressed last year regarding loss of the community impact grants and funding for local emergency planning committees. That funding remains intact in this draft. Also intact are provisions which require the annual review of the state master plan to include public and legislative review. In addition, the legislature's ability to set funding levels for spill prevention programs within the Department of Environmental Conservation is maintained. I am also ^{Very} pleased that the language pertaining to funding of an oil response ferry remains intact in this draft.

I agree with comments made ~~in the Senate Finance Committee~~ by Commissioner John Sandor, that ~~the~~ other versions of this legislation, ~~that split the 5 cents per barrel charge~~ may leave the state's spill prevention and response programs underfunded. As a mayor of a coastal community, I would rather see these programs funded to the fullest extent possible. We need to be pro-active and prepared in our communities response to possible spills, not reactive, as we were with the Exxon Valdez disaster. In addition,

this draft still allows the fund to be used to respond to smaller spills, which do occur much more often than a spill of the magnitude experienced in Prince William Sound.

It is my understanding that although this legislation does not go as far as ~~what the oil industry~~ the oil industry would like, savings of many tens of millions of dollars would still be realized by these companies. In addition, any amount over what is needed to maintain the spill reserve and ~~the~~ fund the important prevention and preparedness programs, would be refunded to the oil industry.

This legislation seems to be a fair compromise between all the draft bills which attempt to address the 470 Fund. The main thing to keep in mind as you review this legislation is whether it fulfills the original intent of the legislation which states that, "funds for the abatement of a release of oil or a hazardous substance will always be available."

Thank you for the opportunity to testify.

Jim Carlton

*Testimony given
at 3/2/94 Hearing*

**POSITION OF THE
ALASKA OIL AND GAS ASSOCIATION
ON
HB 238, OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
FOR PRESENTATION TO THE
HOUSE RESOURCES COMMITTEE
March 2, 1994**

The Alaska Oil and Gas Association (AOGA) is a non-profit industry trade association. Its 18 member companies account for the majority of oil and gas exploration, production, refining, marketing and transportation activities in Alaska.

The AOGA position specifically states that:

- AOGA supports the proposal to split the current nickel per barrel surcharge on oil production into two accounts; a two cents per barrel "oil spill preparedness account", to be funded through a permanent two cents per barrel tax, and a three cents per barrel "catastrophic oil discharge account".
- AOGA believes this proposal will ensure that there is a separate and secure independent source of \$50 million available to the state and local communities in case of an emergency.
- AOGA believes the two cents per barrel tax will ensure a permanent and secure source of funding for state prevention and preparedness programs as long as oil is being produced in Alaska. The permanent two cents per barrel tax would provide over \$10 million per year for state prevention and preparedness programs, more than the \$6.5 million projected in the original fiscal notes from the 1989 and 1990 sessions.
- AOGA supports continuing the policy of using mitigation account reimbursement money to fund the state's share of the underground storage tank cleanup assistance program. Future Exxon Valdez settlement reimbursement payments should provide ample funding for the underground storage tank program.

AOGA supports the two-cent/three-cent split as proposed by Representative Green.

AOGA MEMBERS:

Amerada Hess Corporation
Anadarko Petroleum Corporation
ARCO Alaska, Inc.
BP Exploration (Alaska), Inc.
Chevron U.S.A. Inc.
Cook Inlet Region, Inc.
Exxon Company, U.S.A.
MAPCO Alaska Petroleum Inc.
Marathon Oil Company

Mobil Oil Corporation
Petrofina Delaware, Inc.
Petro Star, Inc.
Phillips Petroleum Company
Rowan Companies, Inc.
Shell Western E&P Inc.
Texaco Inc.
Union Texas Petroleum Alaska Corp.
UNOCAL

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To	(H) Resources
Co.	HB 238 Testimony
Dept.	For TC 40447
Fax #	465-3793



**WILDLIFE
FEDERATION
OF ALASKA**

Involving Alaskans with Wildlife,
Habitat and Conservation

memo 7571	# of pages + /
From	ANCH LIO
Co.	
Phone #	
Fax #	

March 9, 1994

TO: House Resources Committee

FROM: Jim Glaspell *Jim Glaspell*
President, Wildlife Federation of Alaska

SUBJECT: HB 238 (An Act relating to the oil and hazardous substance release fund ...)

Good morning Mr. Chairman and members of the House Resources Committee. My name is Jim Glaspell, and I would like to provide testimony on behalf of the Wildlife Federation of Alaska, the state affiliate of the National Wildlife Federation. Our organization is particularly interested in protecting the fish and wildlife habitat resources of Alaska, and in this objective we would like to offer our comments concerning HB 238.

The best approach to protection of resources from the effects of oil and hazardous substance spills is to plan effectively to minimize spill incidents through prevention measures, to be prepared to respond to a spill incident through timely and appropriate response and cleanup activities (Oil Spill Contingency Plan procedures), and if necessary, to restore fish and wildlife habitats which have been adversely impacted. The bill before you today seeks to make changes to a program which was originally intended to address just these issues, and we are at a loss to rationalize why HB 238 is necessary. The existing program as administered by the Alaska Department of Environmental Conservation has admittedly had some problems, but it is our understanding that the difficulties have been dealt with as internal administrative matters within the agency and appropriate corrections are now in place.

If any legislative action is necessary at all, we do not support the current "S" version as offered by Representative Green. As a compromise approach, we are more supportive of the "Y" version offered by Representative Williams since it clarifies intent and focuses on areas of perceived problems. We are particularly supportive of the fact that Representative Williams "Y" version does not propose to remove "...restoration of the environment..." from the scope of containment and cleanup.

Thank you for the opportunity to provide these comments on HB 238 for the Wildlife Federation of Alaska.

Thea Thomas

Date: Mar. 9, '94

Box 1566

Cordova, AK 99574

Occupation: Commercial Fisherman

I am speaking on HB 238. First of all, I would like to say that I do not think it is necessary for any Legislative action concerning the 470 Fund. The present system works, why try to fix what is not broken. But if the Legislature finds it absolutely necessary to provide tax relief for the oil companies, then Representative Williams' proposed committee substitute is the only fair and balanced option concerning this issue. Williams' bill addresses the oil industries request for tax relief while maintaining the state's ability to prevent, prepare for and respond to oil and hazardous substance spills. This bill also provides an atmosphere of cooperation and compromise between the oil industry and the people of the State of Alaska. Thank you.



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Honorable Bill Williams
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

February 25, 1994

RE: HB 238 — 470 Fund Bill

Dear Representative Williams:

The Alaska Wilderness Recreation and Tourism Association does not believe any legislation is needed to change the management or funding of the 470 Fund. However, if the legislature is determined to pass a bill, we thank you for introducing the House Resources Committee Substitute for HB 238.

CS HB 238 goes along way towards continuing to adequately fund the State's spill prevention and response program while addressing concerns raised by the oil industry. As you have heard AWRTA testify on previous occasions, the law does not give tourism businesses legal standing to file for economic damages sustained as a result of a spill. Therefore, strong spill prevention and response programs are the tourism industry's only protection. We would prefer a stronger, not weaker, program.

AWRTA is particularly concerned about spill prevention and cleanup of contaminated sites in rural Alaska. There are not many jobs for people living in rural Alaska. A growing number of rural communities have contacted AWRTA for information on ecotourism in hopes of beginning ecotourism type businesses. However, contaminated sites and the potential for oil spills pose problems for their development. I give three examples. First, drinking water contaminated by fuel spills poses problems for some communities. For example, because of a fuel spill, a restaurant in Cbitina is importing water. Second, the village of Chenega Bay inherited a contaminated site when it was relocated following the 1964 Earthquake. The village is located in an area with tremendous tourism potential, but before it can develop tourism facilities, it must cleanup the contaminated site. Third, in rural Alaska, there are many aging fuel storage areas which are often located adjacent to rivers. Funding is needed to repair or replace them before they cause spills which will create economic, social and environmental disasters for the local residents, communities downstream, and tourism businesses using those streams. The 470 fund provides funding for the cleanup of contaminated sites and the prevention of oil spills. It makes good economic sense for the state to continue the present funding mechanism for this program.

Sincerely,

Nancy R. Lethcoe

Testimony of Kenneth M. Reither
on behalf of Exxon Company, U.S.A.
House Resources Committee
March 16, 1994
HB 238

1. The Tax Suspension Mechanism Doesn't Work.

Despite testimony last week to the contrary, the tax suspension mechanism in the current 470 fund law doesn't work. DEC agrees. The nickel surcharge is supposed to suspend when the 470 fund reaches \$50 million. Even though the spill reserve is \$37.4 million, the latest calculation to determine whether the \$50 million target has been reached shows as follows:

Oil surcharge cumulative revenue	\$115 million
Cumulative expenditures	(128 million)
Difference	(\$13 million)

If the tax suspension provision was working properly, the difference would equate to the \$37.4 million spill reserve, not to a negative \$13 million.

2. What does industry seek?

We are not seeking some sort of tax break from the state. We are instead seeking two things:

- A. First, a mechanism that provides a stable source of revenue for ongoing spill prevention and response programs, and
- B. Second, a fix to the tax suspension mechanism so that funds available for spill response build to \$50 million as intended, but then part of the tax suspends unless and until there is a draw-down below the \$50 million target level.

3. There is no "immediate benefit" from any of the proposals under consideration.

DEC has published graphs that purport to show an "immediate benefit" to industry from the proposals under consideration ranging from \$26.8 million to \$64.7 million. These amounts were derived by comparing the negative \$13 million yielded by the suspension formula that doesn't work, against the result that a fixed suspension formula would yield under the various proposals.

We believe that comparison is invalid. The proper way to calculate benefit is to compute the difference between the tax the industry would pay under present law versus the tax it would pay

under the proposals.

Measured properly, there is no immediate benefit to industry from any of the proposals. The earliest that any benefit can come about is mid FY95 due to a partial suspension or credit taking effect at that time. That benefit is no where close to \$26.8 to \$64.7 million.

4. Splitting the Nickel

One of the reasons why splitting the nickel makes sense is that the 470 fund has in reality become a dual purpose fund, trying to meet two separate and distinct needs. First, it is used to fund ongoing spill preparation and prevention programs -- needs that continue each year. Second, it is used as a storehouse of moneys available to respond to catastrophic and other spills.

Splitting the nickel into two separate surcharges - one to take care of the ongoing needs and the other to build the fund - seems to us to be a sensible and workable approach. This is the approach taken in Representative Green's proposal.

How would it work? The numbers are really simple. Exhibit A shows how it would work if the nickel is divided into a 2 cent permanent tax for ongoing programs and a 3 cent suspending tax to build the \$50 million fund.

As shown in Exhibit A, funds are available for DEC's ongoing spill planning, prevention and oversight programs at a level at least equal to DEC's own recent projections. At the same time, 3 cents of the nickel surcharge suspends January 1, 1995 after the balance available for spill response grows to about \$58 million.

What happens if the Legislature adopts a 2.5 cents/2.5 cents split instead? Exhibit B describes the result, but the only basic differences are:

- A. More dollars are available for appropriation to DEC for ongoing programs in future years (\$16.1 million or more vs. DEC's projected need of \$13.5 million), and
- B. The buildup of the \$50 million fund is not quite as fast as under the 2 cents/3 cents proposal.

Both raise the fund above \$50 million, but how fast you get there is different between the proposals.

5. DEC's 3 cents/2 cents proposal.

This proposal is quite different in a couple of areas. In addition to advocating 3 cents for DEC's ongoing programs instead of 2 or 2.5 cents, DEC advocates taking 60 percent of the \$37.4 million spill reserve and appropriating that amount to DEC in a non-lapsing appropriation to be spent for ongoing programs. The result is \$38 million appropriated to DEC for ongoing programs, compared to DEC's projected need of \$13.5 million.

This proposal also reduces the spill reserve to \$25.4 million and it would take 2 1/2 years for the fund to build to \$50 million. Compare this approach to the 2 cents/3 cents split -- or to the 2.5 cents/2.5 cents split -- where the fund will exceed \$50 million by the middle of the coming fiscal year.

Exhibit C is an analysis of this proposal.

6. HB238 "Y": Retain the nickel surcharge; credit part back to producers

Now I would like to turn to the proposed tax credit solution, as described in HB 238 work draft "Y". Under this proposal, the nickel surcharge would remain in place. A tax credit would supposedly come into play when the amount reached for spill response got to \$50 million or more.

I tried to prepare a detailed analysis of how version "Y" would work, Exhibit D, but didn't get very far before I ran into problems due to ambiguities as to how it would work. In addition, although the tax credit mechanism appears simple in theory, in practice it would create a large tax compliance problem for DOR and the producers.

Here are some of the problems I found:

- The accounting problem is not fixed. In section 4 of the bill, which contains the calculation to see whether \$50 million target has been reached, the bill subtracts reserves for outstanding appropriations at page 2, line 28, then subtracts "total appropriations" at page 3, line 14, which appears to be a double subtraction of appropriations. I have reviewed amendment "Y.1", which confirms this observation.
- In the "Y" work draft, a taxpayer is entitled to a credit against the tax imposed by AS 43.55.011-150. This appears in Sec 2 at lines 6 - 13. The following problems are observed in this area:
 - A. AS 43.55.011-150 includes both the oil production tax (AS 43.55.011) and the gas production tax (AS 43.55.013), which are two separate taxes. Against which tax is the credit to be taken? Presumably it would be against the oil production tax, but the bill should be more precise in this

area. If passed as drafted, I suppose DOR would have to pass a regulation attempting to clarify this point.

- B. Under version "Y", the credit may be taken only during a tax year in which the credit is calculated and reported. But under neither tax is there a "tax year". These taxes are calculated and paid monthly, not annually. It is therefore unclear what this limitation means.
- C. Under "Y", the surcharge would be segregated into a separate account in the general fund. At the end of the year, the Legislature would appropriate the nickels collected into the 470 Fund. But since the credit is allowed against production taxes (which are paid into the general fund), that credit effectively comes out of the general fund, not the 470 fund. Thus the 470 fund would continue to grow, funded indirectly by the general fund, and not by the surcharge itself.

Amendment "Y.4" changes the credit to be against the surcharge itself, which solves problems A and C mentioned above. But "Y.4" allows the credit only during the state fiscal year in which the credit is calculated and reported. Consider activity during the 4th quarter of the state fiscal year.

- By 4/30, the Commissioner of Administration must make the calculation and by 5/14 must report same to DOR.
- DOR (within no specified time limit) calculates the amount of credit by taxpayer and notifies each taxpayer how much each is entitled to.
- But the next tax return before the end of the quarter is due June 20 and delinquent June 30. That leaves only 45 days for DOR to make the calculation, notify taxpayers of the amount of credit, and the taxpayers to fold the credit into their return -- otherwise the credit is apparently lost.

What if there's an amended return filed later in which a taxpayer pays more or claims an overpayment of surcharge -- or an up or down audit adjustment in a later year -- that affects the amount of surcharge due.

- During those quarters when the credit is more or less than the full amount of the surcharge paid, DOR cannot calculate with precision the amount of credit due unless it waits until the periods are closed for ALL taxpayers.
- Example. Suppose the amount of credit is \$3.0 million and suppose the surcharge collected was \$6.5 million. Initially the credit is 46.15% of the tax paid. So far, so good. But suppose next year an adjustment is made in

one taxpayer's return resulting in total pre-credit surcharge due of \$6.55 million. Now the applicable credit is 45.80%, not 46.15% and an adjustment is due every other taxpayer. Multiply this by the 14 or so producers in Alaska.

This is a real concern. There is an issue now of whether Natural Gas Liquids are gas or oil. Should the DOR prevail in it's claim that they are oil, then amended returns will be required which change the number of barrels reported and accordingly the surcharge due. Depending on when this issue is resolved, and it could be five to ten years from now, the burden of going back and recalculating the tax credit could be very large.

- No taxpayer can verify the accuracy of the amount of credit calculated by DOR without knowing the total amount of surcharge collected from the other taxpayers (as adjusted after audits are closed -- 10 or more years later).
- Page 5, lines 7-15. These lines may not be appropriate to this bill since they refer a situation where the tax is to be reimposed. But this bill has a tax credit mechanism, not a suspension/ reimposition mechanism.

Now, I have no doubt that DOR can write regulations and make any calculation required under just about any law that is passed. But as I mentioned earlier, the tax credit mechanism appears to be easy in theory, but in practice it would create a very large tax compliance burden for both DOR and the producers.

It seems to us to be much simpler to split the nickels instead. Then, when the \$50 million cap is reached, all DOR would have to do is send a form letter to the producers, notifying them of the suspension or reinstatement of the surcharge. DOR would have nothing to calculate.

Summary

To summarize, we do not support the tax credit solution to this problem. Although some of the problems I have described could be cured through amendment, these facts remain:

1. You still end up with one fund trying to do two jobs;
2. The effort required by DOR and the taxpayers to make and keep up with the calculations seems out of line with the objectives that are being sought.
3. The far simpler approach is to split the tax into two parts -- one to fund ongoing programs and the other to build the \$50 million fund.

Under the split nickel proposal we have supported, only part of the nickel tax suspends -- and only after full funding of DEC's ongoing programs -- and only after the full \$50 million fund is built up for response to catastrophic and other spills to be addressed out of that fund.

Thank you for the opportunity to testify.

KMR:lm

Exhibit A

SB 215 / HB 238

2 cent Permanent Tax for Ongoing Programs
3 cent Suspending Tax for \$50 million Fund
(\$ million - all numbers approximate)

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

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.

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> (None because law has just taken effect).
0.0	Prior quarter recoveries in the spill response mitigation account. (None, same reason.)
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.

Note closeness to \$50 million target -- in reality, the tax might suspend at the end of the quarter if the total came out higher.

Meanwhile, during that quarter,

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

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

During Second Quarter FY95

30 days into the quarter, Commissioner of Administration adds

3.9	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.1	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<hr/>	
53.9	Total. The 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.

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

Meanwhile, during that Second Quarter,

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

3.9 million 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

30 days into the quarter, the Department of Administration updates the calculation and notifies Department of Revenue of the result:

7.8	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.2	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<hr/>	
57.9	Total. The spill response 3 cents surcharge remains suspended.

If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

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.

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 FY95 from the 2 cent permanent surcharge (4 quarters of \$2.6 million each).
- 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 or more (DEC's projected need.)

AS TO THE SPILL RESPONSE ACCOUNT

The spill response account grows above \$50 million:

- 3.9 1st quarter collections from 3 cents spill response tax.
- 3.9 2nd quarter collections from 3 cents spill response tax.
- 0.4 Estimated recoveries.
- 49.9 Prior balance in spill response account.
- 58.2 New balance in spill response account.

OVERALL RESULT AFTER FIRST YEAR OF OPERATION UNDER NEW LAW

Funds are available for DEC's ongoing spill planning, prevention, and oversight programs, sufficient according to DEC's own projections. At the same time, the 3 cents spill response surcharge suspends as of January 1, 1995 and the balance in the 470 fund for spill response grows to over \$58 million.

Note: The \$58 million 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 producers is due to a suspension of 3 cents of the total 5 cents in surcharges half way during FY95 after funds available for spill response grows above the \$50 million target -- the target 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.

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

Exhibit B

SB 215 / HB 238

2.5 cent Permanent Tax for Ongoing Programs
2.5 cent Suspending Tax for \$50 million Fund
(\$ million - all numbers approximate)

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

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.

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> (None because law has just taken effect).
0.0	Prior quarter recoveries in the spill response mitigation account. (None, same reason.)
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.

Note closeness to \$50 million target -- in reality, the tax might suspend at the end of the quarter if the total came out higher.

Meanwhile, during that quarter,

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

3.25 million is collected from the spill response 2.5 cents surcharge and segregated in a separate account in the general fund.

During Second Quarter FY95

30 days into the quarter, Commissioner of Administration adds

3.25	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.1	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<hr/>	
53.25	Total. The 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.

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

Meanwhile, during that Second Quarter,

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

3.25 million 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

30 days into the quarter, the Department of Administration updates the calculation and notifies Department of Revenue of the result:

6.5	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.2	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
49.9	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
<hr/>	
56.6	Total. The spill response 2.5 cents surcharge remains suspended.

If the result is less than \$50 million, the surcharge is reinstated at the beginning of the next quarter.

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.

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 FY95 from the 2.5 cent permanent surcharge (4 quarters of \$3.25 million each).
- 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.
- ???
- Registration and certification fees collected.
- 16.1 or more (DEC's projected need is 13.5)

AS TO THE SPILL RESPONSE ACCOUNT

The spill response account grows above \$50 million:

- 3.25 1st quarter collections from 2.5 cents spill response tax.
- 3.25 2nd quarter collections from 2.5 cents spill response tax.
- 0.4 Estimated recoveries.
- 49.9 Prior balance in spill response account.
- 56.8 New balance in spill response account.

OVERALL RESULT AFTER FIRST YEAR OF OPERATION UNDER NEW LAW

Funds are available for DEC's ongoing spill planning, prevention, and oversight programs, sufficient according to DEC's own projections. At the same time, the 2.5 cents spill response surcharge suspends as of January 1, 1995 and the balance in the 470 fund for spill response grows to over \$56 million.

Note: The \$56 million 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 producers is due to a suspension of 2.5 cents of the total 5 cents in surcharges half way during FY95 after funds available for spill response grows above the \$50 million target -- the target intended when the nickel surcharge was enacted.

OVERALL RESULT FOR FUTURE

More than 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.

Exhibit C

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

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

Transition and FY95 Funding

1. Appropriation to Contingency and Abatement Account for use by DEC for ongoing programs.

15.6 60% of FY94 nickels collected.
22.4 60% of Spill Reserve.
38.0 Total appropriated to DEC for ongoing programs.
(13.5) DEC's projected need.
25.5 Excess over need.

2. Appropriation to Reserve Account for spill response.

10.4 40% of FY94 nickels collected
15.0 40% of Spill Reserve
25.4 Total appropriated to spill response account

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 (None because law has just taken effect).
0.0 Prior quarter recoveries in the spill response mitigation account. (None, same reason.)
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.

Meanwhile, during that quarter,

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

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

During Second Quarter FY95

30 days into the quarter, Commissioner of Administration adds

2.6	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.1	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
25.4	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
28.1	Total. The spill response 2 cents surcharge is not suspended.

Meanwhile, during that Second Quarter,

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

2.6 million is collected from the spill response 2 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

30 days into the quarter, the Department of Administration updates the calculation and notifies Department of Revenue of the result:

5.2	Amount collected through the prior quarter under the <u>spill response surcharge</u> .
0.2	Amount collected through the prior quarter as recoveries to the spill response mitigation account.
25.4	Unreserved and unobligated balance in the <u>spill response account</u> of the 470 fund.
31.0	Total. The spill response surcharge remains in place.

Fourth Quarter FY95

The Department of Administration updates the calculation and notifies Department of Revenue of the result. As with the prior quarter, the suspending 2 cents surcharge remains in place.

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:

15.6	Amount collected during FY95 from the 3 cent permanent surcharge.
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 <u>spill response surcharge</u> during the prior year.
???	Registration and certification fees collected.
18.7	or more (6.2 over DEC's projected need of 13.5).
6.2	Excess appropriation this year.
25.5	Excess to need appropriated prior year.
31.7	Cumulative excess.

AS TO THE SPILL RESPONSE ACCOUNT

The spill response account doesn't yet reach \$50 million:

10.4	4 quarters of collections of spill surcharge
0.4	Estimated recoveries.
25.4	Prior balance in spill response account.
36.2	New balance in spill response account.

OVERALL RESULT AFTER FIRST YEAR OF OPERATION UNDER NEW LAW

Funds available for DEC's ongoing spill planning, prevention, and oversight programs greatly exceed need (by tens of millions).

At the same time, the 2 cents spill response surcharge remains in place during the fiscal year. The spill response fund itself is reduced initially from 37.4 million to 25.4 million, and increased by year end to 36.2 million.

It will take at least 6 more quarters before the \$50 million target is reached and the 2 cents tax is suspended.

Exhibit D

HB 238 Work Draft Y
Retain 5 cent/bbl surcharge
Allow tax credit when fund exceeds \$50 million

6/30/94 Spill Reserve	37.4 million
FY94 collections from 5 cent surcharge	26.0 million

Transition and FY95 Funding

26.0	FY94 nickels collected are appropriated to the 470 fund, 13.5 of which is appropriated for ongoing DEC programs and 12.5 to the spill reserve.
<u>37.4</u>	6/30/94 spill reserve balance.
63.4	New balance in 470 fund, of which 49.9 would be in the spill reserve (12.5 plus 37.4).

During 1st Quarter FY95

30 days into the quarter, the Commissioner of Administration adds:

49.9	Unreserved and unobligated balance in the 470 fund (63.4 total minus 13.5 reserved for appropriations)
0.0	Cumulative nickels collected through prior quarter (would be zero since the prior quarter collections have already been appropriated to the 470 fund)
<u>0.0</u>	Balance of the mitigation account (also zero)
49.9	

And subtracts:

<u>(13.5)</u>	Total appropriations from the 470 fund
36.4	

Thus despite the fact that the spill reserve is 49.9 million, the formula yields 36.4 million.



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

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

March 15, 1994

Representative Bill Williams, Chair
House Resources Committee
State Capitol
Juneau, Alaska 99801

Dear Representative Williams:

Following testimony by Prince William Sound Regional Citizens' Advisory Council (RCAC) on March 9, some members of the House Resources Committee requested more information on the budget chart prepared by the Exxon Corporation. Attached is a copy of the chart. Below are bullets that point out the inconsistencies and inaccuracies of this information.

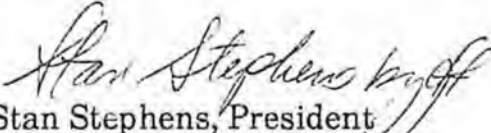
- The chart cites a report completed by BCSB Marketing for RCAC in December 1992 as its source. This suggests that the chart was produced by BCSB. This is not accurate; the chart was produced by the Exxon Corporation.
- The BCSB report provides information on annual appropriations for Alaska Department of Environmental Conservation (DEC) core spill prevention and response programs for the fiscal years (FY) 91 through 93. There is no information on FY 90 and 94. The purpose for showing the FY 91-93 appropriation levels in the BCSB report was to illustrate that despite the availability of response funds, the level of funding for core programs has remained relatively constant during those years.
- In the report, no attempt was made to analyze the adequacy of appropriations to these DEC programs---most of which have not been fully implemented.
- The most glaring error of the Exxon Corporation chart, however, is that it inaccurately compares "apples and oranges" and "credits" the poor analysis to another author. Specifically, the chart line "actual appropriations" includes appropriations for all authorized uses of the response fund. The line "original fiscal notes" includes only a select few fiscal notes---primarily those from the "spill bill package" passed in 1989 and additional legislation passed in 1990. These include SB 261, state and regional contingency planning; SB 264, response corps and depots; and HB 566 and 567, contingency planning and financial responsibility filings. These are only a subset of authorized uses of the response fund.

Prince William Sound Regional Citizens' Advisory Council

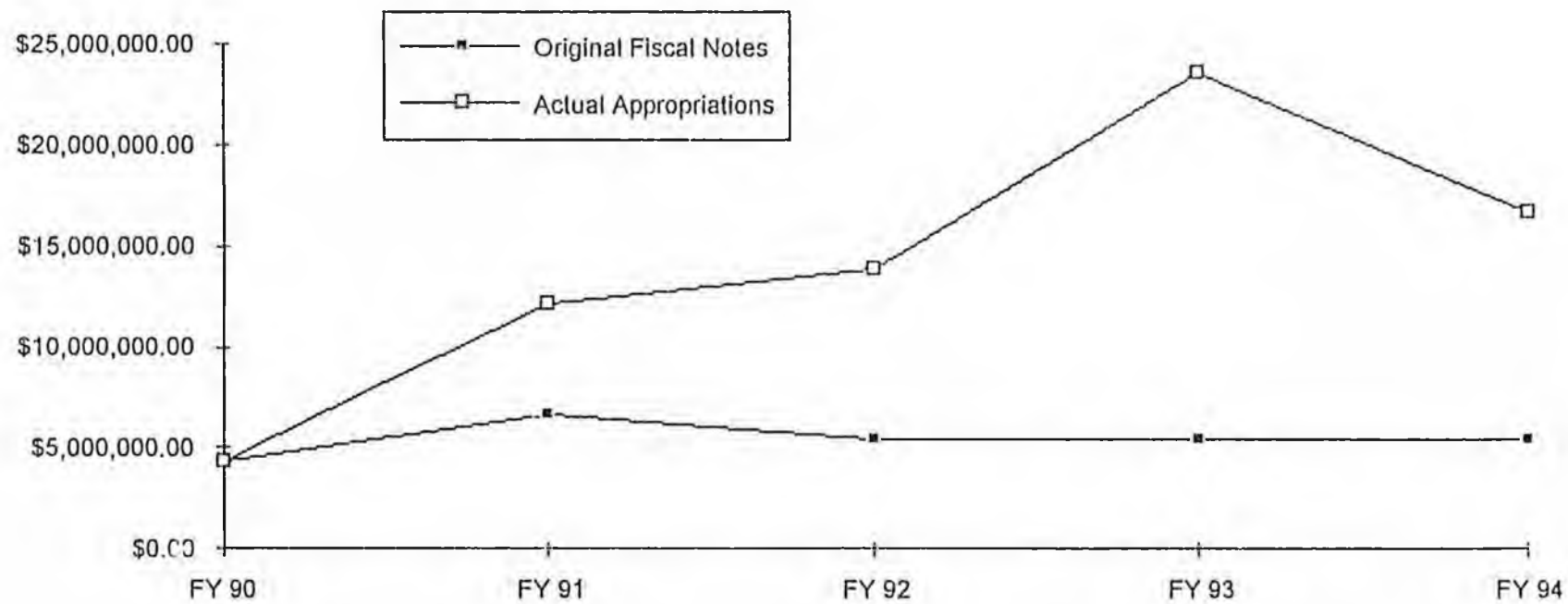
- Conspicuously absent from the analysis is the fiscal note for the Alaska Marine Highway Ferry which causes a jump in the appropriation line in FY 93. The fiscal note line does not include the fiscal note that accompanied that authorizing piece of legislation. When this issue was raised before the Senate Finance Committee on March 1, Senator Drue Pearce also noted this inconsistency and remembered that the Exxon Corporation had not testified in opposition to the legislation that authorized use of the response fund for the ferry.

As stated in RCAC's March 9 testimony, it is extremely unprofessional to produce false information and cite another entity as the source. At the very least, the Exxon Corporation owes RCAC an apology and should withdraw this misinformation from the legislative record.

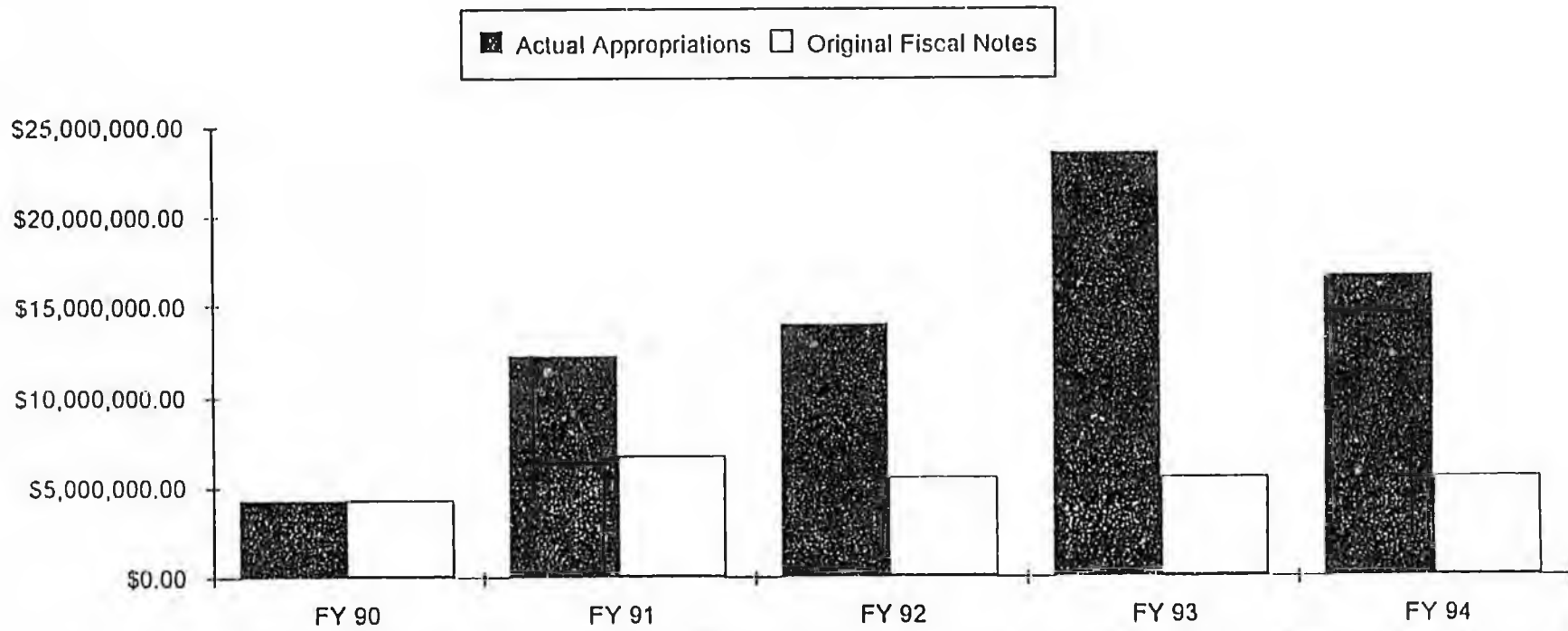
Sincerely,


Stan Stephens, President

Attachment



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report by BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention and Response Committee, December 1992



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention and Response Committee, December 1992.

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS

	DEC/OMB FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation and Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	186.50
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Enviromental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	10,727.30
Revenues on 2 Cent per Barrel (per ADEC Estimate)	10,400.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	16,400.00

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB FY 95 Budget Request
Contaminated Sites	2,747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Review	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Enviromental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	13,514.60
Revenues on 2 Cent per Barrel (per ADEC Estimate)	10,400.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements 'to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	16,400.00

2.5 CENT BUDGET - PREVENTION RESPONSE PROGRAMS

	DEC/OMB FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation and Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	186.50
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	10,727.30
Revenues on 2.5 Cent per Barrel (per ADEC Estimate)	13,000.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	19,000.00

2.5 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB FY 95 Budget Request
Contaminated Sites	2,747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4,067.40
Industry Preparedness	2,351.90
Underground Storage Tanks	108.30
Fund Administration and Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G - Industry Contingency Plan Review	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	13,514.60
Revenues on 2.5 Cent per Barrel (per ADEC Estimate)	13,000.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million through the year 2001 - Annual amounts may vary)	3,500.00
MINIMUM TOTAL REVENUES AVAILABLE	19,000.00

Representative Bill Williams
State Capitol
Juneau

3. 3. 94.

Dear Representative Williams.

I have the honor of representing the citizens of Seward on the Prince William Sound Regional Citizens Advisory Council.

With regard to your Y version of HB 238, I wish to tell you that both myself and I am sure most of the citizens of this community are fully in support of your modifications to the House Bill.

It is obvious that you have put a great deal of work and thought into this complex issue, and you appear to have struck a workable compromise which we hope will be acceptable to all the parties concerned.

This community of Seward is the headquarters for administration and visitor handling of tourists visiting the Kenai Fjords National Park. After Denali we are rapidly becoming one of the major visitor attractions in the State. Literally thousands of our residents are becoming reliant upon the tourist industry to earn a livelihood, and since we would certainly be in the path of any future oil spills in PWS, those livelihoods could be placed in jeopardy.

We must be increasingly vigilant, since as the years go by, and the tankers and terminal equipment in Valdez ages, then the potential for accidents is also increasing.

When we look at the overall costs of over 2 billion dollars for the Exxon Valdez clean up, even the present proposed cap of 50 million dollars is only two and a half percent of the cost of a major clean up operation, and would only be of token value in the case of the next major spill.

In summary we applaud your efforts on behalf of the residents of the oil spill affected areas, and hope that your fellow representatives are able to recognize all the good points of your modified "Y" version of HB 238. We would be very obliged if your secretary could Xerox copies of this letter to the other Representatives concerned with 238 and so assure them of the strong support for your version of the bill in this and the other oiled communities.

Yours Very Sincerely;



Dennis Lodge. Seward RCAC representative.

From the desk of **Richard A. Fineberg**
Ester, Alaska 99725

P.O. Box 416
 Phone / Fax (907) 479-7778

(Via Fax)

February 26, 1994

Rep. Bill Williams, Chair
 House Resources Committee
 Alaska State House of Representatives
 Juneau, Alaska 99801-1182

Re: SB 215 / SB 238 ("470" Fund)

Dear Rep. Williams:

Once again you are being asked to consider bills modifying the oil spill response "470" fund on behalf of the oil industry. I am strongly opposed to any attempt to restructure or reduce the "470" fund and its mission without clear recognition of two things:

- ==> the crucial importance of prevention in the State's oil spill prevention program; and
- ==> the incredible magnitude of North Slope profits.

Regarding the first point, I find it strange that less than five years after the Exxon Valdez ran aground, unleashing what was arguably the worst oil spill in this nation's history, citizens are once again have to remind the Legislature that foolish complacency and misplaced trust played major roles in causing that spill. Although the Senate Resources Committee blatantly ignored the testimony from others in opposition to changing the "470" fund at this time, I believe that strong and well-grounded testimony covered the first point; I turn therefore to the second.

Spread across all North Slope oil production, the so-called "nickel-per-barrel" surcharge actually amounts to less than three cents per barrel after taxes. According to the Dept. of Revenue's Feb. 9 letter to Senator Zharoff, there are two principal reasons for this: First, the surcharge does not apply to royalty barrels, and, secondly, on the remaining 7/8 of production to which the surcharge applies, it is deductible from federal income tax. In simplified form, the true cost of the nickel per barrel would look like this:

\$0.05	surcharge on taxable (non-royalty) barrels
x 0.875	approximate equity (non-royalty) fraction
= \$0.04375	pre-tax surcharge spread across all barrels
x 0.65	35% federal income tax allowance for the \$0.0375 per-barrel payment
= \$0.02843	(2.483 cents per barrel) cost of the nickel-per-barrel after consideration of royalty and federal income tax effects

That's less than one percent of CY 1993 after-tax Alaska North Slope production and pipeline profits of approximately \$2.96 per barrel. That per-barrel profit produced an annual profit in excess of \$1.7 billion for the industry. This estimate, incidentally, fully recognizes the industry's poor fourth-quarter performance. Even on those few dark days in December when prices were at the \$10.00 per-barrel level, it appears that North Slope profits were still running on the order of \$400,000.00 per day.

To determine whether this 2.8 cents per barrel significantly affects oil industry operations, let's consider these profits in terms of what an investor might earn

*Fineberg / Rep. Bil Williams
2/26/94 (Page 2)*

elsewhere. If North Slope production and pipelining were controlled by one company instead of three, that firm's 1993 profits would have ranked on a par with the seventh most profitable firm on the Fortune 500 list of the nation's most profitable companies in 1992. Clearly, North Slope investors would be hard-pressed to duplicate their North Slope profits anywhere else in the nation. The Fortune listing from 1992 is attached to demonstrate that North Slope operations rank among the most profitable enterprises in the nation.

It is also noteworthy that compared to Fortune 500 leaders in other industries, the North Slope is remarkably constant in its profits. Between 1987 and 1992, I estimate that North Slope production and pipelining profits exceeded \$2 billion in every year. By comparison, during those years, Fortune 500 powerhouses such as GM and IBM vanished from the ranks of the most profitable, racking up huge losses for several years in a row when they encountered hard times. In contrast, the costs of the Exxon Valdez didn't even knock Exxon out of the top five in 1989, while the oil market's travails in late 1993 only put a relatively small dent in the profitability of Alaskan operations for the year.

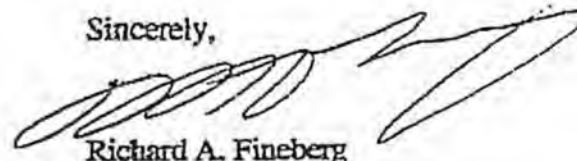
The spreadsheet on which my 1993 profit estimates are based is attached. The right-hand column identifies the sources for the data I have used. These are all published sources, and perhaps the most surprising thing is that the industry's ongoing public relations campaign has been so effective that these numbers are not widely discussed. Those of you who are familiar with the estimates I did in 1992 in a report to the Senate Finance Committee will recognize that I have revised my estimates to reflect new production cost data released by the Department of Revenue and published last fall by the Legislative Research Agency.

Clearly, \$0.03 per barrel is at most a minute fraction of North Slope profits. Moreover, this surcharge is virtually irrelevant to long-term industry profitability models, which typically forecast price changes in the \$2.00- to \$5.00-per-barrel range. Those models indicate that the North Slope should produce similarly strong profits into the next century, with or without alteration to the "470" fund.

I can think of several reasons why the oil industry might wish to divert the Legislature into wasting time on this red herring. But I can see no good reason why you, as our elected representatives, should fall for this industry ploy. In my estimation, your time during a 120-day session is too valuable to waste on this excursion. Your services are badly needed in other areas.

If I can provide additional information, please let me know. In the meantime, I close with best wishes in your efforts to resolve the far more pressing administrative and budget problems facing you.

Sincerely,



Richard A. Fineberg

enc.

ANS Profits Worksheet (Research Associates 2/94)

North Slope Profit Analysis: ALL FIELDS		1993 ANS Avg. (\$/bbl) -- /		Notes (2/16/94) LRA 8/93, post costs
		Gulf Coast	West Coast	
1	Average Price for ANS (Spot)	\$16.36	\$15.45	ADOR (thru Nov.; Dec. = BP posting)
2	Quality Adjusted Price			(n.a.)
3	Production / Disposition			
	<i>Bbl. rate Day</i>			
a	Production (mm bbls. yr. / day)	586.19	1.606	ADOR (ADMS; ReveNews)
b	Volume to East / West Coast (%)	13.80%	86.20%	ADOR (avg. thru Nov.)
4	Feeder Pipeline Tariffs	(\$0.10)	(\$0.10)	Wghtd. avg. sum of items 4a thru 4g (1992 data)
a	Operating & capital costs	(\$0.04)	(\$0.04)	Alaska Dept. of Law (ADL; 7/29/92) less 4b
b	State & local property tax (pipelines)	\$0.00	\$0.00	30% of total property tax * (feeder tariff / TAPS tariff)
c	State income tax (pipelines)	\$0.00	\$0.00	4d * (eff. state tax rate / eff. fed. tax rate)
d	Federal income tax (pipelines)	(\$0.01)	(\$0.01)	ADL (7/29/92) less item 4c
e	After-tax margin	(\$0.02)	(\$0.02)	ADL (7/29/92)
f	Recovery of deferred return	(\$0.01)	(\$0.01)	*
g	DR&R allowance	\$0.00	\$0.00	*
5	TAPS Pipeline Tariff	(\$2.92)	(\$2.92)	From ADOR Shortcut
a	Operating & capital costs	(\$0.97)	(\$0.97)	Line 5 - (lines 5b thru 5g)
b	State & local property tax (pipelines)	(\$0.10)	(\$0.10)	30% of total property tax
c	State income tax (pipelines)	(\$0.09)	(\$0.09)	5d * (eff. state tax rate / eff. fed. tax rate)
d	Federal income tax (pipelines)	(\$0.60)	(\$0.60)	ADL (7/29/92) less item 4c
e	After-tax margin	(\$0.56)	(\$0.56)	ADL (7/29/92)
f	Recovery of deferred return	(\$0.49)	(\$0.49)	*
g	DR&R allowance	(\$0.05)	(\$0.05)	*
h	Permeability Charge			
6	State Share (Feeder Lines)	(\$0.01)	(\$0.01)	Sum of items 4a, 4c
7	Federal Share (Feeder Lines)	(\$0.01)	(\$0.01)	Item 4d
8	Industry Profit (Feeder Lines)	\$0.03	\$0.03	Sum of items 4c, 4f
9	State Share (TAPS)	(\$0.25)	(\$0.25)	Sum of items 5b, 5c
10	Federal Share (TAPS)	(\$0.60)	(\$0.60)	Item 5d
11	Industry Profit (TAPS)	\$1.05	\$1.05	Sum of items 5c, 5f
12	Tanker (to Gulf / West Coast)	(\$3.42)	(\$1.11)	ADOR (from USFRA/ATRA thru July)
13	Wellhead value	\$9.92	\$11.32	Sum of items 1, 4, 5, 12
14	State Royalties, Production & Property Taxes	(\$2.78)	(\$3.12)	Sum of items 14a thru 14d
a	Royalty	(\$1.17)	(\$1.54)	Item 13 less field costs * est. field royalty
b	Severance tax	(\$1.19)	(\$1.36)	Item 13 * .575 * nominal severance * FTF
c	Spill Response & Conservation Tax	(\$0.05)	(\$0.05)	3.054 * .875
d	State & local property tax (production)	(\$0.37)	(\$0.37)	70% of total property tax (from ADOR Spr. 93, p. 6)
15	Production costs	(\$5.17)	(\$5.17)	Sum of items 15a, 15b (assumed = FY 1993)
a	Lifting Costs	(\$1.86)	(\$1.86)	From Leg. Res. Agency FY 93 (Sept. 93)
b	Depletion, Depreciation & Amortization	(\$3.31)	(\$3.31)	*
16	Net Revenue (production)	\$1.98	\$3.03	Sum of items 13, 14, 15
17	State Income Tax (production)	(\$0.12)	(\$0.12)	ADOR Fall 93 forecast less items 4c, 5c
18	Federal Income Tax (production)	(\$0.61)	(\$0.94)	Est. 33.0% of items 16 + 17
19	Industry Profit (production)	\$1.24	\$1.98	Sum of items 16 thru 18
20	Total State Share (production + pipelines)	\$3.15	\$3.49	Sum of items 6, 9, 17
21	Total Federal Share (production + pipelines)	\$1.25	\$1.55	Sum of items 7, 10, 13
22	Total Industry Profit (production + pipelines)	\$2.53	\$3.06	Sum of items 8, 11, 19
23	CY 93 Industry Avg. per-barrel ANS Profit		\$2.96	(Gulf [line 22 * line 3b]) + (W. C. [line 22 * line 3b])
24	Est. CY 93 Industry Profits ==>	\$1,735.5 billion		(Line 23 * line 3a)

LARGEST U.S. INDUSTRIAL CORPORATIONS

Want proof that the U.S. auto industry is coming back? Check out Chrysler's return to investors.

FROM RICHARD FINEBERG

SALES	% change from 1991	PROFITS		ASSETS		TOTAL STOCKHOLDERS' EQUITY		MARKET VALUE 2/15/92	PROFITS AS % OF...			EARNINGS PER SHARE			TOTAL RETURN TO INVESTORS		RANK 1992									
		\$ millions	% rank	\$ millions	% rank	\$ millions	% rank		\$ millions	% rank	% Sales	% Assets	% Equity	1992 \$	% change from 1991	1992-93 annual growth rate % rank		1992 % rank	1992-93 annual rate % rank							
132,746.9	7.3	(23,496.3)	50	181,012.8	1	6,226.8	21	27,858.0	11	(11)	451	7(3.3)	451	(107.4)	116	(16.24)	—	—	15.9	167	6.7	21	17			
103,547.0*	0.7	4,770.0	2	114.0	88,030.0	3	23,774.0	1	28,868.8	1	48	128	3.8	155	11.8	124	3.75	(14.4)	4.4	131	6.2	242	23.0	27	18	
100,786.8	13.3	(7,188.0)	476	—	180,548.2	3	14,752.8	5	34,080.4	17	(2)	427	(4.1)	109	(86.8)	405	(15.81)	—	—	—	—	—	—	—	—	12
85,366.0	(0.6)	(4,448.0)	475	—	84,705.0	4	27,624.0	2	31,671.8	8	(20)	420	(5.7)	408	(14.0)	355	(6.70)	—	—	—	—	—	—	—	—	17
82,202.8	3.3	4,726.0	2	79.2	192,878.0	1	23,488.0	3	13,351.0	2	26	71	2.4	114	20.1	60	3.51	81.8	10.7	88	15.1	173	17.4	122	7	
87,389.4*	0.8	682.0	17	(83.1)	40,561.0	6	16,840.0	4	27,015.9	10	22	581	2.1	170	4.9	261	2.01	(24.8)	14.9	211	(2.2)	301	16.1	155	18	
10,187.4	4.3	4,839.9	1	64.2	50,014.0	5	12,862.0	7	17,710.1	3	88	42	3.0	61	39.3	14	5.45	87.7	21.5	74	(1.3)	272	31.0	11	4	
37,843.6	(8.1)	(1,427.3)	471	(79.8)	28,870.0	7	11,768.0	10	31,854.8	7	(10-1)	447	(10.3)	419	(14.2)	374	(5.84)	(21.1)	—	—	—	—	—	—	—	5
17,484.0*	3.8	1,549.0	8	31.2	23,870.0	11	12,728.0	7	25,160.3	15	4	178	4.8	155	11.4	165	4.93	35.3	1.4	187	3.8	240	14.1	107	18	
27,130.0*	(1.1)	712.0	21	(18.0)	25,492.0	15	9,973.0	11	10,301.1	25	25	242	2.7	231	6.8	247	2.57	(40.8)	(7.0)	211	2.7	247	2.4	167	10	
30,897.8	35.6	722.0	22	—	40,849.0	7	7,838.4	17	11,857.8	24	20	200	1.8	217	9.8	117	2.21	—	10.3	91	181.2	3	18.1	151	17	
30,184.0	2.0	182.0	31	(94.8)	14,147.0	21	8,054.0	14	11,732.8	23	28	170	2.0	245	6.8	151	1.82	(64.8)	6.1	151	(12.8)	351	17.8	131	12	
29,890.0	6.1	3,473.0	4	6.6	24,026.0	18	9,071.0	12	30,501.3	6	10	104	7.8	101	15.8	11	2.62	8.6	8.4	110	16.7	119	17.8	120	22	
25,543.0*	(0.2)	(74.0)	387	(106.0)	28,432.0	13	12,880.0	8	26,040.3	13	(3)	331	(0.3)	331	(0.8)	232	10.13	(104.0)	—	—	—	—	—	—	—	19
22,461.7	11.7	174.8	31	(88.3)	20,981.2	20	8,268.7	27	23,101.4	7	57	274	1.8	274	7.0	245	0.48	(85.0)	6.6	146	24.3	113	25.4	26	3	
22,022.0	4.8	(187.0)	142	—	18,928.0	30	3,376.0	51	2,708.1	74	(3)	350	(1.8)	351	(1.8)	312	(2.87)	—	—	—	—	—	—	—	—	14
21,762.0*	(2.2)	(180.0)	127	(6,050.0)	28,870.0	14	14,808.0	6	N.A.	—	(3)	342	(0.7)	508	—	—	N.A.	—	—	—	—	—	—	—	—	18
21,119.0	8.8	172.4	48	19.7	9,758.7	52	2,232.1	71	4,675.4	57	15	272	1.8	211	30.0	12	1.30	(78.4)	10.4	71	(5.9)	378	24.0	31	6	
20,577.0	4.7	1,146.0	12	4,411.2	23,138.0	19	6,847.0	21	17,435.6	14	15	133	3.0	178	17.5	43	3.52	8,940.0	4.1	171	(12.3)	358	8.2	191	27	
19,177.0	(0.7)	(400.0)	167	(181.9)	25,140.0	16	8,074.0	15	15,128.7	18	(2)	354	(1.8)	354	(8.3)	302	(1.03)	(192.9)	—	—	—	—	—	—	—	11
18,281.0	2.4	(1,020.0)	164	(24.7)	34,061.0	10	2,878.0	40	7,848.7	19	(15)	408	(3.0)	374	(17.4)	241	(11.20)	(169.7)	—	—	—	—	—	—	—	21
18,061.0*	3.1	401.0	20	19.0	24,264.6	17	6,721.8	19	18,343.7	22	14	171	3.3	233	11.5	137	4.96	13.0	(1.1)	207	12.9	192	16.7	147	15	
17,513.0	(8.4)	(781.0)	164	(194.0)	12,781.0	32	3,023.0	54	2,150.6	107	18	599	(8.7)	424	(25.8)	244	(10.10)	(282.2)	—	—	—	—	—	—	—	14
18,427.0	13.0	149.0	33	(27.3)	17,700.0	31	7,494.0	18	10,358.4	21	13	208	4.0	274	7.3	219	2.18	(27.8)	2.8	146*	23.9	119	7.5	167	4	
18,168.0*	(8.7)	(1,428.0)	171	—	17,261.0	36	2,709.0	42	N.A.	—	(13)	192	(10.8)	441	—	—	N.A.	—	—	—	—	—	—	—	—	18
18,734.0	8.0	209.0*	41	(18.9)	22,041.0	12	8,276.0	14	9,802.7	12	15	261	0.9	277	3.2	272	0.20	(1.1)	—	—	—	—	—	—	—	25
14,027.0	0.0	(2,781.8)	173	—	11,244.2	39	4,920.9	31	4,149.6	67	(11)	166	(24.8)	167	(84.7)	101	(22.39)	—	—	—	—	—	—	—	—	21
12,882.0	4.1	1,233.0	11	4.8	11,886.0	36	6,699.0	20	23,428.8	18	16	51	10.9	54	18.7	73	8.83	7.0	7.7	134	9.2	215	14.4	80	23	
12,846.0	10.2	1,030.0	14	(20.8)	11,884.0	36	8,171.8	26	16,461.8	14	28	77	4.7	81	19.9	41	1.58	(28.9)	9.3	107	(10.3)	350	17.7	124	17	
13,408.0	(2.1)	(1,123.0)	170	—	14,984.0	28	1,220.0	127	8,833.9	29	(20)	413	(8.0)	427	(183.7)	411	(6.19)	—	—	—	—	—	—	—	—	11
13,400.0	7.1	88.0	141	(63.3)	14,469.0	29	4,189.0	23	7,822.1	30	18	308	0.8	317	1.4	243	0.71	(97.2)	(7.0)	218	(5.5)	307	14.8	178	7	
13,241.0	17.2	483.0	43	(0.2)	10,529.0	47	8,144.0	27	18,249.4	26	23	265	4.3	301	6.8	274	1.70	(50.8)	0.8	194	41.7	23	18.8	187	7	
13,231.0	6.9	781.0	21	43.2	9,488.0	51	3,812.0	45	14,559.8	27	24	125	7.6	157	21.8	48	3.08	186.5	24.8	18	6.0	274	10.8	119	8	
12,338.0	12.7	1,044.0	7	2.8	11,632.0	41	2,648.0	37	16,037.6	4	128	21	15.1	23	42.8	10	1.28	3.7	144	57	8.8	235	18.6	15	3	
12,180.0*	(8.4)	(1,281.8)	167	—	10,292.0	50	2,244.0	68	4,893.4	87	(10)	147	(12.4)	151	(73.2)	107	(2.81)	—	—	—	—	—	—	—	—	14
12,089.0	1.7	(712.0)	162	—	10,758.0	46	2,281.0	67	9,249.8	43	(18)	112	(8.6)	114	(11.8)	373	(5.85)	—	—	—	—	—	—	—	—	16
11,973.0	(0.7)	180.0*	81	(10.2)	11,484.0	37	3,048.0	56	7,514.2	51	26	280	1.8	181	8.7	254	0.19	(10.3)	16.2	217	8.5	212	15.5	165	18	
11,022.6	7.9	(58.8)	161	(781.4)	8,563.7	63	1,820.0	70	5,210.6	65	(5)	107	(7.7)	424	(34.1)	315	(9.12)	(172.7)	—	—	—	—	—	—	—	21
11,847.0	2.8	(274.0)	107	—	10,890.0	43	2,506.0	54	5,835.2	72	(18)	114	(1.1)	114	(4.9)	317	(1.43)	—	—	—	—	—	—	—	—	7
11,808.0	4.3	1,942.0	3	(4.8)	10,904.0	14	6,020.0	21	19,384.4	10	16	1	18.2	10	32.6	29	3.79	(4.1)	11.3	78	(20.6)	355	18.8	112	19	
11,400.8*	3.8	917.5	13	(24)	10,537.8	49	4,830.4	35	14,884.4	20	84	56	8.7	70	18.8	61	3.22	(1.1)	12.5	17	(2.8)	370	21.0	81	3	
11,139.7	0.9	63.4	174	4,601.3	1,499.4	107	124.1	169	879.5	128	10	204	4.2	203	11.9	58	1.34	4,268.7	—	—	—	—	—	—	—	3
10,996.1	(8.8)	(1,038.0)	147	(27.3)	9,731.0	53	3,778.0	37	6,218.8	65	(8)	142	(10.4)	115	(17.3)	302	(4.42)	(170.6)	—	—	—	—	—	—	—	24
10,184.0	6.1	(2,435.0)	172	—	13,935.0	22	3,178.0	109	5,921.0	70	(23)	113	(17.3)	111	(18.4)	418	(4.12)	—	—	—	—	—	—	—	—	11
10,138.0	3.4	(283.0)	137	(181.9)	8,754.0	73	2,042.8	119	3,547.3	114	(20)	170	(4.2)	291	(13.8)	311	(4.38)	(184.2)	—	—	—	—	—	—	—	1
10,062.9	4.8	(128.0)	111	(211.6)	10,570.8	45	2,008.9	83	2,645.9	120	(10)	118	(1.2)	243	(10.0)	324	(1.23)	(123.2)	—	—	—	—	—	—	—	18
9,800.8	(1.8)	1,964.2	4	(8.5)	11,086.0	40	8,092.9	30	42,976.3	5	30															

500

RANK 1991	1991	COMPANY
1	1	GENERAL MOTORS Detroit
2	2	EXXON Irving, Texas
3	3	FORD MOTOR Dearborn, Mich.
4	4	INTL. BUSINESS MACHINES Armonk, N.Y.
5	5	GENERAL ELECTRIC Pittsfield, Conn.
6	6	MOBILE Oilfield, Okla.
7	7	PHILIP MORRIS New York
8	8	E.I. DU PONT DE NEMOURS Wilmington, Del.
9	9	CHEVRON San Francisco
10	10	TEXACO White Plains, N.Y.
11	11	CHRYSLER Highland Park, Mich.
12	12	BOEING Seattle
13	13	PROCTER & GAMBLE Cincinnati
14	14	AMOCO Chicago
15	15	PIPERCO Purchase, N.Y.
16	16	UNITED TECHNOLOGIES Hartford
17	17	SHELL Oil, Houston
18	18	CHELSEA Omaha
19	19	EASTMAN KODAK Rochester, N.Y.
20	20	BOY SCHEMCEL Highland Park, Mich.
21	21	XEROX York, Conn.
22	22	ATLANTIC RICHFIELD Los Angeles
23	23	SIDDONNELL DODDLE St. Louis
24	24	MEYLET'S PACKAGING Palo Alto, Calif.
25	25	UNION Carbide
26	26	FIN KABILCO HOLDINGS New York
27	27	SPRINT EQUIPMENT Weymouth, Mass.
28	28	BEVELL ORA RUMING & H.P.O. St. Paul
29	29	JANSEN & JOHNSON New Brunswick, N.J.
30	30	TEBODCO Houston
31	31	INTERNATIONAL PAPER Purchase, N.Y.
32	32	INDUSTRIAL PAPER Schenectady, N.Y.
33	33	MARCA LUX Chicago
34	34	COCA-COLA Atlanta
35	35	WESTINGHOUSE ELECTRIC Pittsburgh
36	36	ALLIED-SIGNAL Morris Township, N.J.
37	37	PHILLIPS PETROLEUM Bartlesville, Okla.
38	38	GOODYEAR TIRE & RUBBER Akron
39	39	GEORGIA-PACIFIC Atlanta
40	40	BRISTOL-MYERS SQUARE New York
41	41	ANHEUSER-BUSCH St. Louis
42	42	IBM Orléans, Ohio
43	43	ROCKWELL INTERNATIONAL San Diego, Calif.
44	44	CATERPILLAR Peoria, Ill.
45	45	LOCKHEED California
46	46	COASTAL Houston
47	47	MERCK Whitehouse Station, N.J.
48	48	ASHLAND Oil, Ashland, Ohio
49	49	ALUMINUM CO. OF AMERICA Pittsburgh
50	50	ABBOTT BACHELOR MIDLAND Director, Ill.

The data, names, abbreviations, and addresses underlying the figures in this



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
 committee on HB 238 dated 3/2/94
 bill/subject

Thank you for the opportunity to testify. I would like to express my opposition to Congressman Joe Green's version of HB 238. The serious reduction in funding for state oil spill prevention and response programs that this bill would cause is a great danger to the health & well being of our natural systems. Even though I don't think any changes should be made to the 470 Fund; I do think that Bill Williams' version of HB 238 is preferable to version 5 by Joe Green. I appreciate Congressman William's more reasonable version which seems to take into consideration many of my concerns about prevention and response.

Signed: _____
 Testifier
 KRISTA ROGERSON - Krista Rogerson (SELF)
 Representing (Optional)
 P.O. BOX 1386 VALDEZ AK 99686
 Address
 835-3788
 Phone No.

1/19/94

✓ TO: Senate Resources Comm.
FR: Chip Thoma, an individual
RE: Testimony on SB 215

1. There was an excellent presentation yesterday by the staff of DEC on the programs, uses and direction of the 470 fund, which this bill proposes to modify and, in effect, eliminate.
2. I remain completely supportive of the Oil + Hazardous Substance Release Response Fund.
3. Contrary to what has been implied and alleged by certain oil industry lobbyists, I am convinced there has been no malfeasance or misappropriation of 470 funds.
4. There is presently an audit underway by LB+A that is due in March and will put these allegations to rest.
5. There should be a discussion over accounting procedures of the fund — making them more clear to the legislature, the industry and the public — not an attempt to gut the fund.
6. As DEC explained yesterday, there are also 1400 hazardous disposal sites in the state — a 100 of which threaten water supplies. This is also an extremely important component of the 470 fund in addition to crude oil oversight.

1/19/94

7. As you are probably aware, 6 large crude tankers have lost power since 1989, and the BP tanker damaged by ice near Bligh Reef last week could have easily been headed the other way, fully loaded. The danger of large oil spills still exists on a daily basis. The 470 fund is our only defense for preparation, planning and response.
8. The large oil companies (in all likelihood) write the 5¢ a barrel tax off on their federal taxes, and similar such funds exist in many other states (attached).
9. In conclusion, if there is a clear intent by the legislature to split the 470 account into SAVINGS for large spills and OPERATING for planning and other responses, the 2¢ proposed operating account only generates \$10 million a year, whereas DEC expends \$15 million a year for these necessary, ongoing functions. Consequently, the 2¢ fund should go to savings and 3¢ for operational, which would then generate the needed \$15 million a year without requesting general funds. The subcommittee should look closely at changing the 3¢, 2¢ division to reflect these needs.

#

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	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 \$16 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.

March 1993
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State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
Maine	4 cents per barrel for coastal and inland cleanup; 44 cents (gasoline), 25 cents (#2, kerosene, jet fuel, and diesel), and 10 cents (#6) per barrel for groundwater cleanup	For coastal and inland cleanup; every person that first transports oil in Maine. For groundwater cleanup: terminal facilities that first transfer the products and any person that first transports oil into the state (no fee on exports)	The Maine Coastal and Inland Surface Oil Cleanup Fund (now at about \$4 million; capped at \$6 million), and the Groundwater Oil Cleanup Fund (now at about \$12 million; capped at \$15 million)
Maryland	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	7/8 of a cent per gallon of petroleum products	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	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)
Nebraska	3/10 of a cent per gallon on motor fuels (although now it is at 1/10 of a cent per gallon on motor fuels plus 1/10 of a cent per gallon on all other petroleum since the fund dropped down to \$2 million; the fee will return to 3/10 of a cent when the fund reaches \$4 million)	The refiner, importer, or distributor that first sells within the state	The Petroleum Release Remedial Action, and Reimbursement Fund (now at about \$3.1 million; capped at \$5 million)
Nevada	1/10 of a cent per gallon on most petroleum products	The refiner or importer	The State Petroleum Fund (now at about \$4 million; capped at \$7.5 million)
New Hampshire	6/10 of a cent per gallon for the ODD Fund; 1/10 of a cent per gallon for the OPC Fund	The distributor of motor fuels at the time of sale (for the 6/10 of a cent fee); the distributor of all oil at the time of sale (for the 1/10 of a cent fee)	The Oil Discharge, Disposal, and Cleanup Fund (the ODD Fund; now at about \$9.1 million; capped at \$10 million); The Oil Pollution Control Fund (the OPC Fund; now at about \$3.5 million; capped at \$5 million)
New Jersey	1 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.
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March 1993

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State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
New York	Currently at 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	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	1/2 cent per gallon on all petroleum	The retailer 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	1/5 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 to the same oil.



Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name
committee on HB 238, dated March 2, 1994
bill/subject

Mr. Chairman and committee members,

I represent the Kodiak Audubon Society. We have a diverse membership of 80 people ranging from doctors, teachers and biologists to fishermen and contractors. We would like to thank Representative Williams for introducing the "Y" draft of HB 238. This is the only version which adequately addresses the concerns the public has expressed. Though we do not feel a bill is necessary, we will support the "Y" version. This draft addresses our concerns which were the continued adequate funding of DEC's preparedness and response programs and DEC's ability to respond to non-catastrophic non-oil hazardous material spills. Not splitting the nickel and other provisions of the "Y" draft make it the only acceptable version. If you pass this bill, please pass the "Y" draft. Thank you for considering our views.

Signed: _____

Testifier

Kodiak Audubon Society

Representing (Optional)

418 Mill Bay Rd Kodiak

Address

486-2685

Phone No.

City Of Seldovia

P.O. Drawer B

Seldovia, Alaska 99663

Phone (907) 234-7643

FAX (907) 234-7430

February 24, 1994

Representative Bill Williams
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Williams:

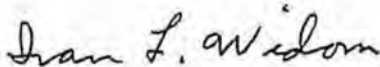
As City Manager of the City of Seldovia and secretary of the Prince William Sound RCAC, I strongly support your efforts to deal responsibly with the 470 Fund through the draft version 8-LS0676\Y of CS HB 238 (RES).

There are many people all over Alaska who are very concerned about what the Oil Companies are trying to do to the 470 Fund. Your bill cuts through all the "hype" and accomplishes what should have been the goal along - to streamline the legislation and allow the oil companies to save some money.

I strongly support your stand and will promote the advancement of these concepts.

We appreciate your concern for the 470 Fund and how it affects all Alaskans. We also recognize your willingness to take on the mighty forces that are pushing their own agendas.

Sincerely,



Ivan L. Widom
City Manager
cc: Mayor and City Council

MICHAEL J. FRANK
ATTORNEY AT LAW
2224 TURNAGAIN PARKWAY
ANCHORAGE, ALASKA 99517
(907) 248-5078

March 9, 1994

Representative Bill Williams
Chairman, House Resources Committee
Alaska Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Rep. Williams:

I attended the Resources Committee hearing today on legislation concerning the so-called "470 fund", but had to leave before I had a chance to testify. Therefore, I would appreciate it if you shared the following comments with other members of the committee.

I am opposed to current attempts to amend the 470 fund statutes. Instead, I think the Legislature should eliminate the \$50 million cap entirely, and expand the purposes of the fund.

I think the cap should be eliminated because in The Exxon Valdez Oil Spill Final Report. State of Alaska Response, ADEC (June 1993), it is made clear that \$50 million would not nearly have been enough to cover the out of pocket costs to the state arising from the T/V Exxon Valdez oil spill:

The state received just under \$80 million from Exxon in reimbursements based on state billings during the three years of the response. An additional \$27 million in unbilled expenses were repaid to the state treasury out of the \$1 billion state-federal claims settlement with Exxon, and at this writing (spring, 1993) roughly \$30 million in additional reimbursement is outstanding.

Id., p. 23. In total, therefore, out of pocket costs for state government easily exceeded \$137 million, for which the state had to seek reimbursement from Exxon. Had Exxon been unwilling to enter into a reimbursement agreement shortly after the spill, the state would have faced years of litigation to recover its oversight expenses. As it was, the state's expenditures for attorney's fees were not reimbursed until the \$1 billion Exxon settlement, and in any case only "hard", easily provable expenses were reimbursed.

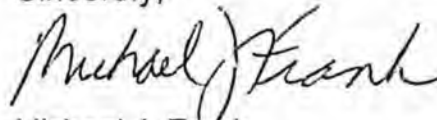
Moreover, had the spiller not been Exxon, but a shell tanker "corporation" unwilling to perform any clean up, the state would have had to use general fund (or Permanent Fund) dollars to clean up the spill. This could easily have cost billions of dollars. Only after clean up would the state have been able to seek reimbursement and only following years of litigation. (The current financial responsibility laws do not create a clean up fund the state can tap into. They only guarantee that some minimal amount of money will be available to satisfy a judgment in the event the owner/operator/spill discharger disappears or is bankrupt.)

In light of this Exxon Valdez history, the \$50 million cap is much, much too low.

I also think the Legislature should expand the 470 fund to include a reserve for expenditures the state will have in decommissioning TAPS when the North Slope oil fields run dry. Under the TAPS tariff Settlement Agreement, the TAPS owners have been allowed to charge off literally tens of millions of dollars to their own "reserve" which they purportedly intend to draw from to pay expenses for decommissioning TAPS and restoring the right-of-way, as is required by state and federal leases with Alyeska. The state, so generous with the TAPS owners and *their* need for a reserve, has in contrast set aside no moneys to pay for state oversight expenses during TAPS's decommissioning. The 470 fund provides a vehicle for creating just such a reserve. The Legislature should have at least the same foresight as the TAPS's owners have had in planning for the day when considerable sums of money will be needed to oversee restoration of the environment that TAPS now occupies.

I agree with comments made by RCAC chair Stan Stephens and others critical of the particulars of the pending legislation. While I appreciate your own effort in offering a better bill than Representative Green's, I simply do not see the need to satisfy the Prudhoe Bay producers' demand for relief from a tax which in any event is passed on to all American consumers of TAPS oil at the gas station pump.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Frank". The signature is written in dark ink and is positioned above the printed name.

Michael J. Frank

March 9, 1994 Re: HB 238 (Revising the 470 Fund)

To: Alaska House of Representatives Committee on Resources
From: Larry Smith, Executive Secretary, Kachemak Resource Inst.

My Exxon Valdez spill responsibilities included the prioritization for oil boom placement, the assignment of vessels and the provision of oil-spotting and supply aircraft, for the Kenai Peninsula Borough.

I participated in the legislatively sponsored all-interests working group which worked with the Senate Special Committee on Oil and Gas on post-spill legislative changes to fix the enormous problems uncovered by incompetent spill response by the state and by the industry.

I became the first chairman of the Prevention, Response and Operations committee for the OPA '90 mandated Cook Inlet Regional Citizen's Advisory Council. I represented CIRCAC in the Technical Implementation Working Group, another all interests effort, this one convened by ADEC to work up the regulatory package to implement the legislation. Even Exxon provided responsible negotiators in that process. We all knew, however, that as we worked many months on the issues in a cooperative manner that big oil lobbyists were diligently pushing quite different ideas than company spokesmen in the working group. Not the best basis for trust and cooperation.

Today, once again, representatives of companies that do not regularly pay royalties and taxes without causing great expense have come to you for tax relief, at a time the rest of us must tighten our belts and pay much more in local taxes for basic services for which the legislature can no longer find funding.

Seek no further. Stop up the reverse revenue streams that flow from the State to the oil industry: the state provides them many benefits, unavailable to anyone else: tax incentives, rebates, refunds, tariff netbacks, and settlements. The legislature would serve us well by a clear and complete exposition of these special privileges.

As to the nickel a barrel supposedly contributed to the 470 Fund I doubt that it ever amounted to much more than three cents after the reverse revenue stream is accounted for.

Compare this to California which has three funds to do the work of our Oil and Hazardous Substances Release Response Fund. The per

barrel contribution adds up to 33 cents. A surcharge of 4 cents a barrel for petroleum discharges, 4 cents a barrel for other hazardous substances, and 25 cents a barrel to create a big spill response fund of \$50 million. In addition California has an uncapped borrowing authority for catastrophic spill response that allows maximum response, with provision for the state to increase per barrel surcharges by another 75 cents until response and restoration expenses are repaid. At the time of enactment this was estimated to give California a \$13,000,000,000 (Thirteen Billion) emergency response capability in the absence of a responsible party willing and able to contain, cleanup and restore. Up to \$1/bbl would be surcharged to repay the state.

What is not working properly about the 470 Fund is not what it has been used for, but what it has not been used for. Where are the depots and corps? Where is the hazards analysis? Where are the storage tank farm repairs in rural Alaska?

Let me tell you how we can benefit from well funded depots and corps. Make agreements with Cook Inlet Spill Response Inc.(CISPRI), Alaska Clean Seas (ACS), Southeast Alaska Petroleum Resources Organization (SEAPRO), and others for an integrated program. State equipment staged in their depots and corps training coordinated by these response organizations, under the right terms can substantially reduce refined product carriers and tank farm contingency plan costs and we will all directly benefit by finally having as good a statewide program as we have now only at Alyeska. The state must come forward and pay its share. To do that a healthy funding source is required. At Alyeska the state pays a minimum of 25% of the Prevention and Response bill by tariff netbacks. We should do no less statewide, with the surcharge.

\$85,000,000,000 are just some of North Slope producers profits since oil started coming out of the Trans-Alaska Pipeline. That is the minimum estimate for after tax and expense profit at Valdez. Profits for transportation and refining and manufacturing are not known. The Alaska Department of Revenue studies estimate clear profit of \$6.59/barrel at Valdez from 1969 through 1987 (DOR report 3/15/89 by Deakin, p. i. of Summary, p. 1 of Overview.)

DOR's mid-case scenario for FY 2000 for a profit of 2.419 billion dollars of after tax profit based on 410 million barrels at a clear profit of \$5.90/barrel in 1993 dollars. 1993, not a good year, produced an estimated net profit of \$4.54/barrel for

589 million barrels for a total of \$2.674 billion dollars.

It has not been at all easy for the State of Alaska to collect tariffs, surcharges and taxes from the industry. Hasn't the state spent \$200 million for legal work on tax settlements? Didn't Charlie Cole, when he was Attorney General, ask the Federal Energy Regulatory Commission to order Alyeska to return over \$50 million improperly netbacked for prevention and response activities since 1989. It seems as if every tax and tariff bill from Alaska is appealed, negotiated and settled for about fifty cents on the dollar.

A committee member alluded to hypocrisy during today's hearing. It seems the height of it to complain about a nickel that has never amounted to much more than 3 cents a barrel in netback and taxbreak reality. Even if it was a whole nickel that is less than 15% of what the same companies pay per barrel in California, for the same purposes.

I don't see any hypocrisy in the differing views from coastal communities. The difference in opinion arises mainly from the very different levels of prevention and response capability around the state. Comparing Prince William Sound activity to the Interior, the Peninsulas, Bristol Bay, Southeast or Cook Inlet is like comparing Disneyland to penny arcades.

In answer to the question: Shouldn't other users contribute to the 470 Fund? I would say that ultimately that nobody pays but consumers -- in Alaska or elsewhere. We are the spigot from which big oil's Alaska profits spew in their tens of billions.

Please do what you can to remove the roadblocks to implementation of the 470 fund and other legislation. Remember it was the same lobbyists who wish now to hamstring the fund that have stalled the implementing regulations for legislation passed in 1990. Stalled the regs for three years and concurrently proposed tax breaks.

I am impressed by the honest efforts by Representative Williams and Senator Pearce, in particular, to try to move the debate along and to salvage the sense of the program for the benefit of Alaska.

My thanks to all legislators who are thorough and objective in their approach to issues.



Alaska State Legislature

Please enter into the record my testimony to the House Resource Comm. Fee
committee name

committee on HB 238, dated March 9, 1994
bill/subject

The Prince William Sound Conservation Alliance feels very strongly that there need not be any changes to the 470 fund. We find it appalling that ~~the~~ our legislatures are even considering limiting funds for response when we are only 5 short years from such a catastrophic spill as the Exxon Valdez Oil spill. Tremendous progress has been made in these 5 years. Response capabilities have increased dramatically and necessarily, especially to 99% of spills which are not catastrophic but require quick and appropriate response. ~~These~~ ~~these~~ these response capabilities have existed because of the 470 fund as it presently sits. The only proposal thus far to HB 238 that even remotely recognizes those with memories reaching farther than 5 years who understand the importance of this fund is Representative Bill Williams. IF Any changes must be made to the current fund we can at least acknowledge Representative Williams' dedication to the legislative process and his attempt to listen to the concerns of citizens in this state - we urge ~~our~~ our legislatures to keep the 470 fund as is.

Signed:

Testifier Marnil J. Johnson

Prince William Sound Conservation Alliance

Representing (Optional)

PO Box 3004, Valdez, AK 99686

Address

(907) 835-2799

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Resources
 committee name
 committee on HO 238 SPILL RESPONSE FUND dated 3/9/94
 bill/subject

LET THE BILL STAND AS WRITTEN.
 USE SURPLUSSE FUNDS TO FUND D.E.C.
 MONITORING OF THE TREATMENT.
 ALASKA SELF MONITORING OF THE WATER
 TREATMENT PLANT MUST STOP

Signed: [Signature]
 Testifier

Representing (Optional)
BOX 2493 VALDEZ AK 99686
 Address
835 5473
 Phone No.

MICKAEL S. O'MEARA
P.O. BOX 1125
HOMER, ALASKA 99603

MARCH 15, 1993

TESTIMONY TO THE
HOUSE RESOURCES COMMITTEE
HB 238 (2/3/94 CS WORK DRAFT)

The 5th anniversary of the Exxon Valdez disaster is upon us. Do you remember what it was like in coastal communities? A surprising number of us still experience the spill's effects. And we remember why we had to go through all of it.

We remember an oil industry prideful and arrogant in its unwillingness to provide reasonable and necessary prevention and response measures. We remember meek and ineffectual federal and state regulators emasculated by the money and power of the industry. And we know how it feels to be sacrificed for the greed, comfort, and convenience of others. We never want to see it happen again. Never.

As legislators with the knowledge of that experience you have the sacred responsibility to see that it never does.

House Bill 238 was originally conceived at the behest of an oil industry intent on avoiding payment of the five-cent per barrel surcharge imposed after the spill. Industry would deny the people of Alaska money needed to offset the risks and damages resulting from oil and gas activities. Underneath 21 pages of complicated wording, HB238 seems still to be a vehicle for granting the oil industry a massive tax reduction.

At least in the face of all the public testimony in opposition to this bill some accommodations to common sense and decency have found their way into the committee substitute. You are to be commended for:

Including hazardous substances as a subject of the bill

Redefining "catastrophic release" to include spills of 10,000 barrels or more

Providing some mechanism for minimal funding of response preparation, prevention, and mitigation.

Unfortunately, the bottom line is that splitting the fund in two assures inadequate funding for all aspects of spill prevention and response.

-- more --

-- HB 238, O'Meara, 3/15/94 --

Legislative appropriation of the surcharge to the funds remains discretionary, with no assurance to the public that needed programs will be supported. Limitations on the uses of money in the funds and deletion of annual, required revision of state and regional contingency plans reflects a stronger desire on the part of the legislature to assure savings for the oil industry than to prevent and respond effectively to spills. And the \$50 million cap on the "catastrophic response" fund, combined with a \$10 million per spill limit is a farce, in light of the costs of attempting to deal with the Exxon Valdez disaster.

Considering all of this I would make the following recommendations regarding HB 235.

Heed public concerns and scrap the bill -- but if you feel you must pass something, focus on the welfare of the people above all else:

Simplify and shorten the bill so that ordinary people can read it and understand

Increase the surcharge to ten-cents per barrel

If you must split the fund, apply 5-cents to "catastrophic response" and 5-cents to preparation, prevention, and mitigation

Increase the "catastrophic response" fund cap to at least \$100 million

Remove per spill expenditure limits

Retain your revised definition of "catastrophic" and continue to include hazardous substances

Find a way to make appropriations to both funds and all accounts mandatory.

Remember the Exxon Valdez. Remember the reasons it occurred. I find it difficult to believe that any of you would wish to be counted among those responsible for the next major spill. Tell the oil industry that to be welcome in Alaska it must be willing to pay its way by preserving and improving the "470" fund. Kill HB238.

END OF DOCUMENT



sue is finally development in a heavily fished portion of Cook Inlet between Kasilof and Anchor Point. The groups asked the court for an injunction halting the lease sale until the case could be heard in court. On Jan. 24, one day before the scheduled sale, Superior Court denied the appeal late Tuesday in a one-sentence order that offered no explanation for the decision. The case now goes back to Superior Court, where oral arguments will be heard Sept. 21. The Hickel administration has argued that Cran-

lease sales by allowing the director of the Division of Oil and Gas discretion in establishing the scope of any pre-sale reviews and by allowing the director to decide the relevant issues of any such review. The bill is scheduled for a hearing today by the Senate Finance Committee.

Williams tries new deal on spill fund

By JEANINE POHL
THE JUNEAU EMPIRE

A new proposal has emerged in the legislative fight to change how oil industry taxes are funneled into the state's oil and hazardous waste cleanup and spill prevention fund.

Rep. Bill Williams, D-Saxman, wants to keep the nickel-a-barrel tax intact, and give oil companies credits for money paid once the fund reaches its cap of \$50 million.

His version of House Bill 238 has the support of the Department of Environmental Conservation and environmental groups. Meanwhile, a Senate bill that has generally been supported by the oil industry has moved to its final committee before a Senate vote.

Like the Senate bill, Williams' legislation would change the way the fund is accounted for.

"My goal was to save the oil companies money while making sure that the money that was being spent was being spent correctly," Williams, chairman of House Resources, said Wednesday.

His bill gives the DEC what it wants — a single fund to draw on to pay for spill response and cleanups, as well as prevention programs.

Williams held several hearings last session on another bill introduced by Rep. Joe Green, R-Anchorage, that is similar to the Senate legislation.

"I am concerned that the various versions presented to date go beyond fixing what is broken," Williams said.

Green said he believed the Senate version of his bill is moving



REP. BILL WILLIAMS

faster.

"It's far too late in the session for such a drastic change," he said of Williams' measure.

Green's bill and the one sponsored by Sen. Mike Miller, R-North Pole, would have split the fund in two. At first, 3 cents of the nickel tax would have gone into a fund for catastrophic oil and hazardous waste spills, the rest for prevention programs. That has been changed in Miller's bill to split the nickel equally between the two funds.

The tax is a legacy of the Exxon Valdez oil spill nearly five years ago. The tax was to be suspended whenever the spill response and prevention fund hit the \$50 million mark.

But lawmakers added pro-

grams and responsibilities to the fund, and state spending and the way the fund is accounted for have kept the fund from reaching its mark. According to DEC, it now totals about \$37 million, while the oil industry has paid out over \$112 million in taxes.

Miller's bill also has a so-called "blackmail clause" that suspends half the tax if the Legislature does not appropriate all of the current fund's money into the newly created catastrophic spill account.

The clause would effectively end the oil companies' taxes paid to the spill cleanup fund earlier by filling up the account, which would still have a cap of \$50 million.

Miller defended the clause, saying it is the "big stick" the Legislature needs to force the state to carry out the original intent of the spill-response legislation.

He said today that DEC and the Legislature have "frittered away" the fund and his bill will bring accountability to spending. He also included language preventing lawmakers from spending spill fund money on state ferries to be used for spill cleanup and response.

Miller said he was not familiar with Williams' bill, but said he would be willing to work with the House to address what he called the accounting problems of the spill fund.

Senate Bill 215 continues to be opposed by the DEC and environmental organizations while receiving support from oil companies.

Bob Poe, DEC's director of administrative services, said that under Miller's bill oil companies

would pay about \$8 million over a five-year period. With Williams' proposal he said companies would pay about \$10.3 million over the same time period.

"We will continue to make the case for stronger support of a prevention and abatement program," DEC commissioner John Sandor said. He said the department's preference was to keep the nickel whole, as is proposed in Williams' bill.

Patti Saunders, an attorney for the Anchorage-based Alaska Center for the Environment, said Williams' bill is a great improvement over the other measures that would change funding of spill prevention and response.

"This bill recognizes the need for a balance between the public interest and the oil industry's interests," Saunders said.

Beverly Ward of Arco Alaska Inc. said the way the fund is structured prevents it from ever reaching the \$50 million cap. "We want the cap to be achievable so that at least part of the time the tax can be suspended."

Ward said her initial impression of Williams' bill is that it's the "right approach" in attempting to simplify the fund's accounting, although she said she's not ready to endorse it yet.

"I don't think we have much confidence that we'd ever get the (tax) credit," Ward said.

Williams said he planned to schedule a hearing for his bill next week in the House Resources Committee.

NEWS CLIPPINGS IN
Anchorage Daily News

Date: 2/28 1994

The 470 Fund

Appropriateness, fairness the issues

Legislative battles over the so-called "470 Fund" oil tax have centered on bookkeeping and fairness. Each of those issues can be cleanly resolved — and ought to be.

At issue is a fund titled the Oil and Hazardous Substances Release Response Fund, financed by a nickel-per-barrel surcharge on oil production and intended — supporters argue — to fund prevention and response programs for incidents involving all types of oil and hazardous substances.

Oil companies — which naturally enough want to pay less — argue that the fund is rigged. It sets a \$50 million cap, they argue, but because money is drained away for recurrent expenses, the cap is never reached.

Others — principally the state Department of Environmental Conservation, which spends 470 Fund money on regulatory programs — argue that the tax is doing exactly what was intended, that the uses of the money are vital, and that changing the levy would mean cutting essential regulatory activities. DEC is supported in this interpretation by organizations like the Prince William Sound Regional Citizens' Advisory Council.

So far, most of the debate has centered on whether the 470 Fund (named for the number of the bill by which it was established) is a stacked deck. What we really ought to be talking about is whether the money raised is appropriate — and, if so, how it can be fairly collected.

It would be hard to argue that the need for oversight, regulation and clean-up preparedness has diminished. Events like the Exxon Valdez oil spill and critical federal inspection of pipeline operations make it clear that constant, vigilant regulation is essential. Legislators should establish how much money DEC and related organizations need to accomplish that, and fund them adequately.

It also makes good sense to have a fund on hand for emergency response. That seems straightforward, as well. With a fund solely dedicated to that purpose, it probably would make sense to cap it and suspend (but not remove) the levy when the balance was fully met.

Surely legislators can segregate these questions and reach equitable answers to each. It may be possible to do that within the mechanism of the 470 Fund legislation. If not, starting from scratch and fashioning legislation to meet the goals independently is the way to go.

Cheers & Jeers



CLEARING THE SMOKE OUT OF BUILDINGS: A cheer to the National Association of Chain Restaurants for backing the Smoke-Free Environment Act of 1993, which would ban smoking in many buildings open to the public.

Association executive director Terrie Dort, who represents 90,000 chain restaurants, says it would be best for Congress to implement a ban, rather than have a hit-and-miss banning system. Tobacco spokeswoman Brennan Davis is wrong to say that the restaurateurs "really have overstepped their bounds ..." with this latest move. Perhaps what's bugging the tobacco industry is that the battle over smoking has switched arenas. Americans are rightly focusing on the rights of nonsmokers to breathe clean air, rather than the rights of smokers to pollute that air with carcinogens.



SURGEON GENERAL TAKES ON TEEN SMOKING: A cheer to Surgeon General Jocelyn Elders for taking the anti-smoking ball and running with it. Ms. Elders has made teen smoking one of her prime causes, and the latest surgeon general's report on smoking is

sure to cause pro-tobacco folks to blow smoke rings out of their ears. "Smoking is not just an adult habit. It is an adolescent addiction," she said in her latest report — which is focused entirely on teen-agers and smoking. She's on the right track, especially when you consider that almost three out of four daily smokers began puffing in their impressionable adolescence.



TO SMOKE OR NOT TO SMOKE: GIRLS SWAYED BY ADS? A cheer to the University of California San Diego Cancer Center for

authoring a study linking those early female-oriented tobacco ads to increasing numbers of young girls' picking up the smoking habit. The study shows that as these ads increased, cigarette smoking among female adolescents skyrocketed. During that same time period — from the late 1960s to 1975 — smoking among boys was on the decline, according to The New York Times.

The tobacco industry argument that youngsters turn to smoking because of parental smoking or peer pressure is weakened when you think twice about it. How did those parents get sucked into smoking in the first place? And couldn't some peer pressure originate in kids who emulate what they see on television, including smoking ads with youthful themes? These kids then influence other kids to adopt smoking and the cycle is repeated.

Audit Report

DEC

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
OIL AND HAZARDOUS SUBSTANCE
RELEASE RESPONSE FUND

January 10, 1994



Audit Control Number:

18-4463-94

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

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Audit Report

DEC

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
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RELEASE RESPONSE FUND

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

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

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

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

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

January 10, 1994

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

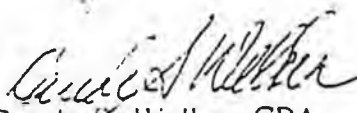
January 10, 1994

Audit Control Number

18-463-94

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

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


Randy S. Welker, CPA
Legislative Auditor

OBJECTIVES, SCOPE, AND METHODOLOGY

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

Objectives

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

1. Review the history of the Response Fund; including the original purposes of the fund, the reasons for establishing a 5¢ per barrel of oil surcharge, and the current purposes of the Response Fund.
2. Determine the criteria DEC uses in its decisions to fund certain projects and whether the criteria is consistent from project to project.
3. Determine what accounting procedures are currently in place that allow the legislature to track where and how Response Funds are being spent.
4. Recommend possible statutory changes that will clarify how Response Fund monies should be administered by agencies outside of DEC.

Scope

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

Methodology

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

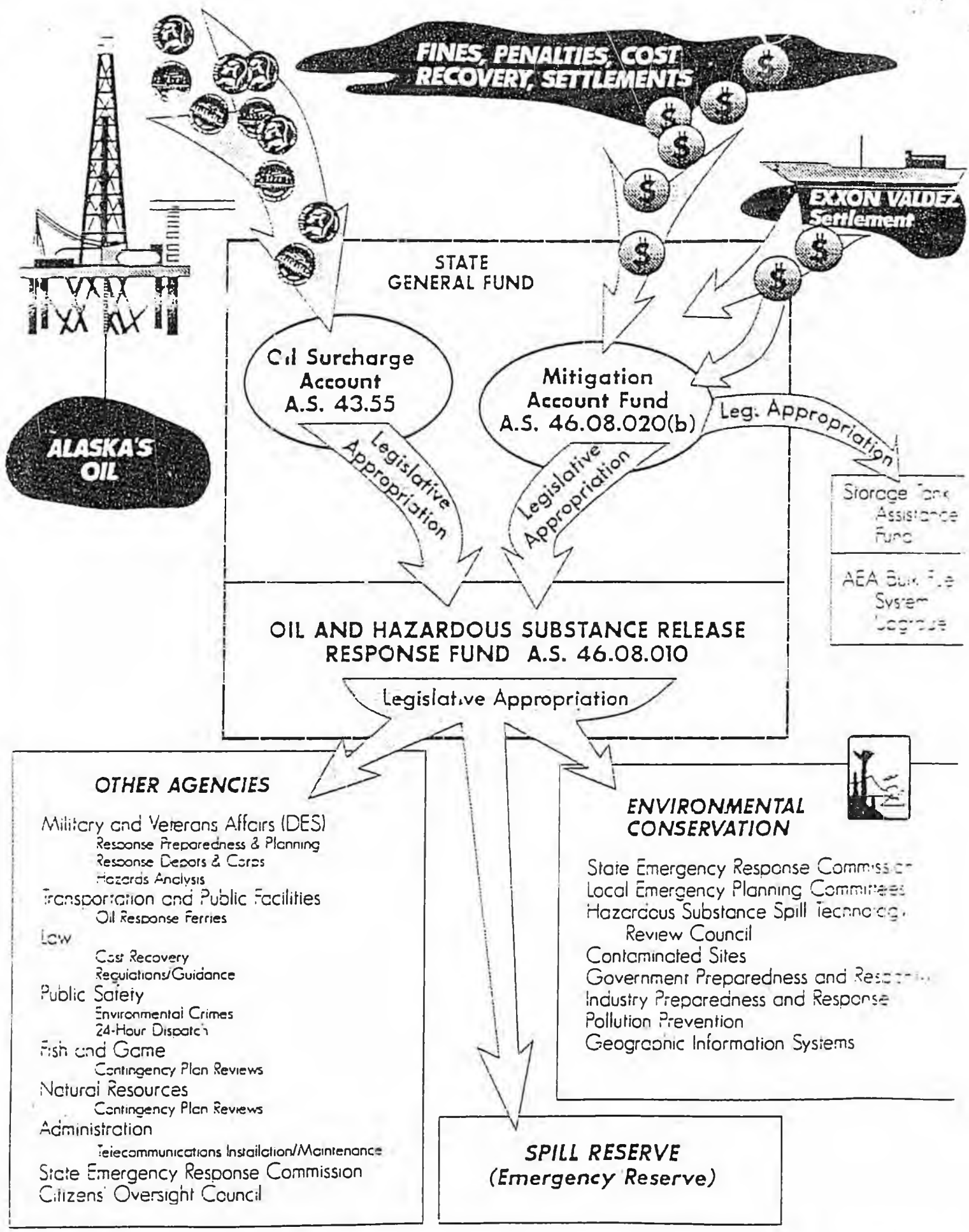
1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.
2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, S.L.A. 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13. SLA 1989.
4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29. SLA 1989.
5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 30. SLA 1989.
6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90. SLA 1989.
7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112. SLA 1989.
8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113. SLA 1989.
9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190. SLA 1990.
10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191. SLA 1990.
11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199. SLA 1990.
12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48. SLA 1991.
13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83. SLA 1991.
14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.
15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.
16. Response Fund Annual Reports for FY 87 through FY 93.
17. DEC Policy Statements on the Response Fund.
18. Attorney General Opinions and memorandums on the Response Fund.
19. Industry contingency plans and corresponding documentation maintained at DEC.

20. Documents pertaining to DEC spill responses through November 8, 1993.
21. DEC database information and other documentation related to contaminated sites.
22. Oil Spill Commission Final Report.
23. A pamphlet put out by the Prince William Sound Regional Citizens' Advisory Council entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill.*"
24. Newspaper coverage regarding the Response Fund and its usage.

Additionally, we interviewed the following:

1. Staff within DEC.
2. Staff within Department of Military and Veterans Affairs.
3. Staff within Division of Legislative Finance.
4. Staff of Office of the Governor, Office of Management and Budget.
5. Staff within Division of Legal Services.
6. Chairman of the former Alaska Oil Spill Commission and current chairman of Hazardous Substance Technology Review Council.



ORGANIZATION AND FUNCTION

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

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

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

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

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

Spill Prevention and Response Division

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

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

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

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

2. The Industry Preparedness Program (IPP) focuses on the oil industry's ability to prevent and respond to releases or threatened releases of oil. Statute requires industry to submit proof they have both the financial ability and physical ability to respond to releases. Their physical ability is demonstrated by a contingency plan which must be approved before obtaining a permit to operate. Contingency plan requirements apply to oil tank vessels, barges, crude oil pipelines, and onshore and offshore oil exploration and production facilities. In addition, oil terminal facilities that contain an amount of product specified in statute must have a contingency plan. IPP is responsible for reviewing, approving, and testing contingency plans as well as ensuring operators meet the financial responsibility requirements set out in statute.
3. The Contaminated Sites Remediation program was created to abate threats to public health and the environment posed by sites contaminated by improper disposal or discharges of hazardous substances. The number of contaminated sites is large and ever increasing. The program attempts to identify and assess contaminated sites and

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

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

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

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

PURPOSES OF THE RESPONSE FUND
AS 46.08.040

<p>Senate Bill 25 [Ch 83, SLA 91]</p>	<p>(4) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to</p>
<p>Senate Bill 261 [Ch 90, SLA 89]</p>	<p>(1) investigate and evaluate the release or threatened release of oil or a hazardous substance and</p>
<p>House Bill 470 [Ch 59, SLA 86]</p>	<p>contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;</p>
<p>Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 19, SLA 90] HB 566 [Ch 190, SLA 90]</p>	<p>(2) pay all costs incurred to (A) establish and maintain the oil and hazardous substance response office;</p>
<p>House Bill 567 [Ch 191, SLA 90]</p>	<p>(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030; (C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and (D) to verify or establish proof of financial responsibility required by AS 46.04.040;</p>
<p>Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]</p>	<p>(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;</p>

House Bill 470
[Ch 89, SLA 86]

- (4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);
- (5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

Senate Bill 261
[Ch 90, SLA 89]

- (6) prepare, review, and revise
 - (A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and
 - (B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and
- (7) restore the environment by addressing the effects of an oil or hazardous substance release.

House Bill 566
[Ch 190, SLA 90]

- (b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.
- (c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)--(7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

House Bill 578
[Ch 199, SLA 90]

- (d) Upon request from
 - (1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

Senate Bill 165
[Ch 48, SLA 91]

- (2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

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BACKGROUND INFORMATION

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

Original uses of the Response Fund

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

1. Contain and clean up, which includes monitoring, assessing, investigating, and evaluating, the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.
2. Provide matching funds for participation in federal oil discharge cleanup activities.
3. Recover the cost to the State or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

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

Original methods to finance the Response Fund

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

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

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

Legislature reacts to Exxon Valdez grounding

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

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

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

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

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

Senate Bill 251 added a state master plan and regional master plans to the duties of DEC. The State Master Plan, which was to be addressed in AS 46.04.200, included requiring or scheduling unannounced oil spill drills to test the sufficiency of an oil terminal facility discharge prevention and contingency plan. The preparation, review, and revision of the state master plan and regional master plans were added as the fourth authorized use of the fund. In addition, the first use of the fund was amended to include investigate and evaluate as well as the contain and clean up previously allowed. A fifth purpose allowed the Response Fund to be used to restore the environment by addressing the effects of an oil or hazardous substance release.

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

Imposition of a 5c per barrel conservation surcharge

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

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

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

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

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

(a) *The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.*

(b) *It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.*

Uses of Response Fund continue to expand

House Bill 567 (Ch 191, SLA 90) extended the number of the purposes of the fund which were to review oil discharge prevention and contingency plans; to conduct training, response exercises, inspections, and tests in order to verify state, municipality, and industry preparedness; and to verify or establish proof of financial responsibility. The bill also clarified DEC's reporting requirements on the Response Fund to include describing each personal services position and total compensation for the position, each contract in excess of \$20,000, and each purchase in excess of \$10,000.³

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

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

A Hazardous Substance Spill Technology Review Council,⁷ which was to review and recommend research topics to DEC, was created under SERC. The bill clarified that the Response Fund was to pay expenses incurred by DMVA, DES for response corps and depots when presented with appropriate documentation by the division. This bill allowed the Response Fund to be used for response to a declared disaster emergency related to an oil or hazardous substance discharge.

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

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

Legislature plays active role in shaping purpose of fund

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

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

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

⁷The Division of Legislative Audit conducted a Sunset Audit on the Department of Environmental Conservation, Hazardous Substance Spill Technology Review Council, dated November 29, 1993.

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

Various budgeting procedures used to track Response Fund expenditures

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

Different budget processes were used in FY 93 and FY 94

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

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

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

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

Reimbursable Services Agreements extensively used for Response Funds expenditures

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

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

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REPORT CONCLUSIONS

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

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

The Response Fund had already been used to address cleanup of existing contaminated sites. This resulted in a situation whereby the major funding source of the Response Fund had the more narrow focus of being used for future discharges. But the activities of the Response Fund itself were broader, in that they addressed the results of historical oil and hazardous substance spills, i.e., contaminated sites.⁷

Members of the oil and gas industry have expressed dismay at how the expanded uses of the fund, particularly as it is being used to cleanup existing contaminated sites, does not meet their understanding of the reason for the surcharge. There are claims that "there have been abuses to the oil spill fund since it was established in 1989."⁸ Such arguments appear to us to be based on the emphasis on future discharges that was placed on the 1989 imposition of the surcharge. As quoted above, this emphasis was part of the Findings and Purpose of Senate Bill 260. The Findings and Purpose does not carry the degree of authority that an enacted statute does.

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

⁷In 1986 during committee meetings regarding the bill originating the Response Fund, the commissioner of DEC had made it clear he intended cleanup activities from the Response Fund to address both current and past spill activity. The final legislation was silent as to what time period would be used to determine cleanup activities. In addition, the purposes of the Response Fund were expanded in 1989 and have continued to expand since that time.

⁸Quote came from an article entitled "AOGA supports bill to fix the oil-spill-response fund," which was published in the Forum/Letters section of the *Anchorage Daily News* on November 27, 1993. The letter was written by Ardie Gray, who is the public affairs manager of the Alaska Oil and Gas Association.

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

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

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

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

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

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

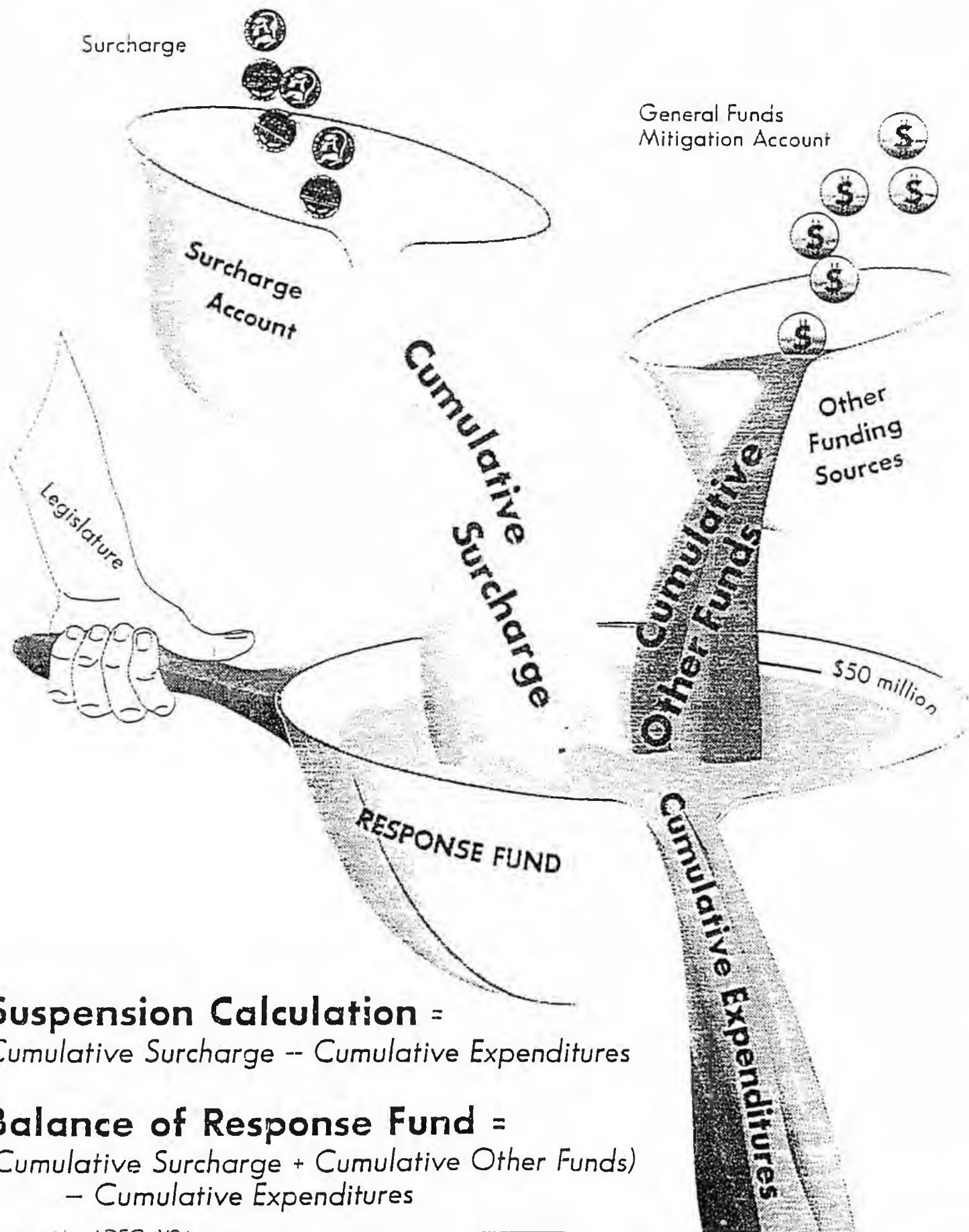
As discussed above, the State had over \$27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a deficit balance of over \$8.5 million as of the same time. It should be recognized that there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

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

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

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

SURCHARGE SUSPENSION vs. RESPONSE FUND BALANCE



Suspension Calculation =
Cumulative Surcharge -- Cumulative Expenditures

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

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

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

1. a listing of each position control number (PCN) with title and the amount compensated the position;
2. copies of all contracts in excess of \$20,000 and all subsequent amendments, and copies of all RSAs with the University of Alaska in excess of \$20,000 and all subsequent amendments;
3. documentation of each purchase in excess of \$10,000;
4. the amount paid to each municipality, community, or village; and
5. RSAs to other state agencies funded by the RSA must also report the information requested in items 1 through 4.

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

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

Criteria for allocating resources within SPAR varies by program

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

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

1. Response depends on the risk posed by a spill: The Government Preparedness and Response Program within SPAR is charged with responding to spills that pose an imminent and substantial threat to public health or the environment. No preset policy exists as to which spills will be responded to in a region. Determining if a spill poses an imminent and substantial threat is a subjective process. Every region and district has taken into consideration a myriad of factors and developed its own method for deciding whether a spill warrants a response. Common criteria for response among regions include proximity of a spill to populations and water source, size of spill, and type of spill. The level of response can vary from responding via telephone, to monitoring the cleanup, to taking the lead in response through a contractor.
2. Progress in reviewing contingency plans has lagged behind agency projections: As discussed in Background Information, the *Exxon Valdez* oil spill caused major revisions to the statutes that set forth requirements for oil discharge prevention and contingency planning. As a result of the new statutes, SPAR's IPP was required to draft new regulations. These regulations forced affected operators to either prepare contingency plans or make amendments to their existing plans. The new regulations also created the need for technical assistance to be provided to those operators who were either drafting amended, or developing new, contingency plans. IPP has focused their resources on drafting new regulations, providing technical assistance to operators and reviewing contingency plans.

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

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

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

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

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

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

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

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

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

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

Hazard Ranking Model

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

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

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

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

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

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

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

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 2

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

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

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

- (1) shall maintain accounting records showing the income and expenses of the fund; and
- (2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

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

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

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

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

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

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

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

- (1) a summary of the sites identified by the department;
- (2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites, and
- (3) the appropriate actions needed to abate these threats, and their estimated cost.

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

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

Recommendation No. 2

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation No. 3

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

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

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

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

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

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

B. Contrary to what the department has reported to the legislature, DEC has not maintained a current complete prioritized list of state-lead⁴ sites.

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

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

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

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

⁴As stated in the Organization and Function section, if a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead in cleanup efforts. These sites are commonly called state-lead or orphan sites.

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

AUDITOR COMMENTS

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

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

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

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

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

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

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

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

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

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

ISSUES NEEDING FURTHER STUDY

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

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

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

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TABLE A

RESPONSE FUND SUMMARY AS OF JUNE 30, 1993

Sources of funding:

Oil Surcharge Revenue	\$82,500,000
General Fund	44,447,000
Program Receipts: Exxon Reimbursements 1989 & 1990	30,000,000
Mitigation Revenue	<u>4,346,600</u>
	<u>161,293,600</u>

Uses of funding:

Expenditures through FY 93 (Note 1)	119,567,992
Reserve for Encumbrances	6,786,808
Reserve for Prior Year Appropriations	2,190,914
Accounts receivable recorded for Exxon Valdez cleanup	<u>2,338,795</u>
Fund Balance/Spill Reserve (Note 2)	<u>\$30,409,071</u>

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

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

TABLE B

SUMMARY OF EXPENDITURES BY FISCAL YEAR
(NOTE 1)

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

FY 89	FY 90	FY 91	FY 92	FY 93	Total
\$120,900	\$774,500	\$1,671,700	\$1,262,400	\$2,926,700	\$7,714,992
	211,000	690,200	378,500	71,000	1,350,700
		1,056,200	3,346,200	5,385,800	10,288,200
	158,400	556,700	223,500	54,700	993,300
	199,800	967,700	1,125,100	2,663,000	4,955,600
	112,800	4,800			117,600
	245,500	313,600	71,400	268,500	899,000
		448,500	105,700		554,200
		583,700	555,900	177,900	1,317,500
		399,600	257,000	186,200	842,800
			575,200	1,039,700	1,614,900
				88,400	88,400
		119,800			119,800
		119,500	237,300	88,300	445,100
			112,400	275,300	387,700
			100,000	90,000	190,000
			57,200	10,200	67,400
			29,900		29,900
				3,300	3,300
			84,200	15,000	99,200
				91,600	91,600
			120,300		120,300
			102,400	7,501,500	7,603,900
			1,358,400	59,400	1,417,800
\$120,900	\$1,702,000	\$6,932,000	\$10,603,000	\$20,996,500	\$41,313,192

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

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

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

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TABLE C

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

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

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

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

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

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$5,731,300	\$7,339,300	✓	✓	SB 261 [Ch 90, SLA 89] HB 567 [Ch 191, SLA 90]
\$29,081,900	\$3,318,000	✓	✓	SB 261 [Ch 90, SLA 89] SB 262 [Ch 113, SLA 89]
\$4,203,200	\$3,528,600	✓		
\$0	\$2,193,000	✓		
\$12,627,400	\$23,656,700	✓		
\$500,000	\$7,500,000		✓	SB 165 [Ch 48, SLA 91]
\$329,900	\$350,800		✓	SB 261 [Ch 90, SLA 89]
\$900,000	\$1,200,000		✓	SB 261 [Ch 90, SLA 89]

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

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Hazards Analysis	A Hazards Analysis covers four stages: (1) identifying the hazard, which is defined in AS 46.03.026, (2) performing a vulnerability analysis, (3) conducting a risk analysis, and (4) assessing response capability by industry and local response. After DEC had prepared a request for proposals to perform a statewide Hazards Analysis, LEPCs indicated that they preferred to control this project themselves. In FY 92, DEC delegated the responsibility and funding to LEPCs for the Hazards Analysis. As of October 15, 1993, hazards analyses are completed for four LEPCs, are in process for twelve LEPCs, and the other ten LEPCs are scheduled for completion in June 1994 as part of a statewide Hazards Analysis contract. Once the hazard analyses are complete, DEC believes they will have an inventory of between 80%-90% of all facilities with hazardous substances required to report under SARA Title III. DEC will need to keep their database of information up-to-date.
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FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$1,700,000	\$800,000		✓	SB 264 (Ch 113, SLA 89)
\$237,300	\$237,300		✓	HB 578 (Ch 199, SLA 90)
\$0	\$1,200,000		✓	HB 567 (Ch 191, SLA 90)
\$0	\$177,300		✓	SB 261 (Ch 90, SLA 89)
\$0	\$689,300	✓	✓	SB 261 (Ch 90, SLA 89)
\$236,300	\$420,000		✓	HB 567 (Ch 191, SLA 90)

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

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

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TABLE D

EXAMPLES OF EXTERNAL FY 92 AND FY 93 RSAs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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DEPT. OF ENVIRONMENTAL CONSERVATION

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Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
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MAR - 4 1994

LEGISLATIVE AUDIT

Dear Mr. Welker:

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

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

Recommendation No. 1

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

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

Recommendation No. 2

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

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

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

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

Recommendation No. 3

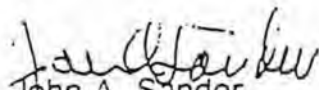
DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

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

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

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

Sincerely,


John A. Sandor
Commissioner