

SB

215

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/94

FURTHER:

DATE TURNED INTO OFFICE: 4-7-94

The Finance Committee considered **SENATE BILL NO. 215**

Redesignating the oil and hazardous substance release response fund; repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; efd.

and recommends:

replace with _____ CS SB 215 (FINANCE)
 or adopt previous _____ CS _____
 attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DEC	4/7/94	0	
DPS	2/3/94	0	
DOR	3/25/94	0	
DOLaw	1/28/94	Indeterminate	
DIA	2/8/94	0	

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

George Iker
Tom Kelly
Bob Whang

OTHER RECOMMENDATIONS:

Steve King No Recommendation

1. Steve King Do Pass
 Co-Chair: Signature/Recommendation

2. Steve King - 10/20
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB215 (FIN)

Revision Date: _____
 Title: Oil/Hazardous Substance Fund,
Tax, Plans
 Sponsor: Senate Resources Committee
 Requestor: Senate Finance 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)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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: \$ _____

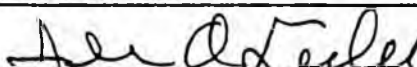
POSITIONS:

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: 4/7/94

Approved by Commissioner: 
 Agency: Department of Environmental Conservation

Date: 4/7/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

(S) RES
THEN FIN

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 215

Revision Date: _____ Dept. Affected: Public Safety
 Title: Oil/Hazardous Subs Release Response Fund BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: S. Miller
 Requestor: S. Finance COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars.) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.) *4/7/94 Lee Ann Lucas (DPS) approved application of this note to CSSB 215 (Fin)*
 No impact is anticipated to the Department of Public Safety.

Prepared By: Lee Ann Lucas Phone: 465-4322
 Division: Office of Commissioner Date: 2/3/94
 Approved by Commissioner: *[Signature]* Date: 2/3/94
 Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB 215 (RES)

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act relating to oil and hazardous substances... BRU: Revenue Operations
 Component: Oil & Gas Audit
 Sponsor: Miller
 Requestor: Senate Finance COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.) None *4/11/94* *Rod Mourant advised that this note also applies to CSSB 215 (Fin).*

Prepared by: Leslie K. Stewart *[Signature]* Phone: 276-1363 ext. 271
 Division: Oil & Gas Audit Division Date: March 24, 1994
 Approved by Commissioner: Darrel J. Rexwinkel *[Signature]* Date: March 25, 1994
 Agency: Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

FISCAL NOTE

217194
(S) RES
THEN FIN
BILL NO. SB 215

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: January 28, 1994
Title: "...redesignating the oil and hazardous
substance release response fund..."
Sponsor: Senator Miller
Requestor: Senator Miller

Department Affected: Department of Law
BRU: Legal Services, Exxon Valdez Litigation
Component: Legal Services, Operations
Exxon Valdez Litigation
COMPONENT SERIAL NO. 0093.1175

EXPENDITURES/REVENUES:

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx

POSITIONS:

FULL-TIME	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

4-11-94 Dick Pegues (DOLaw)
approved application
of this fiscal note to
CSB 215 (Fin).

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: January 28, 1994

Approved by Commissioner: Bruce M. Botelng, Attorney General
Agency: Department of Law

Date: January 28, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 215

ANALYSIS CONTINUATION:

SB 215 would split the present Oil and Hazardous Substance Release Response Fund (470 Fund) into two accounts. The first account, the catastrophic account, would be financed by a 3 cent a barrel conservation surcharge on oil production. The second account, the abatement account, would be financed by an on-going 2 cent surcharge.

Under present law, the Legislature can appropriate Oil and Hazardous Substance Fund (470) monies to the Department of Law and other departments for recovery of the costs of containment and cleanup (including restoration of the environment) resulting from the release or threatened release of oil or a hazardous substance. In the case of the Department of Law, this currently occurs in two instances. First, an annual amount of \$355,000 is appropriated from the oil and hazardous substance fund to the Legal Services Operations component to pay for the department's cost recovery enforcement efforts on behalf of the Department of Environmental Conservation. Second, an amount of \$1,005,200 was appropriated in FY 94 and \$805,200 is requested for FY 95 to pay for EXXON VALDEZ and certain other significant oil and hazardous substance cost recovery efforts. During the current fiscal year (FY 94) the department has already collected \$20,000,000 (\$14,762,703 for deposit in the general fund and \$5,237,297 for deposit in the mitigation account) that is attributable to the EXXON VALDEZ oil spill. In addition, the department has also already collected \$600,000 in cost recover services for deposit in the mitigation account, from other cost recovery efforts.

SB 215, by dividing the 470 Fund, would only allow use of the 3 cent catastrophic spill account for cost recovery efforts relating to spills over 4.2 million gallons or where the Governor has declared a disaster emergency. SB 215 also provides that all on-going spill prevention and response programs be funded by the 2 cent fund. However, the estimated revenues from the 2 cent surcharge are not sufficient to finance these activities, which include Department of Law cost recovery efforts relating to so-called non-catastrophic spills. In its fiscal note analysis of SB 215, the Department of Environmental Conservation has indicated that it would require an initial general fund appropriation of \$5,100,000 to offset the loss of 470 Fund monies. Substitution of general funds for 470 Funds, however, is somewhat problematic in view of the dramatic downturn in the state's general fund revenues. Because much of the Department of Law's cost recovery effort involves these so-called non-"catastrophic" spills the department will suffer a drastic decrease in funding resulting

FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. SB 215

ANALYSIS CONTINUATION:

in a severe reduction in its efforts to recover monies owed to the state by parties responsible for oil and hazardous substance pollution. Moreover, the Department of Law's cost recovery enforcement efforts provide an important incentive for cleanups by private parties who, in the absence of undertaking cleanup themselves, would face state-funded cleanups and repayment of those costs to the state. In many ways, cost recovery is the engine that drives private cleanups of oil and hazardous substance pollution. By creating a division between so-called catastrophic and non-catastrophic spill cost recovery efforts, SB 215 would disrupt state recovery efforts and serve as a disincentive for private cleanups. Because of the uncertainty of substitute funding if SB 215 is approved, we cannot predict the amount of substitute general funds that may be required, nor can we predict the amount of cost recovery funds that will be lost if substitute funding is not found.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215(RES)

Revision Date: _____
Title: "An Act relating to oil and hazardous substances:..."
Sponsor: Senator Miller
Requestor: Senate Finance

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUNDING SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 94) cost: \$ 0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) *4-11-94 Joe Thomas (DOA) approved application of this fiscal note to CSSB 215 (Fin).*

Prepared by: Don Wanie
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Nancy Bear Usery
Agency: Department of Administration

Date: 3/8/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

4-7-94 pm

SF-3, 24

WORK DRAFT

WORK DRAFT

WORK DRAFT

8-LS1107V

Chenoweth

4/6/94

Amends -

#1 (TK) Conceptual p. 22 Sub. sec (b) Notify LBA - Adopted

Adopted

#2 Chenoweth (GJ moved) p. 10 line 23 - Adopted

#3 (BS) Grants out of prevention account only p. 4, 5 + 6

Withdrawn

CS FOR SENATE BILL NO. 215()

#4 (BS) p. 3 line 21 (SR) amend amend

IN THE LEGISLATURE OF THE STATE OF ALASKA

"was spontaneous and"

EIGHTEENTH LEGISLATURE - SECOND SESSION

#5 (TK) p. 20 line 14

BY Adopted

Offered:

Referred:

(F) add

"approved by the Commissioner" Adopted

Sponsor(s): SENATORS MILLER, Kelly

#6 (TK) Delete eve

p. 20 lines 30 + 31

p. 21 line 1

Sec. 29 (p. 21 + 22)

delete - Adopted A BILL

FOR AN ACT ENTITLED

1 "An Act relating to oil and hazardous substances; redesignating the oil and
 2 hazardous substance release response fund and relating to it; repealing the
 3 authority in law by which marine highway vessels may be designed and
 4 constructed to aid in oil and hazardous substance spill cleanup in state marine
 5 water using money in the oil and hazardous substance release response fund and
 6 repealing the authority of the Department of Environmental Conservation to levy
 7 and collect fees for review of certain submissions related to oil; altering
 8 requirements applicable to liens for recovery of state expenditures related to oil
 9 or hazardous substances; terminating the nickel-per-barrel oil conservation
 10 surcharge; levying and collecting two new oil surcharges; and providing for the
 11 suspension and reimposition of one of the new surcharges; and providing for an
 12 effective date."

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

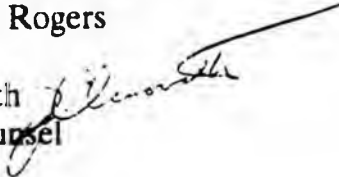
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 6, 1994

SUBJECT: CSSB 215 () "V" (Work Order No. 8-LS1107\V)

TO: Senator Drue Pearce, Co-Chair
Senate Finance Committee
ATTN: David Rogers

FROM: Jack Chenoweth 
Legislative Counsel

The change, in bill section 24, of "equal to" to "not to exceed" raises the question that the purported limitation may not work. If this legislature imposes a "not to exceed" requirement and a later legislature appropriates in excess of the limitation, the question arises as to whether or not that later appropriation inferentially sets aside the statutory limitation. If it does, then, arguably, the later appropriation's inferential "amendment" of the statutory limitation arguably violates the second sentence of article II, section 13 ("bills for appropriations to be confined to appropriations."). If it does not, there may be a violation of article IX, section 7 and its prohibition against establishment of a dedicated fund. See *Sonneman v. Hicke*, 836 P.2d 936 (Alaska 1992):

One method of dedicating funds is to preclude the legislature from appropriating designated funds for any reason other than a designated purpose.

836 P.2d at 940.

There is less risk in the current law--"equal to"--because, arguably, the legislature may appropriate an amount "equal to" but it remains free to do otherwise. With the substitution comes the notion of an upper limit and the risk of a finding of a violation of a constitutional provision.

I should caution that the new material previously added at the end of bill section 28 may raise the same concern.

JBC:gc
94-244.glc
Enclosure

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

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

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

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

* Sec. 2. AS 29.60.500 is amended to read:

Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds and declares that a major release of oil or hazardous substances into the environment presents a real and substantial threat to the economy and public welfare of the municipalities, [AND] villages, and school districts that are affected by the release and the resultant activities to contain and clean up the release.

(b) The legislature concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by municipalities, [AND] villages, and school districts to mitigate the social and economic effects that arise out of a major release of oil or hazardous substances and resultant cleanup activities.

(c) It is the intent of the legislature and declared to be the public policy of the state that money to defray the cost of social and economic effects on municipalities, [AND] villages, and school districts arising from a major release of oil or a hazardous substance and resultant cleanup activities and to pay for efforts to abate that release will be immediately available upon

[(1)] a determination [BY THE GOVERNOR] that the release exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance that when released into the environment presents a real and substantial threat to the economy and public welfare of the municipalities, [OR] villages, or school districts affected by it [;

(2) THE DECLARATION BY THE GOVERNOR OF A DISASTER EMERGENCY RELATING TO THE RELEASE; AND

(3) A FINDING BY THE GOVERNOR THAT

(A) THE RELEASE OF THE OIL OR HAZARDOUS SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY

*BS
amend Adopted
(was spontaneous and)*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN AND CLEAN UP THE RELEASE; AND

(B) IT IS IN THE BEST INTEREST OF THE STATE TO PAY THE EXPENSES INCURRED BY MUNICIPALITIES AND VILLAGES TO MITIGATE THE SOCIAL AND ECONOMIC EFFECTS THAT ARISE OUT OF THE RELEASE OF THE OIL OR THE HAZARDOUS SUBSTANCE AND THE RESULTANT CLEANUP ACTIVITIES].

* Sec. 3. AS 29.60.510 is amended to read:

Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a)

Subject to (b) of this section, the [THE] commissioner may use money from the oil and hazardous substance release prevention ~~(and response)~~ fund to make grants to a municipality, [OR] village, or school district that is affected by the release or by the response to the release and that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality, [OR] village, or school district to meet from the current revenue sources of the municipality, [OR] village, or school district if

[(1) THE GOVERNOR DETERMINES THAT] a release of oil [OR A HAZARDOUS SUBSTANCE] exceeds 2,500 barrels of oil, or if a release of a hazardous substance exceeds an amount of a hazardous substance that, when released into the environment, presents a threat to the economy and public welfare of the municipalities, [AND] villages, and school districts affected by it at least equivalent in effect to the effect of a release of oil in an amount defined by this subsection [PARAGRAPH;

(2) THE RELEASE HAS BEEN PROCLAIMED A DISASTER EMERGENCY BY THE GOVERNOR UNDER AS 26.23.020; AND

(3) THE GOVERNOR FINDS THAT

(A) THE RELEASE OF THE OIL OR HAZARDOUS SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN

*BS
motion
to fund
Grants
from
prevention
fund only
Withdrawn*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

AND CLEAN UP THE RELEASE; AND

(B) IT IS IN THE BEST INTEREST OF THE STATE TO PAY THE EXPENSES INCURRED BY MUNICIPALITIES AND VILLAGES TO MITIGATE THE SOCIAL AND ECONOMIC EFFECTS THAT ARISE OUT OF THE RELEASE OF THE OIL OR THE HAZARDOUS SUBSTANCE AND THE RESULTANT CLEANUP ACTIVITIES].

(b) For each release or threatened release of oil or a hazardous substance

(1) for which the commissioner of environmental conservation may, under AS 46.08.045, expend money from the oil and hazardous substance (release response) account in the fund [DISASTER EMERGENCY DECLARED BY THE GOVERNOR UNDER AS 26.23.020], and subject to agreement with the commissioner of environmental conservation as to the amount of money in the fund that may be used by the department to make grants, the commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the unrestricted balance of the oil and hazardous substance (release response) account in the fund for grants for purposes described in AS 29.60.520; if [AUTHORIZED UNDER THIS SECTION. IF] the commissioner and the commissioner of environmental conservation do not agree on the amount of money in the (response account) in the fund that may be used by the department to make grants under AS 29.60.500 - 29.60.599 for release or threatened release of oil or a hazardous substance, the governor shall make the determination;

(2) for which money may not be expended from the (response account) under (1) of this subsection, and subject to appropriation of money in the fund that may be used by the department to make grants, the commissioner may expend not more than the amount appropriated from the oil and hazardous substance release prevention account in the fund for grants for purposes described in AS 29.60.520.

(c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money between appropriations, when the commissioner and the commissioner of environmental conservation have agreed to the amount of money in the oil and hazardous substance (release response) account [FUND] that may be used by the

Prevention

(Prevention)

(Prevention)

(Prevention)

(Prevention)

1 department to make grants, or when that determination has been made by the governor,
2 the commissioner of environmental conservation shall promptly transfer that amount
3 to the department for use under AS 29.60.500 - 29.60.599.

4 (d) For money that has been transferred under (c) of this section, if within any
5 one-year period thereafter the commissioner does not use the money to make a grant
6 under AS 29.60.500 - 29.60.599, the commissioner shall, at the direction of the
7 governor or the request of the commissioner of environmental conservation, return the
8 unexpended amount transferred under (c) of this section to the oil and hazardous
9 substance ^(Prevention) ~~(release response account)~~ of the fund. ~~§~~

10 * Sec. 4. AS 29.60.520 is amended to read:

11 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A
12 grant made under AS 29.60.510 may be made

13 (1) only for

14 (A) provision of subsistence resources on which the residents
15 of the municipality, [OR] village, or school district rely for subsistence needs;

16 (B) the additional costs of a reasonable and appropriate function
17 or service, including administrative expenses for the incremental costs of
18 providing the function or service, limited to:

19 (i) public health and welfare functions and services,
20 including hospital, clinic, and emergency medical services; alcohol,
21 drug abuse, and mental health services; family support services; and the
22 operation of waste disposal systems and water quality improvement
23 systems;

24 (ii) public safety functions and services, including police
25 protection, search and rescue, and fire protection;

26 (iii) public utility functions and services, including the
27 operation of electric generating plants and distribution systems, water
28 supply systems, telephone systems, and fuel distribution systems; and

29 (iv) housing functions and services, limited to leasing or
30 making other arrangements for temporary housing to be occupied by
31 persons associated with containment or cleanup of the release;

1 (C) costs associated with leasing transportation facilities for use
2 in activities associated with the containment or cleanup;

3 (D) costs of repair or replacement of equipment or a capital
4 asset associated with a function or service set out in (B) of this paragraph the
5 useful life of which has been substantially reduced by use associated with the
6 containment or cleanup; and

7 (2) to compensate the municipality, [OR] village, or school district for

8 (A) the reduction of revenue attributable to the release of the
9 oil or hazardous substance; and

10 (B) the costs of projects or activities that are delayed or lost
11 because of the efforts of the municipality, [OR] village, or school district
12 responding to the release or associated with the containment or cleanup of oil
13 or the hazardous substance.

14 (b) If money received under this section is used for a capital expenditure, the
15 commissioner may require the municipality, [OR] village, or school district that
16 acquired the item as a capital expenditure to transfer it to the state at the end of the
17 period during which the item is actually used for spill response if the commissioner
18 finds that retention of the item would confer an inappropriate benefit on the
19 municipality, [OR] village, or school district.

20 * Sec. 5. AS 29.60.530 is amended to read:

21 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a)

22 In determining whether an expenditure or proposed expenditure by a municipality,
23 [OR] village, or school district is eligible for a grant under AS 29.60.510, the
24 department shall consider

25 (1) the degree to which the effect on the municipality, [OR] village, or
26 school district is directly caused by the oil or hazardous substance release or the
27 response to the release;

28 (2) the availability of money to the recipient from other sources that
29 can meet the costs of providing the functions or services; and

30 (3) the severity of the effect addressed in the grant application.

31 (b) The department may reject an application for a grant under AS 29.60.510

1 or approve an application for a grant in an amount that is less than the amount
2 requested by a municipality, [OR] village, or school district if the department
3 determines that payment of the amount requested is not warranted under (a) of this
4 section.

5 (c) The department shall adopt, by regulation, criteria by which to rank all or
6 a portion of applications for the purpose of establishing the priority order of awarding
7 grants if money requested by eligible municipalities, [AND] villages, and school
8 districts under this section exceeds the amount available. The criteria must be based
9 on the elements set out in (a) of this section. If the total amount of money requested
10 by eligible municipalities, [AND] villages, and school districts under this section
11 exceeds the amount available, the department shall rank applications for the purpose
12 of establishing the priority order of awarding grants in accordance with the regulations.

13 * Sec. 6. AS 29.60.540(b) is amended to read:

14 (b) Money received by a municipality, [OR] village, or school district under
15 AS 29.60.500 - 29.60.599 may not be used for a capital improvement, as that term is
16 defined in AS 46.08.900.

17 * Sec. 7. AS 29.60.560(a) is amended to read:

18 (a) For each disaster emergency declared by the governor under AS 26.23.020
19 based on a release of oil or a hazardous substance or for each other release of oil or
20 a hazardous substance for which money may be expended under AS 46.08.045(b),
21 the commissioner, after consulting with and securing the written approval of the
22 attorney general and after consulting with other state agencies, shall

23 (1) make an assessment of the social and economic effects of the
24 release of the oil or hazardous substance;

25 (2) develop a plan to

26 (A) recover the cost of release-related expenditures; and

27 (B) mitigate the social and economic effects of the release of
28 the oil or hazardous substance on the municipalities, the villages, the school
29 districts, and the region in which the discharge occurs.

30 * Sec. 8. AS 29.60.560(e) is amended to read:

31 (e) Expenditures made under this section may be made only from the amount

1 transferred to the commissioner under AS 29.60.510(c), unless

2 (1) the commissioner and the commissioner of environmental
3 conservation mutually agree that payment may be made from money in the oil and
4 hazardous substance release response account in the oil and hazardous substance
5 release prevention and response fund not transferred under AS 29.60.510(c); or

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

7 * Sec. 9. AS 29.60.599(4) is amended to read:

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

10 * Sec. 10. AS 29.60.599(7) is amended to read:

11 (7) "service"

12 (A) means

13 (i) a function performed or service provided by a
14 municipality under a duty or power authorized by this title or by
15 another provision of law authorizing a municipality to perform functions
16 or provide services;

17 (ii) [, OR] a comparable function performed or service
18 provided by a village; or

19 (iii) a function performed or service provided by a
20 school district;

21 (B) includes functions not previously performed and services
22 not previously provided by the municipality or village;

23 * Sec. 11. AS 29.60.599 is amended by adding a new paragraph to read:

24 (9) "school district" has the meaning given in AS 14.30.350.

25 * Sec. 12. AS 37.14.410 is amended to read:

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

1 (b) A percentage of each payment deposited in the general fund under (a) of
2 this section shall be credited to the prevention account established in [OIL AND
3 HAZARDOUS SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER
4 AS 46.04.010 OR] AS 46.08.020. That percentage is determined by dividing

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

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

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

11 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
12 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
13 less any oil the ownership or right to which is exempt from taxation.

14 (b) The surcharge imposed by (a) of this section is in addition to and shall be
15 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
16 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

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

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

20 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The
21 legislature may appropriate the annual estimated balance of the account maintained
22 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
23 levied under AS 43.55.201 to the response account in the oil and hazardous substance
24 release prevention and response fund established by AS 46.08.010.

25 * Sec. 15. AS 43.55 is amended by adding a new section to read:

26 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
27 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
28 commissioner of administration shall determine, as of the end of that quarter, the fiscal
29 year's

30 (1) unreserved and unobligated balance in the response account of the
31 oil and hazardous substance release prevention and response fund established in

- 1 AS 46.08.010; for purposes of this paragraph, the "unreserved and unobligated balance
2 in the response account" means the cash balance of the account less the sum of
- 3 (A) reserves for outstanding appropriations from the account;
 - 4 (B) encumbrances of money in the account; and
 - 5 (C) other liabilities of the account;
- 6 (2) balance of the account maintained under AS 37.05.142 that accounts
7 for the proceeds of the surcharge that are deposited in the general fund;
- 8 (3) the balance of the response mitigation account established by
9 AS 46.08.025(b) that originated from the sources described in AS 46.08.025(a)(3) and
10 that is available for appropriation to the response account of the fund established in
11 AS 46.08.010.
- 12 (b) Within 15 days after making the determinations required by (a) of this
13 section, the commissioner of administration shall
- 14 (1) add the amounts determined under (a)(1) - (3) of this section; and
 - 15 (2) report the sum calculated under (1) of this subsection to the
16 commissioner of revenue.
- 17 (c) In making the determination required by (a) of this section, the
18 commissioner of administration may not consider money described in (a) of this
19 section that is subject to a dedication imposed by law that restricts the use of the
20 money to a specific purpose for which the response account of the oil and hazardous
21 substance release prevention and response fund established in AS 46.08.010 may not
22 be lawfully expended.
- 23 (d) If the commissioner of administration reports that the sum reported under
24 (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue shall
25 suspend imposition and collection of the surcharge levied and collected under
26 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on
27 the first day of the calendar quarter next following the commissioner's receipt of the
28 commissioner of administration's report under (b) of this section. Before the first day
29 of a suspension authorized by this subsection, the commissioner shall make a
30 reasonable effort to notify all persons who are known to the department to be paying
31 the surcharge under AS 43.55.201 that the surcharge will be suspended.

1 (e) Except as provided in AS 43.55.231, if the commissioner of administration
2 reports that the sum reported under (b) of this section is less than \$50,000,000, the
3 commissioner of revenue shall require imposition and collection of the surcharge
4 authorized under AS 43.55.201. If the surcharge is not in effect, reimposition of the
5 surcharge begins on the first day of the calendar quarter next following the
6 commissioner's receipt of the commissioner of administration's report under (b) of this
7 section. Before the first day of reimposition of the surcharge authorized by this
8 subsection, the commissioner shall make a reasonable effort to notify all persons who
9 are known to the department to be required to pay the surcharge under AS 43.55.201
10 that the surcharge will be reimposed.

11 * Sec. 16. AS 43.55 is amended by adding a new section to read:

12 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized
13 by AS 43.55.201 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
17 response account in the oil and hazardous substance release prevention and response
18 fund; or

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

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

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

30 (2) the portion of the balance of the response mitigation account
31 established by AS 46.08.025(b) that originated from the recovery of money described

1 in AS 46.08.025(a)(3).

2 * Sec. 17. AS 43.55 is amended by adding new sections to read:

3 Sec. 43.55.299. DEFINITIONS. In AS 43.55.201 - 43.55.299,

4 (1) "response account" means the oil and hazardous substance release
5 response account established in AS 46.08.010(a)(2);

6 (2) "response mitigation account" means the oil and hazardous
7 substance release response mitigation account established in AS 46.08.025(b).

8 **ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.**

9 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
10 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
11 less any oil the ownership or right to which is exempt from taxation.

12 (b) The surcharge imposed by (a) of this section is in addition to and shall be
13 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
14 addition to the surcharge imposed by AS 43.55.201 - 43.55.231.

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

17 Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE. The
18 legislature may appropriate the annual estimated balance of the account maintained
19 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
20 levied under AS 43.55.300 to the oil and hazardous substance release prevention
21 account in the oil and hazardous substance release prevention and response fund
22 established by AS 46.08.010.

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

24 (15) "surcharge" means

25 (A) when used in AS 43.55.201 - 43.55.299, the surcharge
26 levied by AS 43.55.201 [AS 43.55.200];

27 (B) when used in AS 43.55.300 - 43.55.310, the surcharge
28 levied by AS 43.55.300;

29 * Sec. 19. AS 46.04.010 is amended to read:

30 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The
31 department shall promptly seek reimbursement under AS 46.03.760(e), AS 46.08.070.

1 or from an applicable federal fund, for the expenses it incurs in cleaning up or
2 containing a discharge of oil. If the department obtains reimbursement for a portion
3 of its expenses from a federal fund, the remainder of the expenses incurred may be
4 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department
5 under this section shall be deposited in the general fund and credited to

6 (1) the oil and hazardous substance prevention mitigation account
7 established under AS 46.08.020(b); the amount required to be deposited under this
8 paragraph shall represent the proportion of the expenses recovered that were
9 originally paid for from the oil and hazardous substance release prevention
10 account established under AS 46.08.010(a)(1); or

11 (2) [^ SPECIAL ACCOUNT CALLED] the ["] oil and hazardous
12 substance release response mitigation account established under AS 46.08.025(b); the
13 amount required to be deposited under this paragraph is the amount of money
14 recovered that exceeds the amount payable to the prevention mitigation account
15 under (1) of this section ["].

16 * Sec. 20. AS 46.08.005 is amended to read:

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

23 (1) one account consists of money readily available to the
24 commissioner for the payment of the expenses incurred by the Department of
25 Environmental Conservation during a response to a release or threatened [AND
26 THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN THE
27 PROTECTION OF THE ENVIRONMENT OF THE STATE FROM THE] release of
28 oil or hazardous substances when authorized by AS 46.08.045 and for related
29 purposes intended to address those releases;

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

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

6 * Sec. 21. AS 46.08.010(a) is amended to read:

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

10 (1) the oil and hazardous substance release prevention account;

11 (2) the oil and hazardous substance release response account.

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

13 (b) Money from an appropriation made to an account in the fund remaining
14 in that account [THE FUND] at the end of a fiscal year does not lapse and remains
15 available for expenditure in successive fiscal years.

16 * Sec. 23. AS 46.08.010(c) is amended to read:

17 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.
18 Except as provided in AS 46.08.040(a)(2)(C)(ii) for the equipment that is required
19 for and placed in the oil and hazardous substance response depots and in
20 AS 46.08.040(a)(2)(E) for the acquisition, repair, or improvement of assets as
21 preparedness measures [AS 46.08.040(d)(2)], the fund may not be used for capital
22 improvements.

23 * Sec. 24. AS 46.08.020 is amended to read:

24 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
25 SUBSTANCE RELEASE PREVENTION ACCOUNT [FUND]. (a) The legislature
26 may appropriate from the following sources to the prevention account in the fund:

27 (1) the annual estimated balance of the account maintained under
28 AS 37.05.142 for deposits into the general fund of the proceeds of the oil
29 conservation surcharge levied by AS 43.55.300;

30 (2) money received from other state sources, from federal [, STATE,]
31 or other sources, or from a private donor;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

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

(B) described in AS 46.08.025(a)(3);

(4) [(3)] fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance;

(5) the interest earned on the balance of the accounts maintained under AS 37.05.142 for deposits into the general fund from the proceeds of the surcharges levied under AS 43.55.201 and 43.55.300; and

(6) the interest earned on the balances of each of the following:

(A) the prevention account;

(B) the prevention mitigation account;

(C) the response account; and

(D) the response mitigation account.

(b) Money received by the state under (a)(2) - (6) [(a)(2) AND (a)(3)] of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release prevention mitigation account." The legislature may annually appropriate to the prevention account in the fund from the prevention mitigation [THIS] account a sum ^{delete} ~~not to exceed~~ ^{add} [EQUAL TO] the amount received under (a)(2) - (6) [(a)(2) AND (a)(3)] of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

Chen...
with
add
Adopted
3-2
DP TK
CS BS
SR

* Sec. 25. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.025. FINANCING OF THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE ACCOUNT. (a) The legislature may appropriate from the following sources to the oil and hazardous substance release response account in the fund:

(1) the annual estimated balance of the account maintained under

1 AS 37.05.142 for deposit into the general fund of the proceeds of the oil conservation
2 surcharge levied by AS 43.55.201;

3 (2) money received from other state sources, from federal or other
4 sources, or from a private donor; and

5 (3) money recovered or otherwise received from parties responsible for
6 the containment and cleanup of oil or a hazardous substance at a specific site for
7 which the state expended money from the former oil and hazardous substance release
8 response fund before the effective date of this section or for which the state expended
9 money from the response account, but excluding

10 (A) money from performance bonds and other forms of
11 financial responsibility held in escrow pending satisfactory performance of a
12 privately financed response action;

13 (B) fines, penalties, and damages described in
14 AS 46.08.020(a)(4).

15 (b) Money received by the state under (a)(2) and (3) of this section shall be
16 deposited in the general fund and credited to a special account called the "oil and
17 hazardous substance release response mitigation account." The legislature may
18 annually appropriate to the response account from the fund from the response mitigation
19 account a sum equal to the amount received under (a)(2) and (3) of this section during
20 the calendar year preceding the legislative session in which the appropriations are to
21 be made.

22 * Sec. 26. AS 46.08.040(a) is amended to read:

23 (a) In addition to money in the response account of the fund that is
24 transferred to the commissioner of community and regional affairs to make grants
25 under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the
26 commissioner of environmental conservation may use money

27 (1) from the response account in the fund

28 (A) when authorized by AS 46.08.045, [(1)] to investigate and
29 evaluate the release or threatened release of oil or a hazardous substance, and
30 contain, clean up, and take other necessary action, such as monitoring and
31 assessing, to address a release or threatened release of oil or a hazardous

1 substance that poses an imminent and substantial threat to the public health or
2 welfare, or to the environment;

3 (B) to [(2)] PAY ALL COSTS INCURRED TO

4 (A) ESTABLISH AND MAINTAIN THE OIL AND
5 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

6 (B) REVIEW OIL DISCHARGE PREVENTION AND
7 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

8 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
9 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
10 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
11 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
12 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
13 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
14 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
15 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
16 AND

17 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
18 RESPONSIBILITY REQUIRED BY AS 46.04.040;

19 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION
20 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
21 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
22 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
23 THE DIVISION;

24 (4) provide matching funds in the event of a release of oil or a
25 hazardous substance for which use of the response account is authorized by
26 AS 46.08.045 for participation

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

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

30 and

31 (C) to [(5)] recover the costs to the state, a municipality, [OR]

1 a village , or a school district of a containment and cleanup resulting from the
2 release or the threatened release of oil or a hazardous substance for which
3 money was expended from the response account;

4 (2) from the prevention account in the fund to

5 (A) investigate and evaluate the release or threatened release
6 of oil or a hazardous substance, except a release described in
7 AS 46.08.045(a), and contain, clean up, and take other necessary action,
8 such as monitoring and assessing, to address a release or threatened
9 release of oil or a hazardous substance, except a release described in
10 AS 46.08.045(a);

11 (B) pay all costs incurred to

12 (i) establish and maintain the oil and hazardous
13 substance response office;

14 (ii) review oil discharge prevention and contingency
15 plans submitted under AS 46.04.030;

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

23 (iv) verify or establish proof of financial
24 responsibility required by AS 46.04.040;

25 (C) pay the expenses incurred by the division of emergency
26 services for

27 (i) the oil and hazardous substance response corps;

28 and

29 (ii) the oil and hazardous substance response depots;

30 (D) pay, when presented with appropriate documentation by
31 the Alaska State Emergency Response Commission, expenses incurred by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

the commission for

(i) its activities, including staff support, when the activities and staff support relate to oil or hazardous substances; and

(ii) the costs of being prepared for and responding to a request by the department for support in activities that relate to response to and restoration of the effects of an oil or hazardous substance release;

(E) pay all costs incurred to acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a release or threatened release of oil or a hazardous substance;

(F) pay the costs incurred by local emergency planning committees to carry out the duties assigned them by AS 46.13.080;

(G) provide matching funds in the event of the release of oil or a hazardous substance, except a release of oil for the containment and cleanup of which use of the response account is authorized by AS 46.08.045, for participation

(i) in federal oil discharge cleanup activities; and

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

(H) pay or reimburse the storage tank assistance fund established in AS 46.03.410 for expenditures from that fund authorized by AS 46.03.410(b);

(I) recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance for which money was expended from the prevention account;

~~(J) reimburse the Alaska Legislative Council under AS 46.08.040(d) for its expenditures for the operation of the Citizens'~~

TK approved by the Commissioner Adopted

TK Delete COC See 29: deletion also Adopted 11-1 (DP)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

~~Oversight Council on Oil and Other Hazardous Substances, out~~

(K) [(6)] prepare, review, and revise

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

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

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

* Sec. 27. AS 46.08.040(a)(2)(D) is repealed and reenacted to read:

(D) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, expenses incurred by the Department of Military and Veterans' Affairs for

(i) Alaska State Emergency Response Commission activities, including staff support, when the activities and staff support relate to oil or hazardous substances; and

(ii) the costs to the Department of Military and Veterans' Affairs of being prepared for and responding to a request by the department for support in activities that relate to response to and restoration of the effects of an oil or hazardous substance release;

* Sec. 28. AS 46.08.040(c) is amended to read:

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(1)(B) or (C) or (a)(2) [(a)(2) - (7) AND (d)(2)] of this section unless money is available from an appropriation made specifically for that purpose. The legislature may use not more than three percent of the estimated annual balance of the prevention account to make appropriations for the purposes described in (a)(2)(F) of this section.

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

(d) ~~Upon a request from~~

~~[(1)] the Alaska Legislative Council, the commissioner shall use money~~

TK motion to delete ref. to coc Adopted

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

from the prevention account in the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the ~~Citizens' Oversight Council on Oil and Other Hazardous Substances~~, established under AS 24.20.600 [; AND

(2) THE COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES, THE COMMISSIONER SHALL TRANSFER MONEY FROM THE FUND TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES TO PAY FOR THE CONSTRUCTION OR REFURBISHMENT OF ONE OR MORE VESSELS OF THE ALASKA MARINE HIGHWAY SYSTEM THAT HAVE THE CAPABILITY TO ASSIST IN RESPONDING TO SPILLS OF OIL AND HAZARDOUS SUBSTANCES; IN EXPENDING MONEY IN THE FUND WHOSE USE FOR VESSELS OF THE MARINE HIGHWAY SYSTEM IS AUTHORIZED BY AS 19.65.025 AND THIS PARAGRAPH, THE COMMISSIONER SHALL GIVE PRIORITY TO CONSTRUCTION OF ONE OR MORE NEW VESSELS THAT HAVE THE CHARACTERISTICS REQUIRED BY THIS PARAGRAPH].

* Sec. 30. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.045. USE OF THE RESPONSE ACCOUNT. (a) The commissioner may use money from the response account in the fund to respond to a release or threatened release when the governor declares a disaster related to a oil or hazardous substance discharge emergency under AS 26.23.020(c). During the effective period of the disaster emergency, the commissioner may use money from the response account to respond to the disaster emergency.

(b) Notwithstanding (a) of this section, money from the response account may be used for the purpose in AS 46.08.040(a)(1)(A) without a declaration under AS 26.23.020(c). However, when exercising authority under this subsection, the commissioner shall, within 120 hours of using money in the response account when authorized by this subsection, provide a written report to the governor summarizing the release, the state's actions, both taken and anticipated, the costs of the state's actions, both taken and anticipated, and other information considered appropriate by the commissioner or the governor. The governor may, at any time during the state's response, approve, disapprove, or amend the action.

*TK
Conceptual
Amend
to
notify
LBA
Adopted*

LBA

1 * Sec. 31. AS 46.08.050(b) is amended to read:

2 (b) A [THE] department that is appropriated or allocated money from the
3 fund, either directly or through a reimbursable service agreement with the
4 Department of Environmental Conservation, shall develop procedures governing the
5 expenditure of, and accounting for, money it expends [EXPENDED] from the fund.
6 The Department of Environmental Conservation may not reimburse or pay money
7 to another state agency for the agency's activities under AS 46.08.040 unless the
8 state agency provides to the department the information necessary to complete the
9 report required by AS 46.08.060 [, AND MAY NOT DELAY IMPLEMENTATION
10 OF THIS CHAPTER PENDING THE EFFECTIVE DATE OF THE PROCEDURES].

11 * Sec. 32. AS 46.08.060(a) is amended to read:

12 (a) The commissioner shall submit a report to the legislature not later than the
13 10th day following the convening of each regular session of the legislature. The report
14 may include information considered significant by the commissioner but must include:

15 (1) the amount of money expended by the department under
16 AS 46.08.040, (1)(A) [AS 46.08.040(a)] during the preceding fiscal year;

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

19 (A) AS 46.04.010 (reimbursement of cleanup expenses);

20 (B) AS 46.08.020(a)(4) (recovery of fines, penalties, and
21 damages); and

22 (C) AS 46.08.025(a)(3) (cost recoveries) [AS SPECIFIED IN
23 AS 46.08.020];

24 (3) a summary of municipal participation in the department's responses
25 that were paid for [FUNDED] by the response account [FUND];

26 (4) a [DETAILED] summary of department activities in responses paid
27 for [FUNDED] by the response account [FUND] during the preceding fiscal year,
28 including response descriptions and statements outlining the nature of the threat; [IN
29 THIS PARAGRAPH, "DETAILED" INCLUDES INFORMATION DESCRIBING
30 EACH PERSONAL SERVICES POSITION AND TOTAL COMPENSATION FOR
31 THAT POSITION, EACH CONTRACT IN EXCESS OF \$20,000, AND EACH

1 PURCHASE IN EXCESS OF \$10,000); and

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

6 * Sec. 33. 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 include
9 in the report under this section

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

13 (2) a prioritized listing of those sites, both statewide and by
14 community, based on the immediate and long-term threats to the public health or
15 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. 34. AS 46.08.060(c) is amended to read:

19 (c) In addition to the department's report required under (a) of this section, the
20 governor shall submit a report about use of the fund during the previous fiscal year to
21 the legislature not later than the 10th day following the convening of each regular
22 session of the legislature. In the report, the governor shall describe in detail the
23 governor's use of money from the fund, with separate explanations, by agency, of the
24 activities that were paid for [FUNDED] under the authority of AS 46.08.045
25 [AS 46.08.040(b)].

26 * Sec. 35. AS 46.08.070 is amended by adding a new subsection to read:

27 (d) The department shall adopt regulations to implement the cost recovery
28 requirements of (a) and (b) of this section, but may not delay cost recovery actions
29 pending the effective date of the adoption of the regulations.

30 * Sec. 36. AS 46.08.075(a) is amended to read:

31 (a) The state has a lien for expenditures by the state from the [OIL AND

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

11 * Sec. 37. AS 46.08.075(e) is amended to read:

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

19 * Sec. 38. AS 46.08.900(5) is amended to read:

20 (5) "fund" means the oil and hazardous substance release prevention
21 and response fund;

22 * Sec. 39. AS 46.08.900(9) is amended to read:

23 (9) "release"

24 (A) means any spilling, leaking, pumping, pouring, emitting,
25 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
26 the environment;

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

28 (i) a permitted release; or

29 (ii) an act of nature;

30 * Sec. 40. AS 46.08.900(11) is amended to read:

31 (11) "threatened release" means [AN IMMINENT DANGER] that a

1 release is imminent; a release is imminent if

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

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

4 commissioner

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

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

10 * Sec. 41. AS 46.08.900 is amended by adding new paragraphs to read:

11 (13) "catastrophic oil discharge" and "catastrophic oil release" have the
12 meaning given the term "catastrophic oil discharge" in AS 46.04.900;

13 (14) "prevention account" means the oil and hazardous substance
14 release prevention account established in AS 46.08.010(a)(1);

15 (15) "prevention mitigation account" means the oil and hazardous
16 substance release prevention mitigation account established in AS 46.08.020(b);

17 (16) "response account" means the oil and hazardous substance release
18 response account established in AS 46.08.010(a)(2);

19 (17) "response mitigation account" means the oil and hazardous
20 substance release response mitigation account established in AS 46.08.025(b).

21 * Sec. 42. AS 46.09.900(8) is amended to read:

22 (8) "threatened release" means [AN IMMINENT DANGER] that a
23 release is imminent; a release is imminent if

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

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

26 commissioner

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

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

1 * Sec. 43. AS 19.65.025; AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240;
2 AS 44.46.025(a)(4) and (5); AS 46.08.040(b), and sec. 3, ch. 112, SLA 1989 are repealed.

3 * Sec. 44. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
4 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
5 sec. 43 of this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b),
6 the reference to which is deleted by sec. 3 of this Act, is not an expenditure.

7 * Sec. 45. SURCHARGE IMPOSED BY AS 43.55.201 - 43.55.231 SUSPENDED AND
8 REIMPOSED. In addition to the circumstances set out in AS 43.55.231, the surcharge
9 authorized by AS 43.55.201 is not levied on and after the effective date of this section and
10 until June 30, 1995, if

11 (1) the Eighteenth Alaska State Legislature does not, during the Second
12 Regular Session or during any special session held before the effective date of this section,
13 appropriate at least an amount equal to the estimated amount, as of the day before the
14 effective date of this section, of the unexpended and unobligated balance of the former oil and
15 hazardous substance release response fund to the response account in the oil and hazardous
16 substance release prevention and response fund; or

17 (2) the governor vetoes or reduces the amount appropriated under (1) of this
18 section.

19 * Sec. 46. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
20 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
21 BEFORE THE EFFECTIVE DATE OF THIS SECTION. After June 30, 1994, and before the
22 effective date of this section, every producer of oil who is required by AS 43.55.200 -
23 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
24 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
25 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
26 received after June 30, 1994, and before the effective date of this section, if so appropriated
27 by the legislature and notwithstanding any other provision of law relating to the deposit of and
28 accounting for those receipts,

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

31 (A) 40 percent of the amount received to the response account

1 established by AS 46.08.010(a)(2), as amended by sec. 21 of this Act; and
2 (B) 60 percent of the amount received to the prevention account
3 established by AS 46.08.010(a)(1), as amended by sec. 21 of this Act; and
4 (2) the allocations made under (1) of this section are credited to the respective
5 accounts for purposes of determination of the suspension and reimposition of the surcharge
6 under AS 43.55.221 and 43.55.231, added by secs. 15 and 16 of this Act.

7 * Sec. 47. Section 27 of this Act takes effect only if a version of Senate Bill 33
8 transferring the Alaska State Emergency Response Commission from the Department of
9 Environmental Conservation to the Department of Military and Veterans' Affairs is enacted
10 by the Eighteenth Alaska State Legislature and becomes law.

11 * Sec. 48. If sec. 27 of this Act takes effect under sec. 47 of this Act, it takes effect on the
12 effective date of the Act described in sec. 47, or on July 1, 1994, whichever is later.

13 * Sec. 49. Except as provided in sec. 48 of this Act, this Act takes effect July 1, 1994.

3-22-94

8-LS110VI
Chenoweth
3/21/94

*B-5 moved for adoption as a working draft.
JK objected.*

CS FOR SENATE BILL NO. 215()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS MILLER, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to oil and hazardous substances; redesignating the oil and
 2 hazardous substance release response fund and its uses; repealing the authority
 3 in law by which marine highway vessels may be designed and constructed to aid
 4 in oil and hazardous substance spill cleanup in state marine water using money
 5 in the oil and hazardous substance release response fund and the authority of
 6 the Department of Environmental Conservation to levy and collect fees for review
 7 of certain submissions related to oil; altering requirements applicable to liens for
 8 recovery of state expenditures related to oil or hazardous substances; terminating
 9 the nickel-per-barrel oil conservation surcharge; levying and collecting two new oil
 10 surcharges; providing for the suspension and reimposition of one of the new
 11 surcharges; and authorizing appropriations to the underground storage tank
 12 assistance fund of a portion of reimbursements for expenditures related to the

1 Exxon Valdez oil spill; and providing for an effective date."

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

3 * Section 1. FINDING AND DETERMINATION FOR SECTION 5. The legislature

4 (1) finds and declares that the release of petroleum from or associated with
5 underground petroleum storage tanks presents a real and substantial threat to the public health
6 and welfare, to the environment, and to the economy of the state; and

7 (2) determines that it is in the best interest of the state and its citizens to
8 finance a portion of the storage tank assistance fund out of reimbursed expenditures received
9 by the state for expenses related to the Exxon Valdez oil spill.

10 * Sec. 2. AS 29.60.510(a) is amended to read:

11 (a) Subject to (b) of this section, the [THE] commissioner may use money
12 from the oil and hazardous substance release prevention and response fund to make
13 grants to a municipality or village that is affected by the release of oil or a hazardous
14 substance or by the response to the release and that demonstrates that the release or
15 response to the release involves extraordinary expenditures that are beyond the
16 reasonable capability of the municipality or village to meet from the current revenue
17 sources of the municipality or village if

18 (1) the governor determines that the [A RELEASE OF] oil or [A]
19 hazardous substance [EXCEEDS 2,500 BARRELS OF OIL, OR EXCEEDS AN
20 AMOUNT OF A HAZARDOUS SUBSTANCE THAT], when released into the
21 environment, presents a threat to the economy and public welfare of the municipalities
22 and villages affected by it [AT LEAST EQUIVALENT IN EFFECT TO THE EFFECT
23 OF A RELEASE OF OIL IN AN AMOUNT DEFINED BY THIS PARAGRAPH;

24 (2) THE RELEASE HAS BEEN PROCLAIMED A DISASTER
25 EMERGENCY BY THE GOVERNOR UNDER AS 26.23.020]; and

26 (2) [(3)] the governor finds that

27 [(A) THE RELEASE OF THE OIL OR HAZARDOUS
28 SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND
29 SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE
30 OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY
31 THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN

*Response
at
municipal
level*

1 AND CLEAN UP THE RELEASE; AND

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

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

7 (b) For each release or threatened release of oil or a hazardous substance
8 for which the commissioner of environmental conservation may, under
9 AS 46.08.045(a), expend money from the response account in the fund [DISASTER
10 EMERGENCY DECLARED BY THE GOVERNOR UNDER AS 26.23.020], and
11 subject to agreement with the commissioner of environmental conservation as to the
12 amount of money in the fund that may be used by the department to make grants, the
13 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
14 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
15 unrestricted balance of the response account in the fund for grants authorized under
16 this section. For each release or threatened release of oil or a hazardous substance
17 for which money may not be expended from the response account, and subject to
18 appropriation of money in the fund that may be used by the department to make
19 grants, the commissioner may expend not more than the amount appropriated
20 from the contingency and abatement account in the fund for grants authorized
21 under this section. If the commissioner and the commissioner of environmental
22 conservation do not agree on the amount of money in the response account in the
23 fund that may be used by the department to make grants under AS 29.60.500 -
24 29.60.599 for release or threatened release of oil or a hazardous substance, the
25 governor shall make the determination.

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

27 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by
28 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred
29 by the state on or before December 31, 1992, shall be deposited in the general fund
30 and, except as required under (b) of this section and allowed under (c) of this
31 section, may not be credited to the oil and hazardous substance release mitigation

1 account under AS 46.04.010 or to an account established in AS 46.08.020 or
2 46.08.025.

3 (b) A percentage of each payment deposited in the general fund under (a) of
4 this section shall be credited to the contingency and abatement mitigation account
5 established in [OIL AND HAZARDOUS SUBSTANCE RELEASE MITIGATION
6 ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020. That percentage is determined
7 by dividing

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

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

13 * Sec. 5. AS 37.14.410 is amended by adding a new subsection to read:

14 (c) Notwithstanding the requirement of (b) of this section, the legislature may
15 appropriate to the storage tank assistance fund established in AS 46.03.410 a portion
16 of the reimbursement for expenditures that are received by the state under (a) of this
17 section and that are credited or subject to credit to the contingency and abatement
18 mitigation account.

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

20 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
21 a surcharge of \$.025 per barrel of oil produced from each lease or property in the state,
22 less any oil the ownership or right to which is exempt from taxation.

23 (b) The surcharge imposed by (a) of this section is in addition to and shall be
24 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
25 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

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

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

29 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The
30 legislature may appropriate the annual estimated balance of the account maintained
31 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge

1 levied under AS 43.55.201 to the response account in the oil and hazardous substance
2 release prevention and response fund established by AS 46.08.010.

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

4 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
5 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
6 commissioner of administration shall determine, as of the end of that quarter,

7 (1) the unreserved and unobligated balance in the response account of
8 the oil and hazardous substance release prevention and response fund established in
9 AS 46.08.010; for purposes of this paragraph, the "unreserved and unobligated balance
10 in the response account" means the cash balance of the account, less the sum of

11 (A) reserves for outstanding appropriations from the account;

12 (B) encumbrances of money in the account; and

13 (C) other liabilities of the account;

14 (2) the balance of the account maintained under AS 37.05.142 that is
15 available for appropriation to the response account of the oil and hazardous substance
16 release prevention and response fund established in AS 46.08.010;

17 (3) the balance of the response mitigation account established by
18 AS 46.08.025(b) that originated from the sources described in AS 46.08.025(a)(2) and
19 that is available for appropriation to the response account of the fund established in
20 AS 46.08.010.

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

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

24 (2) report the sum calculated under (1) of this subsection to the
25 commissioner.

26 (c) In making the determination required by (a) of this section, the
27 commissioner of administration may not consider money described in (a) of this
28 section that is subject to a dedication imposed by law that restricts the use of the
29 money to a specific purpose for which the response account of the oil and hazardous
30 substance release prevention and response fund established in AS 46.08.010 may not
31 be lawfully expended.

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

10 (e) Except as provided in AS 43.55.231, if the commissioner of administration
11 reports that the sum reported under (b) of this section is less than \$50,000,000, the
12 commissioner of revenue shall require imposition and collection of the surcharge
13 authorized under AS 43.55.201. If the surcharge is not in effect, reimposition of the
14 surcharge begins on the first day of the calendar quarter next following the
15 commissioner's receipt of the commissioner of administration's report under (b) of this
16 section. Before the first day of reimposition of the surcharge authorized by this
17 subsection, the commissioner shall make a reasonable effort to notify all persons who
18 are known to the department to be required to pay the surcharge under AS 43.55.201
19 that the surcharge will be reimposed.

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

21 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized
22 by AS 43.55.201 is not levied during any fiscal year for which

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

28 (2) the legislature, during the regular or a special legislative session
29 preceding the first day of the fiscal year, appropriates at least the amount of money
30 equal to the amount determined under (b) of this section from the general fund to the
31 response account in the oil and hazardous substance release prevention and response

1 fund and that appropriation is vetoed or reduced by the governor.

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

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

8 (2) the portion of the balance of the response account paid into that
9 account under AS 46.08.025(a)(2) and credited to the response mitigation account that
10 represents amounts recovered from parties for which expenditures were originally made
11 from

12 (A) the response account; or

13 (B) the former oil and hazardous substance release response
14 fund if the expenditure was made for a release or threatened release of oil or
15 a hazardous substance before the effective date of this Act.

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

17 **ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.**

18 Sec. 43.55.300. **SURCHARGE LEVIED.** (a) Every producer of oil shall pay
19 a surcharge of \$.025 per barrel of oil produced from each lease or property in the state,
20 less any oil the ownership or right to which is exempt from taxation.

21 (b) The surcharge imposed by (a) of this section is in addition to and shall be
22 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
23 addition to the surcharge imposed by AS 43.55.201 - 43.55.231.

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

26 Sec. 43.55.310. **USE OF REVENUE DERIVED FROM SURCHARGE.** The
27 legislature may appropriate the annual estimated balance of the account maintained
28 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
29 levied under AS 43.55.300 to the contingency and abatement account in the oil and
30 hazardous substance release prevention and response fund established by AS 46.08.010.

31 * Sec. 11. AS 43.55.900(15) is amended to read:

1 (15) "surcharge" means
 2 (A) when used in AS 43.55.201 - 43.55.231, the surcharge
 3 levied by AS 43.55.201 [AS 43.55.200];

4 (B) when used in AS 43.55.300 - 43.55.310, the surcharge
 5 levied by AS 43.55.300;

6 * Sec. 12. AS 46.08.005 is amended to read:

7 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release
 8 of oil or hazardous substances into the environment presents a real and substantial
 9 threat to the public health and welfare, to the environment, and to the economy of the
 10 state. The legislature therefore concludes that it is in the best interest of the state and
 11 its citizens to provide a [READILY AVAILABLE] fund containing two accounts.

12 Within the fund,

13 (1) one account consists of money readily available to the
 14 commissioner for the payment of the expenses incurred by the Department of
 15 Environmental Conservation during an emergency first response to a release or
 16 threatened [AND THE DEPARTMENT OF TRANSPORTATION AND PUBLIC
 17 FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE STATE
 18 FROM THE] release of oil or hazardous substances when authorized by
 19 AS 46.08.045 and for related purposes intended to address those releases;

20 (2) the other account consists of money that the state may use
 21 during a response to a release or threatened release of oil or a hazardous
 22 substance, other than a discharge described in (1) of this subsection, to pay the
 23 expenses of making preparations for the possibility of a release or threatened
 24 release of oil or hazardous substances, to reduce the amount, degree, or intensity
 25 of a release or threatened release, and for other related purposes identified in law
 26 [OR HAZARDOUS SUBSTANCES].

27 * Sec. 13. AS 46.08.010(a) is amended to read:

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

31 (1) the contingency and abatement account;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

DP
N 470X

(2) the response account.

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

(b) Money from an appropriation made to an account in the fund remaining in that account [THE FUND] at the end of a fiscal year does not lapse and remains available for expenditure in successive fiscal years.

* Sec. 15. AS 46.08.010(c) is amended to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(a)(2)(C)(v) for the acquisition, repair, or improvement of assets or disaster emergency preparedness measures and in AS 46.08.040(a)(2)(D)(ii) for the equipment that is required for and placed in the oil and hazardous substance response depots [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

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

Sec. 46.08.020. FINANCING OF THE CONTINGENCY AND ABATEMENT ACCOUNT [FUND]. (a) The legislature may appropriate from the following sources to the contingency and abatement account in the fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site for the costs of the containment and cleanup incurred by the state, a municipality, or a village, to the extent that the money recovered or otherwise received had been paid out of the contingency and abatement account, but excluding

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

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

(3) fines, penalties, or damages recovered [UNDER AS 46.08.005 - 46.08.080 OR OTHER LAW] for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance, but excluding

1 (A) fines, penalties, or damages recovered or otherwise
 2 received due to a discharge the costs of containment and cleanup of which
 3 were paid from the account established in AS 46.08.025; and

4 (B) money described in (2) of this subsection;

5 (4) interest accrued on

6 (A) the balances of

7 (i) the contingency and abatement mitigation
 8 account; and

9 (ii) the response account, but only to the extent the
 10 interest accrued on the response account exceeds the amount
 11 determined under AS 46.08.025(a)(4);

12 (B) the account maintained under AS 37.05.142 for deposits
 13 into the general fund from the proceeds of the surcharge levied under
 14 AS 43.55.201; and

15 (C) the contingency and abatement mitigation account
 16 described in (b) of this section;

17 (5) 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 (6) 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) - (6) [(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 "contingency and abatement [OIL AND HAZARDOUS SUBSTANCE
 26 RELEASE] mitigation account." The legislature may annually appropriate to the
 27 contingency and abatement account in the fund from the contingency and
 28 abatement mitigation [THIS] account a sum equal to the amount received under
 29 (a)(2) - (6) [(a)(2) AND (a)(3)] of this section during the calendar year preceding the
 30 legislative session in which the appropriations are to be made.

31 * Sec. 17. AS 46.08 is amended by adding a new section to read:

abatement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Sec. 46.08.025. FINANCING OF THE RESPONSE ACCOUNT. (2) The legislature may appropriate from the following sources to the response account in the fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of a catastrophic oil discharge or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2), for the costs of the containment and cleanup incurred by the state, a municipality, or a village, but excluding money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered for costs incurred by the state as a result of a catastrophic oil discharge or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2); and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year.

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

* Sec. 18. AS 46.08.040(a) is amended to read:

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

inflation proofing

1 (1) from the response account in the fund, when authorized by
2 AS 46.08.045, to

3 (A) [(1)] investigate and evaluate the release or threatened
4 release of oil or a hazardous substance, and [CONTAIN, CLEAN UP, AND]
5 take containment and cleanup and other necessary action, such as monitoring
6 and assessing, to address a release or threatened release of oil or a hazardous
7 substance that poses an imminent and substantial threat to the public health or
8 welfare, or to the environment;

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

10 (A) ESTABLISH AND MAINTAIN THE OIL AND
11 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

12 (B) REVIEW OIL DISCHARGE PREVENTION AND
13 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

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

23 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
24 RESPONSIBILITY REQUIRED BY AS 46.04.040;

25 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION
26 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
27 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
28 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
29 THE DIVISION;

30 (4)] provide matching funds in the event of an oil release for
31 participation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(i) in federal oil discharge cleanup activities; and
(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);
and

(C) [(5)] recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(2) from the contingency and abatement account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a), and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(B) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(C) pay all costs incurred to

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

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

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

(iv) verify or establish proof of financial

DP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

responsibility required by AS 46.04.040: and

(v) acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a disaster emergency, as that term is defined by AS 26.23.900;

(D) pay the expenses incurred by the division of emergency services for

(i) the oil and hazardous substance response corps;

and

(ii) the oil and hazardous substance response depots;

(E) pay, when presented with appropriate documentation by the Alaska State Emergency Response Commission, expenses incurred by the commission for

(i) its activities, including staff support, when the activities and staff support relate to oil or hazardous substances;

and

(ii) the costs of being prepared for and responding to a request by the department for support in activities that relate to response to and restoration of the effects of an oil or hazardous substance release;

(F) provide matching funds in the event of the release of oil or a hazardous substance, except a catastrophic oil release or a release for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2), for participation

(i) in federal oil discharge cleanup activities; and

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

(G) [(6)] prepare, review, and revise

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

1 and

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

5 (H) [(7)] restore the environment by addressing the effects of
6 an oil or hazardous substance release.

7 * Sec. 19. AS 46.08.040(a)(2)(E) is repealed and reenacted to read:

8 (E) pay, when presented with appropriate documentation by the
9 Department of Military and Veterans' Affairs, expenses incurred by the
10 Department of Military and Veterans' Affairs for

11 (i) Alaska State Emergency Response Commission
12 activities, including staff support, when the activities and staff support
13 relate to oil or hazardous substances; and

14 (ii) the costs to the Department of Military and
15 Veterans' Affairs of being prepared for and responding to a request by
16 the department for support in activities that relate to response to and
17 restoration of the effects of an oil or hazardous substance release;

18 * Sec. 20. AS 46.08.040(c) is amended to read:

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

23 * Sec. 21. AS 46.08.040(d) is amended to read:

24 (d) Upon a request from

25 [(1)] the Alaska Legislative Council, the commissioner shall use money
26 from the fund to reimburse the Alaska Legislative Council for expenditures that it
27 makes for the operation of the Citizens' Oversight Council on Oil and Other
28 Hazardous Substances, established under AS 24.20.600 [; AND

29 (2) THE COMMISSIONER OF TRANSPORTATION AND PUBLIC
30 FACILITIES, THE COMMISSIONER SHALL TRANSFER MONEY FROM THE
31 FUND TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC

1 FACILITIES TO PAY FOR THE CONSTRUCTION OR REFURBISHMENT OF
2 ONE OR MORE VESSELS OF THE ALASKA MARINE HIGHWAY SYSTEM
3 THAT HAVE THE CAPABILITY TO ASSIST IN RESPONDING TO SPILLS OF
4 OIL AND HAZARDOUS SUBSTANCES; IN EXPENDING MONEY IN THE FUND
5 WHOSE USE FOR VESSELS OF THE MARINE HIGHWAY SYSTEM IS
6 AUTHORIZED BY AS 19.65.025 AND THIS PARAGRAPH, THE COMMISSIONER
7 SHALL GIVE PRIORITY TO CONSTRUCTION OF ONE OR MORE NEW
8 VESSELS THAT HAVE THE CHARACTERISTICS REQUIRED BY THIS
9 PARAGRAPH].

10 * Sec. 22. AS 46.08 is amended by adding a new section to read:

11 Sec. 46.08.045. USE OF THE BALANCE OF THE RESPONSE ACCOUNT.

12 (a) The commissioner may use money from the response account in the fund to
13 respond to a release or threatened release when

14 (1) the release or threatened release is a catastrophic oil release or
15 catastrophic oil discharge; or

16 (2) the release or threatened release of oil or a hazardous substance
17 presents a threat to the economy, the environment, or public health if,

~~18~~ (A) within 120 hours of being advised of a release or threatened
19 release, the commissioner prepares and provides to the governor a written
20 report relating to the release or threatened release and the response under way
~~21~~ by the department; and

22 (B) not later than 120 hours after the commissioner is advised
23 of the release or threatened release, the governor issues an administrative order
24 approving the commissioner's use of the money in the account; in issuing the
25 administrative order, the governor shall approve or modify and approve the
26 state's response to the release or threatened release as set out in the
27 commissioner's report and may, at any time during the period of the state's
28 response to the release or threatened release, approve, disapprove, or modify
29 action taken or expected to be taken by the department in its use of money in
30 the response account to respond to the release or threatened release.

31 (b) The report of the commissioner required by (a)(2)(A) of this section

- 1 (1) must summarize
- 2 (A) the nature and extent of the release;
- 3 (B) the response action by the state, whether actually taken or
- 4 expected; and
- 5 (C) the costs to the state of the action actually taken or expected
- 6 to be taken; and
- 7 (2) may provide other information about the discharge that the
- 8 commissioner believes may be relevant.

9 * **Sec. 23.** AS 46.08.060(a) is amended to read:

- 10 (a) The commissioner shall submit a report to the legislature not later than the
- 11 10th day following the convening of each regular session of the legislature. The report
- 12 may include information considered significant by the commissioner but must include:
- 13 (1) the amount of money expended by the department under
- 14 AS 46.08.040(a) during the preceding fiscal year;
- 15 (2) the amount and source of money received and money recovered by
- 16 or on behalf of the department during the preceding fiscal year as specified in
- 17 AS 46.08.020 and 46.08.025;
- 18 (3) a summary of municipal participation in the department's responses
- 19 that were paid for [FUNDED] by the fund;
- 20 (4) a detailed summary of department activities in responses paid for
- 21 [FUNDED] by the fund during the preceding fiscal year, including response
- 22 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,
- 23 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
- 24 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
- 25 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
- 26 OF \$10,000;] and
- 27 (5) the projected cost to the department for the next fiscal year of
- 28 monitoring, operating, and maintaining sites where response has been completed or is
- 29 expected to be continued during the fiscal year.

30 * **Sec. 24.** AS 46.08.060(c) is amended to read:

- 31 (c) In addition to the department's report required under (a) of this section, the

1 governor shall submit a report about use of the fund during the previous fiscal year to
2 the legislature not later than the 10th day following the convening of each regular
3 session of the legislature. In the report, the governor shall describe in detail the
4 governor's use of money from the fund, with separate explanations, by agency, of the
5 activities that were paid for [FUNDED] under the authority of AS 46.08.045
6 [AS 46.08.040(b)].

7 * Sec. 25. AS 46.08.075(a) is amended to read:

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

19 * Sec. 26. AS 46.08.075(e) is amended to read:

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

27 * Sec. 27. AS 46.08.900(9) is amended to read:

28 (9) "release"

29 (A) means any spilling, leaking, pumping, pouring, emitting,
30 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
31 the environment;

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

2 (i) a permitted release; or

3 (ii) an act of nature;

4 * Sec. 28. AS 46.08.900(11) is amended to read:

5 (11) "threatened release" means [AN IMMINENT DANGER] that a
6 release is imminent; a release is imminent if

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

8 (B) though not impending, in the judgment of the
9 commissioner

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

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

15 * Sec. 29. AS 46.08.900 is amended by adding a new paragraph to read:

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

18 * Sec. 30. AS 46.09.900(8) is amended to read:

19 (8) "threatened release" means [AN IMMINENT DANGER] that a
20 release is imminent; a release is imminent if

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

22 (B) though not impending, in the judgment of the
23 commissioner

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

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

29 * Sec. 31. AS 19.65.025; AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240;
30 AS 44.46.025(a)(4) and (5); AS 46.08.040(b), and sec. 3, ch. 112, SLA 1989 are repealed.

31 * Sec. 32. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the

1 following, the revisor of statutes shall delete references to "oil and hazardous substance release
2 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
3 release prevention and response fund": AS 26.23.020(g)(11), 26.23.050(b);
4 AS 29.60.560(e)(1), 29.60.599(4); AS 46.08.900(5).

5 * Sec. 33. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
6 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
7 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
8 reference to which is deleted by sec. 3 of this Act, is not an expenditure.

9 * Sec. 34. SURCHARGE IMPOSED BY AS 43.55.201 - 43.55.231 NOT LEVIED. In
10 addition to the circumstances set out in AS 43.55.231, the surcharge authorized by
11 AS 43.55.201 is not levied on or after the effective date of this section if

12 (1) the Eighteenth Alaska State Legislature does not, during the Second
13 Regular Session or during any special session held before the effective date of this section,
14 appropriate at least an amount equal to the balance, on the day before the effective date of this
15 section, of the former spill reserve referred to in AS 29.60.510(b), to the response account in
16 the oil and hazardous substance release prevention and response fund; or

17 (2) the governor vetoes or reduces the amount appropriated under (1) of this
18 section.

19 * Sec. 35. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
20 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
21 BEFORE THE EFFECTIVE DATE OF THIS SECTION. After June 30, 1994, and before the
22 effective date of this section, every producer of oil who is required by AS 43.55.200 -
23 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
24 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
25 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
26 received after June 30, 1994, and before the effective date of this section, if so appropriated
27 by the legislature and notwithstanding any other provision of law relating to the deposit of and
28 accounting for those receipts,

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

31 (A) 50 percent of the amount received to the response account

1 established by AS 46.08.010(a)(2), as amended by sec. 13 of this Act; and
2 (B) 50 percent of the amount received to the contingency and
3 abatement account established by AS 46.08.010(a)(1), as amended by sec. 13 of this
4 Act; and

5 (2) the allocations made under (1) of this section are credited to the respective
6 accounts for purposes of determination of the suspension and reimposition of the surcharge
7 under AS 43.55.221 and 43.55.231, added by secs. 8 and 9 of this Act.

8 * Sec. 36. Section 19 of this Act takes effect on the effective date of a version of Senate
9 Bill 33 enacted by the Eighteenth Alaska State Legislature transferring the Alaska State
10 Emergency Response Commission from the Department of Environmental Conservation to the
11 Department of Military and Veterans' Affairs.

12 * Sec. 37. Except as provided in sec. 36 of this Act, this Act takes effect July 1, 1994.

Rec'd after bill
TR/O

4120194
(H) RES. STA.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215(FIN) am(EFD FLD)

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act relating to and redesignating the oil and hazardous BRU: Revenue Operations
substance release response fund... Component: Oil & Gas Audit Division
 Sponsor: Miller
 Requestor: Hs. Resources Committee COMPONENT SERIAL NO. 115

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:	-5,300.0	-10,000.0	-9,900.0	-9,500.0	-4,500.0	
-----------------------------	-----------------	------------------	-----------------	-----------------	-----------------	--

FUNDING:

(Thousands of Dollars)

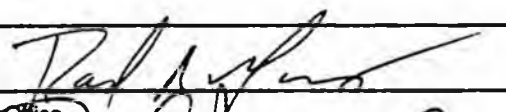

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)
 Revenue reduction estimates are based on production and tax revenues included in the *Revenue Sources Book, Fall 1993*, and expenditure analysis provided by the Department of Environmental Conservation. The fiscal note represents a simple mathematical calculation based on those estimates.
 As requested by the House Resources Committee, analysis for the next five fiscal years is provided.

Prepared by: Rod R. Mourant  Phone: 465-2302
 Division: Commissioner's Office Date: April 15, 1994
 Approved by Commissioner: Darrel J. Rexwinkel  Date: April 15, 1994
 Agency: Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215 (FIN)

*Rec'd offer
bill re/0 4-22-94*

Revision Date: April 13, 1994
Title: "...redesignating the oil and hazardous
release response and..."
Sponsor: Senator Miller
Requestor: Senate Finance

Department Affected: Department of Law
BRU: EXXON VALDEZ Litigation
Component: EXXON VALDEZ Litigation
COMPONENT SERIAL NO. 1175

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

The CS for SB 215 makes sufficient changes that there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: April 13, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: April 13, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

Handwritten notes:
 4/22/94
 371
 5/1

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

BILL NO. CSSB 215 (FIN)am (efd fid)

Revision Date: April 22, 1994
 Title: "...redesignating the oil and hazardous
 release response fund..."
 Sponsor: Senator Miller
 Requestor: Senate Resources

Department Affected: Department of Law
 BRU: EXXON VALDEZ Litigation
 Component: EXXON VALDEZ Litigation
 COMPONENT SERIAL NO. 1175

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

The Finance Committee amendment to CSSB 215(FIN) makes a minor change in syntax and as provided in the department's April 13 fiscal note, there will not be a fiscal impact for Law.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 22, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Date: April 22, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No. 2

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Bill Version: CSSB 215 (REG)

(S) Publish Date: 2-28-94

Revision Date: _____
Title: Oil and Hazardous Substance Release
Response Fund
Sponsor: Senator Miller
Requestor: Senate Resources Committee

Department Affected: Environmental
Conservation
BRU: SPAR/Administrative Services
Component: All SPAR Components
Response Fund Administration

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

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

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

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

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

Phone: 465-5010
Date: 2/24/94

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/24/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	5-Year Total
Revenue from .025 surcharge	\$12,750.0	\$12,250.0	\$11,250.0	\$10,250.0	\$9,500.0	\$8,500.0	\$64,500.0
State Spill Prevention Program*	\$13,300.0	\$13,699.0	\$14,110.0	\$14,533.0	\$14,969.0	\$15,418.0	\$86,029.0
Difference	(\$550.0)	(\$1,449.0)	(\$2,860.0)	(\$4,283.0)	(\$5,469.0)	(\$6,918.0)	(\$21,529.0)
Total GF Cost	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0	\$21,529.0

* This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

This legislation proposes to fund the states's entire spill prevention and response program from a 2.5 cent per barrel surcharge on crude oil produced in Alaska. Since SB215 Version "U" now allows the catastrophic account, established in SB215, to be used for both hazardous substance and oil spills, and there is no spill-size-threshold in order 'o access the catastrophic account, no non-catastrophic spill reserve need be established.

The figure for the 2.5 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue

2-2

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Bill Version: SB 215
(S) Publish Date: 2-28-94

Revision Date: 19-Jan-94
Title: Oil and Hazardous Substance Release Response Fund
Sponsor: Senator Miller
Requestor: Senate Resources Committee

Department Affected: Environmental Conservation
BRU: SPAR/Administrative Services
Component: All SPAR components Response Fund Administration

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0

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

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

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0
1005 GF/Program Receipt						
1006 GF/MITTA						
Other						
TOTAL						

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Bob Poe, Director *[Signature]*
Division: Information and Administrative Services

Phone: 465-5010
Date: 1/19/94

Approved by Commissioner: John Sandor *[Signature]* **For AS**
Agency: Department of Environmental Conservation

Date: 1/19/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

continued

BILL NO.

SB 215

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Revenue from .02 surcharge	10,200.0	9,800.0	9,000.0	8,200.0	7,600.0	6,800.0
State Spill Prevention Program*	13,300.0	13,699.0	14,110.0	14,533.0	14,969.0	15,418.0
Difference	-3,100.0	-3,899.0	-5,110.0	-6,333.0	-7,369.0	-8,618.0
Non-catastrophic Spill Reserve	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
Total GF cost	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0

*This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

This legislation proposes to fund the state's spill prevention and response program entirely from a .02 cent per barrel surcharge on crude oil produced in Alaska. Emergency response to releases less than a catastrophic nature (under 4,200,000 gallons) must also be financed under this program. The .02 surcharge does not produce enough revenue to provide for emergency responses of this nature, therefore, an additional \$2,000,000 "non-catastrophic" spill reserve is the minimum necessary for adequate response measures, based on recent history. Actual risk of a combination of "orphan" spills requiring a state response of over \$2 million is great, and more funds would be necessary.

The figure for the .02 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue "Revenue Sources Book".

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215(RES)

Revision Date: _____
Title: "An Act relating to oil and hazardous substances;..."
Sponsor: Senator Miller
Requestor: Senate Finance

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUNDING SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 94) cost: \$ 0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Wanie
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Department of Administration

Date: 3/8/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

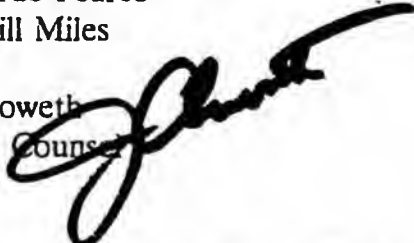
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 21, 1994

SUBJECT: Use of the "470 fund" for acquisition of capital assets for emergency preparedness (Work Order No. 8LS-1107\O.13)

TO: Senator Drue Pearce
ATTN: Bill Miles

FROM: Jack Chenoweth
Legislative Counsel 

The version of Senate Bill 215 to which this amendment attaches proposes to split the nickel. The fund would be divided into two accounts. I propose to attach the amendment to the account--the "abatement account"--from which other capital appropriations are authorized. If that is an incorrect response on my part, please advise.

I don't know what "preparedness" involves, so I stumbled my way to the description set out in the last part of the attached amendment. I also tie the proposed change to something that responds to a "disaster emergency," ^{1/} which is not necessarily the

^{1/} The statute cited defines disaster as:

... the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including

(A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing;

(B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

Senator Drue Pearce
February 21, 1994
Page 2

same as a "disaster" ^{2/} as those terms are defined in AS 26.23.900. Please take a look at the statute and see if my reference to "disaster emergency" covers what you intended.

If this effort is wide of the mark, let me know and I'll redraft to your specifications.

JBC:gc
94-147.5
Enclosure

^{2/} "Disaster emergency" is defined by the same statute to mean

... the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 215(RES) "O" Version

Page 9, line 10, after "in":

Insert "AS 46.08.040(a)(2)(C)(v) for the acquisition, repair, or improvement of assets as disaster emergency preparedness measures and in"

Page 13, line 22, after "i:"

Delete "and"

Page 13, line 24, after "AS 46.04.040:"

Insert "and"

(v) acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a disaster emergency, as that term is defined by AS 26.23.900;

MEMORANDUM

State of Alaska

Department of Law

TO: Shelby Stastny, Director
Office of Management
and Budget

DATE: November 15, 1993

FILE NO.: 663-94-0248

Jeff Hoover
Budget Analyst

TEL NO.: 465-3600

SUBJECT: Use of Appropriation from
470 Fund for DMVA Emergency
Operations Center

FROM: Robert K. Reges
Assistant Attorney General
Department of Law

INTRODUCTION

Some time ago you alerted this office to an appropriation made by the legislature to the Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES). The appropriation -- Section 17(c) and 19 of chapter 79, SLA 1993 -- made monies available to DMVA for "emergency operation center enhancements." Because this appropriation was made from the Oil and Hazardous Substance Release Response Fund (fund), AS 46.08.010, you asked this office if the purpose of the appropriation was within the allowable purposes of the fund, and if the appropriation could be expended without violating a statutory restriction that says the fund cannot be used for capital improvements. AS 46.08.010(b).

We find that construction of the pertinent statutes turns on the facts to which they are applied. Generalizations can not be reliably drawn. Given the facts of this case as presented to us by the DMVA, we find that the proposed expenditures are within the allowable purposes of the fund and are not capital improvements.

However, this is such a close call that we can make reasoned arguments the other way.¹ Accordingly, we suggest a retroactive legislative change to AS 46.08.010(c) to expressly allow the fund to be used for enhancement of the state emergency operation center.

¹ Indeed, legislative counsel has reached an opposing conclusion. Memorandum, FY 94 Appropriation from the Oil and Hazardous Substance Release Response Fund to the Department of Military and Veteran's Affairs, Division of Emergency Services (SB 183), G. Utermohle (Oct. 13, 1993).

Shelby Staatny, Director
 Jeff Hoover, Budget Analyst
 Office of Management & Budget

December 1, 1993
 2
 AGO File #663-94-0248

PURPOSES OF THE FUND

The fund was created by statute. AS 46.08.010. Allowable uses of the fund are statutorily delineated. AS 46.08.040. No expenditure may be made from the fund unless the purpose of the expenditure is one of the statutorily acknowledged purposes.²

In this case, the money will be used to enhance the emergency operations center maintained by the DMVA. Dollars will be used to relocate certain Alaska State Trooper operations to the center; to furnish and equip the center with various electronic investigation, tracking, and communication devices; to purchase and hook up an emergency power generator; and generally to convert an empty suite of rooms into a command post.

Among other things, the fund may be used to "undertake activities intended to establish the preparedness of the state to act in accordance with [contingency] plan[s]." AS 46.08.040(a)(2)(C). Alaska must have both a state and regional contingency plan. AS 46.04.200; AS 46.04.210. One of the primary jobs of DES is to implement those plans in the event of a catastrophic release of oil. AS 46.04.080; see also AS 26.23.030, 26.23.040. To do so, DES needs a center from which to implement its incident command system. Id. See also 46.08.100 - 46.08.190. Thus, equipping the command center so that DMVA can adequately respond to oil catastrophes is an activity intended to establish the preparedness of the state to act in accordance with its contingency plans.³ Accordingly, the proposed purpose is a statutorily recognized purpose.⁴

² The introductory clause of AS 46.08.040 only mentions "the commissioner of environmental conservation." However, the application of 46.08.040 to others is made clear by AS 46.08.010(c). Accordingly, we started with the threshold conclusion that no expenditure may be made from the fund by anyone unless for a purpose iterated in AS 46.08.040.

³ Persons responding to an oil catastrophe must also implement the National Contingency Plan. 40 C.F.R. Part 300 (1993).

⁴ Our interpretation of AS 46.08.040(a)(2)(C) is based, in part, on the historical interpretations given this language by the Department of Environmental Conservation (DEC). As the agency tasked with implementing this statute, DEC's interpretation is entitled to some weight. Peninsula Marketing Ass'n v. State, 817

(continued...)

Shelby Stastny, Director
 Jeff Hoover, Budget Analyst
 Office of Management & Budget

December 1, 1993
 3
 AGO File #663-94-0248

CAPITAL IMPROVEMENTS
A. STATUTORY DEFINITIONS

Activities otherwise allowable under AS 46.08.040 are expressly disallowed if they constitute "capital improvements." AS 46.08.010(c). One cannot spend monies from the fund -- even for purposes identified in AS 46.08.040 -- if the expenditure is for a capital improvement. Thus, this question arises: Are the proposed activities and expenditures at the operations center "capital improvements" within the meaning of the law?

To answer this question we first conducted an analysis of pertinent statutes and cases. Because the appropriation had been made part of the 1994 capital budget, ch. 79, SLA 1993, we had to ascertain whether an item could be a capital item for budget purposes but not for purposes of the fund. We find that it can be. The pertinent definition for budget purposes is AS 37.07.120(4):

"capital projects" and "capital improvements" mean an allocation or appropriation item for an asset with an anticipated life exceeding one year and a cost exceeding \$25,000 and include land acquisition, construction, structural improvement, engineering and design for the project, and equipment and repair costs.

⁴(...continued)

P.2d 917, 922 (Alaska 1991). DEC has, in the past, relied upon this language to expend, or to permit DMVA to expend, money from the fund on an emergency broadcasting satellite uplink, an electronic map, general communications equipment, and emergency response personnel. The expenses under consideration in this memorandum are not substantially different in form.

Furthermore, these previous expenditures have been brought to the attention of the legislature. AS 46.08.060; e.g., 1992 ADEC, Oil and Hazardous Substance Release Response Fund Annual Report, 25, 27-28. At no time has the legislature negatively responded to these reported expenses. Personal communication with Barbara Frank, DEC, November 29, 1993. On the contrary, AS 46.08.040(a)(2)(C) is an expansion of sections previously dealing with preparedness. Cf. section 28.ch 191, SLA 1990 with section 3, ch. 90, SLA 1989. This particular subsection was not revised when recent amendments were made to other subsections. See section 15, ch. 83, SLA 1991. This acquiescence constitutes a form of ratification. Haffling v. Inlandboatmen's Union of Pacific, 585 P.2d 870, 876 (Alaska 1978) (The "operational history" of a statute is a factor in its construction).

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
4
AGO File #663-94-0248

On the other hand, the pertinent definition for purposes of the fund is AS 46.08.900(1):

"capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall.

Obviously the former definition is more inclusive than the latter. While the telecommunications, investigation, and tracking "equipment" that make up the bulk of this appropriation would clearly be "capital improvements" for purposes of Title 37, they may not affect the "building" and, therefore, may not be "capital improvements" for purposes of Title 46. The "to a building" phrase of AS 46.08.900(1) makes that provision quite narrow, and clearly distinct from AS 37.07.120(4).⁵ We conclude that an item can be "capital" for budget purposes but not "capital" for purposes of the fund.

B. DEVELOPING A TEST

To determine whether the expenditures proposed by DMVA were, in fact, "improvements to a building," we turned our

⁵ Legislative counsel noted that AS 46.08.900(1) begins with the word "includes" rather than "means." From this, legislative counsel argued that AS 46.08.900(1) is really quite broad; that improvements "to a building" are just one example of the types of improvements excluded by AS 46.08.010(c). We believe the more natural reading is one in which "to a building" is operative; one in which "to a building" is expressly stated as a form of limitation. Any illustrative list established by the word "includes" is a listing of those activities to which a building might be subjected: construction, renovation, repair, and other improvements.

We find that the commas in the definition support this interpretation. Also, the second use of the word "includes" tends to show that the word is used to differentiate rather than illustrate. It differentiates those types of improvements normally thought of as capital--improvements to buildings and improvements to realty--into two legal categories. The first, improvements to a building, are capital, while the second, improvements to land, are not capital for purpose of this law. Furthermore, we deem it unlikely that the legislature would make equipment and other assets a part of the definition simply by using the word "includes" when the legislators had an explicit model available in AS 37.07.120(4).

DEC 02 '93 09:59AM MILITARY AFFAIRS JMU

P.5/12

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
5
AGO File #663-94-0248

attention to the laws of fixtures, real property tax laws, and other cases involving buildings. From these cases we were able to establish a legal test, which we applied to determine whether the proposed actions were "capital improvements" within the meaning of AS 46.08.900(1).

From *Hikita v. Nichiro Gyogyo Kaisha Ltd.*, 713 P.2d 1197, 1198 (Alaska 1986), we learned that in ordinary custom and usage "improvements" and "equipment" are differentiated.⁶ From *Hydaburg Co-op v. Hydaburg Fisheries*, 826 P.2d 751, 752 (Alaska 1992), we learned that two trademarks of a "capital improvement" to a building are that the improvement makes the building functional and that it contributes substantial value to the building. See also *id.* at 757, n.11. From *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970), we learned that a capital improvement must be a tangible asset; that capital improvements are associated with value represented by real or personal property in some form and with relative permanency.

City of Juneau v. Hixson, 373 P.3d 743 (Alaska 1962) construes the term "capital improvement" as used in article 9, section 9, of the Alaska Constitution. From that case we learned that a capital improvement is characterized by permanency. *Hixson* alerts us to the fact that the term "capital improvement" cannot be applied in any generic sense. Each activity, transaction, or undertaking must be examined on its own facts in light of the unique statutory or constitutional definition of "capital improvement" that is being employed.

In *Hixson* our supreme court cited a New Hampshire case for the proposition that a capital improvement is something that betters the building or premises and is distinguishable from ordinary repair or current maintenance. Because our supreme court felt comfortable looking to other jurisdictions, we did too. We learned that if it is physically and commercially unfeasible to separate an improvement from a building, the improvement is more likely than not a capital improvement to that building. *Honeyoe Storage Corp. v. Bd. of Assessors*, 433 N.Y.S.2d 943 (N.Y.A.D. 1980).

In general, our review of case law showed us that courts apply a two part test to determine whether an improvement that involves a building is a capital improvement. First, the questioner must ask: Is the questioned activity designed and implemented for the purpose of making the building fundamentally

⁶ See also *Crown CoCo, Inc. v. Comm' of Revenue*, 336 N.W.2d 272 (Minn. 1983).

Shelby Stastny, Director
 Jeff Hoover, Budget Analyst
 Office of Management & Budget

December 1, 1993
 6
 AGO file #663-94-0248

functional? If the answer is "yes," the activity is more likely than not a capital improvement and the questioner need look no further. If, however, the answer is "no," the questioner analyzes five factors: the nature of the activity, the extent of the activity, the cost of the activity relative to the cost of the building, the benefit to the building occasioned by the activity, and the degree of permanence of the results of the activity. Such scrutiny reveals characteristics that tend to define the project. *Georgian Gardens Tenants Ass'n. v. Georgian Gardens*, 592 A.2d 641 (N.J. 1991).⁷

By nature, the courts seem to be asking for a common-sense analysis of the activity. Is the item in question structural? Is it an integral component of the building? Is it an undertaking without which the building would be noticeably lacking? Will the building be harmed by removal of the item resulting from the activity? If so, the item is of the nature of a capital improvement. If not, the item is less likely to be a capital improvement.

By extent of the activity, courts are asking what the extent is relative to the whole building. Does it involve all the square footage of the building, or just a part? Does it go on for an extended duration or is the activity resulting in the asset reasonably short in duration?

By cost, the courts are most often speaking of cost of the questioned activity relative to the cost of the building. Looked at another way, this question is whether the activity adds

⁷ See also, *Cafritz Co. v. Dist. of Columbia Rental Housing Comm'n*, 615 A.2d 222 (D.C. App. 1992);

Norene v. Municipality of Anchorage, 704 P.2d 199 (Alaska 1985);

In re Marriage of Aird, 530 N.E.2d 556 (Ill. App. 1988);

Finn v. McNeil, 502 N.E.2d 557 (Mass. App. 1987);

Glenville Cablesystem Corp. v. State Tax Comm'n, 531 N.Y.S.2d 137 (N.Y.A.D. 1988);

Honeoye Storage Corp. v. Bd of Assessors of TOWN of Bristol, 433 N.Y.S.2d 943 (N.Y.A.D. 1988).

Shelby Stastny, Director
Jaff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
7
AGO File #663-94-0248

substantial value to the building.

The benefit to the building factor involves functionality. Can the building function without this item or is the benefit of the undertaking needed to make the building functional? Does the activity result in something that the building must have or something that would merely be helpful? Also, this factor addresses the question of whether the building will be substantially more valuable after the activity than before.

The degree of permanence is probably the quintessential factor. Will the item last as long as the building or must it be replaced regularly? Long lasting items tend to be capital improvements while items with a relatively short life are not. Permanence is viewed in light of permanence relative to the life of the building.

C. APPLYING THE TEST TO THESE SPECIFIC UNDERTAKINGS

After extracting this test from the case law, we conferred with you and DMVA. Together, we applied this test to the undertakings at issue. DMVA produced explicit information outlining the nature, extent, cost, etc. of several items. We have concluded that the activities occurring at DMVA's operations center are not "capital improvements" to the building within the meaning of AS 46.08.900(1). NOTE

In this memorandum, we will not again review every item involved in the questioned appropriation.⁸ Some costs are clearly not questionable, such as the purchase and installation of computers.⁹ Other costs might be questionable if standing alone, but are not so when considered incidental ancillaries to an allowable undertaking. Running a wire from the existing electrical service to a stove falls into this category. Wiring would normally be considered "capital," but when it is ancillary to installation of a stove, the wiring is considered part of that stove and not capital. *Allen v. Allen*, 554 P.2d 303 (Alaska 1976).

We chose two examples of the items scrutinized for the purpose of showing how we applied the test and reached our

⁸ Extensive review of each item did occur during discussions and development of this memorandum.

⁹ Minutes, H.Res.Committee, at 7 (May 3, 1989), confirms that the legislature contemplated use of 470 Funds to purchase equipment. Additionally, the word "equipment" is conspicuously present in AS 37.07.120(4) and absent from AS 46.08.900(1).

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
8
AGO File #663-94-0248

conclusion:

1. Emergency Generator

In materials presented to the legislature, DMVA sought \$165,000 for an "auxiliary power generator." Because large pieces of equipment such as furnaces and generators are often affixed in such a way as to become a permanent part of the building, we initially presumed that this item would be disallowed as a capital improvement. However, DMVA explained that the building was already wired for the generator and that "installation" of the generator consisted of pulling a transportable generator up to the building and connecting it to the existing wiring. The generator will not even be housed directly within the operations center.

Obviously, the building functions at this time despite the absence of a generator. The building draws power from the grid. Equally obvious is the fact that a transportable generator has no permanence in the building. It can readily be transferred to some other location. By its nature, a generator stored in a portable, stand-alone building appears to be equipment, not an improvement.

The extent of the generator, relative to the building, is nothing. The cost of the generator is minimal relative to the cost and value of the building. In the balance, the generator is not a capital improvement.

2. Upgrade of Air Handling System

The documentation submitted by DMVA to the legislature includes a reference to "upgrade of air conditioning system/air handling." This appeared to be capital. However, upon further inquiry, responses from DMVA revealed that the agency already possesses three "stand-alone" air conditioning units. The "upgrade" consists of moving a unit from the second floor of the Armory and relocating it in the basement of the operations center. Such an activity clearly does not result in a capital improvement.

Moving a unit from one place to another adds no value to the building, and the cost is infinitesimal. The fact that the unit is being moved from one location to another shows that it has no permanence in any particular location. Further, the building already has a functioning air handling system. This unit is not needed to make the building functional; it makes the computer equipment functional by keeping it cool enough to operate. Connecting water lines and power lines to a piece of equipment is simply ancillary to that equipment and does not convert that equipment into an improvement. Thus, after applying the test, we

Shelby copy

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-2167 or 465-2450
FAX (907) 465-2020
Mail Stop 3101

130 Second Street, Suite 400
Anchorage, Alaska 99501-2109

MEMORANDUM

October 13, 1993

SUBJECT: FY 94 Appropriation from the Oil and Hazardous Substances Release Response Fund to the Department of Military and Veterans' Affairs, Division of Emergency Services (SB 183)

TO: Mike Greany
Legislative Fiscal Analyst

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your query regarding use of the oil and hazardous substance release response fund. You have asked:

Is the oil and hazardous substance release response fund a proper fund source for the appropriations made to the Department of Military and Veterans' Affairs in sections 17(c) and 19 of Chapter 79 SLA 1993 for Emergency Operation Center Enhancements?

The oil and hazardous substance release response fund consists of money received by the state and appropriated to the fund by the legislature. AS 46.08.020. The basic purpose of the fund is to provide a readily available source of money for the payment of expenses incurred by the Department of Environmental Conservation and the Department of Transportation and Public Facilities to protect the environment from the release of oil or hazardous substances. AS 46.08.005. The fund may not be used for capital improvements, except that the fund may be used to pay for the construction or refurbishment of state ferry vessels for responding to spills of oil and hazardous substances. AS 46.08.010(c) and 46.08.040(d)(2). For purposes of controlling uses of the fund, "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall. AS 46.08.900(1).

Section 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 make appropriations from the oil and hazardous substances release response fund for enhancements to the emergency operation center maintained by the Department of

Mike Greany
 October 13, 1993
 Page 2

Military and Veterans' Affairs. According to the material submitted by the Department of Military and Veterans Affairs in support of its request for the appropriations, the appropriations are for capital expenditures, in the form of facility improvements and equipment purchases, for the Camp Denali armory in order to relocate certain Alaska State Trooper operations to the armory, furnish and equip the state emergency operation center, purchase an emergency power generator, and upgrade the phone and communications systems at the center.

The projects funded by sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 involve significant capital improvements to the state emergency operation center which was a suite of empty rooms at the Camp Denali armory on Fort Richardson. None of the projects funded by the two appropriations involve allowable capital improvements to real property, other than buildings, or to state ferry vessels capable of assisting in oil spill clean up. The projects funded by the two appropriations are obviously capital improvements to renovate or improve (furnish) a building. Under AS 46.08.010(e), the oil and hazardous substance release response fund may not be used for such capital improvements.

Because the appropriations for the state emergency operation center enhancements are inconsistent with the prohibitions imposed by AS 46.08.010(e), there is a risk that the Alaska Supreme Court would construe the appropriations as an attempt to amend or suspend the provisions of AS 46.08.010(e) in violation of the confinement requirement of the Alaska Constitution. The Alaska Constitution expressly prohibits the legislature from enacting or amending substantive law in an appropriation bill by

Section 17(c), ch. 79, SLA 1993 states:

The sum of \$430,000 is appropriated from the oil and hazardous substance release response fund (AS 46.08.010) to the Department of Military and Veterans' Affairs for emergency operation center enhancements.

Section 19, ch. 79, SLA 1993, page 16, lines 22-23 state:

	APPROPRIATION ITEMS	GENERAL FUND	OTHER FUNDS
Emergency Operation Center Enhancements (ED 99)	648,000		548,000

The original proposal submitted by the department requested an appropriation of \$1,500,000 to complete these projects. The legislature only appropriated a total of \$1,078,000 for the projects but did not specify whether the department was to undertake all or only some of the proposed projects with new annual. According to documents submitted to the Office of Management and Budget, the department is attempting to complete most of the projects originally intended, but is giving emphasis to moving the Troopers to the state emergency operation center.

Mike Greany
 October 13, 1993
 Page 3

requiring that appropriation bills be confined to appropriations.^{1/} Article IX, sec. 13. On its face, the confinement requirement would apparently preclude an appropriation from amending or suspending the terms of a substantive provision of law. The Alaska Supreme Court has not had an occasion to construe this provision of the constitution, so we have no guidance as to how rigorously this provision would be applied.

The Department of Law has had occasion to consider the confinement requirement of the Alaska Constitution. The department concluded that the confinement requirement did not defeat the plenary power of the legislature to appropriate unobligated money in the state treasury. 1986 Inf. Alaska Att'y Gen. Op., April 23 (663-86-0460). In the department's view the legislature was not bound by laws which restricted the uses for which a particular fund may be used. On the other hand, the department concluded that the confinement requirement did prevent the legislature from amending a prior appropriation so that it could be used to pay one type of statutorily created income tax credit but not another. 1984 Inf. Alaska Att'y Gen. Op., August 1 (366-031-85). The amendment was construed by the department to be an implied repeal of the latter income tax credit and thus constituted the invalid inclusion of substantive law in an appropriation bill. It is not clear from the informal opinions of the department as to what factors determine when, in its opinion, the legislature would be bound by statute and when it would not.

Other states that have a similar confinement requirement in their constitution and that have addressed this issue, have concluded that money in a statutorily created fund or account may be appropriated only for purposes consistent with the statute. Childree v. Hubbert, 524 So.2d 336 (Ala. 1988); City of North Miami v. Florida Defenders of the Environment, 481 So.2d 1196 (Fla. 1985). Once the legislature has specified that a particular fund or account is to be used for certain purposes, the legislature cannot appropriate money from the fund or account for other purposes without amending the law by substantive legislation. Benedict v. Polan, 413 S.E.2d 107 (W.Va. 1991).

In conclusion, the appropriation of money from the oil and hazardous substance release response fund for purposes set out in sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 is not consistent with AS 46.08.010(c). The

^{1/} Article II, sec. 13 of the Alaska Constitution states:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Emphasis added.

Mike Greasy
October 13, 1993
Page 4

validity of the appropriations is potentially subject to a nontrivial challenge that the appropriations violate the confinement requirement of the Alaska Constitution. The outcome of such a challenge in the state courts is not certain. The power of the legislature to appropriate unobligated funds in the state treasury is extensive, but precedent from other states suggests that the appropriations at issue here may be violative of the confinement requirement.

To avoid the potentially adverse consequences of a challenge to the appropriations made by sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23, the legislature could retroactively amend AS 46.08.010(c), by substantive temporary or permanent law, to allow the fund to be used for projects such as the rehabilitation of the state emergency operation center.

NOTE

If I may be of further assistance, please advise.

GU:gc
93-500.glc

- 1 administrative services E-mail 40,000
- 2 Department of Labor for workers' compensation
- 3 records imaging 383,800
- 4 Department of Commerce and Economic Development
- 5 for data processing system enhancement 400,000
- 6 Department of Public Safety for a statewide law
- 7 enforcement data processing system 900,000
- 8 Alaska Court System for an imaging system 207,500

9 (b) The sum of \$50,000 is appropriated from the receipts of the Alaska Commission
 10 on Postsecondary Education to the Department of Education, Alaska Commission on
 11 Postsecondary Education for borrower records data imaging analysis.

→ 12 (c) The sum of \$430,000 is appropriated from the oil and hazardous substance release
 13 response fund (AS 46.08.010) to the Department of Military and Veterans' Affairs for
 14 emergency operation center enhancements.

→ 15 (d) An appropriation made by (a) - (c) of this section may not be expended until the
 16 office of management and budget certifies that the project is consistent with the
 17 recommendations from the Telecommunications Information Council after completion of the
 18 council's studies begun in the fiscal year ending June 30, 1992. A department that receives
 19 an appropriation made by (a) - (c) of this section shall report to the Legislative Budget and
 20 Audit Committee on the status of the project for which the appropriation was received no later
 21 than December 1, 1993.

22 * Sec. 18. Federal or other program receipts as defined under AS 37.05.146 that exceed
 23 the amount appropriated in secs. 19 and 20 of this Act are appropriated conditioned upon
 24 compliance with the program review provisions of AS 37.07.080(h).

25 (SECTION 19 OF THIS ACT BEGINS ON PAGE 7)

FAX MEMO

PAGES 2 DATE FAX#

TO Jim Gutierrez

FROM Jeff Morrison

OO

PH# FAX#

JUN 18 '83 09:49AM MILITARY AFFAIRS JNU

1 Department of Commerce and Economic Development (cont.)		Appropriation		Appropriation Fund Sources	
	Allocations	Items	General Fund	Other Funds	
2					
3	Alternative and Applied Energy	500,000	500,000		
5	Technology Development (ED 99)				
6	Reimbursable Authority (ED 99)	100,000	100,000		
7	Electrical Service Extension Grant	500,000	500,000		
8	Program (ED 99)				
9	Grants to Named Recipients:				
10	(AG 37.02.316)				
11	Arctic Winter Games (ED 25)	250,000	250,000		
12	Team Alaska Support Funding (ED 99)	134,000	134,000		
13				
14 Department of Military and Veterans Affairs				
15				
16	Statewide Environmental Compliance	3,000,000			3,000,000
17	Restoration Projects (ED 99)				
18	Army Guard Facilities: Deferred	4,220,200	2,055,000		3,165,200
19	Maintenance (ED 99)				
20	Fairbanks Armory/Organizational	100,000	100,000		
21	Maintenance Shop Design (ED 29-34)				
22	Emergency Operation Center	648,000			648,000
23	Enhancements (ED 99)				
24				
25 Department of Natural Resources				
26				
27	Contaminated Site Cleanup/	654,000			654,000
28	Assessment				
29	Childs Pad, Deadhorse	290,000			
30	Contaminated Site Cleanup/				
31	Assessment (ED 37)				
32	Forward Alaska Pad, Deadhorse	200,000			
33	Contaminated Site Cleanup/				
34	Assessment (ED 37)				
35	Soldotna, Peninsula Greenhouse	41,000			
36	Contaminated Site Cleanup/				
37	Assessment (ED 8)				

Sen. Miller

8-LS1107D.2
Chenoweth
3/1/94

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 215(RES)

Page 1, line 10, following ";":
Delete "and"

Page 1, line 11, following "surcharges;":

Insert "and authorizing appropriation to the underground storage tank assistance fund of a portion of reimbursements for expenditures related to the Exxon Valdez oil spill"

Page 1, following line 12:

Insert a new bill section to read:

**** Section 1. FINDING AND DETERMINATION FOR SECTION 4.** The legislature
(1) finds and declares that the release of petroleum from or associated with underground petroleum storage tanks presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state; and
(2) determines that it is in the best interest of the state and its citizens to finance a portion of the storage tank assistance fund out of reimbursed expenditures received by the state for expenses related to the Exxon Valdez oil spill."

Page 2, line 1:

Delete "** Section 1"

Insert "** Sec. 2"

Re-number the following bill sections accordingly.

Page 2, line 25, after "section":

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: SB 215

Sponsor: _____ Date: 3/2/94

Logged In By: (Signature)

Insert "and allowed under (c) of this section"

Page 3, following line 6:

Insert a new bill section to read:

"* Sec. 4. AS 37.14.410 is amended by adding a new subsection to read:

(c) Notwithstanding the requirement of (b) of this section, the legislature may appropriate to the storage tank assistance fund established in AS 46.03.410 a portion of the reimbursement for expenditures that are received by the state under (a) of this section and that are credited or subject to credit to the oil and hazardous substance release contingency and abatement mitigation account."

Renumber the following bill sections accordingly.

Page 19, line 1:

Delete "sec. 1"

Insert "sec. 2"

Page 19, line 25:

Delete "sec. 10"

Insert "sec. 12"

Page 19, line 28:

Delete "sec. 10"

Insert "sec. 12"

Page 19, line 31:

Delete "secs. 5 and 6"

Insert "secs. 7 and 8"

Page 20, line 1:

Delete "Section 16"

Insert "Section 18"

Page 20, line 5:

Delete "sec. 33"

Insert "sec. 35"

SB 215



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

MEMO

TO: Bill Miles, Aide
 Senator Drue Pearce, Co-Chair Finance

FROM: Annette Kreitzer, Aide *AK*
 Senator Loren Lemman

DATE: March 2, 1994

RE: Correcting Amendment to SB 215

Senators Pearce and Lemman discussed Amendment #8 which was proposed by Lemman and adopted in the Senate Resources Committee. Amendment #8 did not accomplish what Senator Lemman intended as an inflation proofing mechanism for the response account.

Attached is an amendment which removes the language of Amendment #8 and inserts language which will NOT trigger on and off the .025 cent tax. The new amendment (LS1107X.1 by Chenoweth) allows part of the interest earned on the response account (\$50 million account) to be appropriated back into the account to maintain \$50 million in "real dollars" in the future. The balance of the interest earned may be appropriated to DEC for its oil and hazardous substance operations.

SENATE FINANCE
 COMMITTEE

Amendment Number: REVISED #2

Bill Number: SB 215

Sponsor: _____ Date: 3/3/94

Logged In By: *(Signature)*

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 215(RES)

BY SENATOR LEMAN

Page 5, lines 17 - 19:

Delete "the target amount of the unreserved and unobligated balance in the response account, as determined under (e) of this section"

Insert "\$50,000,000"

Page 5, line 27, through page 6, line 2:

Delete all material.

Reletter the following subsection accordingly.

Page 6, lines 4 and 5:

Delete "the amount determined under (e) of this section"

Insert "\$50,000,000"

Page 10, line 1:

Delete "the balance of the fund"

Insert "the balances of

(i) the oil and hazardous substances release contingency and abatement mitigation account; and

(ii) the response account, but only to the extent the interest accrued on the response account exceeds the amount determined under AS 46.08.025(a)(4)"

Page 11, line 7, after "AS 46.08.045(a)(2)":

Insert "; and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year"

AMENDMENT

OFFERED IN THE SENATE:

TO: CSSB 215(RES) (Version D)

Page 4, lines 21-22:

Delete "the amount of the unreserved and unobligated balance in the response account, as determined under (e) of this section"

Insert "\$50,000,000"

Page 4, line 31, through page 5, line 13:

Delete all material.

Reletter the following subsection accordingly.

Page 5, lines 15 and 16:

Delete "the amount determined under (e) of this section"

Insert "\$50,000,000"

Page 9, line 12:

Delete "the balance of the fund"

Insert "the balances of

(i) the oil and hazardous substances release contingency and abatement mitigation account; and

(ii) the response account, but only to the extent the interest accrued on the response account exceeds the amount determined under AS 46.08.025(a)(4)"

Page 10, line 18, after "AS 46.08.045(a)(2)":

Insert "; and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year"

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: SB 215
Sponsor: _____ Date: 3/2/94
Logged In By: BR

**THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

While on leave

State Capitol

Juneau, Alaska

99801-1162

(907) 465-4076

Senate District 2

Senate

To: Senator Drue Pearce, Co-Chairman
Senate Finance Committee

From: Senator Mike Miller

Re: CS Senate Bill 215(Res)

Date: February 28, 1994

Attached is the packet for Senate Bill 215, scheduled for a hearing in Senate Finance at 9:00 AM, Tuesday, March 1, 1994.

I wish to draw your special attention to the first two items in the packet.

The first two documents in the packet are copies of amendments offered by Senator Zharoff which failed adoption but which I agreed to transmit to your committee for consideration.

The next document is a memo from Jack Chenoweth of Legal Services which was transmitted to me with a version "X" of SB 215. Mr. Chenoweth makes several recommendations which he thought appropriate to include in the bill after reviewing the amendments adopted by and discharged from the Resources Committee on Tuesday, February 22, 1994. I felt it inappropriate to transmit to the Finance Committee a CS that included more revisions than those which were formally adopted by Senate Resources during the final full-committee hearing on the bill. However, I believe Mr. Chenoweth's suggestions are certainly worthy of consideration and am forwarding a copy of his memorandum of 2/23/94 for your review.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ZHAROFF

TO: CSSB 215(RES) "O" Version

Everywhere that reference is made to "catastrophic oil release response account," revise to remove "catastrophic oil release" so that the reference will say "response account"

Everywhere that reference is made to "catastrophic oil release response mitigation account," revise to remove "catastrophic oil release" so that the reference will say "response mitigation account"

Page 2, lines 3 - 24:

Delete all material and insert:

"* **Section 1.** AS 29.60.510(a) is amended to read:

(a) Subject to (b) of this section. the [THE] commissioner may use money from the oil and hazardous substance release prevention and response fund to make grants to a municipality or village that is affected by the release of oil or a hazardous substance or by the response to the release and that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the current revenue sources of the municipality or village if

(1) the governor determines that the [A] release of oil or a hazardous substance consists of [EXCEEDS 2,500 BARRELS OF OIL, OR EXCEEDS] an amount [OF A HAZARDOUS SUBSTANCE] that, when released into the environment, presents a threat to the economy and public welfare of the municipalities and villages affected by it [AT LEAST EQUIVALENT IN EFFECT TO THE EFFECT OF A RELEASE OF OIL IN AN AMOUNT DEFINED BY THIS PARAGRAPH;

(2) THE RELEASE HAS BEEN PROCLAIMED A DISASTER

EMERGENCY BY THE GOVERNOR UNDER AS 26.23.020]; and

(2) [(3)] the governor finds that

[(A) THE RELEASE OF THE OIL OR HAZARDOUS SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN AND CLEAN UP THE RELEASE; AND

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

* Sec. 2. AS 29.60.510(b) is repealed and reenacted to read:

(b) When authorized to make grants under this section,

(1) for each release or threatened release of oil or a hazardous substance for which the commissioner of environmental conservation may, under AS 46.08.045(a), expend money from the response account in the fund, and subject to agreement with the commissioner of environmental conservation as to the amount of money in the fund that may be used by the department to make grants, the commissioner may expend not more than \$10,000,000 of the unrestricted balance of the response account in the fund for grants authorized under this section; if the commissioner and the commissioner of environmental conservation do not agree on the amount of money in the response account in the fund that may be used by the department to make grants under AS 29.60.500 - 29.60.599 for a release or threatened release of oil or a hazardous substance, the governor shall make the determination;

(2) for each release or threatened release of oil or a hazardous substance for which money may not be expended from the response account, and subject to appropriation of money in the fund that may be used by the department to make grants, the commissioner may expend not more than the amount appropriated from the oil and hazardous substances release contingency and abatement account in the fund for grants authorized under this section."

Page 8, line 19:

After "of oil":

Insert "or a hazardous substance"

After "address":

Delete "oil"

Insert "those"

Page 8, line 23:

Delete "an oil"

Insert "a"

Page 9, line 27:

Delete "catastrophic oil"

After "discharge":

Insert "the costs of containment and cleanup of which were paid from the account established in AS 46.08.025"

Page 10, line 4:

Delete "catastrophic oil"

After "discharge":

Insert "the costs of containment and cleanup of which were paid from the account established in AS 46.08.025"

Page 11, line 4, after "discharge":

Insert ", or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2),"

Page 11, line 10, after "discharge":

Insert "or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2)"

Page 11, line 26:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 11, lines 28 - 29:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 12, line 29:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 13, line 2:

Delete "an oil"

Insert "a"

Page 13, line 5:

Delete "an oil"

Insert "a"

Page 13, line 9:

Delete "an oil"

Insert "a"

Page 13, line 30, after "oil release":

Insert "or a release for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2)"

Page 15, line 9:

Delete "of oil"

Page 15, line 12, after "threatened release":

Insert "of oil or a hazardous substance"

Page 15, line 15:

Delete "of oil"

Page 15, line 29:

Delete "oil"

Page 18, line 30:

Delete "AS 29.60.510(a)"

Page 18, line 31:

Delete "29.60.560(e)(1)"

Insert "AS 29.60.560(e)(1)"

Page 19, line 4:

Delete "sec. 1"

Insert "the reenactment of AS 29.60.510(b) made by sec. 2"

Page 19, line 26:

Delete "sec. 12"

Insert "sec. 13"

Page 19, line 30:

Delete "sec. 12"

Insert "sec. 13"

Page 20, line 2:

Delete "secs. 5 and 6"

Insert "secs. 6 and 7"

Page 20, line 3:

Delete "sec. 6"

Insert "sec. 7"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 215(RES) "D" Version

Page 8, line 15, after "depots":

Insert "and for containment or cleanup activities related to restoration of an unsafe public drinking water supply or the provision of a source of clean public drinking water"

Page 16, following line 30:

Insert the following new bill sections to read:

** Sec. 22. AS 46.08.070(a) is amended to read:

(a) Except as provided in (d) of this section, the [THE] commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

* Sec. 23. AS 46.08.070(b) is amended to read:

(b) Except as provided in (d) of this section, the [THE] attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

* Sec. 24. AS 46.08.070 is amended by adding a new subsection to read:

(d) Notwithstanding (a) and (b) of this section, the state may not seek reimbursement or recovery of containment and cleanup costs incurred to restore an unsafe public drinking water supply or to provide a source of clean public drinking water from a village if the village, as defined in AS 46.07.080, is a party responsible for the release that caused the water supply to become unsafe."

Renumber the following bill sections accordingly.

Page 17, following line 19:

Insert a new bill section to read:

** Sec. 27. AS 46.08.900(3) is amended to read:

(3) "containment and cleanup"

(A) means [INCLUDES]

(i) the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; and

(ii) the restoration of an unsafe public drinking water supply or the provision of a source of clean public drinking water;

(B) when applied to

(i) expenses [, THE TERM] includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service; and

(ii) public drinking water includes, by way of example and not of limitation, a well with pumping facilities or the means by which surface water is treated so it is safe and healthful for use, but does not include a system of pipes and other facilities by which the water is distributed to households for use;"

Renumber the following bill sections accordingly.

Page 20, line 5:

Delete "sec. 33"

Insert "sec. 37"

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M

February 23, 1994

SUBJECT: CSSB 215 (Resources) (Work Order No. 8-LS1107X)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Council

These comments accompany a draft based on the drafting instructions in your February 22 memo.

In this version, bill section 1 is new. Because of the revision of the circumstances under which the administration may draw money from the response account, the material in existing AS 29.60.510(a) is dated. I have revised in light of the changes directed by the committee in AS 46.08.045(a).

In bill section 2, in light of the change made by the incorporation of the "inflation-proofing" provision, should the reference to "\$10,000,000" be revised to read "one-fifth of the account balance" or something comparable?

In the bill's section 6, apparently my method of performing the inflation proofing calculation was incomplete. See my revision at the end of (e)(2).

In the bill's section 10, in order to not mislead anyone into thinking otherwise, I propose to make sure that the response account is available only for significant spills--see my addition of the cross-reference to AS 46.08.045.

Throughout the bill, now that "catastrophic oil release response account" has been shortened to simply "response account," may we not go through and, in like fashion, shorten "oil and hazardous substances release contingency and abatement account" to just "contingency and abatement account"?

Senator Mike Miller
February 23, 1994
Page 2

I propose to retain the bill's section 27 because it supports a reference to a catastrophic oil discharge that appears in AS 46.08.130(b) and for which a definition is not now provided, and that appears in AS 46.08.045(a)(1), added by this Act.

I propose to retain the bill's section 33 in the event one house or the other fails to give the measure the two-third vote necessary for the effective date clause.

Finally, before letting go of this bill, you may want to ask the Department of Environmental Conservation to walk through AS 46.08.020(a)--section 16 in this version--to make sure that the split of the purposes for which money in the fund's two accounts may be expended (1) does not overlap and (2) leaves no gaps. I don't know enough about how they've operated from the existing single fund to feel confident that the split set out in this subsection (a) of AS 46.08.020 won't cause some practical problems. Note that AS 46.08.020(2)(A) doesn't include releases covered by administrative orders under AS 46.08.045(a)(2), and that AS 46.08.040(a)(1)(B) is limited to oil releases.

JBC:mi
94-039.mai

Enclosure

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105


MEMORANDUM

February 28, 1994

SUBJECT: CSSB 215 (Resources) -- Sectional analysis (Work Order No. 8LS-1107D)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel



As it has been reported from the Senate Resources Committee, the bill substantially revises the oil and hazardous substance release response fund ("470 Fund") and the purposes for which that fund may be expended, and replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges.

I

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

The bill establishes a series of funds and accounts:

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

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020(a)), the first component, with its companion oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020(b)), a holding account from which money is transferred in and out;

-- the response account (AS 46.08.010(a)(2) and 46.08.025(a)), the second component, with its companion response mitigation account (AS 46.08.025(b)), also a holding account from which money is transferred in and out.

With reference to this collection of funds and accounts:

Bill section 9 amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

Bill section 10 identifies the two accounts that constitute that fund.

Bill section 11 makes a related substitution of a reference to "account" for fund and inserts language to emphasize the point that the fund and each of its two accounts are intended to be non-lapsing, with balances available from one fiscal year to another.

The changes made in **bill section 12** reflect the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill and the insertion of authority to use money in the oil and hazardous substances release contingency and abatement account to support acquisition of necessary equipment for placement in response depots.

Bill section 13, revising AS 46.08.020, expands the number of sources from which **the oil and hazardous substances release contingency and abatement account** and its companion mitigation account may be financed.

Bill section 14, adding a parallel section, AS 46.08.025, enumerates the sources from which **the release response account** and its companion mitigation account may be financed.

Bill section 15: The amendments made by this bill section to AS 46.08.040(a) revise the objectives for which money in the current oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. Generally, purposes **except** activity directly related to containment and cleanup of a significant release or threatened release of oil or a hazardous substance and for related cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to containment and cleanup of a significant release or threatened release of oil or a hazardous substance and those involving related cleanup activity cost recovery purposes are to be met from the fund's response account. In addition to allocating permissible objectives of expenditure between the two accounts, the enumeration of the purposes for which the oil and hazardous substances release response account may be used expands the list of permissible uses from those that are enumerated in current law in order to allow acquisition of equipment for the response depots.

Bill section 16 is a further amendment to proposed AS 46.08.040(a)(2)(E) made contingent upon passage of a version of Senate Bill 33 that would shift responsibility for the activities of the State Emergency Response Commission from the Department of Environmental Conservation to the Department of Military and Veterans' Affairs. Under **bill section 33**, this provision is given an effective date tied to passage of SB 33.

Bill section 17: Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release prevention and response fund would still be required before money could be used for any purpose apart from initiation of immediate response action when authorized by AS 46.08.040(a)(1)(A).

Bill section 18 forecloses the use of the money in the fund for construction of marine highway vessels. That change is further buttressed by repeal of references to that authority in AS 19.65 in **bill section 28**.

Bill section 19: This section modifies the authority of the commissioner of environmental conservation to draw from the fund's response account. Under the changes made, in addition to being able to draw from the account under 045(a)(1) to respond to an actual or threatened catastrophic oil release, the commissioner may draw from the account under 045(a)(2) to cover other actual or threatened oil or hazardous substance releases. Procedurally, the commissioner is required to submit a report to the governor within 120 hours relating to use of the money in the account, and the governor should ratify that action by issuing an administrative order. The remaining provisions of the bill section describe the content of the report. A provision that is in conflict with the changes proposed by this bill section, AS 46.08.-040(b) is repealed in **bill section 28**.

Bill section 20, relating to annual reporting requirements relating to the fund, makes additional changes reflecting the division of the fund into two accounts, and removes a requirement relating to the contents of the commissioner of environmental conservation's annual report.

Bill section 21 conforms references in current law to activities undertaken using money drawn from the fund.

With the modification of the uses of the fund and changes in key definitions noted below, **bill sections 22** and **23** make a series of conforming changes in the section addressing cost recovery.

The bill seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." **Bill section 24** provides a technically revised definition of "release" and **bill section 25** substantively amends the definition of "threatened release."

Bill section 26 supplies a definition of "catastrophic oil discharge" for AS 46.08. The term appears in current law and is added in at least one new section by this bill.

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, **bill section 29** directs the revisor of statutes to make the change editorially in places where that change is appropriate.

With division of the fund into two accounts and modification of the mechanism by which the response account may be tapped, **bill section 1** incorporates amendment by which there is a differentiation made between the two accounts for the purpose of making disaster response grants to municipalities.

With the division of the existing fund into two accounts, **bill section 3** makes a drafting change related to the handling of the current material in the immediately preceding bill section.

AS 44.46.025(a)(4) and (5) authorize the Department of Environmental Conservation to collect fees for certain activities for which, under proposed AS 46.08.040(a)(2)(C)-(ii) and (iv) the oil and hazardous substances release contingency and abatement account may be tapped. Repeal of AS 44.46.025(a)(4) and (5) by **bill section 28** repeals the fee collecting authority.

II

Amendments related to the levy and collection of the oil conservation surcharge:

In its sections 3 - 8, the bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, each levied at 2 1/2 cents per barrel. Certain of the key provisions are generally modelled after the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but are revised to shift the basis for making determinations of the termination and reimposition feature of one of the two surcharges from a cumulative basis to a fiscal year-by-fiscal year basis.

Bill section 3: This section imposes a new conservation surcharge at the rate of \$.025 per barrel.

Bill section 4 directs the deposit of this surcharge to a special account and, from there, by appropriation, to the "response account" in the fund.

Bill section 5 sets out the conditions under which the severance tax surcharge shall be suspended or reimposed, revising the factors that trigger levy and collection of the surcharge as it supports the response account.

Bill section 6 amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

Bill section 7 imposes a second per barrel surcharge of \$.025 and, through a special account in the general fund, authorizes appropriation of the money received from it into the "oil and hazardous substance release contingency and abatement account."

Bill section 8 provides a revised definition for the term "surcharge."

The existing oil conservation surcharge provisions of AS 43.55 are repealed by **bill section 28**.

A related provision, **bill section 30**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. (Since, in **bill section 1**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.)

Bill section 31 is an additional "blackmail" clause intended to require that the full amount of the fiscal year end balance of the current "spill reserve" be shifted, without reduction, into the new "response account" of the fund.

Another related provision, **bill section 32**, sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1994, and until the effective date of this Act, in the event the measure fails to obtain the two-thirds vote for the bill's proposed effective date.

*

Excepting only the contingent effective date tied to passage of SB 33 for the transfer of functions of the State Emergency Response Commission, **bill section 34** gives the bill a July 1, 1994, effective date.

JBC:mi
94-042.mai

MEMORANDUM

10-1-93
State of Alaska

Department of Environmental Conservation

TO: Shelby Stastny, Director
Office of Management and Budget

DATE: October 1, 1993

FILE NO:

THRU:

TELEPHONE NO: 465-5010

FROM: *John Sandor*
John Sandor, Commissioner

SUBJECT: FY95 Response Fund
Budget Requests

This memo outlines the process DEC followed to receive and evaluate other agency Oil and Hazardous Release Response Fund (Response Fund) FY95 budget requests and describes the recommendations precipitated from that process.

On August 24, 1993, a memo soliciting Response Fund project requests was sent to each department that had received or requested Response Funds in the past. Responses to this solicitation were compiled and reviewed by the Divisions of Spill Prevention and Response, (SPAR) (Mike Conway), Information and Administrative Services, (IAS) (Bob Poe), and the Commissioner's Office (Mead Treadwell). Comments and priority rankings for each project were compiled and then reviewed as a team. I thoroughly reviewed each request, the "review team's" comments and held a subsequent meeting to discuss our findings.

Attached you will find copies of each departmental request received as well as a summary sheet of comments and project rankings. This document is titled "FY95 Response Fund Requests & Rankings". The criteria used for ranking requests as either a "high", "medium", or "low" priority is based on programs or projects DEC "must do", "should do", or "could do", respectively.

The final recommendations of the Department are listed in the attached spreadsheet titled "FY95 Response Fund Requests", under the heading "FY95 DEC to OMB". You will also find a column that reflects the original request received, as well as the amount approved in the FY94 budget. These recommendations are also listed on the "Response Fund Administration" component C22 Interagency Transfer form, under the BRU, "Information and Administrative Services". Last fiscal year, this component was under the Spill Prevention and Response BRU. We propose that this component be moved to IAS as the resources to manage and administer these funds are located in that Division.

personnel to be trained in hazardous substance risks and supports this request. We have recommended funding at \$50,000 for the manual development and ask that a plan on how training will be accomplished state-wide be presented to DEC before the actual training efforts commence. DEC concurs with the \$12,000 request for SERC participation.

Department of Law (DOL). DOL asked for a continuation level of Response Fund funding for FY95. DEC has recommended their request for \$350,000 for Exxon Valdez litigation be reduced to \$300,000 with the intent that the \$50,000 contractual line be eliminated. In addition, DEC recommends that the \$655,000 request for cost recovery, enforcement and responsible party identification efforts be reduced to \$500,000. We believe the reduced amount is sufficient to cover the Department's legal needs in this area.

Department of Public Safety (DPS). DEC did not receive a request from the DPS. The Department would like their continued participation in the SERC, so we have requested \$8,000 for that purpose. In addition, DEC would also like to see continued DPS involvement in the environmental crimes unit. We are recommending a continuation level funding of \$50,000 for this effort.

University of Alaska (UA). Similarly, DEC did not receive a request from the UA. DEC requests continuation level funding of \$200,000 from the Response Fund for University research and development.

The funding for increases in health care costs has been included in DEC's request as follows: SPAR, Director's Office reflects a \$16,000 increase; Environmental Quality, Director's Office reflects a \$24,200 allocation for these costs; and Administrative Services shows a \$5,900 increase.

You will notice no requests for capital projects were considered. DEC's policy on these state contaminated sites will be as follows: For those sites where the potentially responsible party (PRP) is a state agency, we recommend funding cleanup from the State General Fund. If the PRP is an entity other than a state agency, it should be ranked using the state hazards model and placed on the list of other sites awaiting cleanup. Of course, if the Regional Administrator in the site area deems the situation an imminent or substantial threat, it is appropriate to use the spill reserve.

Thank you for your consideration on these requests and DEC recommendations. We look forward to meeting with you to further discuss our rationale for the funding levels we present here. Again, if the requesting agency would like to appeal these recommendations, DEC envisions OMB involvement in any joint meetings to bring resolution and consensus to such disagreements.

GOVERNOR HICKEL'S ORGANIZATIONAL EFFICIENCY TASK FORCE: SUMMARY REPORT
Department of Environmental Conservation

Revenue enhancement through user fees should be elevated to a higher priority by the assigning a task force of professional staff from throughout the department to explore additional fee opportunities.

10. The department's innovative Cooperative Community Environmental Agreements should be a matrix organization that links all of the DEC "local community-building" and "local community-enhancement" activities and programs in a single community focus. A community-centered matrix organization should also include formal relationships with other departments.

These departments include: Military and Veterans Affairs/Emergency Services, Community and Regional Affairs, Commerce and Economic Development, Education, Public Safety, Transportation and Public Facilities, and Health and Social Services. Service to communities will be enhanced and productivity raised through such team efforts.

11. All DEC managerial spans of control should be carefully reviewed to determine whether

some should be expanded further.

With perhaps two exceptions, the Commissioner and the South Central Regional Manager, there do not appear to be any managerial or supervisory spans of control that are too broad, and many that may be too narrow.

Cost savings through reductions of supervisory personnel should be achieved.

12. The Department should conduct a policy analysis of two related subject areas concerning the Oil and Hazardous Substance Release Response Fund:

A. How much spill reserve is enough?

The original intent of the legislation establishing the five cents per barrel oil production surcharge appears to have been to establish a \$50 million spill reserve to prepare the state for expenditures which may be required to respond to a release the magnitude of the March 1989 Exxon Valdez spill. The fund balance has apparently stabilized at about \$20 million, because most revenues collected to date have been expended on operations related to the aftermath of the Exxon

GOVERNOR HICKEL'S ORGANIZATIONAL EFFICIENCY TASK FORCE: SUMMARY REPORT
Department of Environmental Conservation

Valdez spill, and a variety of other spills.

Assistance should be consolidated.

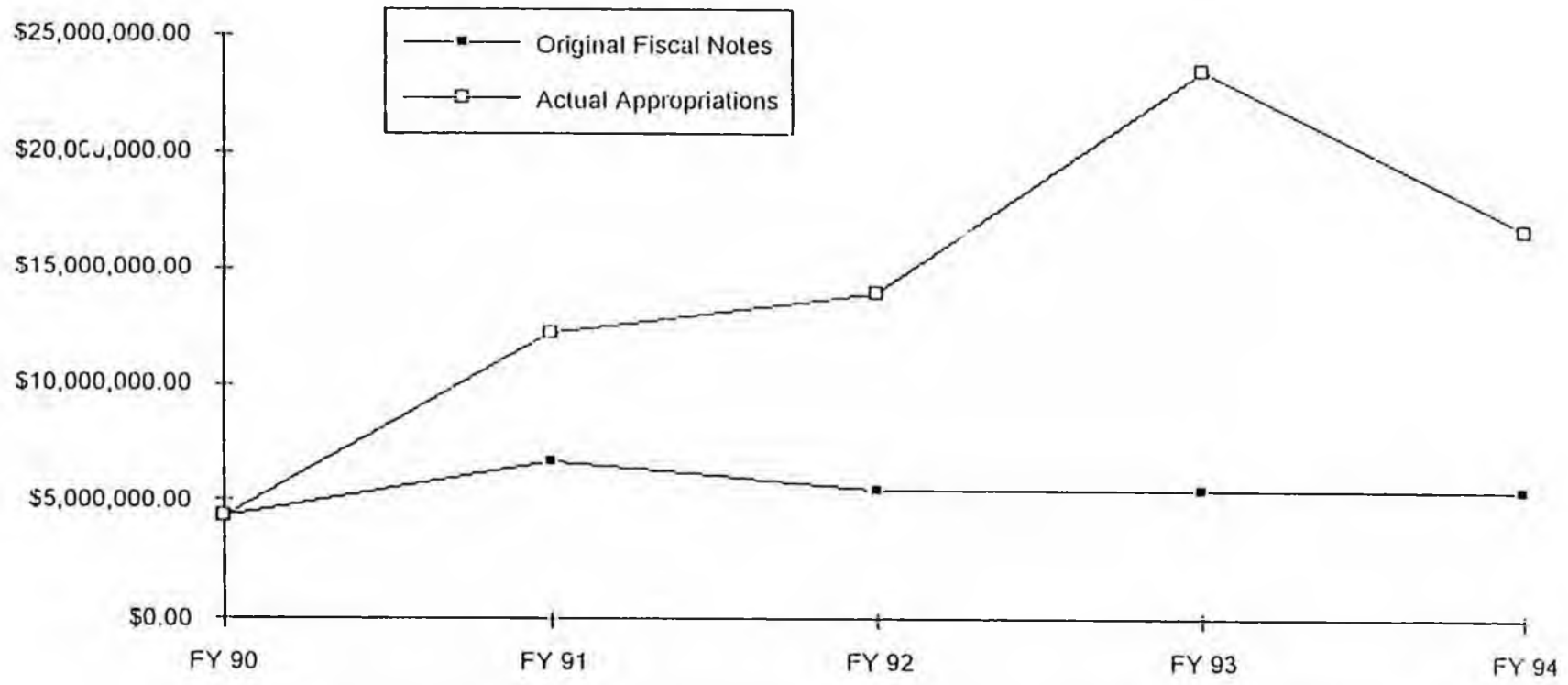
B. What are appropriate expenditures from the fund?

Chapter 112 SLA 1989 indicated two relatively limited and specific purposes for the Fund. Both related to "future discharges of oil or a hazardous substance that present a grave and substantial threat to the economy and the environment of the state."

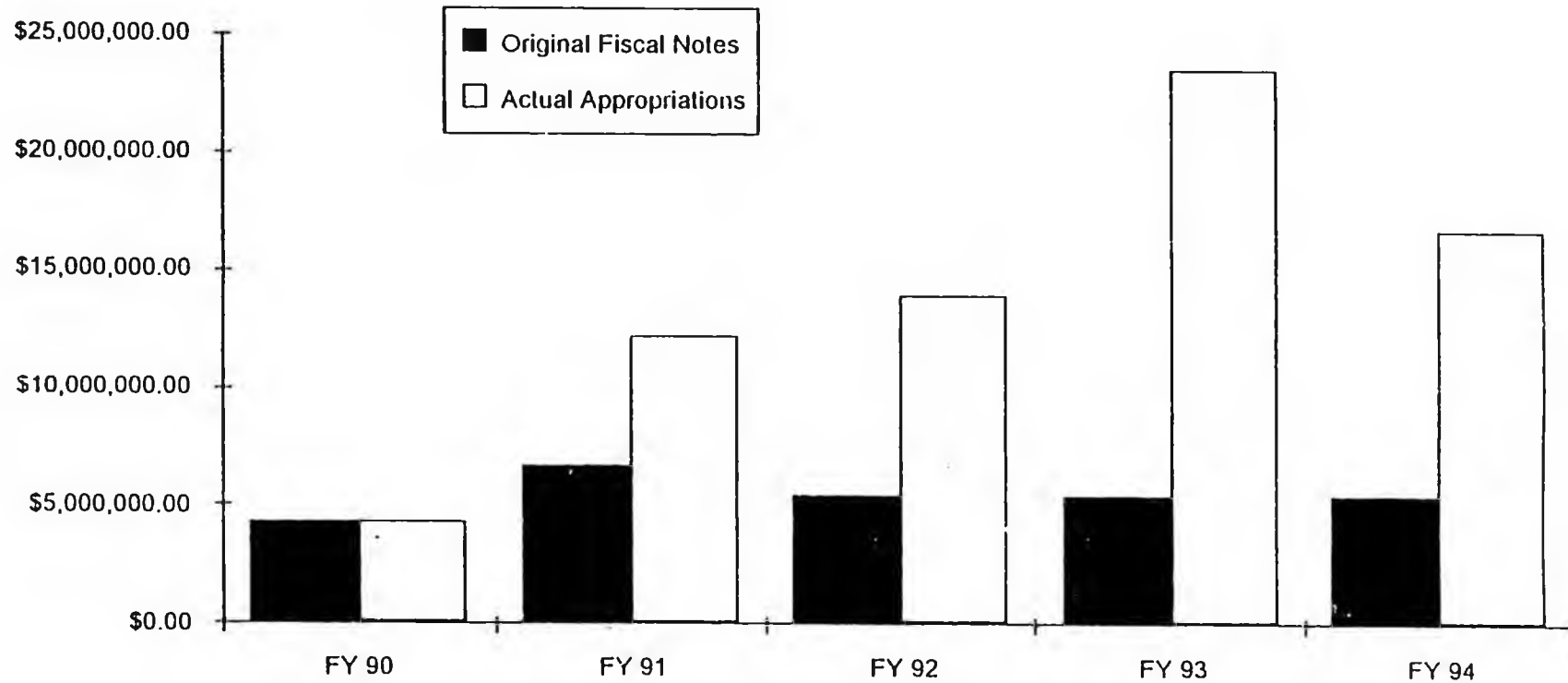
Since then, the number and scope of uses of the surcharge have expanded to include virtually all past, present, and future spills of oil or hazardous substances. It appears timely to review the present policy and intentions for the use of these funds.

The liberal use of the Fund appears to be driving up total state spending, with little concern for efficiency.

13. **The Spill Prevention, Planning and Management section and the Spill Response Office have overlapping functions and should be consolidated.**
14. **The separate staff for the State Underground Storage Tank program and the staff to the Board of Storage Tank**



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.

2001 BUDGET - PREVENTION RESPONSE PROGRAM

	DEC/ONS FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & 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	20.00
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	10727.30
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest on Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million Through the Year 2001 - Annual Amounts May Vary)	3500.00
MINIMUM TOTAL REVENUES AVAILABLE	16400.00

	DEC/CME FY 95 Budget Review
Contaminated Sites	2747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & 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 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	13514.60
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 Million Through the Year 2001 - Annual Amounts May Vary)	3500.00
MINIMUM TOTAL REVENUES AVAILABLE	16400.00

**FY91 AND FY92
COUNCIL ON OIL & HAZARDOUS SUBSTANCES CONTRACTS**

Parker & Associates	12/27/90-02/15/91	4,500.00	Write briefing papers re: vessel fatigue, training, vessel traffic safety, etc.
Fineberg, Richard	03/01/91-04/07/91	2,000.00	Evaluate reg agency performance
Hayden, Gary	09/06/92-01/31/92	3,000.00	Research & prepare database of concerned groups
Vogt, Deborah	09/23/91-01/15/92	4,000.00	Research & prepare report on AK's role and status as an owner and shipper of crude oil
Fluetsch, David	10/01/91-01/31/92	4,500.00	Develop an analysis of the public's participation in the development of oil spill response capability requirements
Sheinberg Assoc	10/18/91-01/26/92	39,000.00	Review Programs & Policies of Alaska re: toxic subst spills
Mertz, Kemp	10/09/91-11/18/91	29,600.00	Review implementation of Alaska's oil spill prevention response
Frank, Michael	11/07/91-01/31/92	4,500.00	Research TAPS Authorization Act, prepare summaries
Heiman, Marilyn	11/22/91-03/21/92	4,000.00	Prepare databases, reports, recommendations Sec. 11, Ch. 92, SLA 1991

**FY91 AND FY92
COUNCIL ON OIL & HAZARDOUS SUBSTANCES CONTRACTS**

Gatton, Gail	12/16/91-01/06/92	5,000.00	Provide Assistance to the Council
Jt Venture Easton, Frank Svancara	01/27/92-05/29/92	40,000.00	Review permitting procedures & processes re: air quality and wastewater discharge permits. Recommend statutory, regulatory, or process improvements
Gatton, Gail	04/01/92-07/01/92	5,000.00	Collect info & evaluate agency program implementation of key pieces of State's oil spill prevention and response planning
Vogt, Deborah	04/01/92-07/01/92	5,000.00	Collect info & evaluate agency program implementation of key pieces of State's oil spill prevention and response planning
Gallagher, Tom	04/20/92-06/30/92	5,000.00	Prepare Who's Who directory for oil spill planning & response activities
Kelso, Dennis	05/15/92-09/01/92	5,000.00	Assist in analyzing recommendations of AK Oil Spill Commission.
Heiman, Marilyn	05/18/92-10/15/92	5,000.00	Research, document & analyze oil discharges & regulatory agencies' response to discharges

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 5/8/93

FURTHER: FINANCE

Date of 5-Day Notice: 1/13/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

RESOURCES Committee considered SB 215

Oil and hazardous substance release response fund; repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; efd.

and recommends:

replace with _____ CS SB 215 (YES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DEC	2-24-94		X

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

~~[Signature]~~
[Signature] (NO REC)
[Signature] (No Fees - No Rec)

[Signature]
Mike Miller DO PASS
Chair: Signature and Recommendation

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
Fax: (907) 465-5070

**FEBRUARY 16, 1994 SENATE FINANCE COMMITTEE HEARING ON CS 8B215
RELATING TO THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
STATEMENT - JOHN SANDOR, COMMISSIONER, DEPT. OF ENVIRON. CONS.**

Mr. Chairman, I appreciate the opportunity to again testify on this proposed legislation. The Department appreciates the Legislature's closely examining 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 continue to work with legislators and committee staffs in search for a consensus approach and common goals which will assure a strong prevention program to reduce the risks of oil and hazardous substance spills, and a strong response program which will leave no doubt as to the State of Alaska's strong commitment to protect the environment, people and communities from the adverse impacts of such spills.

I want to reiterate 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 released.

I believe the Senate Resources subcommittee workshop involving representatives of interested parties at the table was especially productive. All parties presented important concerns which I hope the Committee will address. One of the major concerns was the shift of DEC General Funding to Fee Receipts. In FY 91, 61% of DEC's funding came from General Funds; now it is 29%.

Mr. Chairman, I want to again 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 favor the proposed improvements in the operation and management of the response fund that we have presented to the Senate and House Natural Resource Committees. At the February 11, 1994 Committee workshop, we also reported the Department's analyses of various options to split the nickel. Through this initial analysis we reported the 2 1/2 cent split of the nickel does not enable us to meet pollution prevention, environmental protection, response and restoration objectives. However, we also reported the 3 cent prevention/operations and 2 cent response split, with specific language changes could meet both our environmental protection and fund management objectives. A more thorough analysis by our accounting and financial management staff confirm this, and Mr. Bob Poe, Response Fund Manager, can provide a detailed briefing of this analysis.

At the February 11, 1994 workshop we also presented a "draft bill" with the 3 cent prevention and 2 cent response fund split. This proposal restores the state's ability to quickly respond to all spills of oil and hazardous substances, as well as restoration and research authorities, and assures adequate funding of activities of the Department of Military and Veterans Affairs (DMVA), and other agencies as the Legislature deems appropriate. It strengthens both the reporting and cost recovery requirements and provides for a report to the Governor of action on catastrophic or other significant releases that appear to require extraordinary action and funding. Although I still favor this approach to revisions in the fund, a 3 cent prevention and operations and 2 cent response alternative could be acceptable. The draft we presented February 11 was developed jointly with the Department of Law and has also been reviewed by others in the Executive Branch.

The Department also received a re-draft of CS- SB215 (version O), and we have very serious concerns about a number of specific provisions in that draft. These are included in an attachment to this statement. Also enclosed is a comparison of three Response Fund Restructuring Options when the nickel is split.

Page three - Senate Natural Resources Committee - Feb. 16, 1994

Mr. Chairman, I want to again point out that we have had several 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: The ARCO North Slope spill which was discovered the morning of December 30, 1993; the Overseas Ohio tanker vessel which hit an iceberg in Prince William Sound just 25 miles south of Valdez on January 2nd, 1994 and the more recent Los Angeles Earthquake. We will continue to have oil and hazardous substance spills, and must be prepared to effectively respond to them.

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

Mr. Chairman, the Administration wants 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. Our February 11, 1994 proposal achieves that objective. A split funding formula which would allocate no less than 3 cents for the prevention, contingency planning and operations programs could also achieve that objective.

Thank you for the opportunity to participate in this hearing.

FILE:470FUND2

DEC'S MAJOR CONCERNS
CSSB 215 (RES)
(O VERSION 2/14/94)

- PROVIDES FOR FINAL SUSPENSION OF THE CATASTROPHIC (2-1/2 CENT) SURCHARGE IF THIS LEGISLATURE DOES NOT APPROPRIATE THE ENTIRE FUND BALANCE AT THE END OF THIS FISCAL YEAR, ESTIMATED TO BE \$37.4 MILLION, TO THE CATASTROPHIC ACCOUNT. (SEC. 32; PAGE 19)
- RESPONSES TO HAZARDOUS SUBSTANCES ARE NOT WITHIN THE SCOPE OF THE CATASTROPHIC RELEASE ACCOUNT. (SEC. 11; PAGE 8 AND SEC. 17; PAGE 11)
- THE 2-1/2 CENT SPLIT IS INSUFFICIENT TO ADEQUATELY FUND THE STATE'S PREVENTION AND NON-CATASTROPHIC RESPONSE PROGRAMS.
- REQUIRES AN "ADMINISTRATIVE ORDER" BY THE GOVERNOR WITHIN 5 DAYS OF THE COMMISSIONER BECOMING AWARE OF A RELEASE IN ORDER TO ACCESS THE CATASTROPHIC RELEASE ACCOUNT. (SEC. 20; PAGE 15)
- IT IS UNCLEAR WHETHER OR NOT RESPONSE CAN BEGIN BEFORE THE ORDER IS ISSUED AND IF SO, WHETHER OR NOT THE STATE'S RESPONSE ACTION WOULD HAVE TO STOP IF THE ORDER IS NOT ISSUED WITHIN THE 5 DAYS.
- THE CATASTROPHIC ACCOUNT WOULD RECEIVE ALL FINES AND PENALTIES COLLECTED BY THE STATE FOR OIL RELEASES - POTENTIALLY GIVING THE SPILLER THE BENEFIT OF THOSE FINES AND PENALTIES. (SEC. 16; PAGE 10)
- INCLUDES A DEFINITION FOR "THREATENED RELEASE." (SEC 26 AND SEC. 28; PAGE 18)

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1995			
Initial Benefit to Surcharge Payee	\$33.1	\$51.8	\$26.8
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$31.6	\$50.3	\$25.3
Beginning Balance of Abatement Account	\$31.6	\$12.9	\$37.9
Total .05 Surcharge Collected in FY95			
Total Spill Surcharge Collected in FY95	\$13.1	\$0.0	\$10.5
Total Abatement Surcharge Collected in FY95	\$13.1	\$13.1	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY96 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$31.6	\$50.3	\$24.5
Ending Balance of Abatement Account	\$17.3	(\$1.4)	\$24.4
Total Cost to Surcharge Payee	(\$7.2)	(\$39.0)	(\$0.9)
Suspension and Reimposition Calculation	\$45.0	\$50.8	\$35.3
Fiscal Year 1996			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$45.0	\$50.6	\$35.3
Beginning Balance of Abatement Account	\$30.4	\$11.7	\$40.1
Total .05 Surcharge Collected in FY96			
Total Spill Surcharge Collected in FY96	\$6.3	\$0.0	\$10.1
Total Abatement Surcharge Collected in FY96	\$12.7	\$12.7	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY97 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$45.0	\$50.6	\$34.5
Ending Balance of Abatement Account	\$15.7	(\$3.0)	\$26.2
Total Cost to Surcharge Payee	\$18.7	\$12.4	\$25.0
Suspension and Reimposition Calculation	\$51.6	\$50.9	\$44.9

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1997			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$51.6	\$50.9	\$44.9
Beginning Balance of Abatement Account	\$28.3	\$9.6	\$41.4
Total .05 Surcharge Collected in FY97			
Total Spill Surcharge Collected in FY97	\$0.0	\$0.0	\$7.4
Total Abatement Surcharge Collected in FY97	\$12.4	\$12.4	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY98 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$51.6	\$50.9	\$44.1
Ending Balance of Abatement Account	\$13.2	(\$5.5)	\$27.1
Total Cost to Surcharge Payee	\$12.1	\$12.1	\$22.0
Suspension and Reimposition Calculation	\$51.9	\$51.2	\$51.8
Fiscal Year 1998			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$51.9	\$51.2	\$51.8
Beginning Balance of Abatement Account	\$25.6	\$6.9	\$42.0
Total .05 Surcharge Collected in FY98			
Total Spill Surcharge Collected in FY98	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98	\$11.9	\$11.9	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY99 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$51.9	\$51.2	\$51.0
Ending Balance of Abatement Account	\$10.1	(\$8.6)	\$27.2
Total Cost to Surcharge Payee	\$11.6	\$11.6	\$14.0
Suspension and Reimposition Calculation	\$52.2	\$51.5	\$51.3

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1999			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$52.2	\$51.5	\$51.3
Beginning Balance of Abatement Account	\$22.0	\$3.3	\$41.5
Total .05 Surcharge Collected in FY99			
Total Spill Surcharge Collected in FY99	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY99	\$11.2	\$11.2	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY00 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$52.2	\$51.5	\$50.5
Ending Balance of Abatement Account	\$6.0	(\$12.7)	\$26.3
Total Cost to Surcharge Payee	\$10.9	\$10.9	\$13.1
Suspension and Reimposition Calculation	\$52.5	\$51.8	\$50.8
Total Net Cost - 5 Years (no discount)	\$46.1	\$8.0	\$73.3
Total Net Cost After Tax Effect (40% tax)	\$27.6	\$4.8	\$44.0

**THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

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

March 24, 1994

The Honorable Drue Pearce, Co-Chair
The Honorable Steve Frank, Co-Chair
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Dear Senators Pearce and Frank:

Attached is a bar chart which illustrates how the current CSSB215 version "I" compares with other possible versions of this bill which would better insure that Alaska's spill prevention and response program is adequately funded.

Two possible ways of splitting the nickel surcharge per barrel of oil are compared, the .025/.025 split as proposed in CSSB215 and a .03/.02 cent split of the nickel where 3 cents is applied to the contingency and abatement account. These two approaches to splitting the nickel surcharge are further illustrated by showing the financial impacts of these proposals when the existing \$37.4 million currently in the response fund is split, and when the \$37.4 million is fully applied to the catastrophic spill account.

The results of this comparison indicate that the version of CSSB215 before you today **will not** adequately fund the current spill prevention and response program. Under-funding, based on the attached assumptions, is expected to exceed \$8.7 million over five years. This figure does not, however, take into effect recent amendments proposed by the Senate Finance Committee.

These amendments include significantly expanding the types of capital projects which may be funded from the contingency and abatement account, resulting in significantly increased funding requirements for the account. It is impossible to estimate the level of increased funding required since the provision allows a wide range of possible capital projects. The amendment to include funding for the Storage Tank Assistance Program from the contingency and abatement account further weakens arguments that future Exxon payments to the State of Alaska will be available to assist in funding the State's spill prevention and response program. As you may know, we support applying 1 cent of the proposed increase in the motor fuel tax toward funding the Underground Storage Tank Assistance Program.

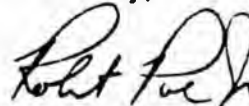
March 24, 1994

All other possible versions of the bill presented on the attached chart do not indicate an under-funding of the current spill prevention and response program within the first five years. However, the .025/.025 split which also splits the \$37.4 million currently in the response fund, will also result in under-funding of the program in approximately eight years. If demands for future capital projects funded through the contingency and abatement account become significant, the point in time when the spill prevention and response program is under-funded will come much sooner. Legislative history, as it relates to the 470 Fund, indicates that the use of this account for capital projects is likely to increase significantly.

The Hickel Administration does not support any version of this bill which does not provide at least 3 cents of the nickel surcharge toward the spill prevention and response program. In addition, a strong argument can be made that a significant portion of the \$37.4 million currently in the response fund came from general funds received prior to the time when the 5 cent surcharge was imposed. We therefore also support splitting the current response fund balance between the contingency and abatement account and the catastrophic spill account. In possible versions of this bill which include splitting the response fund, additional funding is made available to pay for badly needed capital projects like depots and corps and the Emergency Operations Center in Anchorage.

Today is the "morning after" the 5th Anniversary of the Exxon Valdez Oil Spill. As the recent Legislative Audit of the Oil and Hazardous Substance Release Response Fund pointed out, we may soon be approaching a new period of complacency in preventing future oil spills. The current version of CSSB215 before you today certainly supports this view. We strongly urge you to consider adopting a version of this bill similar to the one currently in the House Resources Committee which provides for a 3 cent surcharge to fund the contingency and abatement account and splitting the current balance of the response fund. We support this approach because it will guarantee that Alaska maintains a strong and adequately funded spill prevention and response program while, at the same time, quickly building to a \$50.0 million balance in the catastrophic spill account.

Sincerely,



Robert Poe, Jr.

Director of Administrative Services

RGP\ (ASDIR\SB215I.BP)

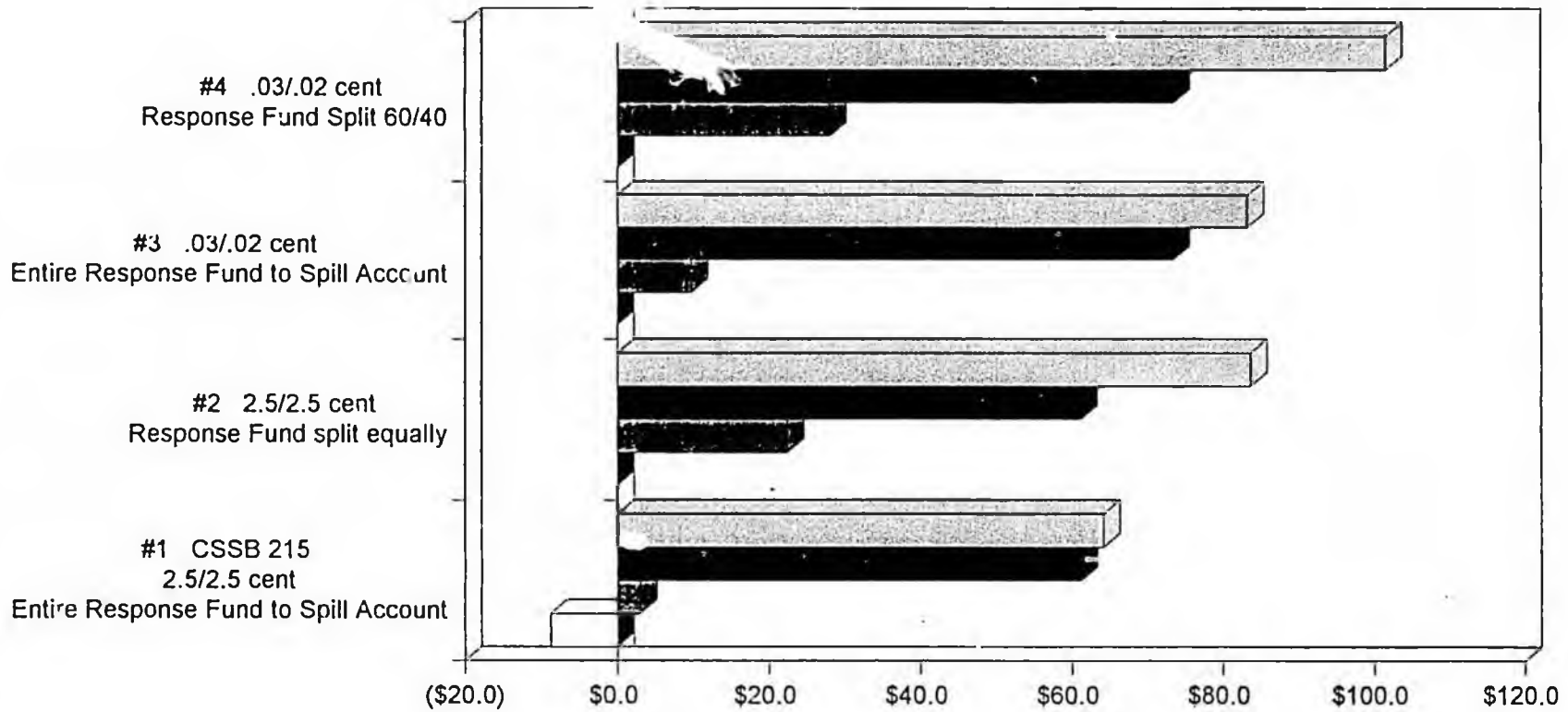
Attachments

ASSUMPTIONS

1. The data summarized in the attached chart represents a five-year look at the financial effects of these possible changes to the current response fund statutes.
2. In identifying funds which would contribute to the contingency and abatement account, no interest or other mitigation account items are included in the calculation. These funds must be appropriated to the contingency and abatement account and there is nothing in CSSB215 which requires or specifically encourages the Legislature to appropriate these funds. In addition, Legislative history does not support the assumption that these funds will be appropriated to the contingency and abatement account.
3. In calculating the balance of the catastrophic spill account throughout the five years, it is assumed that \$0.8 million is spent each year from the catastrophic spill account to address spills of oil and hazardous substances which may occur each year.
4. \$0.3 million is assumed to be collected as cost recovery each year and is credited to the catastrophic spill account at the beginning of each succeeding fiscal year. This assumption appeared to be justified in light of the CSSB215 incentive clauses to assure that these funds are credited to the catastrophic spill account.
5. The State's spill prevention and response program for all agencies is assumed to be \$13.5 million in the first year and to increase by 3% each year thereafter.

Response Fund Restructuring Options Comparison of Proposals For SB215

<input type="checkbox"/> Total Prevention Program Underfunding	<input type="checkbox"/> Total Spill Account Surcharge Paid	<input type="checkbox"/> Total Abatement Account Surcharge Paid	<input type="checkbox"/> Total Surcharges Paid
--	---	---	--



3-22-94

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Telephone No. (907)465-5050
FAX No. (907)465-5070

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

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.

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.

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 95. 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.

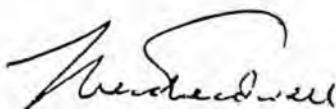
You have also asked, "When are contaminated sites going to be cleaned up and what will it cost?" The following should answer your questions regarding the Department's role in cleaning up a contaminated site, the time it takes to cleanup a site, and the associated cost to the State.

What does the Department do with contaminated sites?

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

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:\SPAR\MAC\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. Sandor, Commissioner, Department of Environmental Conservation
Major General Hugh L. Cox III, Commissioner, Department of Military and
Veterans Affairs

3-22-94

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Office of the Commissioner
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1755

Telephone: (907) 465-5050
FAX: (907) 465-5070

March 18, 1994

Mr. H. Bilhartz, President
ARCO Alaska, Inc.
P. O. Box 100360
Anchorage, AK 99510-0360

Dear Mr. Bilhartz:

Thank you for your positive response responding to my letter to you of February 28 offering to work together with the Department of Environmental Conservation, BP and Alyeska to assess the current status of spill prevention and response programs. Both John Morgan of BP and David Pritchard from Alyeska concurred that such an analysis was in our collective best interests.

I'd like to suggest that the four of us designate a "working group" made up of individuals from our respective organizations to critique our existing capabilities and suggest improvements. Tom Chapple, the new Administrator for the department's Pipeline Corridor Region will be on-board by April 1. I believe it makes sense for us to "kick off" the first meeting of this working group in Anchorage shortly thereafter. If you agree my secretary, Martha Fischbach will call your office to arrange for a mutually convenient time and location.

As additional background information for that meeting, enclosed you will find a copy of an audit of the Oil and Hazardous Substance Release Response Fund (470 Fund) recently completed by the Division of Legislative Audit. By way of background, the Division of Legislative Audit is created in statute to serve a staff function to the Legislative Budget and Audit (LBA) Committee. LBA is a standing committee of the legislature that is to provide "full-time technical assistance in accomplishing fiscal analysis, budget review, and post-audit functions." (AS 24.20.151) Representative Larson, a member of the Budget and Audit Committee, requested this audit shortly after the end of the session last year in order to answer the many questions surrounding the use of the Fund.

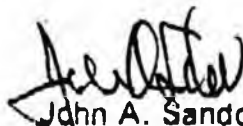
While the Audit contains a wealth of information, of particular importance to the project upon which we have agreed to embark is on page 33. It says:

"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 [the Alaska Oil Spill Commission] 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."

Certainly our joint efforts will enable our organization to assess our effectiveness and consider opportunities to strengthen prevention and response capability. I look forward to working with you and others at BP and Alyeska to improve the capability of our respective organizations.

Sincerely,


John A. Sandor
Commissioner

Enclosure: Oil and Hazardous Substance Release Response Fund
Audit Control Number 18-4463-94

cc: The Honorable Walter J. Hickel

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Office of the Commissioner
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1795

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

March 18, 1994

Mr. John Morgan, President
BP Exploration (Alaska)
P. O. Box 196612
Anchorage, AK 99519-6612

Dear Mr. Morgan:

Thank you for your positive response to my letter to you of February 28, offering to work together with the Department of Environmental Conservation, Alyeska and ARCO to assess the current status of spill prevention and response programs. Both Skip Bilhartz of ARCO and David Pritchard from Alyeska concurred that such an analysis was in our collective best interests.

I'd like to suggest that the four of us designate a "working group" made up of individuals from our respective organizations to critique our existing capabilities and suggest improvements. Tom Chapple, the new Administrator for the department's Pipeline Corridor Region will be on-board by April 1. I believe it makes sense for us to "kick off" the first meeting of this working group in Anchorage shortly thereafter. If you agree, my secretary, Martha Fischbach will call your office to arrange for a mutually convenient time and location.

As additional background information for that meeting, enclosed you will find a copy of an audit of the Oil and Hazardous Substance Release Response Fund (470 Fund) recently completed by the Division of Legislative Audit. By way of background, the Division of Legislative Audit is created in statute to serve a staff function to the Legislative Budget and Audit (LBA) Committee. LBA is a standing committee of the legislature that is to provide "full-time technical assistance in accomplishing fiscal analysis, budget review, and post-audit functions." (AS 24.20.151) Representative Larson, a member of the Budget and Audit Committee, requested this audit shortly after the end of the session last year in order to answer the many questions surrounding the use of the Fund.

While the Audit contains a wealth of information, of particular importance to the project upon which we have agreed to embark is on page 33. It says:

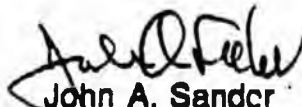
"DEC is already dangerously close to having to implement statute

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 [the Alaska Oil Spill Commission] 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."

Certainly our joint efforts will enable our organizations to assess our effectiveness and consider opportunities to strengthen prevention and response capabilities. I look forward to working with you and others at BP, Alyeska and ARCO to improve the capability of our respective organizations to both prevent and respond to pollution events.

Sincerely,


John A. Sandcr
Commissioner

Enclosure

- Oil and Hazardous Substance Release Response Fund Audit
Audit Control Number 18-4463-94

cc: The Honorable Walter J. Hickel

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Office of the Commissioner
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1795

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

March 18, 1994

Mr. David Pritchard, President & CEO
Alyeska Pipeline Service Company
1835 South Bragaw Street
Anchorage, AK 99512

Dear Mr. Pritchard:

Thank you for your positive response to my letter to you of February 28, offering to work together with the Department of Environmental Conservation, BP and ARCO to assess the current status of spill prevention and response programs. Both Skip Bilhartz of ARCO and John Morgan of BP concurred that such an analysis was in our collective best interests.

I'd like to suggest that the four of us designate a "working group" made up of individuals from our respective organizations to critique our existing capabilities and suggest improvements. Tom Chappie, the new Administrator for the department's Pipeline Corridor Region will be on-board by April 1. I believe it makes sense for us to "kick off" the first meeting of this working group in Anchorage shortly thereafter. If you agree, my secretary, Martha Fischbach will call your office to arrange for a mutually convenient time and location.

As additional background information for that meeting, enclosed you will find a copy of an audit of the Oil and Hazardous Substance Release Response Fund (470 Fund) recently completed by the Division of Legislative Audit. By way of background, the Division of Legislative Audit is created in statute to serve a staff function to the Legislative Budget and Audit (LBA) Committee. LBA is a standing committee of the legislature that is to provide "full-time technical assistance in accomplishing fiscal analysis, budget review, and post-audit functions." (AS 24.20.151) Representative Larson, a member of the Budget and Audit Committee, requested this audit shortly after the end of the session last year in order to answer the many questions surrounding the use of the Fund.

While the Audit contains a wealth of information, of particular importance to the project upon which we have agreed to embark is on page 33. It says:

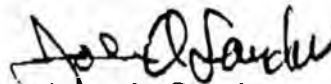
"DEC is already dangerously close to having to implement statute

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 [the Alaska Oil Spill Commission] 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."

Certainly our joint efforts will enable our organizations to assess our effectiveness and consider opportunities to strengthen prevention and response capabilities. I look forward to working with you and others at Alyeska, BP, and ARCO to improve the capability of our respective organizations to both prevent and respond to pollution events.

Sincerely,


John A. Sandor
Commissioner

Enclosure

- Oil and Hazardous Substance Release Response Fund Audit
Audit Control Number 18-4463-94

cc: The Honorable Walter J. Hickel

bc: All Regional Administrators
Mike Menge, Director EQ
Mike Conway, Director, SPAR
Bob Poe, Director, IAS
Mead Treadwell

*BC's will go to all three
letters.*

3-22-94

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

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

March 16, 1994

The Honorable Steve Frank, Co-Chair
The Honorable Drue Pearce, Co-Chair
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Dear Senators Frank and Pearce:

Legislative Audit recently completed its review of the Oil and Hazardous Substance Release Response Fund (470 Fund). The Department appreciated the work of the auditors, and their commitment to understanding the Fund and both its historical and current statutory rules.

Enclosed you will find a copy of that Audit for your review. While it contains a wealth of information, we would like to direct your attention to the Auditor's Comments beginning on page 33:

"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 [the Alaska Oil Spill Commission] 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."

Senate Finance Committee

March 16, 1994

Page 2

The Department of Environmental Conservation looks forward to working with the Senate Finance Committee, and its Finance Subcommittee on how to best address the recommendations of the Audit.

Sincerely,



**John A. Sandor
Commissioner**

JA/ch
Enclosure

*Audit Report, Oil and Hazardous Substance Release Response Fund
Audit Control Number 18-4483-94

cc: All Members, Senate Finance Committee (w/enclosure)
The Honorable Al Adams (w/enclosure)

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
Fax: (907) 465-5070

March 16, 1994

The Honorable Mike Miller
Chairman, Senate Resources Committee
Capitol Building
Juneau, AK 99801

Dear Senator Miller:

Legislative Audit recently completed its review of the Oil and Hazardous Substance Release Response Fund (470 Fund). The Department appreciated the work of the auditors, and their commitment to understanding the Fund and both its historical and current statutory rules.

Enclosed you will find a copy of that Audit for your review. While it contains a wealth of information, we would like to direct your attention to the Auditor's Comments beginning on page 33:

"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 [the Alaska Oil Spill Commission] 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."

Senate Resources Committee

March 16, 1994

Page 2

The Department of Environmental Conservation looks forward to working with the Senate on how to best address the recommendations of the Audit.

Sincerely,


John A. Sandor
Commissioner

JA/ch
Enclosure

***Audit Report, Oil and Hazardous Substance Release Response Fund**
Audit Control Number 18-4463-94

cc: All Members, Senate Resources Committee (w/enclosure)

3-22-94
DEC
Bob Poe

AS 46.08.030

Says:

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available. (S 1 ch 59 S.L.A 1986)

Funding History - Division of Spill Prevention and Response

Prior to Fiscal Year 91 no permanent staff of DEC were charged directly to the Oil and Hazardous Substance Release Response Fund (Response Fund). In FY90 and 91 DEC experienced large staff growth bringing existing programs to core level and adding additional staff associated with new legislation. Beginning in FY 91 and continuing to present, general funding of the Spill Prevention and Response functions has been gradually eliminated. In addition, regional staff have been shifted from other projects to the Spill Prevention and Response projects commensurate with the work load in the respective regions.

STAFFING - FISCAL YEAR 89

FY 89 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
SPPM	19.5	758.5	0.0	226.2
Csites	24.8	1,213.8	0.0	1,457.1
Total	44.3	1,972.3	0.0	1,683.3

LEGISLATION ENACTED 89 SESSION

SLA89 Chapter 29 SB256

Required Department of Law to seek cost recovery at the request of DEC.
Clarified Municipal reimbursements from Response Fund.

SLA 89 Chapter 39 HB68

Authorized DEC to use liens against property as security for State expenditures.

SLA 89 Chapter 112 SB260

Established nickel a barrel surcharge on regulated industry production.

SLA 89 Chapter 90 SB261

Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay costs of State Master Plan and Regional Plans.
Expanded the uses of the Response Fund to include restoration of the environment by
addressing the effects of a release or threatened release.

SLA 89 Chapter 113 SB264

Established Response Office in DEC for catastrophic or declared emergency spills.
Established emergency response equipment depots in DEC's response office.
Established emergency response volunteer corps in DEC's response office.
Expanded uses of Response Fund to pay for Response Office and Depot and Corps.

3-22-94
DEC
Bob Poe

AS 46.08.030

Says:

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available. (§ 1 ch 59 S.L.A. 1986)

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)

Funding History - Division of Spill Prevention and Response

Prior to Fiscal Year 91 no permanent staff of DEC were charged directly to the Oil and Hazardous Substance Release Response Fund (Response Fund). In FY90 and 91 DEC experienced large staff growth bringing existing programs to core level and adding additional staff associated with new legislation. Beginning in FY 91 and continuing to present, general funding of the Spill Prevention and Response functions has been gradually eliminated. In addition, regional staff have been shifted from other projects to the Spill Prevention and Response projects commensurate with the work load in the respective regions.

STAFFING - FISCAL YEAR 89

FY 89 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
SPPM	19.5	758.5	0.0	226.2
Csites	24.8	1,213.8	0.0	1,457.1
Total	44.3	1,972.3	0.0	1,683.3

LEGISLATION ENACTED 89 SESSION

SLA89 Chapter 29 SB256

Required Department of Law to seek cost recovery at the request of DEC.
Clarified Municipal reimbursements from Response Fund.

SLA 89 Chapter 39 HB68

Authorized DEC to use liens against property as security for State expenditures.

SLA 89 Chapter 112 SB260

Established nickel a barrel surcharge on regulated industry production.

SLA 89 Chapter 90 SB261

Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay costs of State Master Plan and Regional Plans.
Expanded the uses of the Response Fund to include restoration of the environment by
addressing the effects of a release or threatened release.

SLA 89 Chapter 113 SB264

Established Response Office in DEC for catastrophic or declared emergency spills.
Established emergency response equipment depots in DEC's response office.
Established emergency response volunteer corps in DEC's response office.
Expanded uses of Response Fund to pay for Response Office and Depot and Corps.

Clarified civil penalty for the unpermitted discharge of oil and the failure to implement an oil discharge contingency plan.

STAFFING - FISCAL YEAR 90

FY 90 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
SPPM	25.0	1,013.3	0.0	235.6
Csites	36.3	876.4	0.0	1,863.5
Total	61.3	1,889.7	0.0	2,099.1

Analysis of Staffing Change from FY 89 to FY 90

The FY90 operating budget request included a structural change from multiple components for individual programs such as Air, Oil, Water to the large single component Environmental Quality (EQ) Projects. The SPPM and Csites projects were included in the EQ Projects component.

Staff increased in the SPPM project in FY 90 due to DEC implementation of a multi year plan to increase staffing to core level necessary to meet statutory, regulatory and legislative intent requirements. Prior to these increases, DEC was not meeting those requirements. The FY 90 increment established a small capacity for spill response and seasonal positions to inspect tankers and facilities for compliance with contingency plan requirements.

Contaminated Sites staff increased in FY 90 due to inclusion of Kenai cleanup project staff previously funded as non permanent or in the CIP budget in the operating budget request. These staff identify and cleanup existing contaminated sites on the Kenai Peninsula which pose a threat to public health.

LEGISLATION ENACTED 90 SESSION

SLA90 Chapter 141 HB315

Categorized environmental crimes and determined appropriate level of criminal behavior for each.

SLA90 Chapter 142 HB316

Established the level of criminal damages to be assessed in fines against organizations for damages caused by environmental crimes.

SLA90 Chapter 190 HB566

Added incident command system requirement to State and Regional Plans.

Required DEC to use the State plan to designate depot and response corps locations.

Required DEC to submit the State master and Regional plans and revisions to the State Emergency Response Commission for review and approval.

Transferred responsibility to establish depots and corps to Division of Emergency Services.
 Expanded uses of Response Fund to include DES reimbursement for depots and corps.
 Established State Emergency Response Commission (SERC).
 Established Local Emergency Planning Committees (LEPCs).
 Established Hazardous Substance Spill Technology Review Council (HSSTRC).

*** SLA90 Chapter 191 HB567**

Required industry contingency plans to include prevention measures.
 Added certification requirement for approved contingency plans.
 Clarified proof of financial responsibility and limits liability for tank vessel or oil barge operations.
 Clarified DEC inspections of regulated industries.
 Established DEC participation in structural integrity of vessels, barges, pipelines and facilities.
 Expanded uses of Response Fund to include:

- Review of oil discharge prevention and contingency plans
- Conduct training, response exercises, inspections and tests to verify inventories and ability of state, municipality or parties required to have an approved contingency plan
- Verification of financial responsibility

SLA90 Chapter 199 HB578

Established Citizen's Oversight Council
 Expanded uses of Response Fund to include Oversight Council costs.

STAFFING - FISCAL YEAR 91

FY 91 (est)	FTEs	Gen Fund	Resp Fund.	Other Funds
SPPM	72.0	1,860.1	3,203.6	0.0
SRO	14.0	0.0	2,703.5	0.0
Csites	41.0	457.8	715.1	1,804.3
Stg Tank Program	11.0	6,009.2	0.0	0.0
Total	138.0	8,327.1	6,622.2	1,804.3

Analysis of Staffing Change from FY 90 to FY 91

FY 91 was the final year of increments to bring the Spill Prevention and Response projects to core level funding. An increment was requested and approved for both the SPPM and Contaminated Sites projects.

The Spill Response Office and Storage Tank Assistance Program were identified as separate projects.

Funding was requested and approved for the Environmental Investigation and Enforcement unit. This unit is responsible for the specialized investigatory and legal resources associated with determination of responsible parties for a release or a contaminated site.

Fiscal notes were attached to HB 566 and HB 567 increasing staffing an additional 22 FTEs to provide resources to perform the additional work necessary to meet the statutory obligations enacted in HB 566 and HB 567.

Additional staff were approved for the Prince William Sound District Office.

LEGISLATION ENACTED 91 SESSION

SLA91 Chapter 48 SB165

Expanded uses of Response Fund to include refurbishment or construction of marine response vessels.

SLA91 Chapter 83 SB25

Expanded uses of Response Fund to municipal grants.

SLA91 Chapter 31 HB194

Required the Board of Marine Pilots to cooperate with DEC in the review and approval of training programs for pilots of tanker vessels.

SLA91 Chapter 92 HB196

Required the Citizen's Oversight Council to submit a report on whether State laws for response action contractor civil liability and vessel contingency plan requirements should be amended.

SLA91 Chapter 09 SB263

Provided a one-year delay to June 1, 1992 for compliance of non crude oil operations with the financial responsibilities in AS 46.04.040.

Authorized DEC to issue interim approval for contingency plan amendments that substantially comply with the requirements of Chapter 191, SLA90.

STAFFING - FISCAL YEAR 92

FY 92 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	6.0	248.7	182.1	0.0
SPPM	69.0	981.8	4,661.5	77.0
SRO	14.0	0.0	1,107.5	0.0
Csites	40.0	414.8	1,182.4	1,949.4
Stg Tank Program	9.0	0.0	0.0	6,700.0
Total	138.0	1,645.3	7,133.5	8,726.4

Analysis of Staffing Change from FY 91 to FY 92

FY 92 budget structure recognized the creation of the Division of Spill Prevention and Response. The Director's Office and Storage Tank Program were separate components in the FY 92 budget request, but, the projects (SPPM, SRO and Csites) continued as a part of the EQ projects budget request.

Overall staffing levels did not increase, but, were re-aligned commensurate with the needed level of effort in the two components and three projects. The process of shifting funding for Spill Prevention and Response work from General Funds to Response Funds began in FY 92 with central office staff.

LEGISLATION ENACTED 92 SESSION

SLA92 Chapter 83 SB540

Required DEC to develop regulations governing the registration and approval of oil spill primary action contractors.
Required DEC to collect fees in the amount necessary to cover the costs of this program.

STAFFING - FISCAL YEAR 93

FY 93 (actual)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	12.0	115.6	1,459.2	0.0
SPPM	72.5	90.8	9,027.5	0.0
Csites	53.5	351.8	4,717.1	2,582.7
Stg Tank Program	7.0	0.0	0.0	3,822.7
Total	145.0	558.2	15,203.8	6,405.4

Analysis of Staffing Change from FY 92 to FY 93

The FY 93 budget structure established the Division of Spill Prevention and Response as a separate BRU with the projects above as separate components. The Spill Response Office was decentralized with expert spill responders in each region. Administrative Support, Safety and Data Management were transferred from the programs to the Director's Office.

Staff were added for Response Fund Management (1), the Department of Defense cooperative agreement (2), Geographic Information Systems (1 - non perm) and the Leaking Underground Storage Tank program (1 - non perm).

Conversion of the Spill Prevention and Response effort from General Funds to Response Funds continued focusing on regional efforts leaving the Division with 393.0 in General Funds and 165.2 in General Fund Match.

STAFFING - FISCAL YEAR 94

FY 94 (request)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	13.0	0.0	1,296.7	36.4
SPPM	75.2	0.0	8,105.2	225.0
CSites	57.2	165.2	3,727.5	2,225.0
Stg Tank Program	10.0	0.0	0.0	6,621.9
Total	155.4	165.2	13,129.4	9,108.3

Analysis of Staffing Change from FY 93 to FY 94

Non permanent staff previously off budget were included in the FY 94 budget request. Historically the department had not included those positions in budget requests and requested revised programs to move monies from contractual to personal services to pay for non perms.

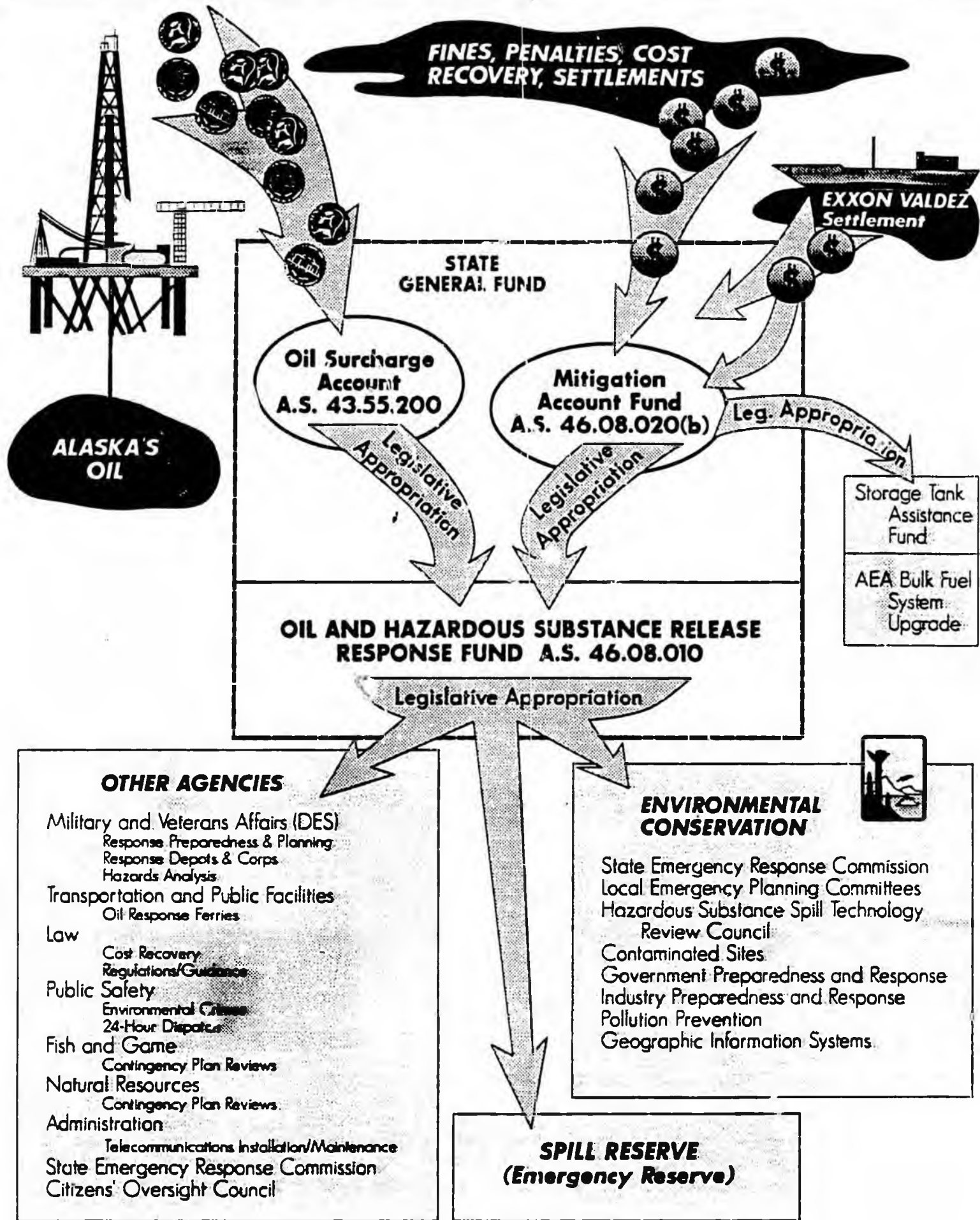
Non permanent staff are included in the FY 94 operating budget request as follows:

Director's Office - 1 Non Perm Student Intern
 Spill Prevention Planning and Management - 1 Non Perm Environmental Specialist
 Contaminated Sites - 3 Non Permanent Environmental Specialists
 Storage Tank Program - 2 Environmental Specialists (seasonal) and 1 Clerk Typist (seasonal)

A permanent position was added in the Contaminated Sites Program (Site Discovery) and a long term non permanent position in the Underground Storage Tank Program was brought on budget as a permanent part time position.

Regional budgets included an additional .4 FTEs not previously assigned to Spill Prevention and Response projects.

All general funds were eliminated leaving 165.2 in general fund match in the budget request.



SPILL RESERVE EXPENDITURES BY FISCAL YEAR

(in thousands)

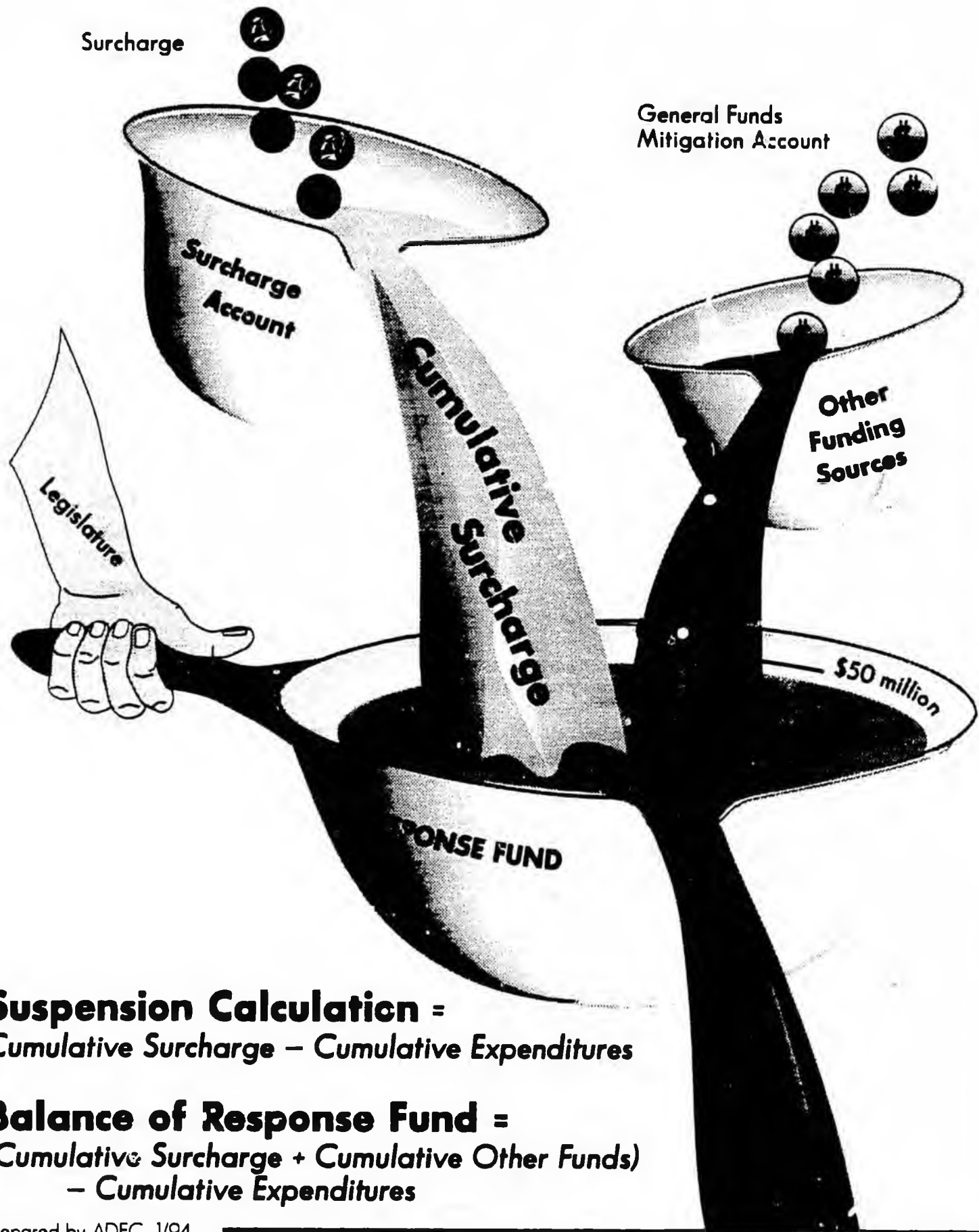
	FY 90	245.5
	FY 91	256.8
	FY 92	71.4
	FY 93	299.3
(to date 11/22)	FY 94	<u>272.5</u>
	TOTAL	1,145.5

*note: Expenditures for FY 94 include 156.7 for Project Chariot which will be reimbursed by a federal grant.

SPILL RESERVE AS A PERCENTAGE OF TOTAL RESPONSE FUND EXPENDITURES

0.9 %

SURCHARGE SUSPENSION vs. RESPONSE FUND BALANCE



Suspension Calculation =
Cumulative Surcharge – Cumulative Expenditures

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

Response Fund Summary as of November 5, 1983

	AS 43.55.230(b)	
	Calculation	Response Fund
Cummulative Surcharge Collected	112,085,145	109,200,000
Cummulative Expenditures	-127,180,873	-127,180,873
Difference	-15,105,728	-17,980,873
Cummulative Other Deposits		
General Fund	0	44,447,000
Program Receipts	0	30,000,000
Mitigation Account	0	5,007,800
Miscellaneous/Accounts Receivable	0	-3,048,952
Reserve For Encumbrances	0	-8,680,882
Reserve For Capital Appropriations	0	-3,181,125
Reserve for FY 84 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-8,302,318
Balance or Spill Reserve	-15,105,728	37,229,889

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

Calculation of Current Available Balance of Spill Reserve (in thousands)

June 30, 1993 Balance Forward of the Unreserved/Unobligated Spill Reserve (This number reflects the amount of spill reserve available that is not encumbered or reserved for prior year authorizations. This amount lapsed at the end of FY93 to the Response Fund and was available for appropriation in FY94)	27,084.1
FY94 Appropriation of 5 Cent Surcharge to the Response Fund	+ 26,700.0
FY94 Appropriation of Mitigation Account to the Response Fund	+ <u>661.2</u>
TOTAL AVAILABLE FOR FY94 APPROPRIATION	54,445.3
FY94 Appropriation DEC Budget	+ 11,513.6
FY94 Appropriation DEC - Other Agencies	+ 2,569.4
FY94 Capital Budget Appropriations	+ <u>2,774.0</u>
TOTAL FY94 APPROPRIATIONS	<u>16,857.0</u>
SPILL RESERVE AVAILABLE DURING FY94 (This number reflects the balance of the Response Fund after FY94 Appropriations are made by the Legislature.)	37,588.3
FY94 EXPENDITURES FROM SPILL RESERVE (This represents year-to-date (11/17/93) expenditures for emergency response to sites which pose an imminent and substantial threat to human health or the environment. A detailed listing of these sites is available. Please note that these are the only DEC expenditures made without legislative approval. Authority to expend funds from the spill reserve for emergency responses is found under AS 46.08.040(a)(1).)	- 155.2
SPILL RESERVE BALANCE AS OF 11/17/93	37,433.1

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

Calculation of Current Available Balance of Spill Reserve (In thousands)

June 30, 1993 Balance Forward of the Unreserved/Unobligated Spill Reserve (This number reflects the amount of spill reserve available that is not encumbered or reserved for prior year authorizations. This amount lapsed at the end of FY93 to the Response Fund and was available for appropriation in FY94.)	27,084.1
FY94 Appropriation of 5 Cent Surcharge to the Response Fund	+ 26,700.0
FY94 Appropriation of Mitigation Account to the Response Fund	+ <u>661.2</u>
TOTAL AVAILABLE FOR FY94 APPROPRIATION	54,445.3
FY94 Appropriation DEC Budget	+ 11,513.6
FY94 Appropriation DEC - Other Agencies	+ 2,569.4
FY94 Capital Budget Appropriations	+ <u>2,774.0</u>
TOTAL FY94 APPROPRIATIONS	<u>16,857.0</u>
SPILL RESERVE AVAILABLE DURING FY94 (This number reflects the balance of the Response Fund after FY94 Appropriations are made by the Legislature.)	37,588.3
FY94 EXPENDITURES FROM SPILL RESERVE (This represents year-to-date (11/17/93) expenditures for emergency response to sites which pose an imminent and substantial threat to human health or the environment. A detailed listing of these sites is available. Please note that these are the only DEC expenditures made without legislative approval. Authority to expend funds from the spill reserve for emergency responses is found under AS 46.08.040(a)(1).)	- 155.2
SPILL RESERVE BALANCE AS OF 11/17/93	37,433.1

Response Fund Summary as of November 5, 1993

Surcharge Calculation Per AS 43.55.230(b)	-18,106,728
Excess Collected over Appropriated	-2,887,145
General Fund	44,447,000 1
Program Receipts	30,000,000 2
Mitigation Account	5,007,800
Miscellaneous/Accounts Receivable	-3,049,852
Encumbrances	-8,690,862
Unobligated Capital Appropriations	-3,191,125
FY 94 Unobligated Operating Appropriations (Excluding Spill Reserve Appropriation)	-9,302,318
Spill Reserve	37,229,669

1 General Fund Deposit 1988 \$42,800,000

General Fund Deposit 1989 \$500,000

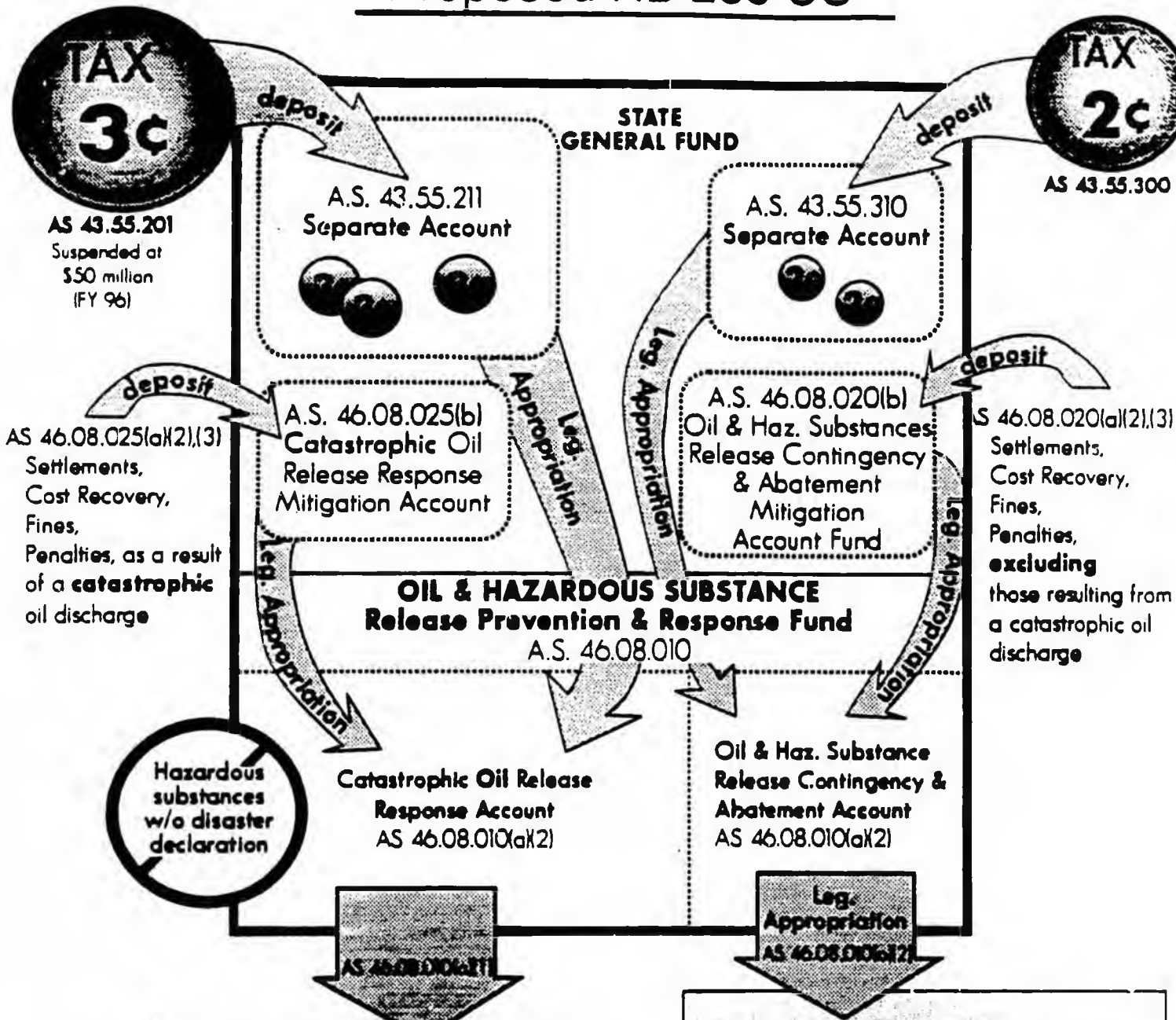
General Fund Deposit 1997 \$825,000

General Fund Deposit 1998 \$300,000

Beginning Fund Balance 1988 \$222,000

2 Excess Reimbursements 1988 and 1989

Proposed HB 238 CS



4,200,000 gallons!

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

Accessed **ONLY** in the event of a catastrophic oil spill - over 100,000 barrels AS 46.04.900(2)(a)
OR
Declaration of a disaster emergency by the Governor - oil and hazardous substances AS 46.04.900(2)(b)

~~RESTORATION ???~~

~~RESEARCH & DEVELOPMENT~~

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

3-22-94
DEC
Bob Poe

**Response Fund Restructuring Options
Comparison of Proposals For SB215**

	No Change From Existing Statute	CSSB 215 .025/.025 Entire Response Fund to Spill Account	.025/.025 Response Fund split equally	.03/.02 Proposal Response Fund Split 60/40	.03/.02 Proposal Entire Response Fund to Spill Account
Fiscal Year 1995					
Beginning Balance of Response Fund	\$63.2				
Beginning Balance of Spill Account		\$50.3	\$31.6	\$25.3	\$47.7
Beginning Balance of Abatement Account		\$12.9	\$31.6	\$37.9	\$15.5
Total .05 Surcharge Collected in FY95	\$26.2				
Total Spill Surcharge Collected in FY95		\$0.0	\$13.1	\$10.5	\$5.2
Total Abatement Surcharge Collected in FY95		\$13.1	\$13.1	\$15.7	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Amount of Prevention Program Under-Funded		(\$0.6)	\$0.0	\$0.0	\$0.0
Ending Balance of Response Fund	\$48.9				
Ending Balance of Spill Account		\$49.5	\$30.8	\$24.5	\$46.9
Ending Balance of Abatement Account		(\$0.6)	\$18.1	\$24.4	\$2.0
Suspension and Reimposition Calculation	(\$6.1)	\$49.8	\$44.2	\$35.3	\$52.5
Fiscal Year 1996					
Beginning Balance of Response Fund	\$75.1				
Beginning Balance of Spill Account		\$49.8	\$44.2	\$35.3	\$52.5
Beginning Balance of Abatement Account		\$12.5	\$31.2	\$40.1	\$17.7
Total .05 Surcharge Collected in FY96	\$25.3				
Total Spill Surcharge Collected in FY96		\$3.0	\$6.3	\$10.1	\$0.0
Total Abatement Surcharge Collected in FY96		\$12.7	\$12.7	\$15.2	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Amount of Prevention Program Under-Funded		(\$0.8)	\$0.0	\$0.0	\$0.0
Ending Balance of Response Fund	\$60.7				
Ending Balance of Spill Account		\$49.0	\$43.4	\$34.5	\$51.7
Ending Balance of Abatement Account		(\$1.4)	\$17.3	\$26.2	\$3.8
Suspension and Reimposition Calculation	\$4.5	\$52.3	\$50.0	\$44.9	\$52.0

**Response Fund Restructuring Options
Comparison of Proposals For SB215**

	No Change From Existing Statute	CSSB 215 .025/.025 Entire Response Fund to Spill Account	.025/.025 Response Fund split equally	.03/.02 Proposal Response Fund Split 60/40	.03/.02 Proposal Entire Response Fund to Spill Account
Fiscal Year 1997					
Beginning Balance of Response Fund	\$86.0				
Beginning Balance of Spill Account		\$52.3	\$50.0	\$44.9	\$52.0
Beginning Balance of Abatement Account		\$11.2	\$29.9	\$41.4	\$19.0
Total .05 Surcharge Collected in FY97	\$24.8				
Total Spill Surcharge Collected in FY97		\$0.0	\$0.0	\$7.4	\$0.0
Total Abatement Surcharge Collected in FY97		\$12.4	\$12.4	\$14.9	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Amount of Prevention Program Under-Funded		(\$1.7)	\$0.0	\$0.0	\$0.0
Ending Balance of Response Fund	\$71.2				
Ending Balance of Spill Account		\$51.5	\$49.2	\$44.1	\$51.2
Ending Balance of Abatement Account		(\$3.1)	\$15.6	\$27.1	\$4.7
Suspension and Reimposition Calculation	\$14.2	\$51.8	\$49.5	\$51.8	\$51.5
Fiscal Year 1998					
Beginning Balance of Response Fund	\$96.0				
Beginning Balance of Spill Account		\$51.8	\$49.5	\$51.8	\$51.5
Beginning Balance of Abatement Account		\$9.3	\$28.0	\$42.0	\$19.5
Total .05 Surcharge Collected in FY98	\$23.8				
Total Spill Surcharge Collected in FY98		\$0.0	\$3.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98		\$11.9	\$11.9	\$14.3	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Amount of Prevention Program Under-Funded		(\$2.4)	\$0.0	\$0.0	\$0.0
Ending Balance of Response Fund	\$80.7				
Ending Balance of Spill Account		\$51.0	\$48.7	\$51.0	\$50.7
Ending Balance of Abatement Account		(\$5.4)	\$13.3	\$27.2	\$4.8
Suspension and Reimposition Calculation	\$22.4	\$51.3	\$52.0	\$51.3	\$51.0

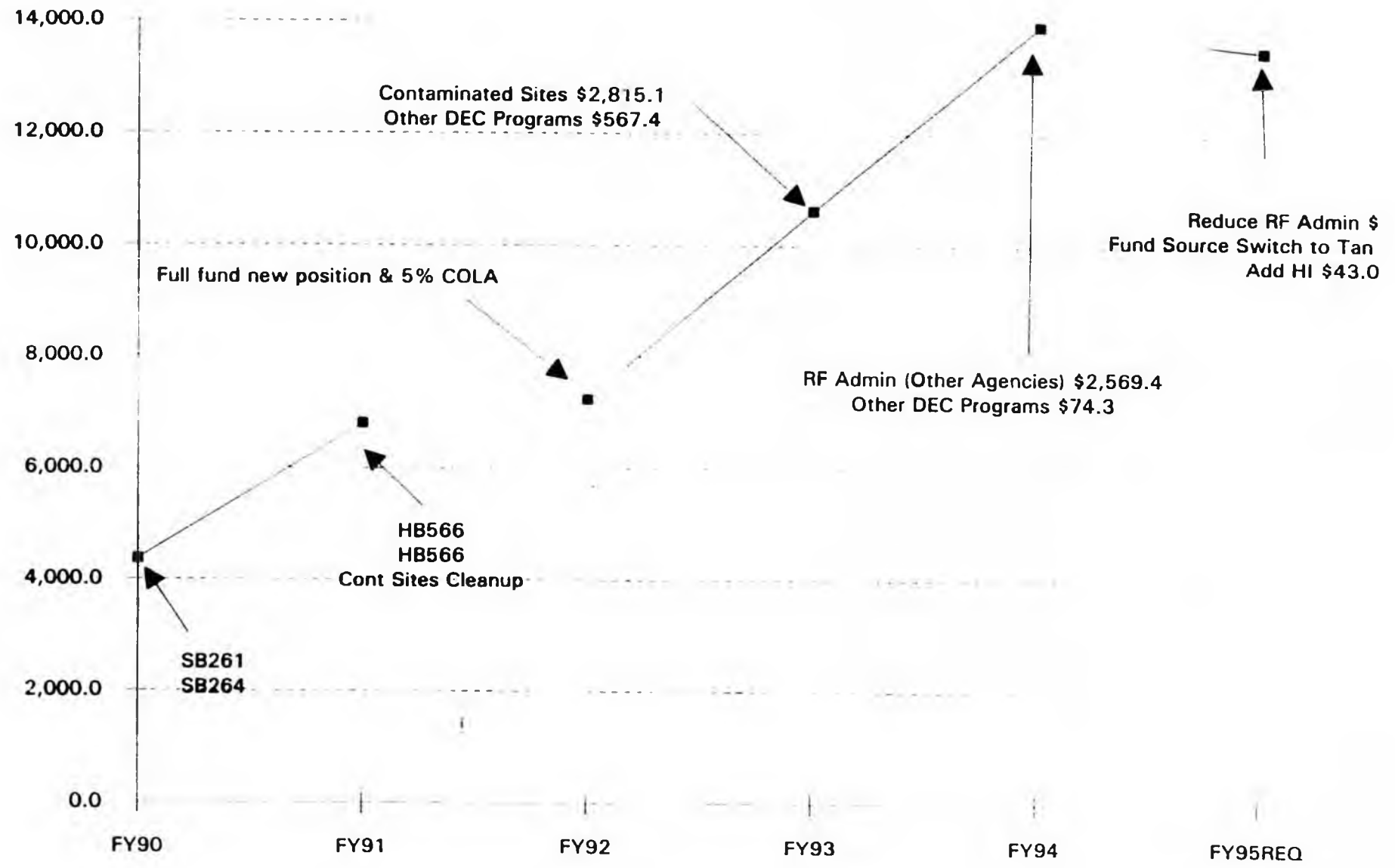
**Response Fund Restructuring Options
Comparison of Proposals For SB215**

	No Change From Existing Statute	CSSB 215 .025/.025 Entire Response Fund to Spill Account	.025/.025 Response Fund split equally	.03/.02 Proposal Response Fund Split 60/40	.03/.02 Proposal Entire Response Fund to Spill Account
Fiscal Year 1999					
Beginning Balance of Response Fund	\$104.5				
Beginning Balance of Spill Account		\$51.3	\$52.0	\$51.3	\$51.0
Beginning Balance of Abatement Account		\$6.5	\$25.2	\$41.5	\$19.1
Total .05 Surcharge Collected in FY99	\$22.4				
Total Spill Surcharge Collected in FY99		\$0.0	\$0.0	\$0.0	\$4.5
Total Abatement Surcharge Collected in FY99		\$11.2	\$11.2	\$13.4	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Amount of Prevention Program Under-Funded		(\$3.3)	\$0.0	\$0.0	\$0.0
Ending Balance of Response Fund	\$88.8				
Ending Balance of Spill Account		\$50.5	\$51.2	\$50.5	\$50.2
Ending Balance of Abatement Account		(\$8.7)	\$10.0	\$26.3	\$3.9
Suspension and Reimposition Calculation	\$28.8	\$50.8	\$51.5	\$50.8	\$54.9
Total Prevention Program Underfunding		(\$8.7)	\$0.0	\$0.0	\$0.0
Total Spill Account Surcharge Paid	\$122.5	\$3.0	\$22.4	\$28.0	\$9.7
Total Abatement Account Surcharge Paid		\$61.3	\$61.3	\$73.5	\$73.5
Total Surcharges Paid	\$122.5	\$64.2	\$83.7	\$101.5	\$83.2

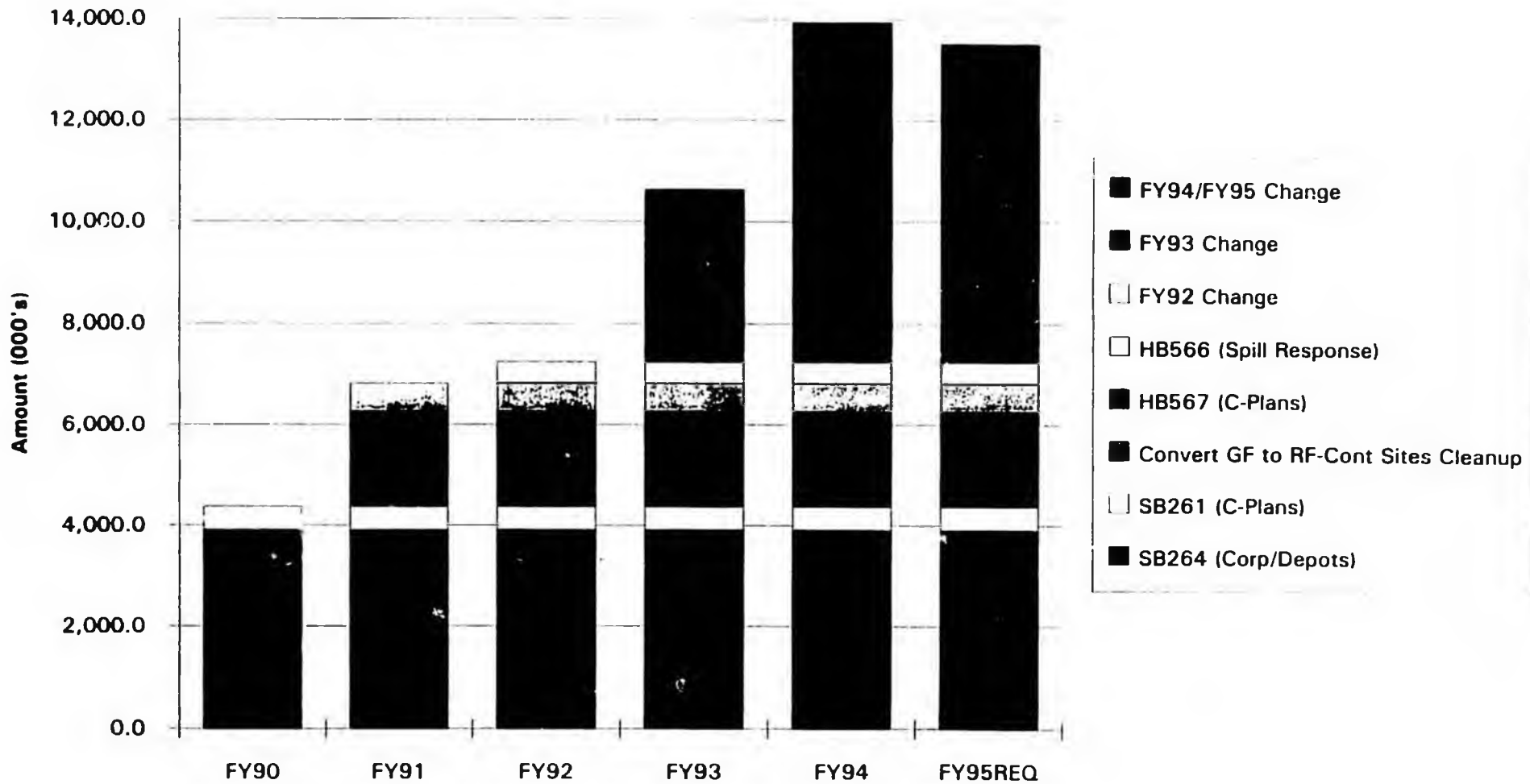
**Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data**

	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	\$8,517.3	\$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

Department of Environmental Conservation Response Fund Operating Budget Growth



**Department of Environmental Conservation
Response Fund Operating Budget Growth**



Funding Auth	Operating Budget Items			Comments
	RF	GF	OTHER	
FY90	4,371.8			
	3909.9			SB264(Corps & Depots)
	461.9			SB261(C-Plans)
FY81	2,439.0			
	518.0	(518.0)		Convert GF to RF for Cont Sites cleanup
	1,371.0			HB567(C-Plans)
	550.0			HB566 (Spill Response)
FY92	434.3			
	485.2			Full fund new fiscal note positions & 5% COLA
	182.1	(182.1)		Convert GF to RF for SPAR Director component
	(233.0)			Move Kenai cleanup to front of budget(\$280.0), \$47.0 other miscellaneous
FY93	3,382.5			
	1,582.7			Contaminates Sites conversion from Non-operating to operating budget
	639.1	(639.1)		IAS Component conversion from GF to RF
	181.3	(181.3)		SPAR Director Component conversion from GF to RF
	102.3			SRO(Spill Response Office) component increment for response preparedness, safety & equipment
	(355.3)			SPPM(Spill Prevention/Planning Mgt) component -reduce projects/delete 1PFT to STR Council
	1,232.4			Contaminated Sites
FY94	3,312.4			
	101.5			IAS Component
	123.0			EQ Director Component-Pollution Prevention
	186.5			EQ Monitoring & Lab Component
	108.0			Storage Tanks
	224.0			Increment to SouthCentral Region for Cont Sites & Spill Response
	2,569.4			Response Fund Administration Component-other Agency funding
FY95 Request	(417.4)			
	(358.4)			Reduce RF Admin Component \$358.4
	(102.0)	102.0		Fund Source switch to Tanks \$102.0
	43.0			Increase Health Insurance - all Components
RF Total	13,522.6			Less Projected Spill Reserve \$49,686.8

**FY 93 SPILLS WHERE RESPONSE FUND WAS ACCESSED
(DOES NOT INCLUDE PERSONAL SERVICES)**

SPILL NAME	RF USE (200-500)
Rezanof Drive Drum	882
Noyes Slough Drum	1447
Rifle Range Drum	1799
Seward Soil Site	1441
South Central Comm RB	148
Aniak Lift Station	61336
Anchorage Bluff	288
Neka Bay Fish Kill	36115
Cinnabar LP	9266
Thane Road	6210
Kodiak Landslide	6681
Kake Tribal Log	3259
McDowell Sterling	14955
Trident Dock	832.00
Klawock Ammonia	836.00
Bethel BIA	14607.00
Donna's Sunchaser	457.00
Talkeetna Train Derail	374.00
Village of Wainwright	842.00

h:\home\dank\95budget\95sum\rfsum.xls
Response Fund Appropriations
Department of Environmental Conservation
 3/1/94

Operating Budget Only

Funding Auth	Operating Budget Items			Comments
	RF	GF	OTHER	
FY90	4,371.8			
	3909.9			SB264(Corps & Depots)
	461.9			SB261(C-Plans)
FY91	2,439.0			
	518.0	(518.0)		Convert GF to RF for Cont Sites cleanup
	1,371.0			HB567(C-Plans)
	550.0			HB566 (Spill Response)
FY92	434.3			
	485.2			Full fund new fiscal note positions & 5% COLA
	182.1	(182.1)		Convert GF to RF for SPAR Director component
	(233.0)			Move Kenai cleanup to front of budget(\$280.0), \$47.0 other miscellaneous
FY93	3,382.5			
	1,582.7			Contaminates Sites conversion from Non-operating to operating budget
	639.1	(639.1)		IAS Component conversion from GF to RF
	181.3	(181.3)		SPAR Director Component conversion from GF to RF
	102.3			SRO(Spill Response Office) component increment for response preparedness, safety & equipment
	(355.3)			SPPM(Spill Prevention/Planning Mgt) component -reduce projects/delete 1PFT to STR Council
	1,232.4			Contaminated Sites
FY94	3,312.4			
	101.5			IAS Component
	123.0			EQ Director Component-Pollution Prevention
	186.5			EQ Monitoring & Lab Component
	108.0			Storage Tanks
	224.0			Increment to SouthCentral Region for Cont Sites & Spill Response
	2,569.4			Response Fund Administration Component-other Agency funding
FY95 Request	(417.4)			
	(358.4)			Reduce RF Admin Component \$358.4
	(102.0)	102.0		Fund Source switch to Tanks \$102.0
	43.0			Increase Health Insurance - all Components
RF Total	13,522.6			Less Projected Spill Reserve \$49,686.8

Please notify

Wayne Coleman, Radioak
496-3916

about Telecom need
to be rescheduled

CALL HIM

OR

MAKE SURE HE
IS AWARE OF

3/11/94 SFC MTC

Notified - left message on
answering machine re

**FY 93 SPILLS WHERE RESPONSE FUND WAS ACCESSED
(DOES NOT INCLUDE PERSONAL SERVICES)**

SPILL NAME	RF USE (200-500)
Rezanof Drive Drum	882
Noyes Slough Drum	1447
Rifle Range Drum	1799
Seward Soil Site	1441
South Central Comm RB	148
Aniak Lift Station	61336
Anchorage Bluff	288
Neka Bay Fish Kill	36115
Cinnabar LP	9266
Thane Road	6210
Kodiak Landslide	6681
Kake Tribal Log	3259
McDowell Sterling	14955
Trident Dock	832.00
Klawock Ammonia	836.00
Bethel BIA	14607.00
Donna's Sunchaser	457.00
Talkeetna Train Derail	374.00
Village of Wainwright	842.00

**FY 93 USE OF DEC TERM CONTRACTORS FOR
SPILL RESPONSE OVERSIGHT OR CLEANUP**

SPILL NAME	AMOUNT ENCUMBERED FOR TERM CONTRACT
Pillar Creek Drum and Disposal	11117.83
Municipality of Anchorage Barrels 11	2352.50
Umiat	15367.00
Klawock Chlorine Leak	28786.46
Peninsula Circle Drums	500.00
79th and Hartzell Drums	1000.00
Dalton Highway Drums	7600.00
Little Rabbit Creek Drums	2133.00
Neelon Drum Site	9896.00
Bradley River Barge	75661.00
Cabin Lake Road Drums	27916.00

**STORAGE TANK ASSISTANCE FUND
FUNDING SOURCE HISTORY**

FY91	\$6,000,000 initial capitalization of fund from general fund \$525,578 tank registration receipts
FY92	no new appropriations to fund for FY92 \$509,406 tank registration receipts
FY93	\$5,000,000 appropriated to fund from mitigation account \$481,150 tank registration receipts
FY94	\$4,991,500 appropriated to fund from mitigation account \$344,246 tank registration receipts to date
FY95 PROPOSED	\$5,924,500 appropriated to fund from mitigation account \$380,000 anticipated in tank registration receipts

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

**MARCH 1, 1994 SENATE FINANCE COMMITTEE HEARING ON CS SB215 ("U")
RELATING TO THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
STATEMENT - JOHN SANDOR, COMMISSIONER, DEPT. OF ENVIRON. CONS.**

Madam Chair, I appreciate the opportunity to testify on this proposed legislation. The Department appreciates the Legislature's closely examining 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 continue to work with legislators and committee staffs in search for a consensus approach and common goals which will assure a strong prevention program to reduce the risks of oil and hazardous substance spills, and a strong response program which will leave no doubt as to the State of Alaska's strong commitment to protect the environment, people and communities from the adverse impacts of such spills.

I want to reiterate 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 released.

I believe the Senate Resources subcommittee workshop involving representatives of interested parties at the table was especially productive. All parties presented important concerns which I hope the Committee will address. One of the major concerns was the shift of DEC General Funding to Fee Receipts. In FY 91, 61% of DEC's funding came from General Funds; now it is 29%.

Madam Chair, I want to again 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.

Madam Chair, 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.

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 SB215 is also presented.

Madam Chair, I also am concerned with the present Committee Substitute's requirement that the Governor issue a formal Administrative Order within five days of DEC's reporting such spills to the Governor, before work could continue on oil spills. The Department received over 2,500 reports of spills which resulted in over 800 responses within the last year. Ten of these spills were over 10,000 gallons. In addition to the potential delays in effective response, there are liability questions raised if an effective response is not continued and ground water, fishing or other resources are damaged as a result of delays or decisions not to proceed with effective clean-up action. We suggest adoption of the language we proposed at the Senate Resource Committee's February 11 workshop.

I must also point out that in the present Committee Substitute, the current balance of the Response Fund of 37.4 million is totally allocated to the Catastrophic Spill Account. Since a large percentage of these funds originated from General Funds, and not "nickels", we believe this fund should be split between the prevention/operations and catastrophic spill accounts.

Madam Chair, I made reference to several 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: 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; the ARCO North Slope spill which was discovered the morning of December 30, 1993; the Overseas Ohio tanker vessel which hit an iceberg in Prince William Sound just 25 miles south of Valdez on January 2nd, 1994; the Overseas Washington tanker's loss of full power during its approach to the berth in Cook Inlet on February 17, 1994; and the recent Los Angeles Earthquake which resulted in a major crude oil pipeline spill as well as hazardous substance releases. We will continue to have oil and hazardous substance spills, and must be prepared to effectively respond to them.

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.

Madam Chair, the Administration wants 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. A split funding formula which would allocate no less than 3 cents for the prevention, contingency planning and operations programs would help achieve that objective.

Thank you for the opportunity to participate in this hearing.

FISCAL NOTE

STATE OF ALASKA
994 LEGISLATIVE SESSION

BILL NO. SB 215

Revision Date: _____
Title: Oil and Hazardous Substance Release
Response Fund
Sponsor: Senator Miller
Requestor: Senate Resources Committee

Department Affected: Environmental
Conservation
BRU: SPAR/Administrative Services
Component: All SPAR Components
Response Fund Administration

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

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

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

FUND SOURCE

1002 Federal Receipts						
003 GF Match						
004 GF	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0
1005 GF/Program Receipt						
1006 GF/MHTA						
Other						
TOTAL	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

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

Phone: 465-5010
Date: 2/24/94

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/24/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

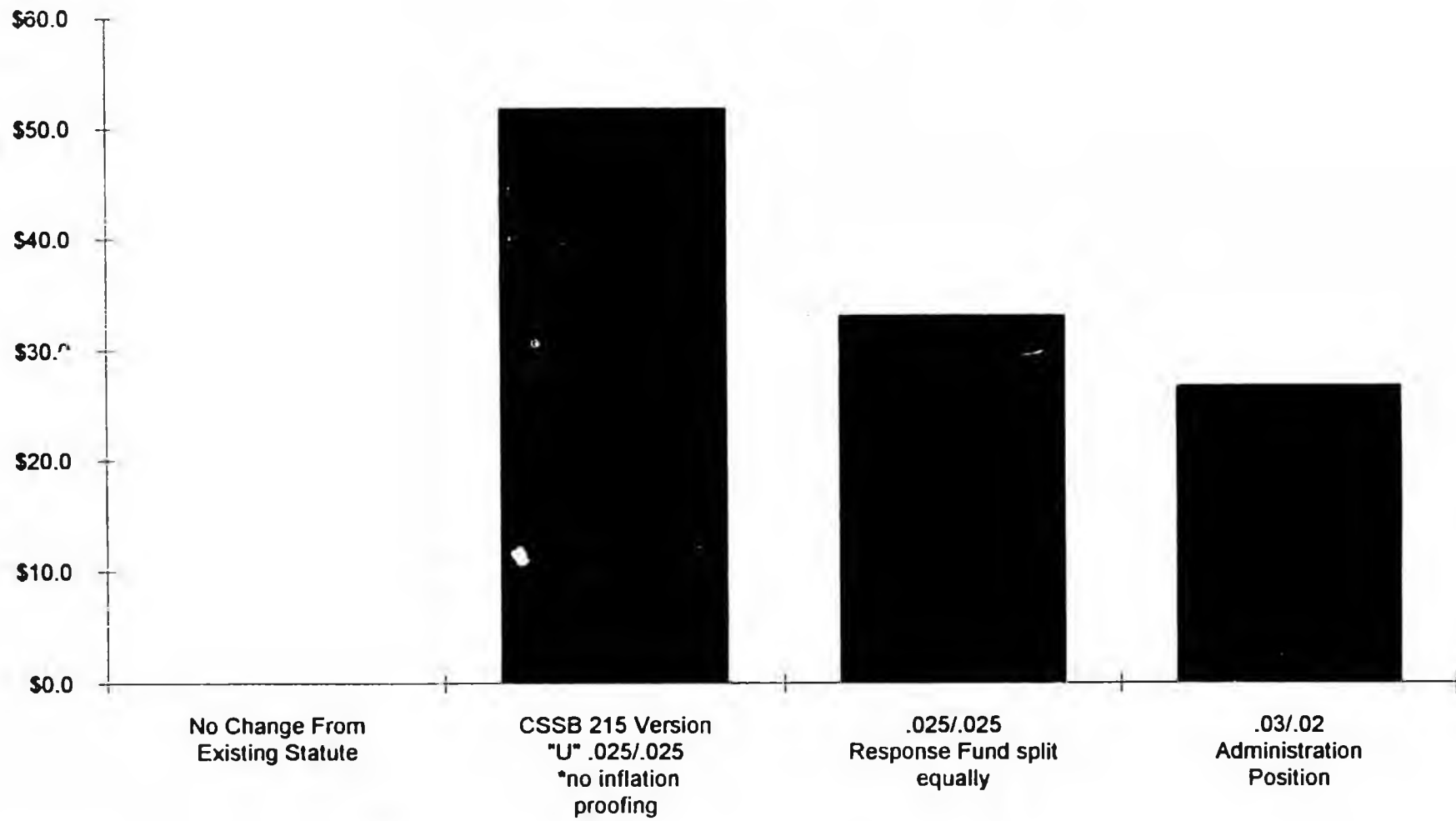
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	5-Year Total
Revenue from .025 surcharge	\$12,750.0	\$12,250.0	\$11,250.0	\$10,250.0	\$9,500.0	\$8,500.0	\$64,500.0
State Spill Prevention Program*	\$13,300.0	\$13,699.0	\$14,110.0	\$14,533.0	\$14,969.0	\$15,418.0	\$86,029.0
Difference	(\$550.0)	(\$1,449.0)	(\$2,860.0)	(\$4,283.0)	(\$5,469.0)	(\$6,918.0)	(\$21,529.0)
Total GF Cost	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0	\$21,529.0

* This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

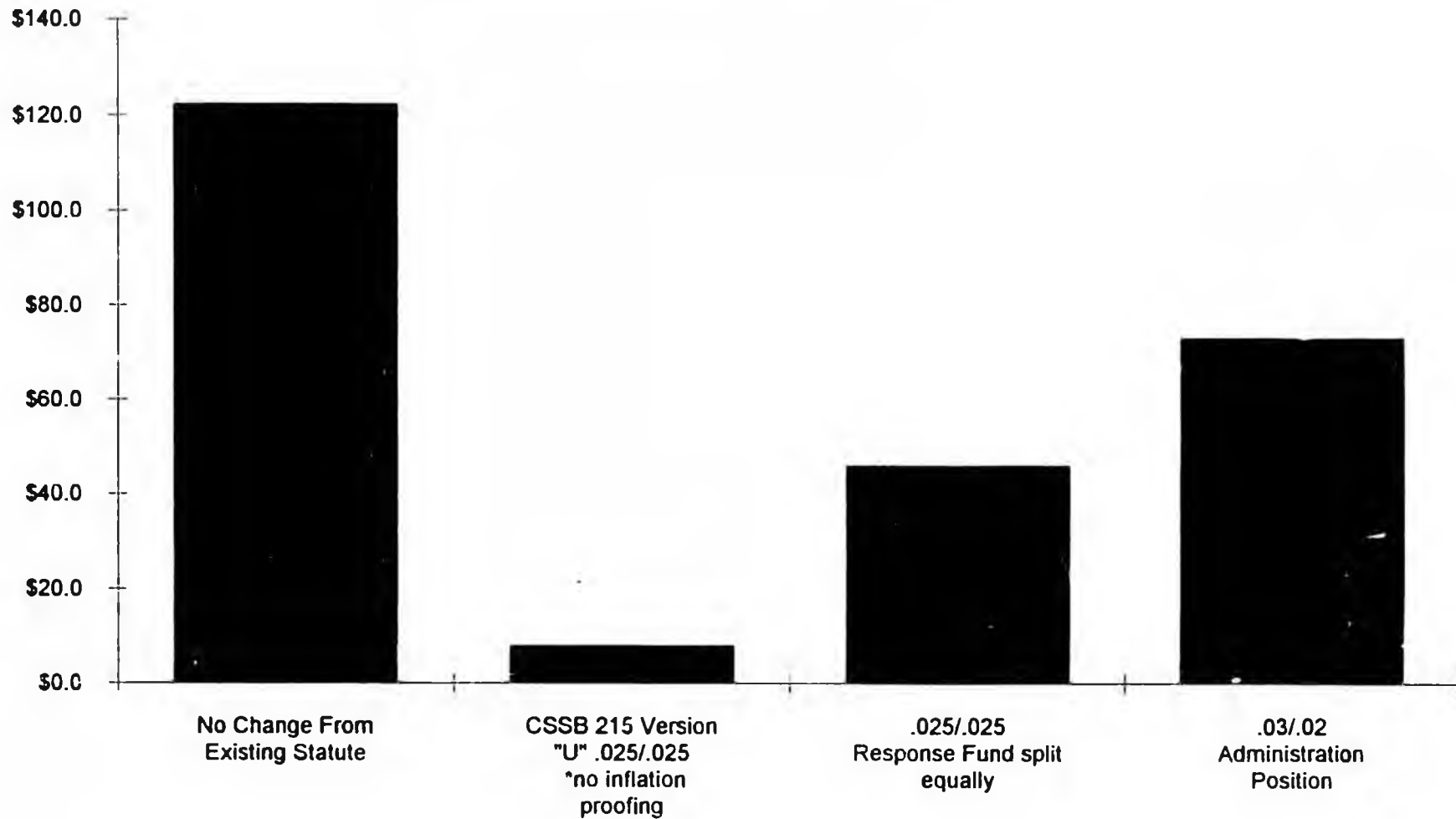
This legislation proposes to fund the state's entire spill prevention and response program from a 2.5 cent per barrel surcharge on crude oil produced in Alaska. Since SB215 Version "U" now allows the catastrophic account, established in SB215, to be used for both hazardous substance and oil spills, and there is no spill-size-threshold in order to access the catastrophic account, no non-catastrophic spill reserve need be established.

The figure for the 2.5 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue

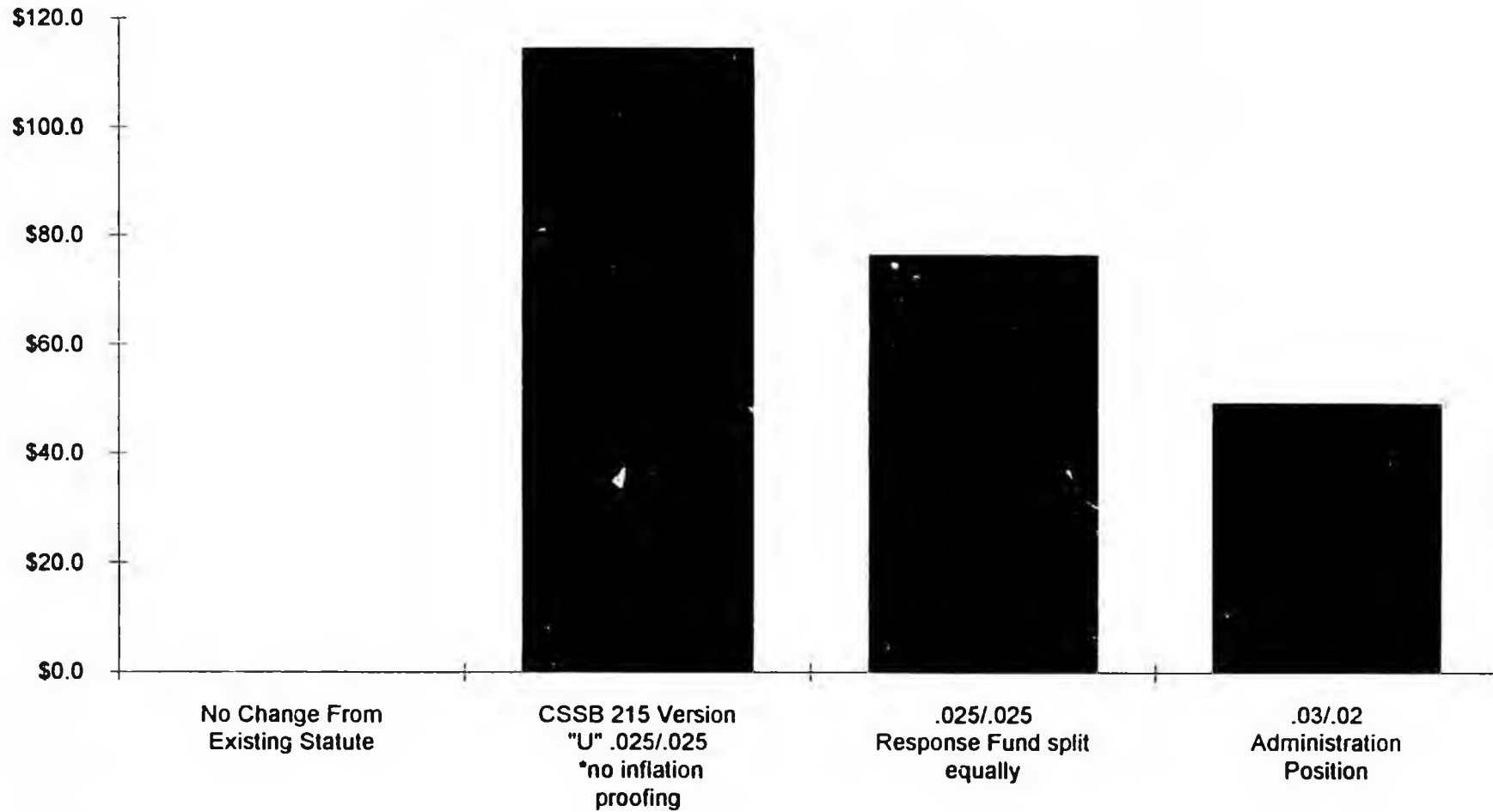
Response Fund Restructuring Options Initial Financial Benefit to Surcharge Payee



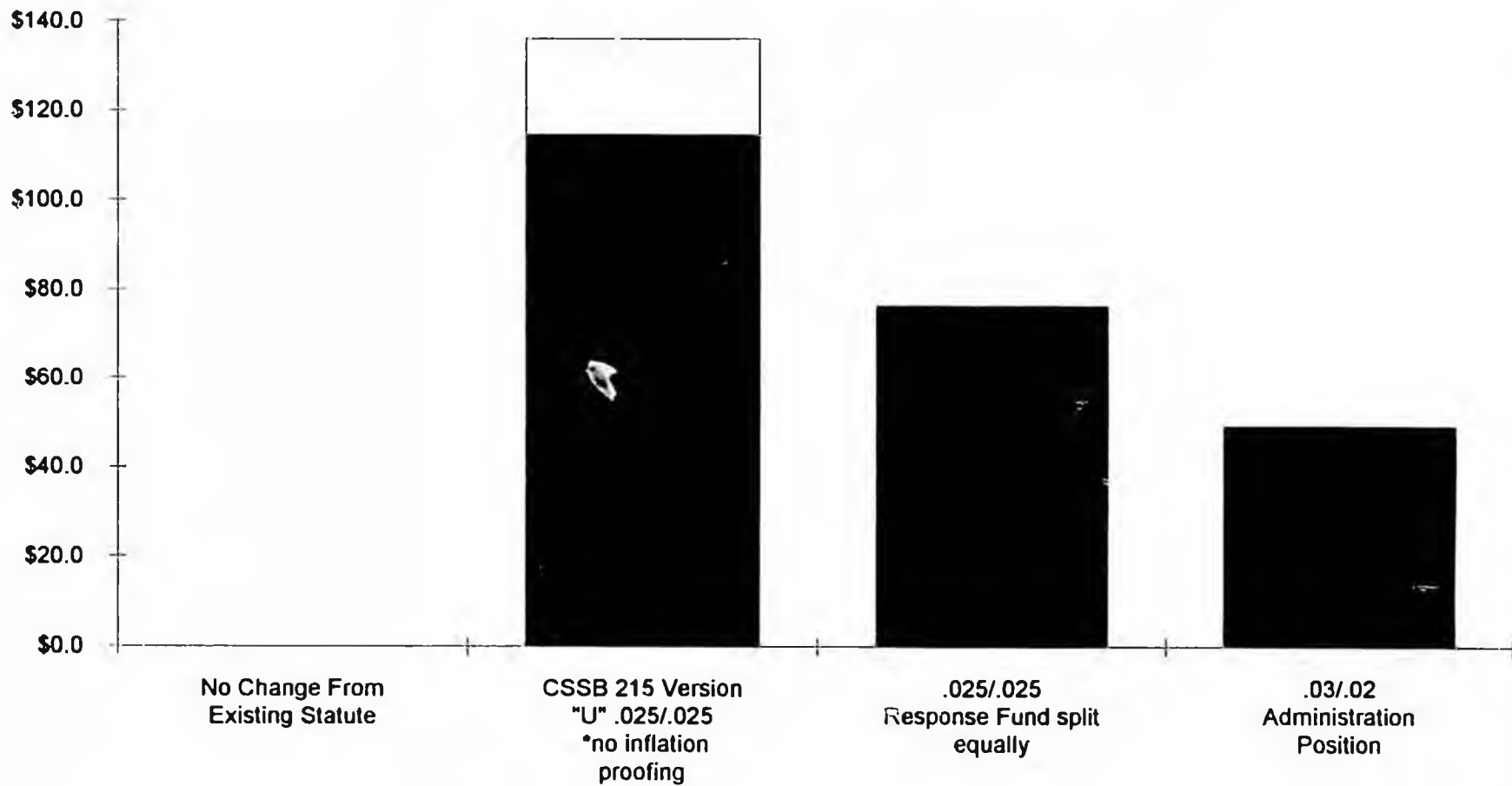
**Response Fund Restructuring Options
Total Net Cost to Surcharge Payee Over 5 Years**



**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**



	No Change From Existing Statute	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. *does not reflect inflation proofing	.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	\$51.8	\$33.1	\$26.8
Beginning Balance of Response Fund	\$63.2			
Beginning Balance of Spill Account		\$50.3	\$31.6	\$25.3
Beginning Balance of Abatement Account		\$12.9	\$31.6	\$37.9
Total .05 Surcharge Collected in FY95	\$26.2			
Total Spill Surcharge Collected in FY95		\$0.0	\$13.1	\$10.5
Total Abatement Surcharge Collected in FY95		\$13.1	\$13.1	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY96 Program				
Surcharge Tax Credit				
Ending Balance of Response Fund	\$48.9			
Ending Balance of Spill Account		\$50.3	\$31.6	\$24.5
Ending Balance of Abatement Account		(\$1.4)	\$17.3	\$24.4
Total Cost to Surcharge Payee	\$26.2	(\$39.0)	(\$7.2)	(\$0.9)
Suspension and Reimposition Calculation	(\$6.1)	\$50.6	\$45.0	\$35.3
Fiscal Year 1996				
Beginning Balance of Response Fund	\$75.1			
Beginning Balance of Spill Account		\$50.6	\$45.0	\$35.3
Beginning Balance of Abatement Account		\$11.7	\$30.4	\$40.1
Total .05 Surcharge Collected in FY96	\$25.3			
Total Spill Surcharge Collected in FY96		\$0.0	\$6.3	\$10.1
Total Abatement Surcharge Collected in FY96		\$12.7	\$12.7	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY97 Program				
Surcharge Tax Credit				
Ending Balance of Response Fund	\$60.7			
Ending Balance of Spill Account		\$50.6	\$45.0	\$34.5
Ending Balance of Abatement Account		(\$3.0)	\$15.7	\$26.2
Total Cost to Surcharge Payee	\$25.3	\$12.4	\$18.7	\$25.0
Suspension and Reimposition Calculation	\$4.5	\$50.9	\$51.8	\$44.9

	No Change From Existing Statute	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. *does not reflect inflation proofing	.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			
Beginning Balance of Spill Account		\$50.9	\$51.6	\$44.9
Beginning Balance of Abatement Account		\$9.6	\$28.3	\$41.4
Total .05 Surcharge Collected in FY97	\$24.8			
Total Spill Surcharge Collected in FY97		\$0.0	\$0.0	\$7.4
Total Abatement Surcharge Collected in FY97		\$12.4	\$12.4	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY98 Program				
Surcharge Tax Credit				
Ending Balance of Response Fund	\$71.2			
Ending Balance of Spill Account		\$50.9	\$51.6	\$44.1
Ending Balance of Abatement Account		(\$5.5)	\$13.2	\$27.1
Total Cost to Surcharge Payee	\$24.8	\$12.1	\$12.1	\$22.0
Suspension and Reimposition Calculation	\$14.2	\$51.2	\$51.9	\$51.8
Fiscal Year 1998				
Beginning Balance of Response Fund	\$96.0			
Beginning Balance of Spill Account		\$51.2	\$51.9	\$51.8
Beginning Balance of Abatement Account		\$6.9	\$25.6	\$42.0
Total .05 Surcharge Collected in FY98	\$23.8			
Total Spill Surcharge Collected in FY98		\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98		\$11.9	\$11.9	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY99 Program				
Surcharge Tax Credit				
Ending Balance of Response Fund	\$80.7			
Ending Balance of Spill Account		\$51.2	\$51.9	\$51.0
Ending Balance of Abatement Account		(\$8.6)	\$10.1	\$27.2
Total Cost to Surcharge Payee	\$23.8	\$11.6	\$11.6	\$14.0
Suspension and Reimposition Calculation	\$22.4	\$51.5	\$52.2	\$51.3

	No Change From Existing Statute	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. *does not reflect inflation proofing	.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			
Beginning Balance of Spill Account		\$51.5	\$52.2	\$51.3
Beginning Balance of Abatement Account		\$3.3	\$22.0	\$41.5
Total .05 Surcharge Collected in FY99	\$22.4			
Total Spill Surcharge Collected in FY99		\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY99		\$11.2	\$11.2	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY00 Program				
Surcharge Tax Credit				
Ending Balance of Response Fund	\$88.8			
Ending Balance of Spill Account		\$51.5	\$52.2	\$50.5
Ending Balance of Abatement Account		(\$12.7)	\$6.0	\$26.3
Total Cost to Surcharge Payee	\$22.4	\$10.9	\$10.9	\$13.1
Suspension and Reimposition Calculation	\$28.8	\$51.8	\$52.5	\$50.8
Total Net Cost - 5 Years (no discount)	\$122.5	\$8.0	\$46.1	\$73.3
Total Net Cost After Tax Effect (40% tax)	\$73.5	\$4.8	\$27.6	\$44.0
Total Tax Savings to Surcharge Payee Over Five Years When Compared to No Change to Existing Statute	\$0.0	\$114.6	\$76.4	\$49.2
Estimated 5-Year General Fund Fiscal Note	\$0.0	\$21.5	\$0.0	\$0.0
Total Cost to State of Alaska Over 5 Years	\$0.0	\$136.1	\$76.4	\$49.2



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 Committee Substitute for Senate Bill 215 (RES), Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund

Section 1 limits access to local impact grants and reduces the amount that can be granted to \$10 million per incidence. The response account can be used for grants for spills for which the response account can be accessed---catastrophic spills over 4.2 million gallons or spills for which the governor has approved use of the response account. All other grants are to come from the contingency and abatement account. Under AS 29.60.510(a)(1), local grants from the response fund are restricted to spills of 2,500 barrels or greater. It is unclear how this inconsistency in thresholds would affect grants---whether the contingency and abatement account can be used for spills less than 2,500 barrels and thus expands the grant program.

Section 2 amends AS 37.14.410 pertaining to reimbursements of expenses related to the *Exxon Valdez* clean up in light of the division of the fund into two accounts. Funds directed for deposit into the mitigation account are directed to the contingency and abatement mitigation account.

Section 3. This section imposes a new conservation surcharge of 2.5 cents per barrel used to fund the response account.

Section 4 carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge and directs the deposit of the 2.5-cents-per-barrel surcharge to the response account in the fund.

Section 5 is the new language proposed by the Departments of Law and Environmental Conservation (DEC) as a compromise for not splitting the current nickel surcharge. It corrects the problem in current statute that under calculates the response fund balance as a result of unanticipated general fund appropriations into the response fund to pay for *Exxon Valdez* clean up. This section provides for quarterly calculation of the fund balance 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 or the inflation proofed amount after July 1, 1994, the surcharge is suspended. If it is less than \$50 million, the surcharge continues or is reimposed, as appropriate.

Section 6 is the incentive or blackmail clause that provides that the surcharge is suspended if surcharge proceeds are not annually appropriated to the response account within the fund. This section was also rewritten in the Department of Law and DEC compromise to include mitigation account proceeds collected as a result of expenditures from the fund.

Section 7 provides for an additional 2.5-cent-per-barrel surcharge and directs the deposit of proceeds of the surcharge to the oil and hazardous substances release contingency and abatement account in the fund.

Section 8 expands the definition of surcharge as a result of the division of the surcharge.

Section 9 redefines the purpose of the response fund and the two accounts within the fund. The purpose of the new oil and hazardous substance release prevention and response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil (response account), and 2) for state "use during a response to a release or threatened release of oil or hazardous substance" and "to pay the expenses of making preparations for the possibility of a release or threatened release (contingency and abatement account)."

Section 10 divides the fund into two accounts---the response account and the oil and hazardous substance release contingency and abatement account.

Section 11 provides that appropriations into either account in the fund do not lapse.

Section 12. Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 31. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. This section allows the fund to be used for the operating expenses and purchase of equipment to be placed in the oil and hazardous substance response depots. However, the contingency and abatement account would be used to support these activities.

Section 13 pertains to the financing of the contingency and abatement account. Funds available for appropriation into the account 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 this account; interest on the fund; oil and hazardous substance release contingency and abatement mitigation account funds; and program receipts for the certification of laboratories and response action contractors. **There is no incentive or blackmail clause for the appropriation of any of these funds into the contingency and abatement account.**

Section 14 provides for the financing of the response account. Similar to section 13, funds available for appropriation into the account 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 this account and all fines and penalties and damages collected under AS 46.08.005-.080 would be paid into the response account regardless of the nature of the spill.

Section 15. This section eliminates the authority to use funds in the response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response

Regional Citizens' Advisory Council of Prince William Sound

preparedness; and 4) verification of financial responsibility. These functions are to be funded by the oil and hazardous substances release contingency and abatement account. In addition, the contingency and abatement account would be used to pay for response corps operating expenses and to purchase of equipment for response depots. **The contingency and abatement account would be used for all restoration of the environment regardless of the size or nature of a spill.**

Money from the response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, and 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release.

This section eliminates funding for the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Section 16 provides for the use of the fund to pay for the Alaska Department of Military and Veteran Affairs expenses related to the State Emergency Response Commission to the extent to which the costs are oil or hazardous substance related.

Section 17. Requires specific appropriation for federal matching or cost recovery from the response account or *all* uses of the oil and hazardous substances release contingency and abatement account---the account can not be used unless an appropriation has been made specifically for that purpose.

Section 18 provides that the contingency and abatement account can be used to fund the Citizens' Oversight Council on Oil and other Hazardous Substances upon a request of the Alaska Legislative Council.

Section 19. Provides for the use of the response fund for sub-catastrophic spills in cases in which the DEC commissioner reports to the governor within 120 hours the nature and extent of the spill, the response action taken, the expected costs of response, and other relevant information. The governor must respond with an administrative order within the same 120 hours approving use of the fund.

Sections 20 and 21 add the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill. It reduces some of the DEC auditing requirements for uses of the fund.

Sections 22 and 23 makes changes conforming to sections 25 and 27 for statutes related to state liens on property for the collection of of the cost of state response to releases or threatened releases.

Sections 24, 25 and 27. These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 25 provides a technically revised definition of "release" and section 24 substantially amends the definition of "threatened release." In current statute, the definition of threatened

Regional Citizens' Advisory Council of Prince William Sound

release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent.

A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property, including the environment." It is unclear if this narrowing of definition and additional proof of "reasonableness" could impact the ability of the state to recover costs of response to threatened releases.

Section 26 is a technical cross reference of definitions.

Section 28. Repealer section including:

- repeals the authority to use the response fund for the construction or refurbishment of Alaska Marine Highway vessels with spill response capabilities;
- repeals of the Conservation Surcharge on Oil replaced by this bill, AS 43.55.200-240;
- removes DEC's authority to collect fees for contingency plan review and financial responsibility filings under AS 44.46.025(a)(4) and (5); and
- repeals the ability of the governor to access the fund in cases in which the governor has declared a disaster emergency under AS 26.23.020(c) for purposes related to oil and hazardous substances; and
- 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.

Section 29 is a note to the reviser of statutes to change the name of the response fund in other sections of law as appropriate.

Section 30. 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 reimposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

Section 31 is a blackmail section that permanently suspends the 2.5 cent response fund surcharge if the balance of the current oil and hazardous substance release response fund is not appropriated to the response account by the Eighteenth Alaska State Legislature.

Regional Citizens' Advisory Council of Prince William Sound

Sections 32 is a transitional section relating to collection of surcharge proceeds that must have a drafting error because it make no sense as currently written.

Section 33 is the effective date clause for **bill section 16** which reflects the transfer of the Alaska Emergency Response Commission by Senate Bill 33.

Section 34 is the effective date clause of July 1, 1994 for all sections except section 16.



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 FAX (907) 277-4522

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

Testimony on the Proposed Senate Finance Committee Substitute for ~~SB 215~~ (RES), April 7, 1994

My name is Wayne Coleman. I am a member of the executive committee of the Prince William Sound Regional Citizens' Advisory Council (RCAC). Thank you for the opportunity to testify on the proposed finance committee substitute for Senate Bill 215. While RCAC by no means embraces this bill, we appreciate the recent efforts of the Senate Finance Committee in developing this significantly improved committee substitute. We believe that RCAC has sincerely offered constructive comments on this legislation. The changes in this draft reflect the committee's willingness to listen and respond, at least in part, to our concerns.

First, I would like to briefly comment on the improvements in the draft.

- RCAC does **not** support "splitting the nickel" but we do appreciate that the prevention account conservation surcharge is increased from 2.5 cents to 3 cents per barrel. This surcharge level should provide sufficient revenues to fund the Alaska Department of Environmental Conservation (DEC) current spill prevention programs at FY 94 levels through the year 2000, if and only if, the legislature can refrain from shifting its "questionable" uses of the respond fund to the prevention account.
- Compared to previous versions of the bill, the response account is accessible for spill response actions. This is an extremely important change. In addition, response action is not limited to initial first response.
- The response account inflation proofing provision that would have resulted in a substitution of general fund deposits for surcharge collections was deleted. RCAC is not opposed to inflation proofing the response account but the proposed method was unacceptable.
- The threshold for municipal impact grants continues to be releases of 2,500 barrels or more (as in current statute). We believe that it is appropriate for grants to be paid from the response account.
- Language in the previously proposed committee substitute authorizing use of the prevention account for response depot equipment and for the acquisition of assets for preparedness measures is clarified to better ensure that expenditures relate to oil and hazardous substances.

New or unchanged problems in SB 215:

- The Senate Finance Committee substitute authorizes use of the prevention account for underground storage tank grants. This is a new use of the response

Prince William Sound Regional Citizens' Advisory Council

fund. The current backlog of grant requests totals \$65 million and the application period, which was to sunset this fiscal year, is likely to be extended. Approximately \$5 million has been spent annually on this program, primarily from mitigation account proceeds. The problem with this new use of the prevention account is that 1) the 3-cent surcharge is insufficient to fund the underground storage tank grant program and maintain current spill prevention programs, 2) other sources of funds are available to underground storage tank owners, and 3) this action is inconsistent with the original stated intent of the proponents of response fund legislation---to provide greater equity in surcharge payments between crude and non crude operators.

- The entire estimated balance of the spill reserve is appropriated to the response account despite 1) approximately 42 percent of the balance originating from state general funds and not surcharge payments and 2) the current practice of paying the next fiscal year's prevention program appropriations prior to appropriating the unencumbered balance to the spill reserve. Forward funding prevention programs will become increasingly critical as North Slope production declines and the 3-cent surcharge becomes inadequate to fund prevention programs.
- In previous drafts, if the entire balance of the spill reserve was not appropriated by this 18th legislature or if the appropriation was vetoed or reduced by the governor, the 2-cent-response surcharge would be permanently suspended. In this most recent proposal, the 2-cent-response surcharge is suspended until June 30, 1995. While this is an improvement, at least 42 percent of the balance should go to the prevention account and/or FY 95 programs should be paid before appropriating the balance to the response account.
- Authorization for oil and hazardous substance response depot equipment purchases specifies the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services. The DEC also has authority for establishing response depots and is the more appropriate lead agency for oil and hazardous substance depots or the oil and hazardous substances component of all-hazards depots. The DMVA would be the lead agency on all-hazards depots.
- Cost recovery efforts for state expenditures would be paid from the response account while local government and school district cost recovery efforts would be paid from the prevention account. This is inconsistent with using the response account to pay for costs associated with releases or threatened releases.

Thank you for the opportunity to testify.



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 Senate Finance Committee on the Committee Substitute for Senate Bill 215 "i" draft March 25, 1994

My name is Wayne Coleman. I am a member of the executive committee of the Prince William Sound Regional Citizens' Advisory Council (RCAC). We appreciate the opportunity to testify and would like to reiterate the concerns expressed in our March 9 letter to Senator Drue Pearce and other Senate Finance Committee members. RCAC has two principal concerns regarding SB 215---access to response account funds in an efficient and effective manner in the event of spills and adequate funding for spill prevention and preparedness programs. However, the bill as currently drafted contains numerous other problems and inconsistencies.

We are extremely concerned about the changes in the "i" draft. In general, these changes reflect increased expenditures out of the contingency and abatement account that is already short funded. Specifically:

- we do not support paying costs of the under ground storage tank assistance program out of *Exxon Valdez* settlement payments directed to the contingency and abatement account because this further decreases funding for prevention programs;
- inflation proofing the balance of the response account while leaving the response account cap calculation at \$50 million effectively substitutes general fund dollars for surcharge payments---if the account is to be inflation proofed, the cap needs to be adjusted;
- while RCAC strongly supports the response depots and corps program, 1) these costs should come from the response account or only from the contingency and abatement account if the current response fund balance is divided evenly between the response account and contingency and abatement account and 2) section 15 and section 18 AS 46.08.040(a) (2)(C)(v) are too broadly worded---the current wording is a blank check to the Department of Military and Veterans' Affairs (DMVA) for all disaster related equipment and staff costs. While this is a real and valid need, at least 95 percent of these costs should more appropriately be paid from the general fund. Section 15 allows all disaster planning and preparedness to be paid from the contingency and abatement account. We believe oil and hazardous substances depot equipment costs should be appropriated from the response account to the Alaska Department of Environmental Conservation. The DMVA's record to date on response depots and corps is at best poor (see attached report).

Response Account Access

Under the Resource Committee CS, access to response account funds for spill response is limited to catastrophic oil spills (4.2 million gallons). The account can also be accessed for oil spills less than 4.2 million gallons or all hazardous substance spills, if within 120 hours the DEC commissioner prepares and provides the governor a written report. Within that same 120 hour period, an administrative order must be written approving the use of the funds.

As mentioned previously, what recourse is there if approval does not occur, the 120-hour time period is missed. In the cases of the thousands of relatively small, chronic spills in which the administrative order provisions may prove to be excessive, it is unclear how access to the contingency and abatement account for spill response would occur. As written, all uses of the contingency and abatement account are subject to legislative appropriation. As currently drafted, the abatement account can not be accessed for spill response. Though this probably does not matter since there will be insufficient funds in the account for spill response.

In none of the many hearings on SB 215 and the House companion HB 238 have any reasons been cited for limiting access to response funds to catastrophic spills. There is no evidence that the Alaska Department of Environmental Conservation (DEC) has misused response funds in the course of responding to spills. As a matter of fact, in the last five years less than one percent of response fund expenditures have been used by DEC to pay for spill response. All other expenditures of response funds have been by legislative appropriation for uses authorized in statute. A recent legislative audit has confirmed that the DEC has used response funds properly.

The administrative order provision is cumbersome, inefficient, bureaucratic and expensive. At the very least it should include a provision for paying out of the response account the Department of Law and the Office of the Governor for processing an average of three administrative orders per day---approximately 2,000 spills happen annually in Alaska. The DEC responds to about half of these and all except the *Exxon Valdez* spill are subcatastrophic.

A likely impact of this legislation is that DEC will respond to fewer spills despite the threat of these spills to the environment and public health. One of the complaints voiced by communities regarding DEC is that DEC does not access response funds to respond to spills often enough.

Spill Prevention and Preparedness Program Funding

The FY 95 governor DEC budget request represents continued funding at the FY 94 level. The FY 94 budget was a substantial reduction from earlier budgets. This level of funding has been termed by a recent legislative audit

Prince William Sound Regional Citizens' Advisory Council

of the response fund as already seriously cut--- "We wonder whether complacency is again taking root." While 2.5 cents may be a Senate caucus position, it is unreasonable, unfounded in reality, and seriously jeopardizes spill prevention and preparedness programs.

Opposition to dividing the fund is based on insufficient revenues generated by the 2.5 cent surcharge. If the proposal provided an adequate and predictable level of funding for spill prevention and preparedness programs, this might be reasonable. To date, however, bill proponents have offered little more than misinformation, bordering on slander, to justify the adequacy of their proposed level of funding. An unbiased review of the numbers clearly indicates that 2.5 cents is inadequate. The legislative audit confirms this point.

Other points to consider:

- Appropriation of the entire balance of the response fund into the response account makes uncertain the funding mechanism for FY 95 spill prevention programs.
- Restoration costs should be paid by the response account not the abatement account because restoration is part of spill clean up.
- The response account should be accessible for the purchase of equipment for response depots.
- Fines and penalties should not be counted against the \$50 million cap--- this is synonymous to using proceeds from a bank robbery to pay restitution.
- The committee substitute contains a blackmail section that permanently suspends the 2.5 cent response fund surcharge if the balance of the current oil and hazardous substance release response fund is not appropriated to the response account by the Eighteenth Alaska State Legislature. This is a rather extreme measure that seriously jeopardizes the existence of Alaska's response fund.
- This proposed committee substitute specifically removes the Alaska Department of Environmental Conservation authority to charge fees for review of contingency plans and financial responsibility filings. This was done to avoid the potential shifting of the costs of these services to non-crude oil and hazardous substances operators. However, the statutory requirements for these programs are not changed. Therefore, the deterioration in the level, quality, and timeliness of these services will be the cost to all oil and hazardous substance businesses. This provision should be removed because it is a blatant attempt to neutralize public opposition but does nothing to address the problem of inadequate funding.

Prince William Sound Regional Citizens' Advisory Council

- The committee substitute limits the amount of local grants to \$10 million per spill and restricts use of the response account for local grants for catastrophic spills---10,000 barrels or 4.2 million gallons or spills which the governor has approved use of the response account. All other grants are to come from the contingency and abatement account. Under AS 29.60.510(a)(1), local grants from the response fund are restricted to spills of 2,500 barrels or greater. It is unclear how this inconsistency in thresholds would affect grants---whether the contingency and abatement account can be used for spills less than 2,500 barrels and thus expands the grant program. It is likely, however, that there will be insufficient funds in the contingency and abatement account to make grants for spills less than 10,000 barrels.
- The impact on state cost recovery authority of the amended definition of "threatened release" remains unclear.



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 Senate Finance Committee on the
Committee Substitute for Senate Bill 215 (RES)
March 22, 1994**

My name is Wayne Coleman, vice-president of the Prince William Sound Regional Citizens' Advisory Council (RCAC). We appreciate the opportunity to testify and would like to reiterate the concerns expressed in our March 9 letter to Senator Drue Pearce and other Senate Finance Committee members. RCAC has two principal concerns regarding SB 215---access to response account funds in an efficient and effective manner in the event of spills and adequate funding for spill prevention and preparedness programs. However, the bill as currently drafted contains numerous other problems and inconsistencies.

Response Account Access

Under the Resource Committee CS, access to response account funds for spill response is limited to catastrophic oil spills (4.2 million gallons). The account can also be accessed for oil spills less than 4.2 million gallons or all hazardous substance spills, if within 120 hours the DEC commissioner prepares and provides the governor a written report. Within that same 120 hour period, an administrative order must be written approving the use of the funds.

As mentioned previously, what recourse is there if approval does not occur, the 120-hour time period is missed. In the cases of the thousands of relatively small, chronic spills in which the administrative order provisions may prove to be excessive, it is unclear how access to the contingency and abatement account for spill response would occur. As written, all uses of the contingency and abatement account are subject to legislative appropriation. As currently drafted, the abatement account can not be accessed for spill response. Though this probably does not matter since there will be insufficient funds in the account for spill response.

In none of the many hearings on SB 215 and the House companion HB 238 have any reasons been cited for limiting access to response funds to catastrophic spills. There is no evidence that the Alaska Department of Environmental Conservation (DEC) has misused response funds in the course of responding to spills. As a matter of fact, in the last five years less than one percent of response fund expenditures have been used by DEC to pay for spill response. All other expenditures of response funds have been by legislative appropriation for uses authorized in statute. A recent legislative audit has confirmed that the DEC has used response funds properly.

Prince William Sound Regional Citizens' Advisory Council

The administrative order provision is cumbersome, inefficient, bureaucratic and expensive. At the very least it should include a provision for paying out of the response account the Department of Law and the Office of the Governor for processing an average of three administrative orders per day--- approximately 2,000 spills happen annually in Alaska. The DEC responds to about half of these and all except the *Exxon Valdez* spill are subcatastrophic.

A likely impact of this legislation is that DEC will respond to fewer spills despite the threat of these spills to the environment and public health. One of the complaints voiced by communities regarding DEC is that DEC does not access response funds to respond to spills often enough.

Spill Prevention and Preparedness Program Funding

The FY 95 governor DEC budget request represents continued funding at the FY 94 level. The FY 94 budget was a substantial reduction from earlier budgets. This level of funding has been termed by a recent legislative audit of the response fund as "already seriously cut--- "We wonder whether complacency is again taking root." While 2.5 cents may be a Senate caucus position, it is unreasonable, unfounded in reality, and seriously jeopardizes spill prevention and preparedness programs.

Opposition to dividing the fund is based on insufficient revenues generated by the 2.5 cent surcharge. If the proposal provided an adequate and predictable level of funding for spill prevention and preparedness programs, this might be reasonable. To date, however, bill proponents have offered little more than misinformation, bordering on slander, to justify the adequacy of their proposed level of funding. An unbiased review of the numbers clearly indicates that 2.5 cents is inadequate. The legislative audit confirms this point.

Other points to consider:

- Appropriation of the entire balance of the response fund into the response account makes uncertain the funding mechanism for FY 95 spill prevention programs.
- Restoration costs should be paid by the response account not the abatement account because restoration is part of spill clean up.
- The response account should be accessible for the purchase of equipment for response depots.
- Fines and penalties should not be counted against the \$50 million cap--- this is synonymous to using proceeds from a bank robbery to pay restitution.

Prince William Sound Regional Citizens' Advisory Council

- The committee substitute contains a blackmail section that permanently suspends the 2.5 cent response fund surcharge if the balance of the current oil and hazardous substance release response fund is not appropriated to the response account by the Eighteenth Alaska State Legislature. This is a rather extreme measure that seriously jeopardizes the existence of Alaska's response fund.
- This proposed committee substitute specifically removes the Alaska Department of Environmental Conservation authority to charge fees for review of contingency plans and financial responsibility filings. This was done to avoid the potential shifting of the costs of these services to non-crude oil and hazardous substances operators. However, the statutory requirements for the programs are not changed. Therefore, the deterioration in the level, quality, and timeliness of these services will be the cost to all oil and hazardous substance businesses. This provision should be removed because it is a blatant attempt to neutralize public opposition but does nothing to address the problem of inadequate funding.
- The committee substitute limits the amount of local grants to \$10 million per spill and restricts use of the response account for local grants for catastrophic spills---10,000 barrels or 4.2 million gallons or spills which the governor has approved use of the response account. All other grants are to come from the contingency and abatement account. Under AS 29.60.510(a)(1), local grants from the response fund are restricted to spills of 2,500 barrels or greater. It is unclear how this inconsistency in thresholds would affect grants---whether the contingency and abatement account can be used for spills less than 2,500 barrels and thus expands the grant program. It is likely, however, that there will be insufficient funds in the contingency and abatement account to make grants for spills less than 10,000 barrels.
- The impact on state cost recovery authority of the amended definition of "threatened release" remains unclear.

5B 215

My name is Wayne Coleman, I am a member of the Executive Committee of the Regional Citizens Advisory Council (RCAC) of Prince William Sound. I am the Kodiak Island Borough's representative on that Council.

The RCAC continues to stress grave concerns regarding both the process for and the intent of this bill. Inter Alia the all too fast-track of this bill leaves little time for public scrutiny. Additionally the process, such as delaying the start of this hearing today, really constrains citizen's input because most of us are busy trying to make a living and we do not have the luxury of spending an inordinate amount of time on these issues.

We have previously testified to this committee and to other Senate and House committees regarding this issue. Our concerns are a matter of record and I would urge committee members to review and seriously consider the information provided by the RCAC. Accordingly I will not categorically reiterate out relative and sincere concerns at this time.

I want to point out that the scorecard to date is running more than 10 to 1 in opposition to this bill and the various versions rendered by both bodies of the Legislature. It is basically the public (10) who would be adversely impacted by this bill to the industry (1) who would benefit.

One additional thing to consider: The administration is presently proposing a motor fuel tax increase from the current \$3.36 per barrel to \$10.50 per barrel rate. This higher rate equates to TWO HUNDRED TEN (210) NICKELS. Why is the Legislature proposing a reduction of a part of a NICKEL for the producers while there is the potential to increase the levy by ONE HUNDRED FORTY THREE NICKELS (67 current to 210 proposed) for consumers.

Thank You for the opportunity to again be a part of this process, at least by accepting this written testimony, even though the time restrictions this date precluded my oral participation.



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."

Committee Substitute for Senate Bill 215 (RES)

The Committee Substitute (CS) for Senate Bill (SB) 215 (RES) makes three fundamental changes to the Oil and Hazardous Substance Release Response Fund (OHSRRF)---the CS 1) restricts uses of the fund; 2) divides the fund into two accounts, the response account and the contingency and abatement account; and 3) changes the method for calculating the balance of the fund.

The committee substitute incorporates language changes the method for calculating the \$50 million cap on the response fund balance and the manner in which the surcharge is imposed and suspended.

The incorporation of this language constitutes at least a \$52 million reduction in North Slope oil producers' surcharge payments in the near term. In addition, dividing the surcharge into two, 2.5-cent accounts is worth an additional approximately \$22 million to surcharge payers. This results from insufficient funding of DEC spill prevention and response programs for fiscal years 95 through 2000. Therefore, the direct cost of this proposal in surcharge payments to the state of Alaska is approximately \$74 million.¹ Indirect costs resulting from impacts of losing prevention programs may be considerably higher.

The committee substitute contains a blackmail section that permanently suspends the 2.5 cent response fund surcharge if the balance of the current oil and hazardous substance release response fund is not appropriated to the response account by the Eighteenth Alaska State Legislature.

This overview discusses the principal features of the proposed CSSB 215 (RES). Sections of the bill are included to facilitate reference.

Purposes of the Fund

The purpose of the new oil and hazardous substance release prevention and response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil (response account), and 2) for state "use during a response to a release or threatened release of oil or

¹This estimate is based on a 1) November 5, 1993 spreadsheet by the Office of the Governor, Office of Management and Budget which showed the statutory calculation of the response fund at -\$15.1 million while the actual balance is \$37.2 million. and 2) an estimate of the annual budget shortfall based on the DEC fiscal note for SB 215 (2/24/94). Fiscal note calculations hold the DEC, Division of Spill Prevention and Response (SPAR) at FY 94 levels through FY 2000. These budgets reflect reductions from prior years.

hazardous substance" and "to pay the expenses of making preparations for the possibility of a release or threatened release (contingency and abatement account)." The purposes section in this draft is relatively unclear compared to current statute. [section 9]

"Two-and-a-Half-Cents" Accounts

The proposal divides the new fund into two accounts. The "catastrophic oil release account" referred to in draft committee substitutes is now called the "response account." This new name reflects the expanded use of the account to include hazardous substances and the ability to access the fund for subcatastrophic spills if approved by the governor. While the Senate Resources Committee expanded the use of the response fund to include hazardous substance response, this change is not reflected in section 19, "use of the balance of the response account."

The response account would receive 2.5 cents of the surcharge. Uses of the response account would be restricted to spill response [sections 15 and 19]. When the \$50 million cap is reached, this 2.5 cent portion of the surcharge would be suspended [section 5]. The committee substitute inflation proofs the \$50 million response account [section 5].

Spill response for all spills less than 100,000 barrels or 4.2 million gallons would be paid for from the contingency and abatement account unless the DEC commissioner requests and receives within 120 hours an administrative order from the governor approving use of the response fund. **If this approval does not occur, the 120-hour time period is missed, or in the cases of the thousands of relatively small, chronic spills in which the administrative order provisions may prove to be excessive, it is unclear how access to the contingency and abatement account for spill response would occur. As written, all uses of the contingency and abatement account are subject to legislative appropriation.**

Similar to earlier drafts, the purpose and name of the "oil and hazardous substances release contingency and abatement account" remains the same. The **contingency and abatement account** would receive 2.5 cents of the 5-cent surcharge [section 7]. All funding for spill prevention programs would be from this account [section 15]. This 2.5-cent surcharge would be paid indefinitely with no capping mechanism.

The primary flaws of this proposal are that the 1) 2.5-cent-per-barrel surcharge is insufficient to fund DEC spill prevention, preparedness, clean up and response programs and 2) despite the Senate Resources Committee attempt to remedy the problems imposed by restricting access to the response fund based on spill size, the state's ability to respond to most spills is still significantly hampered. Funding for prevention programs is insufficient with current oil production levels and the problem becomes more acute as North Slope production declines. The proposal

would force a continued reduction in DEC programs or the supplementing of general fund money at the same time state revenues are also declining.

Fiscal Impact

According to a Alaska Department of Environmental Conservation (DEC) analysis and fiscal note, the 2.5 cent account is insufficient to fund the department's core prevention and response programs. This analysis was conducted using the DEC's FY 94 budget, which is significantly reduced from prior years. According to DEC, changing the allocation of surcharge revenues to provide 3 cents of each nickel for spill preparedness, prevention, and clean up programs is still insufficient.

Changing how the fund balance is calculated and appropriating the balance of the fund to the response account is worth \$52 million to surcharge payers. In addition, another approximately \$22 million less in surcharge payments occurs from insufficient funding of DEC spill prevention and response programs for fiscal years 95 through 2000. Therefore, the direct cost to the state of Alaska of this proposal is at least \$74 million. It is unclear how FY 95 prevention and response programs will be paid from the contingency and abatement account if the balance of the current Oil and Hazardous Substance Release Response Fund is paid to the response account [sections 31 and 32, though section 32 appears to have a drafting error which when fixed would appropriate half of FY 94 surcharge proceeds to the contingency and abatement account].

This proposed committee substitute specifically removes the Alaska Department of Environmental Conservation authority to charge fees for review of contingency plans and financial responsibility filings [section 28]. This was done to avoid the potential shifting of the costs of these services to non-crude oil and hazardous substances operators. However, the statutory requirements for these programs are not changed. Therefore, the deterioration in the level, quality, and timeliness of these services will be the cost to all oil and hazardous substance businesses.

Definition of Threatened Release

In current statute, the definition of threatened release is "an imminent danger that a release will occur." In both proposals, the new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." [sections 25, 27] It is unclear if this narrowing of definition and additional proof of "reasonableness" could impact the ability of the state to recover costs of response to threatened releases.

Municipal Grants

The committee substitute limits the amount of local grants to \$10 million per spill and restricts use of the response account for local grants for catastrophic spills--10,000 barrels or 4.2 million gallons or spills which the governor has approved use of the response account. All other grants are to come from the contingency and abatement account. Under AS 29.60.510(a)(1), local grants from the response fund are restricted to spills of 2,500 barrels or greater. It is unclear how this inconsistency in thresholds would affect grants--whether the contingency and abatement account can be used for spills less than 2,500 barrels and thus expands the grant program. It is likely, however, that there will be insufficient funds in the contingency and abatement account to make grants for spills less than 10,000 barrels.

Response Corps and Depots

Prior versions transferred the response corps and depots from the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to the Alaska Department of Environmental Conservation (DEC) and the state emergency response commission and the local emergency planning commissions from DEC to DMVA. These sections have been dropped. Transfer of the SERC still occurs in SB 33. Depots and corps are not transferred but become "all-hazards" in SB 33.

Mitigation Account Funds

For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re-deposited into the mitigation account [section 14]. Appropriation of mitigation account funds to the response account are included in the "incentive or blackmail clause." [section 6]

Cost Recovery

The proposed CS contains more specific language regarding cost recovery and some provisions that appear unclear or contradictory [sections 13 and 14]. The bill includes municipal and village costs paid from the contingency and abatement account as recoverable back to that account. For the response account, municipal and village costs from a catastrophic release are recoverable to that account even if they were not paid out of response account (no parallel wording regarding the extent to which funds originated in the account). **In addition, it appears that all fines, penalties, and damages recovered**

under AS 46.08.005-.080 would be paid into the response account regardless of the nature of the spill.

Restoration

Under this new proposal, the contingency and abatement account would be used for all restoration of the environment even if the spill was catastrophic. [section 15]

From the desk of

Richard A. Fineberg
Ester, Alaska 99725

P.O. Box 416

Phone / Fax (907) 479-7778

(Via Fax)

March 21, 1994

Senator Drue Pearce, Chair
Senate Finance Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

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

Dear Senator Pearce:

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 \$0.04375 per-barrel payment
= \$0.02843	(2.843 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

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.

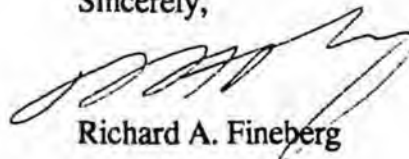
The spreadsheet on which my 1993 profit estimates are based is attached. The right-hand column identifies the sources for the data I have used. These are all published sources, and perhaps the most surprising thing is that the industry's ongoing public relations campaign has been so effective that these 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.

1993 Profit est. (1 page)

ANS Profits Worksheet (Research Associates 2/94)

North Slope Profit Analysis: ALL FIELDS		-- CY 93 ANS Avg. (\$/bbl.) -- /		Notes (2/16/94) LRA 9/93 prod. 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>Bbls. year Day</i>			
a	Production (mm bbls. yr. / day)	586.19 /	1.606	ADOR (MMS; ReveNews)
b	Volume to East / West Coast (%)	13.80%	36.20%	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)	(\$0.16)	(\$0.16)	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	Pumpability Charge			
6	State Share (Feeder Lines)	(\$0.01)	(\$0.01)	Sum of items 4b, 4c
7	Federal Share (Feeder Lines)	(\$0.01)	(\$0.01)	Item 4d
8	Industry Profit (Feeder Lines)	\$0.03	\$0.03	Sum of items 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 5e, 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)	(\$1.34)	Item 13 less field costs * est. field royalty
b	Severance tax	(\$1.19)	(\$1.36)	Item 13 * .875 * nominal severance * ELF
c	Spill Response & Conservation Tax	(\$0.05)	(\$0.05)	\$0.054 * .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)	\$1.23	\$1.55	Sum of items 7, 10, 18
22	Total Industry Profit (production + pipelines)	\$2.33	\$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)



Cordova District Fishermen United

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

March 21, 1994

Senator Drue Pearce
Co-Chair, Senate Finance Committee
State Capitol
Juneau, AK 99801-1182

MAR 24 1994

Dear Senator Pearce:

On behalf of the Cordova District Fishermen United (CDFU), I wish to express our opposition to the SB 215 (Resources). There is no compelling reason for this bill other than to provide a tax reduction to the oil industry and undermine state authority to prevent and respond to oil and hazardous substance spills.

There is a great deal of misinformation being spread about the 470 Fund. Most of the examples being cited to show how the fund is being misused actually involve relatively small amounts of money for contaminated sites on state land where the responsible party is unknown or unable to pay and the site is posing a threat to public health or the environment. In addition, these appropriations were approved by the legislature through the appropriations process. If adjustments are necessary, a more direct method is to amend the DEC budget through the finance committee appropriations process. In addition, the audit recently conducted by Legislative Budget and Audit shows that expenditures made by DEC were all appropriate and within the allowable uses of the fund.

One of the most important lessons we learned from the Exxon Valdez oil spill is that prevention is the best tool we have to protect public health and the environment from oil spills. By splitting the nickel, the legislature is, in effect, reducing funding for critical prevention programs and reducing what was intended to be a 5 cent tax to a 2.5 cent tax in the future.

The "catastrophic oil release response account" which would receive 2.5 cents of the per barrel surcharge would be available only for the most extreme spill events, and only for "emergency response." Since the likelihood of an oil spill of 100,000 barrels or more is quite small, we can anticipate this fund will remain dormant and collect dust while the state is left without the ability to deal with the serious acute and chronic effects of smaller spills. Any spill can be catastrophic. The size of a spill matters far less than where the spill occurs (i.e., a municipal drinking water system or an anadromous fish stream) or what substance is spilled. CDFU recommends that if the fund is split, the response fund should be available for response all sizes of spills both oil and hazardous substances.

The remaining 2.5 cents would go into the "oil and hazardous substances release contingency and abatement account." This amount would be woefully inadequate to fund the ongoing spill prevention and response programs presently being funded from the 470 Fund.


There are several other problems with the SB 215. Among other things, it would:

- cause detrimental reductions in spill prevention and response programs now and especially in the future as North Slope production declines, threatening public health and the environment;
- give a \$74 million reduction in the nickel-per-barrel tax that was intended to be ongoing;
- reduce DEC's ability to respond to hazardous substance spills and spills smaller than 100,000 barrels;
- allow the legislature to permanently suspend the surcharge if the legislature does not appropriate the entire balance of the spill reserve to the new response account;
- reduce DEC's flexibility to expeditiously respond to a spill that could threaten the economy, public health or the environment;
- allow fines and penalties levied for illegal actions to be credited toward the suspension of the tax; and
- place the entire balance of the spill reserve into the catastrophic account, allowing for no transition period and potentially causing layoffs in the Spill Prevention and Response Programs.

Apathy caused the Exxon Valdez Oil Spill. The state had virtually no spill prevention and response program in place when it occurred. Nearly 5 years later, the legislature is threatening to turn back to the same vulnerable position. SB 215 removes much of the oversight that has been put in place since the 11 million gallon oil spill in Prince William Sound.

CDFU urges the Senate Finance Committee to oppose SB 215 and protect critical spill prevention and response programs. Thank you for your consideration.

Sincerely,



John Bocci, Legislative Committee Chair

cc:

Governor Hickel
 Senator Halford
 Senator Jacko
 Senator Kelly
 Senator Rieger
 Senator Sharp
 Senator Kerttula



Alaska State Legislature

Please enter into the record my testimony to the SENATE FINANCE
 committee name.
 committee on SB 215, dated 3/1/94
 bill/subject

My name is Krista Rogerson and I appreciate the opportunity to testify, though regrettably I am unable to do so in person.

I would like to express my opposition to Senate Bill 215 because I fear that limiting funding for the 470 Fund will place our state back where we were before the Exxon Valdez oil spill when we were caught tragically unprepared.

The revised 2 1/2¢ per barrel allotted to prevention is a dangerously inadequate level of funding. Such a cut in funding would jeopardize the state's ability to effectively prevent and prepare itself for oil spills and the release of other hazardous substances.

I am especially concerned about the reduction of money that would go to the DEC will adversely impact their efforts at spill prevention and response. Reduced funding for such things as spill drills, contingency plan reviews, and non-catastrophic spill response poses a great threat to the health of our natural systems.

In closing, I ask that you withdraw this bill so that we can prevent future tragedy and continue, and even improve, current efforts to protect our states precious resources through maximum preparedness and prevention.

Signed:

KRISTA ROGERSON

Testifier

SELF

Representing (Optional)

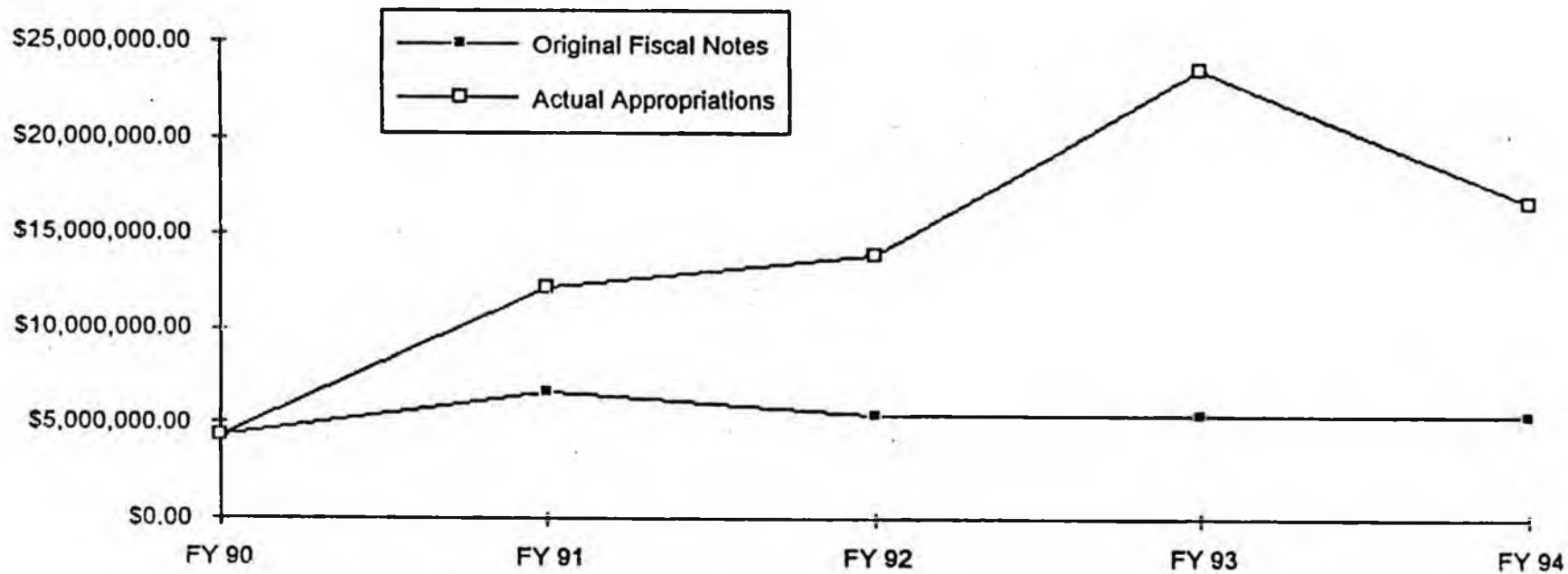
Box 1386, VALDEZ, AK 99686

Address

835-3788

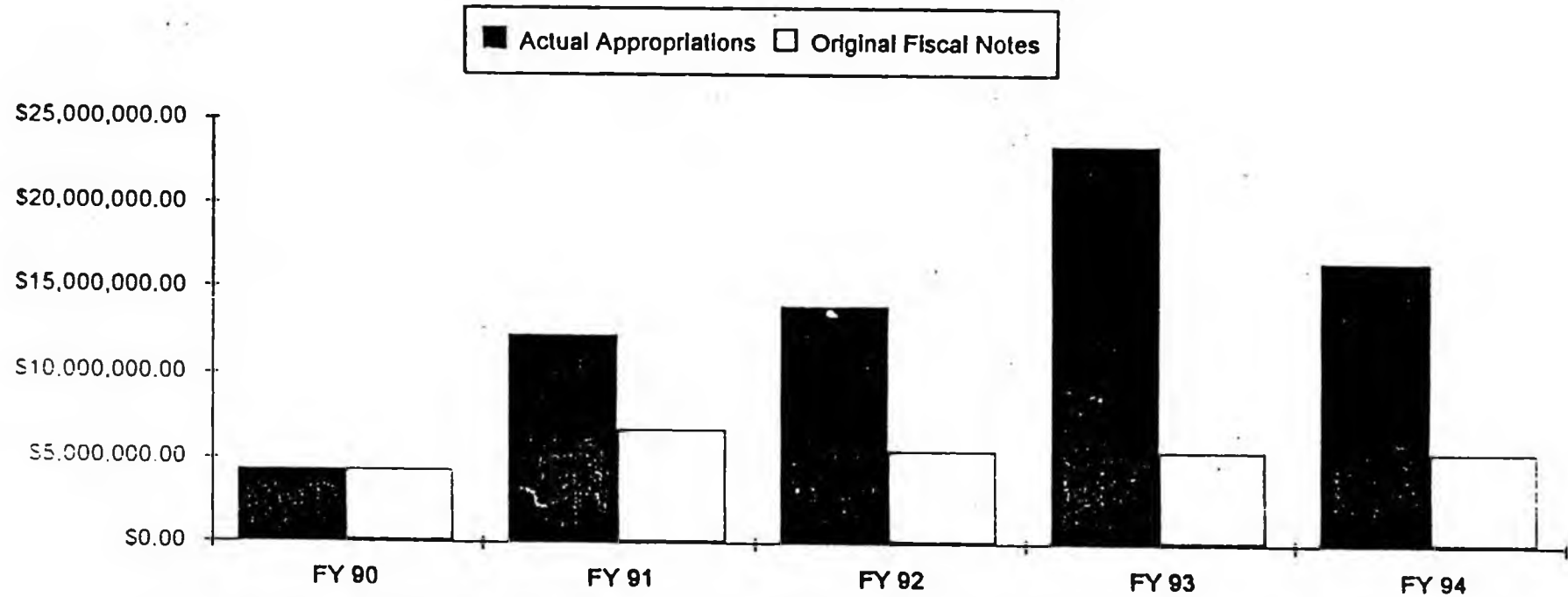
Phone No.

3-1-94
JPC



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

SB 215
Dave Pansik



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 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 Cent per Barrel (per ADEC Estimate)	10,400.00
Interest on Spill Reserve (50m, 5%)	2,500.00
Exxon Valdez Reimbursements to Mitigation Account (\$2.7 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 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

EXECUTIVE SUMMARY

The Nickel-Per-Barrel Conservation Surcharge: A Review of Legislative History and Intent

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF). Similar legislation, Senate Bill 215, was introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the \$0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for *catastrophic crude oil* spill response;
- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;
- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

It is clear from the legislative history of Senate Bill 260, which created the \$0.05 per-barrel surcharge, that the intent of the legislation was to use the \$0.05 per-barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances. All versions of the legislation, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the "spill bill" package funded with the nickel-per-barrel surcharge.

In addition, **Senate and House committees did not limit use of the response fund based on the size of the spill nor did the final version of the bill.** No amendments were considered in either body to limit use of the Fund based on spill size. It was also clear that the **legislation was intended to be used to fund DEC annual operating costs of spill prevention programs for oil and hazardous substances.**

It appears that **despite recognition that the mechanism for calculating the response fund cap was complicated, there was no discussion regarding how the calculation would work under different appropriation scenarios** . All examples of the surcharge on/off switch assumed that the only source of funds into the OHSRRF would be appropriations of surcharge proceeds. However, it was recognized that in the initial years there would be insufficient revenue generated from the surcharge to pay for the other spill prevention and response legislation passed accompanied by fiscal notes showing the OHSRRF as the funding source. There was no discussion regarding the impact on fund cap calculations of general fund appropriations into the OHSRRF to fund these programs or "loans" made to the OHSRRF to pay for *Exxon Valdez* clean-up efforts.

Since 1989, the legislature has passed a number of pieces of legislation that have expanded the use of the response fund . These include development, review and revision of state and regional spill response master contingency plans; verification of financial responsibility; review of vessel and facility discharge prevention and contingency plans; conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans; development and operation of response corps and depots; grants to communities impacted by spills; operation of the Spill Response Office and the Citizens' Oversight Council on Oil and other Hazardous Substances; and construction of marine response vessels.

A 50-state survey of **other states' response funds** found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms.

Given North Slope producers' profits, the \$0.05 per barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993 . Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND	2
Purposes of the Oil and Hazardous Substance Release Response Fund	3
Financing of the Oil and Hazardous Substance Release Fund	4
IMPOSITION OF THE SEVERANCE TAX CONSERVATION SURCHARGE	4
Committee Action on Senate Bill 260	5
Senate Special Committee on Oil and Gas	5
Senate Resources Committee	6
Senate Finance Committee	6
House Resource Committee	9
House Finance Committee	9
Public Testimony on Senate Bill 260	11
LEGISLATION EXPANDING USE OF THE RESPONSE FUND	11
Amendments to Uses of the Fund	12
OTHER STATES' RESPONSE FUNDS	14
Types of Response Funds	15
Response Funds Tax Rates	16
Types of Products Assessed Response Fees	16
Uses of Response Funds	17
CONSERVATION SURCHARGE IN THE CONTEXT OF NORTH SLOPE PROFITABILITY	17
CONCLUSION	19
APPENDIX A	
Senate Bill 215 and Background Information	
APPENDIX B	
Oil Spill U.S. Law Report and Legislative Research Agency Memorandum	
APPENDIX C	
Alaska North Slope Profit Report	

INTRODUCTION

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF).

Considerable opposition to the bill was expressed by the Alaska Departments of Law and Environmental Conservation at the bill's first hearing on March 24 before the House Resources Committee. With the exception of brief remarks from a representative of British Petroleum, no public testimony was heard. As a result agency concerns, Representative Green, chair, House Special Committee on Oil and Gas, proposed a new committee substitute for HB 238 (the "D" draft) on April 13, 1993.

A House Resources Committee hearing on this proposed committee substitute was held in the on April 17. Again, the Alaska Departments of Law and Environmental Conservation (DEC) voiced concerns regarding the proposed draft which was also strongly opposed by fishing organizations, environmental groups and other members of the public. As a result of continued opposition to the bill, another proposed committee substitute (the "M" draft) was released on April 20. No additional House Resource Committee hearings occurred during the legislative session. During the interim, the House Resource Committee held a hearing on HB 238, "M" draft on November 12. To date, the House Resources Committee has not adopted any of the proposed committee substitutes as the committee's working draft.

The "M" draft of HB 238 forms the basis for Senate Bill 215, introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees. The Senate Resources Committee held a hearing on SB 215 on November 19, 1993. **At this hearing, Senator Miller announced that the Senate Resources Committee would meet and pass SB 215 before the end of January 1994. The Senate Resources Committee is currently holding subcommittee work sessions on SB 215.** Background on this legislation is contained in Appendix A.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the \$0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for *catastrophic crude oil* spill response;
- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;

- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

This report provides information to address these issues. The first section provides an overview of the development of oil spill response funds in Alaska, including the OHSRRF. The second section examines in more detail the legislative history and intent of Senate Bill 260 which created the severance tax conservation surcharge.¹ The third section examines legislation that impacts the purposes, uses, and annual appropriation from the OHSRRF. The fourth section presents information on response funds in other states. The final section reviews the \$0.05 per-barrel surcharge in the context of North Slope oil producers' per barrel profitability.

BACKGROUND ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

In 1976, the Alaska Legislature passed its first major legislation addressing the potential risk of oil spills posed from oil and gas exploration, development and production in Cook Inlet and Prudhoe Bay. This legislation, Senate Bill 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products" (Chapter 266, SLA 1976), required oil spill contingency plans and proof of financial responsibility for clean up efforts, as well as provisions for charges to be paid by terminal users and oil tanker operators based on the degree of spill risk posed by their equipment and operations. Funds collected from the program were deposited into the Coastal Protection Fund, which served as a reserve to meet cleanup costs in the event of a major spill. Also deposited into the fund were penalties collected from spillers.²

In 1977, the Oil Spill Mitigation Account (Chapter 129, SLA 1977) was established within the general fund. Civil penalties for discharges of oil received by the state were to be deposited into the account. The legislation provided that the Legislature may annually appropriate funds received during

¹Information on the legislative history is based on a thorough review of the House and Senate Journals, committee minutes of all hearings, and committee bill packets on SB 260 and other bills in the "spill bill package."

²Alaska Department of Environmental Conservation, memorandum from Keith Kelton to Bill Ross, "Spill Expense Reserve Account History and Status Report," February 19, 1985.

the prior calendar year for the purpose of restoring and enhancing environments affected by oil pollution.³

In 1978, the Coastal Protection Fund was found to be in violation of the constitutional prohibition against the dedication of funds. As a result, in 1979 Governor Hammond introduced House Bill 205, "An Act relating to the prevention and control of oil pollution." The program was to be funded by levying an assessment on oil terminal facilities. However, provisions for the assessment on terminal facilities was deleted prior to passage of House Bill 205 in 1980 (Chapter 116, SLA 1980). As a result of dedication of funds prohibitions, the non-lapsing fund was to be capitalized by annual appropriations and cost recovery from responsible parties.⁴

In 1986, House Bill 470 and Senate Bill 375, both entitled "An Act relating to the release of oil and hazardous substances" were introduced. That same year, the Alaska Legislature enacted House Bill 470 (Chapter 59, SLA 1986) which added two new chapters within Alaska Statutes (AS) 46. Alaska Statutes 46.08 established the Oil and Hazardous Substance Release Response Fund, and AS 46.09 established a Hazardous Substance Release control chapter. The legislation also repealed the pre-existing "oil spill mitigation account" and created the "oil and hazardous substance mitigation account."

Purposes of the Oil and Hazardous Substance Release Response Fund

The original purposes of the Oil and Hazardous Substance Release Response Fund (OHSRRF), commonly referred to as the "470 Fund," as stated in AS 46.08.040 were:

- 1) to contain, cleanup and take other necessary actions, such as monitoring, assessing, investigating and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or the environment;
- 2) to provide matching funds for participation in federal oil discharge cleanup activities under CERCLA for hazardous waste site investigation, evaluation, and clean up; and
- 3) to recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

³"Oil Pollution Control Programs in Alaska: Legislative and Fiscal History," House Bill 470, House Finance Committee Bill File, March 10, 1986.

⁴Ibid.

The legislation directed the Alaska Department of Environmental Conservation (DEC) to manage the Fund, and required DEC to maintain accounting records to document income and expenditures from the Fund and provide an annual report to the legislature.

Financing of the Oil and Hazardous Substance Release Fund

House Bill (HB) 470 identified several sources of potential revenue for the OHSRRF including:

- federal and state revenues;
- moneys recovered by the state from responsible parties to cover the state's cost in the cleanup of oil and hazardous substance releases; and
- fines, penalties, and damage awards.

Under the terms of HB 470, money recovered by the state from responsible parties or as a result of fines, penalties or damage awards were to be deposited into the state general fund and credited to the newly created "Oil and Hazardous Substance Release Mitigation Account." Once in the Mitigation Account, these funds could be appropriated to the OHSRRF.

Under the terms of the original law and consistent with the Alaska constitutional prohibition against dedicated funds, it was left to the legislature to determine appropriate funding levels on an annual basis. Appropriations could be made from the general fund, the Oil and Hazardous Substance Release Mitigation Account or other sources, as needed, to the OHSRRF. However, HB 470 included a statement of legislative intent in AS 46.08.030, which states, "It is the intent of the legislature and declared to be public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available."

IMPOSITION OF THE SEVERANCE TAX CONSERVATION SURCHARGE

On April 4, 1989, following the March 24 *Exxon Valdez* oil spill in Prince William Sound, Senate Bill (SB) 260, "An Act levying a severance tax on oil" was introduced. The sponsors of the legislation were Senators Kertulla and Szymanski. In the Senate, the bill was referred to the Senate Special Committee on Oil and Gas and the Resources and Finance Committees. In the House of Representatives the bill was referred to the Resources and Finance Committees. Senate Bill 260 was one of numerous pieces of oil spill related legislation introduced after the *Exxon Valdez* spill.

As introduced, the stated purpose of the Act was "to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger." The fee was \$0.05 per barrel on all crude oil produced in the state. The fee was to be deposited in to the general fund and then appropriated on an annual basis by the legislature to the OHSRRF. There was no cap on the collection of the fee.

From the date of SB 260's first committee hearing to its transmittal to the governor was less than one month; this bill moved quickly through the legislature. However, it should be noted that many of the issues currently before the Eighteenth Legislature in House Bill 238 and Senate Bill 215 were deliberated by the legislature in 1989. Committee and floor actions on Senate Bill 260 are discussed in the next section of this report.

Committee Action on Senate Bill 260

The **Senate Special Committee on Oil and Gas**, chaired by Senator Drue Pearce, met April 11, 12 and 13, 1989 on SB 260. At these hearings, SB 260 was discussed in the context of SB 271, SB 261, HB 68, SB 264 and SB 266 which pertained to civil penalties for oil spills, state and regional oil and hazardous substances contingency plans, liability for oil and hazardous substances spills, oil and hazardous substances spill response corps and depots, and an oil spill emergency containment fund, respectively. These bills are commonly referred to as the "spill bill package."⁵

The Senate Oil and Gas Committee made three major changes to SB 260. First, it adopted the funding mechanism contained in Senator Halford's SB 266. Second, a \$100 million maximum fund balance was added. Third, Senator Halford's SB 266 "blackmail clause" that sought to insure appropriations from future legislatures was also added. The blackmail clause would suspend the \$0.05 per-barrel fee if the legislature failed to appropriate proceeds of the fee to the OHSRRF, or if the governor vetoed the appropriation and the veto was not overridden by the legislature. With the exception of the amount of the cap, these changes remained part of SB 260 when it was passed by the Legislature.

Senate Bill 266, sponsored by Senator Rick Halford, was another oil spill related bill before the Legislature in 1989. It imposed a \$0.02 per barrel levy on crude oil production to be paid to the general fund then appropriated to the oil spill emergency containment fund. The surcharge would be suspended when the fund balance reached \$20 million. The fund was to be used for oil spill emergency containment of catastrophic oil spills and to support an oil spill containment strike team. This bill had provisions similar to SB 260, the

⁵Senate Special Committee on Oil and Gas minutes, April 11, 1989, pp. 1-6; April 12, 1989, pp. 1-8; April 13, 1989, pp. 1-15.

surcharge bill, and SB 264, the response corps and response depots bill. Senate Bill 266 was passed by the Senate Special Committee on Oil and Gas and the Senate Resources Committee, then withdrawn by the sponsor. When passed, however, SB 260 contained many of the provisions originally contained within SB 266. However, **provisions of Senator Halford's SB 266 which limited response to catastrophic spills and could have been interpreted to limit response to crude spills (language in the bill was unclear) were not part of SB 260.**

Another of the spill bills considered by the legislature was SB 261, relating to state and regional contingency planning. Initially, SB 261 was to have its own separate tax levy to fund state and regional master contingency plan review. The Senate Special Committee on Oil and Gas also adopted the funding mechanism from SB 266 (Senator Halford's bill) for the funding of the development and review of state and regional master contingency plans. This was later removed and the nickel per barrel conservation surcharge, 470 Fund, became the source of funding for state and regional contingency planning.

The **Senate Resources Committee**, chaired by Senator Bettye Fahrenkamp, heard SB 260 on April 19 and 21, 1989. Compared to the Senate Oil and Gas and Finance Committees, there was relatively little discussion on the bill at the Senate Resources Committee meetings. Some discussion of increasing the levy to \$1 per barrel and increasing the cap to \$200 million did occur. Conceptual changes were suggested for the bill but it was passed out of committee before a new committee substitute could be drafted. It was also noted by the committee chair that the set of bills---SB 260, 261, 264, 266, 271 and HB 68 would need to be changed and better coordinated by future committees. The fund maximum was set at \$100 million by the Senate Oil and Gas Committee. The Senate Resource Committee contemplated increasing the cap to \$200 million but informally adopted a \$25 million cap which was contained in the proposed draft resources committee substitute recommended to the Senate Finance Committee.⁶

The **Senate Finance Committee** heard SB 260 on April 22 (?) and 28.⁷ At the April 22 (or 26) meeting, Senator Fahrenkamp, chair, Senate Resources Committee, came before the Finance Committee and directed her remarks to SB 260, SB 261, SB 264 and SB 266. She explained that the Senate Resources Committee had a proposed draft committee substitute for SB 260 that the Resources Committee had not adopted because of insufficient time to draft the changes. Senator Uehling, co-chair of the Senate Finance Committee assigned

⁶Senate Resources Committee bill packets and minutes, April 19, 1989, pp. 1-6; April 21, 1989, pp. 1-9.

⁷There is some confusion because the Senate Finance Committee minutes indicate that the meeting occurred on April 22, 1989 but the proposed CS is dated April 26. It is likely that the committee meeting was actually on April 26.

SB 260 to a Finance subcommittee chaired by Senator Pearce and consisting of Senators Duncan and Uehling.⁸

At the April 28 Finance Committee hearing, SB 260 was heard with SB 261, SB 264, and SB 271. There was a more in-depth overview and lengthy discussion of the bill. The proposed Resources Committee Substitute was adopted as a working document. Principal points of discussion were as follows:

- The purpose section (“...to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger.”) was expanded to a findings and purpose section that was similar to the findings and purpose sections contained in the other oil spill bills. It added the finding that “the March 24, 1989 oil spill disaster in Prince William Sound demonstrates the need for the state to have an independent spill containment and clean up capability in the event of future discharges of oil or hazardous substances.” The purpose was expanded to “provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substances releases of a magnitude that presents a grave and substantial threat to the economy and environment of the state.”
- The fee would not be charged to fuel barges on rivers because they transport refined products rather than crude oil.
- Senator Pearce explained that Sections 42.59.050 and 42.59.60, the “blackmail clause sections,” were included to ensure that the legislature appropriate money into the response fund on a long-term basis--that in the past **the legislature has not demonstrated “a great deal of staying power”** when it comes to setting up a new fund and ensuring annual appropriations as evidenced by the current balance of the oil and hazardous substance release response fund.
- Jack Chenoweth, legislative council, gave a lengthy explanation of how the “on/off” provisions of the bill would work. This was explained in the context of the fiscal notes for SB 261 and SB 264 which would use approximately \$4.5 million annually during the initial years.
- Senator Uehling noted that 13 different pieces of legislation were pending, and that if they all passed, more than \$4.5 million would be needed from the fund.
- Senator Pearce noted that the effect of additional expenditures would be that the tax would remain on for a longer period of time. If the cap were

⁸Senate Finance Committee bill packet and minutes, April 22, 1989, pp. 1 and 17-26; April 28, 1989, pp. 1-2, 6-21, and 31-32.

raised from \$25 million to \$70 million, as discussed, it would have the same effect.

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statutes.
- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.
- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the wellhead and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.
- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.
- Senator Zharoff voiced that the \$25 million cap was inadequate. He suggested that the cap be \$50 million. Following a review of Department of Revenue projection of revenues, the \$50 million cap was adopted without objection.
- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

Senate Bill 260 was passed out of the Senate Finance Committee on April 28, 1989. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The final finance committee substitute changed the title, the findings and purpose section, defined the levy more

raised from \$25 million to \$70 million, as discussed, it would have the same effect.

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statutes.
- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.
- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the wellhead and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.
- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.
- Senator Zharoff voiced that the \$25 million cap was inadequate. He suggested that the cap be \$50 million. Following a review of Department of Revenue projection of revenues, the \$50 million cap was adopted without objection.
- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

Senate Bill 260 was passed out of the Senate Finance Committee on April 28, 1989. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The final finance committee substitute changed the title, the findings and purpose section, defined the levy more

raised from \$25 million to \$70 million, as discussed, it would have the same effect.

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statute.
- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.
- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the well head and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.
- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.
- Senator Zharoff voiced that the \$25 million cap was inadequate. He suggested that the cap be \$50 million. Following a review of Department of Revenue projection of revenues, the \$50 million cap was adopted without objection.
- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

Senate Bill 260 was passed out of the Senate Finance Committee on April 28, 1989. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The final finance committee substitute changed the title, the findings and purpose section, defined the levy more

specifically as a surcharge, established the fund cap at \$50 million, clarified that the surcharge does not diminish the liability of a responsible party, and added a severability section.

The only **public testimony presented to the Senate Finance Committee** was by the Alaska Environmental Lobby which voiced support for the bill but preferred the original bill. In addition, they preferred a larger fee as well as a higher cap.

Senate Bill 260 was passed by the **Senate** on April 29, 1989. Three amendments were offered and two were passed on the floor. The first amendment was offered by Senator Adams to increase the surcharge to \$0.50 per barrel. This failed on a vote of 2 yeas and 18 nays. Amendment number two, removing the severability clause, was offered by Senators Pearce, Halford and Faiks.⁹ It passed on a vote of 12 yeas and 8 nays. Amendment number three, inserting the surcharge amount of \$0.05 per barrel in the bill title was offered by Senator Pearce. This amendment passed by a vote of 13 yeas and 7 nays. The effect of the title change amendment was to make it more difficult for the House to change the per barrel amount of the surcharge because it would require a three-quarters vote to change a senate bill title in the house.¹⁰

Senator Halford gave a notice of reconsideration. At reconsideration, Senator Adams asked to return to second reading for the purpose of a specific amendment. Senator Adams offered amendment number four, which would delete the \$0.05 per barrel reference from the title, establish an interim surcharge of \$0.50, and make the law effective immediately. Amendment number four failed 8 yeas to 12 nays.

The **House Resource Committee** heard SB 260 on May 4, 1989. There was little discussion on the bill and no changes. The one topic of discussion was the complicated mechanism for the surcharge to be imposed or suspended depending on the fund balance. There was a memorandum from the Legislative Affairs Agency, Division of Legal Services in the committee packet explaining how the mechanism worked. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The Alaska Environmental Lobby testified in support of the bill; no other public testimony was presented.¹¹

The **House Finance Committee** heard SB 260 on May 6. The bill was heard with SB 261, state and regional master plans, and SB 264, response corps and depots. There was relatively little discussion regarding SB 260. Senate Bill

⁹Severability allows a portion of law that is found to be invalid by the courts, to be "severed" from the remainder of the law. Specifically regarding SB 260, the Senate Finance Committee was concerned that the blackmail clause may be found invalid.

¹⁰Information on floor debate is from the Senate Journal, 1989, pp. 1526-1529, 1536-1538.

¹¹House Resources Committee bill packet and minutes, May 4, 1989, pp. 1, 6-7, 14-15.

260 was identified as the funding source for the programs contained in other pieces of legislation. There was discussion regarding whether the planning and response corps and depot programs should be funded with general funds or response funds (i.e. whether the funding should be contained with the rest of DEC's annual budget or be in the front section of the annual budget where funding for the 470 Fund is located). A motion to amend SB 261's fiscal note to identify general funds as the funding source failed.¹²

Senator Kertulla, prime bill sponsor of SB 260, gave a brief overview of the legislation. Representative Koponen asked if the "blackmail clause" was constitutional; he was told that legal counsel had advised that the bill would be viable without the severability clause that was removed on the Senate floor. The bill was moved from committee with a do pass recommendation. The same April 28 "indeterminate" (uncertain) fiscal note from the Department of Revenue was attached. No public testimony occurred.

Senate Bill 260 was scheduled on the **House Floor** on May 8, 1989. It passed with a vote of 26 yeas and 10 nays and received a notice of reconsideration.¹³ On reconsideration, the bill passed 30 yeas and 10 nays. No amendments were offered on the House floor.

It is clear that the intent of the legislation was to use the \$0.05 per barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances. All versions of SB 260, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the spill package funded with the nickel-per-barrel surcharge.

In addition, the legislation that passed the Senate and House did not limit use of the response fund based on the size or type of the spill. It was also clear that the legislation was intended to be used to fund DEC spill prevention programs for oil and hazardous programs because the 470 Fund is the funding source on the fiscal notes attached to the legislation that created these programs. This topic was also discussed at the Senate Special Committee on Oil and Gas,¹⁴ and in the context of the other spill bills in the other committees of referral.

It is also clear that despite recognition that the mechanism for calculating the fund cap was complicated, there was no discussion as to how the calculation would work if mitigation money or general funds were appropriated to the OHSRRF. All examples of the

¹²House Finance Committee packet and minutes, May 6, 1989, a.m., pp. 1-12.

¹³Information on floor debate is from the House Journal, 1989, pp. 1629, 1722, 1737-1738, 1774, 1776-1777, 1846-1848.

¹⁴Senate Special Committee on Oil and Gas, minutes, April 12, 1989, p. 6.

surcharge on/off switch assumed that the only source of funds appropriated to the OHSRRF would be proceeds of the surcharge

However, Senator Bettye Fahrenkamp recognized that in the first years there would be insufficient revenue generated from the surcharge to fund the other pieces of legislation passed with fiscal notes showing the OHSRRF as the source of funds. In addition, at the April 22, 1989 Senate Finance Committee hearing, Senator Halford also raised concerns as to whether enough thought had gone into the funding mechanism--that he perceived there could be problems. He stated that if others wanted to adopt sections of his SB 266, that was fine but he was disassociating himself with SB 266 and the other bills. **There was no discussion of the impact of general fund appropriations into the OHSRRF on fund cap calculations.**

Public Testimony on Senate Bill 260

There was relatively little public testimony on the bill. The only oil industry testimony on SB 260 occurred on April 13, 1989 in the Senate Special Committee on Oil and Gas when persons representing Exxon, Alyeska and ARCO Alaska testified generally in opposition to the surcharge. It was recommended that causes of the *Exxon Valdez* spill be studied before the Legislature enact any new legislation. In contrast, Jim Palmer, representing British Petroleum testified that penalties for spillers could be increased to support a spill containment fund. Testimony from the public and environmental groups generally advocated increasing the per barrel surcharge and the cap on the fund; this was expressed at most of the hearings.

LEGISLATION EXPANDING USE OF THE RESPONSE FUND

In 1986 the legislation which created the OHSRRF stated that it was the intent of the legislature that "funds for the abatement of a release of oil or a hazardous substance will always be available." Until FY 89, the Response Fund received money from the general fund and from responsible parties of spills. After the *Exxon Valdez* accident in March 1989, special appropriations were made including money from program receipts (money loaned from the general fund). Since fiscal year (FY) 91, however, the primary funding source has been the \$0.05 per barrel conservation surcharge (AS 43.55.200).

Amendments to Uses of the Fund

The legislature made changes to the fund in 1989, 1990, and 1991. These changes expanded use of the OHSRRF to include funding for:

- spill response during emergency disasters declared by the governor;
- operation of the spill response office;
- preparation of state and regional discharge prevention and contingency plans;
- development and operation of response corps and depots managed by the state Division of Emergency Services, Department of Military and Veteran Affairs;
- review of vessel and facility discharge prevention and contingency plans;
- grants issued by the Alaska Department of Community and Regional Affairs for spill impacted communities;
- state Emergency Response Commission and the Local Emergency Planning Committees;
- conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans;
- verification of proof of financial responsibility;
- operation of the Citizens' Oversight Council on Oil and Hazardous Substances; and
- refurbishment or construction of marine response vessels by the state Department of Transportation and Public Facilities.

Table 1 shows the year, session law, bill number and primary impact of the legislation passed.

Table 1

**Legislation Expanding the Uses of the Oil and Hazardous
Substance Release Response Fund, 1989 through 1991.**

Legislation Enacted 1989 Session

SLA 89 Chapter 29 **SB 256**
Expanded Municipal reimbursements for Response Fund

SLA 89 Chapter 112 **SB 260**
Established nickel-per-barrel surcharge on oil industry production.

SLA 89 Chapter 90 **SB 261**
Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay cost of State and Regional Plans.
Expanded use of the Response Fund to include restoration of the environment.

SLA 89 Chapter 90 **SB 264**
Established Response Office in DEC for catastrophic or declared emergency spills.
Established emergency response equipment depots in DEC's Response Office.
Established emergency response volunteer corps in DEC's Response Office.
Expanded use of the Response Fund to pay for Response Office and Depot and Corps.

Legislation Enacted 1990 Session

SLA 90 Chapter 190 **HB 566**
Added incident command system requirement to State and Regional Plans.
Required DEC to use State plan to designate depot and response office locations.
Required DEC to submit the State Master and Regional Plans and revisions to the State
Emergency Response Commission for review and approval.
Transferred responsibility to establish depots and corps to the Dept. of Military & Veteran Affairs,
Division of Emergency Services (DES).
Established State Emergency Response Commission (SERC).
Established Local Emergency Planning Committees (LEPCs).
Established Hazardous Substance Spill Technology Review Council (HSSTRC).

SLA 90 Chapter 191 **HB 567**
Required industry contingency plans to include prevention measures.
Added certification requirement for approved contingency plans.
Clarified proof of financial responsibility and limits liability for tank vessel or oil barge operations.
Established DEC participation in structural integrity of vessels, barges, pipelines and facilities.

Table 1 continued

Expanded use of Response Fund to include:

Review of oil discharge prevention and contingency plans
Conduct training, response exercises, inspections, tests to verify approved contingency plans.
Verify financial responsibility.

SLA 90 Chapter 199

HB 578

Established Citizens' oversight council.

Expanded use of Response Fund to include Citizens' Oversight Council costs.

Legislation Enacted 1991 Session

SLA 91 Chapter 48

SB 165

Expanded use of Response Fund to include construction of marine response vessels.

SLA 91 Chapter 83

SB 25

Expanded uses of Response Funds to municipal grants.

SLA 91 Chapter 31

SB 194

Required the Board of Marine Pilots to cooperate w/ DEC in the review and approval of training programs for pilots of tanker vessels.

SLA 91 Chapter 92

SB 196

Required the Citizens' Oversight Council to submit a report on response action contractor liability.

SLA 91 Chapter 90

SB 263

Provided a one-year delay for compliance of non-crude oil operation with financial responsibility requirements.

Authorized DEC to issue interim approval for contingency plans.

Source: Alaska Department of Environmental Conservation, unpublished funding history information.

OTHER STATES' RESPONSE FUNDS

In March 1993, the *Oil Spill U.S. Law Report* published an article containing information from a 50-state survey entitled "State fees on oil for spill response and administrative costs." In April 1993, the Alaska Legislative Research Agency released a research memorandum containing the *Oil Spill U.S. Law Report* article as well as results of interviews conducted with spill response fund administrators in California, Florida, Louisiana, New Jersey, Texas, and Washington. These reports are contained in Appendix B. This section summarizes the results of the survey and interviews and provides additional analysis.

In summary, the 50-state survey found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the U.S. charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administrative costs to the reimbursement of cleanup/remediation expenditures.¹⁵ Some funds are treated as insurance policies, while others are financed primarily through the collection of penalties. Likewise, some fee/fund systems are designed so that the fund can reach a cap at which point the fee is shut off, while others are designed to generate the same amount of available money each year.¹⁶

At the time of publication, the states of Montana, New Hampshire, Virginia and Idaho were either changing the mechanism for collecting the fee or increasing or expanding the applicability of the charge. In addition, Hawaii House Bill 1194 would establish a 6-cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at \$7 million.

Types of Response Funds

Of the 28 states that assess a per-gallon or per-barrel fee, the types of fees generally fall into three categories. The first type is assessed by nine of the states (Alaska, California, Florida, Louisiana, New Jersey, New York, Oregon, Texas, and Washington) that are major oil producers and/or processors. In addition, all of these states are coastal states, most of which have extensive programs to protect their marine environments and communities from potential oil spill impacts. These states assess a per-barrel charge on oil produced in, entering, or transported through the state. The volume of oil transported through these states or along their coastlines is significantly greater than other states which increases the risk of spills.

The second type of state program is a broader-based assessment charged on a per-gallon basis for all petroleum products entering or sold in the state. These funds appear to be used for a wider range of cleanup activities as opposed to the third type of program that is directed primarily toward leaking underground storage tanks. Twelve states (Delaware, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, South Dakota, Vermont, Wisconsin and Wyoming) have this second, broader type of program.

¹⁵*Oil Spill U.S. Law Report*, March 1993, p. 12.

¹⁶*Ibid.*

The third type of program is primarily a per-gallon assessment on all petroleum products entering or sold in the state but the proceeds of the funds are directed primarily toward underground storage tank release clean up. Seven (Arizona, Idaho, Maryland, Michigan, Missouri, Oklahoma, South Carolina, and Virginia) of the 28 states have this type of program.

Of the latter two types of programs, Wyoming is the only state that assesses the fee directly on retail fuel consumers. Most of the states charge the fee to the first importer of fuels into the state or to fuel distributors. The latter two types of fees are primarily assessed on non-crude products because that is the predominate, if not only, form of petroleum products in the state.

Nine states (Arizona, California, Florida, Kansas, Maine, Maryland, New Hampshire, Washington, and Wyoming) have more than one account or fund. In five of the nine states (California, Florida, Maine, Maryland, and New Hampshire), separate assessments are collected to provide revenue to the different accounts. In the remaining states, the assessments are funneled into separate funds or accounts to be used for different purposes.

The next sections on other states' response funds focuses on the nine states with the first type of fund discussed above. Alaska's OHSRR Fund is included in this first type.

Response Funds Tax Rates

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.**

Florida and New Jersey have variable rate assessments. In Florida, the two cent charge can be increased to ten cents in the event of a major spill. Similarly, in New Jersey the one and one half cent assessment can be increased to four cents. Calculation of the mean rate using the Florida and New Jersey maximum rates results in an average charge of 7.1 cents per barrel. Similarly, if California's combined fee (29 cents) and Florida and New Jersey's maximum fee are used to calculate the average fee, the average increases to 7.6 cents per barrel. It should be noted that Oregon is not included in these calculations because it assesses a per-trip, as opposed to a per-barrel, fee.

Types of Products Assessed Response Fees

The states of Alaska, Louisiana and Texas per-barrel charges are only on crude oil; in each of these states, spill prevention and response programs

include crude oil, other petroleum products and hazardous substances. In California, Florida and Washington, all petroleum products are assessed the per-barrel fee and are included in response. The state of New Jersey's per-barrel assessment includes charges on hazardous substances as well as crude and refined petroleum products. Oregon's assessment, as well as its spill prevention and response programs, is on both crude and non-crude products.

Uses of Response Funds

In all of the nine states, **the charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs**. In California and Washington, a separate assessment is charged for operating costs while a response fund with a maximum balance is collected under a separate assessment. **None of these states limit use of response funds based on the size of a spill.** The only exception to this is Washington where spill responses costing less than \$50,000 total are to be paid from agency operating budgets. Alaska's fund has a similar provision for DEC response costs below \$25,000.

Of the nine states with a primary revenue source being a per-barrel assessment on crude oil, the purposes of the funds include spill clean up, as well as operating prevention programs and administering the fund. **In none of the nine states is spill response limited to crude oil or to catastrophic spills.**

CONSERVATION SURCHARGE IN THE CONTEXT OF NORTH SLOPE PROFITABILITY

In October 1993, Dr. Richard A. Fineberg presented a paper entitled "Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures" at the 15th Annual North American Conference of the International Association for Energy Economics (Appendix C). This paper was a continuation of Mr. Fineberg's research for the Alaska Senate Finance Committee completed in November 1992 and a study by Dr. Edward B. Deakin for the Alaska Department of Revenue completed in March 1989.¹⁷

The focus of the October 1993 study is the **balancing of environmental risks against the costs of prevention and mitigation measures**. Specifically, Dr. Fineberg's study compares the costs of 1) installation of a vapor emissions recovery system to capture potentially toxic emissions vented

¹⁷Richard Fineberg, "North Slope Profits and Production Prospects," report to the Alaska Senate Finance Committee, November 11, 1992 and Edward B. Deakin, "Oil Industry Profitability in Alaska 1969 through 1987," prepared for the Alaska Department of Revenue, March 15, 1989.

during loading and off-loading tankers at Valdez, and 2) specially designed tractor tugs to handle a disabled tanker. These costs are reviewed within the context of North Slope oil producer profits. The North Slope profit calculations presented in Dr. Fineberg's study are used to review the relative impact of the severance tax conservation surcharge on North Slope producers' profits.

In summary, Dr. Fineberg estimates that for the calendar years (CY) 1987 through 1992, the average profit on North Slope production was approximately \$5.05 per-barrel. Total North Slope producers' profits for the years 1986 through 1992 are estimated to be \$25.9 billion, or \$3.7 billion per year (in 1993 dollars). In CY 1991, the industry average profits are estimate to be \$4.77 per-barrel (Table 3). In CYs 1992 and 1993, profits are estimated to be \$4.80 and \$4.11 per-barrel, respectively. Using December 1993 Alaska Department of the Revenue data and an average price per-barrel of \$10.40, Dr. Fineberg's recent estimate of North Slope profits is \$1.62 per-barrel.

For comparison, Dr. Deakin estimated 1969 through 1987 average profits of \$6.69 per barrel and 1977 through 1987 average profits of \$5.81 per barrel. His 1986 "low-price estimate" was an average profit of \$2.40 per barrel.

Given North Slope producers' profits, the \$0.05 per-barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993 (Table 3). Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

Table 2.
Nickel-per-Barrel Surcharge in the Context of Estimated North Slope Profits

Year	Estimated Average Price /-----1993 \$ / barrel-----/	North Slope Production and Pipeline Profits	Conservation Surcharge % of Profits
CY 1987-92		\$5.05	1.0%
CY 1992	\$17.66	\$4.80	1.0%
CY 1993	\$15.40	\$4.11	1.2%
Dec-93	\$10.40	\$1.62	3.1%
FY 2000 (low)	\$17.86	\$4.94	1.0%
FY 2000 (mid)	\$20.20	\$5.90	0.8%
FY 2000 (high)	\$21.17	\$6.39	0.8%

Source: Fineberg 1992, 1993 and recent estimates by Fineberg for December 1993 oil prices.

CONCLUSION

In conclusion, the OHSRRF was developed in 1986 to respond to releases and threatened releases of oil and hazardous substances, to fund clean up of sites contaminated by oil and hazardous substances, and to recover costs of response and clean up from responsible parties. After the *Exxon Valdez* oil spill, the nickel-per-barrel conservation surcharge legislation was enacted to ensure adequate funding would be available in the OHSRRF for response to any future spills.

While the surcharge is a per-barrel tax on crude oil production in Alaska, it is clear from the legislative history that the surcharge levy is not intended to fund only crude oil response. Nor is response limited to large or "catastrophic" spills.

A number of pieces of legislation have been passed since 1989 that expand the Alaska Department of Environmental Conservation spill prevention, clean up, and oversight programs. These pieces of legislation have expanded the purposes and use of the OHSRRF and increased expenditures from the fund.

A 50-state survey of other states' response funds found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms. In the context of other states' response funds and Alaska North Slope producers' profits, Alaska conservation surcharge is not unreasonable.

Appendix A

Senate Bill 215 and Background Information

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR MILLER

Introduced: 5/8/93
Referred: RES, FIN

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

- 1 (6) prescribe routes, modes of transportation, and destinations in
2 connection with necessary relocation;
- 3 (7) control ingress to and egress from a disaster area, the movement of
4 persons within the area, and the occupancy of premises in it;
- 5 (8) suspend or limit the sale, dispensing, or transportation of alcoholic
6 beverages, firearms, explosives, and combustibles;
- 7 (9) make provisions for the availability and use of temporary
8 emergency housing;
- 9 (10) allocate or redistribute food, water, fuel, or clothing; and
- 10 (11) use money from the oil and hazardous substance release
11 prevention and response fund, established by AS 46.08.010, to respond to a declared
12 disaster emergency related to an oil or hazardous substance discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) the governor finds that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.**

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

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

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

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

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

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

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

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

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

13 (3) "catastrophic oil discharge" means

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

15 or

16 (B) any other oil release or discharge that the governor
17 determines presents a grave and substantial threat to the economy or
18 environment and for which the governor has issued a proclamation
19 declaring a condition of disaster emergency under AS 26.23.020(c) [HAS
20 THE MEANING GIVEN IN AS 46.04.900];

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

22 (15) "surcharge" means

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

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

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

28 (e) The department may attach reasonable terms and conditions to its approval
29 or modification of a contingency plan that the department determines are necessary to
30 ensure that the applicant for a contingency plan has access to sufficient resources to
31 protect environmentally sensitive areas, [AND] to take containment and cleanup and

1 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
2 discharges from the facility or vessel as provided in (k) of this section, and to ensure
3 that the applicant complies with the contingency plan. The contingency plan must
4 provide for the use by the applicant of the best technology that was available at the
5 time the contingency plan was submitted or renewed. The department may require an
6 applicant or holder of an approved contingency plan to take steps necessary to
7 demonstrate its ability to carry out the contingency plan, including

8 (1) periodic training;

9 (2) response team exercises; and

10 (3) verifying access to inventories of equipment, supplies, and
11 personnel identified as available in the approved contingency plan.

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

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

27 (1) periodic training;

28 (2) response team exercises; and

29 (3) verifying access to inventories of equipment, supplies, and
30 personnel identified as available in the approved contingency plan.

31 * Sec. 19. AS 46.04.200(a) is amended to read:

1 (a) The department shall

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

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

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

10 * Sec. 20. AS 46.04.200(c) is amended to read:

11 (c) In preparing and annually reviewing the state master plan, the
12 commissioner shall

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

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

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

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

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

27 * Sec. 21. AS 46.04.200 is amended by adding a new subsection to read:

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

30 (1) the draft plan to the

31 (A) public for review and comment; and

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

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

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

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

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

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

14 (3) revise the regional master oil and hazardous substance
15 discharge prevention and contingency plan; the commissioner shall revise a
16 regional master plan whenever, in the judgment of the commissioner, revision is
17 necessary.

18 * Sec. 23. AS 46.04.210(b) is amended to read:

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

21 * Sec. 24. AS 46.04.900(2) is amended to read:

22 (2) "catastrophic oil discharge" means

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

24 or

25 (B) any other oil release or discharge that [WHICH] the
26 governor determines presents a grave and substantial threat to the economy or
27 environment and for which the governor has issued a proclamation
28 declaring a condition of disaster emergency under AS 26.23.020(c) [OF
29 THE STATE];

30 * Sec. 25. AS 46.08.005 is amended to read:

31 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the

1 catastrophic release of oil or hazardous substances into the environment presents a
2 real and substantial threat to the public health and welfare, to the environment, and to
3 the economy of the state. The legislature therefore concludes that it is in the best
4 interest of the state and its citizens to provide a [READILY AVAILABLE] fund
5 containing two accounts. Within the fund,

6 (1) one account consists of money readily available to the
7 commissioner for the payment of the expenses incurred by the Department of
8 Environmental Conservation during an emergency first response to a catastrophic
9 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND
10 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE
11 STATE FROM THE] release of oil and for related purposes intended to address
12 catastrophic oil releases:

13 (2) the other account consists of money that the state may use
14 during a response to a release or threatened release of oil or a hazardous
15 substance, other than a catastrophic oil discharge, to pay the expenses of making
16 preparations for the possibility of a release or threatened release of oil or
17 hazardous substances, to reduce the amount, degree, or intensity of a release or
18 threatened release, and for other related purposes identified in law [OR
19 HAZARDOUS SUBSTANCES].

20 * Sec. 26. AS 46.08.010(a) is amended to read:

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

24 (1) the oil and hazardous substances release contingency and
25 abatement account;

26 (2) the catastrophic oil release response account.

27 * Sec. 27. AS 46.08.010(b) is amended to read:

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

31 * Sec. 28. AS 46.08.010(c) is amended to read:

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

5 * Sec. 29. AS 46.08.020 is amended to read:

6 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
7 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT

8 [FUND]. (a) The legislature may appropriate from the following sources to the oil
9 and hazardous substances release contingency and abatement account in the fund:

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

12 (2) money recovered or otherwise received from parties responsible for
13 the containment and cleanup of oil or a hazardous substance at a specific site, to the
14 extent that the money recovered or otherwise received had been paid out of the
15 oil and hazardous substances contingency and abatement account, but excluding

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

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

21 (3) fines, penalties, or damages recovered under AS 46.08.005 -
22 46.08.080 or other law for costs incurred by the state as a result of the release or
23 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
24 damages recovered or otherwise received due to a catastrophic oil discharge.

25 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
26 be deposited in the general fund and credited to a special account called the "oil and
27 hazardous substances [SUBSTANCE] release contingency and abatement mitigation
28 account." The legislature may annually appropriate to the oil and hazardous
29 substances release contingency and abatement account in the fund from the oil and
30 hazardous substances release contingency and abatement mitigation [THIS]
31 account a sum equal to the amount received under (a)(2) and (a)(3) of this section

1 during the calendar year preceding the legislative session in which the appropriations
2 are to be made.

3 * Sec. 30. AS 46.08 is amended by adding a new section to read:

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

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

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

13 (3) fines, penalties, or damages recovered under AS 46.08.005 -
14 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil
15 discharge.

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

23 * Sec. 31. AS 46.08.040(a) is amended to read:

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

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

29 (A) [(1)] investigate and evaluate a catastrophic oil [THE]
30 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS
31 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and

1 cleanup and other necessary action, such as monitoring and assessing, to
2 address a catastrophic oil release or threatened catastrophic oil release [OF
3 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and
4 substantial threat to the public health or welfare, or to the environment;

5 (B) [(2) PAY ALL COSTS INCURRED TO

6 (A) ESTABLISH AND MAINTAIN THE OIL AND
7 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

8 (B) REVIEW OIL DISCHARGE PREVENTION AND
9 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

10 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
11 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
12 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
13 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
14 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
15 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
16 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
17 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
18 AND

19 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
20 RESPONSIBILITY REQUIRED BY AS 46.04.040;

21 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION
22 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
23 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
24 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
25 THE DIVISION;

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

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

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

31 and

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

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

7 (A) investigate and evaluate the release or threatened release
8 of oil or a hazardous substance, except a catastrophic oil release, and
9 contain, clean up, and take other necessary action, such as monitoring and
10 assessing, to address a release or threatened release of oil or a hazardous
11 substance, except a catastrophic oil release, that poses an imminent and
12 substantial threat to the public health or welfare;

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

16 (C) pay all costs incurred to

17 (i) establish and maintain the oil and hazardous
18 substance response office;

19 (ii) review oil discharge prevention and contingency
20 plans submitted under AS 46.04.030;

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

28 (iv) verify or establish proof of financial
29 responsibility required by AS 46.04.040;

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

31 (i) the oil and hazardous substance response corps;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

and

(ii) the oil and hazardous substance response depots;

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

(i) in federal oil discharge cleanup activities; and

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

and

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

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

(ii) [(B)] a region.l master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210
; AND

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

* Sec. 32. AS 46.08.040(b) is amended to read:

(b) ~~The~~ [WHEN THE GOVERNOR DECLARES A DISASTER RELATED TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF THE DISASTER EMERGENCY,] use money from the catastrophic oil release response account in the fund to respond to a [THE] disaster emergency based upon a release or discharge of oil or a hazardous substance

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

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

* Sec. 33. AS 46.08.040(b) is amended to read:

1 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED
2 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER
3 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF
4 THE DISASTER EMERGENCY,] use money from the catastrophic oil release
5 account in the fund to respond to a [THE] disaster emergency based upon a release
6 or discharge of oil or a hazardous substance when the governor has declared a
7 condition of disaster emergency under AS 26.23.020(c).

8 * Sec. 34. AS 46.08.040(c) is amended to read:

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

13 * Sec. 35. AS 46.08.060(a) is amended to read:

14 (a) The commissioner shall submit a report to the legislature not later than the
15 10th day following the convening of each regular session of the legislature. The report
16 may include information considered significant by the commissioner but must include:

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

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

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

24 (4) a detailed summary of department activities in responses paid for
25 [FUNDED] by the fund during the preceding fiscal year, including response
26 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,
27 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
28 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
29 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
30 OF \$10,000;] and

31 (5) the projected cost to the department for the next fiscal year of

1 monitoring, operating, and maintaining sites where response has been completed or is
2 expected to be continued during the fiscal year.

3 * Sec. 36. AS 46.08.075(a) is amended to read:

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

15 * Sec. 37. AS 46.08.075(e) is amended to read:

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

23 * Sec. 38. AS 46.08.110 is amended to read:

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

27 (b) The corps consists of volunteers who register with the department
28 [DIVISION] and agree to be trained by the division in techniques for containment and
29 cleanup and to be available on short notice to assist in containment and cleanup
30 consistent with the responsibilities assigned to the corps under an applicable incident
31 command system.

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

4 * Sec. 39. AS 46.08.120 is amended to read:

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

11 * Sec. 40. AS 46.08.150 is amended to read:

12 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS
13 APPLICABLE,] may

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

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

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

21 (2) contract with persons to provide personnel, including members
22 of the emergency response corps, to assist them with a nongovernmental response
23 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT
24 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;
25 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT
26 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS
27 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL
28 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

29 * Sec. 41. AS 46.08.900(5) is amended to read:

30 (5) "fund" means the oil and hazardous substance release prevention
31 and response fund;

1 * Sec. 42. AS 46.08.900(9) is amended to read:

2 (9) "release"

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

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

7 (i) a permitted release; or

8 (ii) an act of nature;

9 * Sec. 43. AS 46.08.900(11) is amended to read:

10 (11) "threatened release" means [AN IMMINENT DANGER] that a
11 release is imminent; a release is imminent if

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

13 (B) though not impending, in the judgment of the
14 commissioner

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

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

20 * Sec. 44. AS 46.08.900 is amended by adding a new paragraph to read:

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

23 * Sec. 45. AS 46.09.900(8) is amended to read:

24 (8) "threatened release" means [AN IMMINENT DANGER] that a
25 release is imminent; a release is imminent if

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

27 (B) though not impending, in the judgment of the
28 commissioner

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

31 (ii) that actual release may reasonably be expected to

1 cause personal injury, other injury to life, or loss of or damage to
2 property, including the environment [WILL OCCUR].

3 * Sec. 46. AS 46.13.010(a) is amended to read:

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

7 * Sec. 47. AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230,
8 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

9 * Sec. 48. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
10 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
11 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
12 reference to which is repealed by sec. 5 of this Act, is not an expenditure.

13 * Sec. 49. APPLICABILITY. The definition of "catastrophic oil discharge" in
14 AS 46.08.900, added by sec. 44 of this Act, applies to discharges occurring after the effective
15 date of this section.

16 * Sec. 50. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
17 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND
18 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the
19 effective date of this section, every producer of oil who is required by AS 43.55.200 -
20 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
21 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
22 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
23 received after June 30, 1993, and before the effective date of this section, if so appropriated
24 by the legislature and notwithstanding any other provision of law relating to the deposit of and
25 accounting for those receipts,

26 (1) on the effective date of this section, the commissioner of revenue shall
27 allocate

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

30 (B) 40 percent of the amount received to the oil and hazardous
31 substances release contingency and abatement account established by

1 AS 46.08.010(a)(1), added by sec. 26 of this Act; and

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

5 * Sec. 51. TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE
6 COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response
7 Commission from the Department of Environmental Conservation to the Department of
8 Military and Veterans' Affairs made by sec. 46 of this Act does not affect the term of office
9 of a person serving as a member of the commission on the effective date of this section.

10 * Sec. 52. Section 33 of this Act takes effect only if Senate Bill 90 am H becomes law.

11 * Sec. 53. If sec. 33 of this Act takes effect, sec. 32 of this Act does not take effect.

12 * Sec. 54. Section 18 of this Act takes effect January 1, 1994.



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 Senate Bill 215 (5/8/93)

In its basic mission of restricting the use of the Oil and Hazardous Substance Release Response Fund and replacing the Fund with a new fund composed of two accounts, Senate Bill (SB) 215 differs slightly from HB 238, 4/20/93 "M" draft which differs little from the HB 238, 4/13/93 "D" draft. Specifically, the 2-cent, 3-cent split is maintained. This overview discusses the principle features of SB 215. Sections of the bill are included to facilitate reference. This is followed by a brief discussion of the three predominant difference between SB 215 and HB 238.

Purposes of the Fund. The purpose of the new oil and hazardous substance release prevention and response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release." [sections 25, 26]

"Two Cent" and "Three Cent" Accounts. The proposal divides the new fund into two accounts---the "catastrophic oil release account" and the "oil and hazardous substances release contingency and abatement account." The catastrophic account would receive 3 cents of the surcharge. Uses of this account would be restricted to crude oil catastrophic spill response [section 25]. Catastrophic oil spills are defined as those equal to or greater than 100,000 barrels or 4.2 million gallons [section 15, 24]. When the \$50 million cap is reached, the 3 cent portion of the surcharge would be suspended [section 12].

The contingency and abatement account would receive 2 cents of the 5-cent surcharge [section 14]. Spill response for all non-crude oil and hazardous substances spills, and crude oil spills less than 100,000 barrels or 4.2 million gallons would be paid for from this account. In addition, all funding for spill prevention programs would be from this account. The 2-cent surcharge would be paid indefinitely with no capping mechanism.

There are two major problems with this proposal. The first is that the 2 cent portion of the surcharge is insufficient to fund DEC spill prevention programs. It is insufficient with current oil production levels and the problem becomes more acute as North Slope production continues to decline. The proposal would force a continued reduction in DEC programs or the supplementing of general fund money at the same time state revenues are also declining.

The second major problem is that a spill reserve for "smaller" spills would not exist. Given the definition of "catastrophic oil spill," it is highly probable that most spills would be below the catastrophic threshold. To access the catastrophic account would require a governor's disaster declaration. To continue use of the account after 30 days would require a special legislative session (unless the legislature were in session). This is hardly an efficient system.

In addition to these two major problems, the proposal makes little sense given the \$1 billion response fund established under the federal Oil Pollution Act of 1990 (OPA 90). The Act provides funding in the event of catastrophic oil spills. Given this spill reserve, it makes the

Regional Citizens' Advisory Council of Prince William Sound

most sense for Alaska to focus its spill reserve funds on the statistically more likely sub catastrophic spills.

Fiscal Impact. According to a Alaska Department of Environmental Conservation (DEC) analysis, the 2 cent account is insufficient to fund the department's core prevention and response programs. This analysis was conducted using the DEC's FY 94 budget, which was significantly reduced from prior years. According to DEC, inverting the allocation of surcharge revenues to provide 3 cents of each nickel for core spill prevention programs is still insufficient.

Contingency Plan Review. An important change in SB 215 is contained in Section 17, a new section that **modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans.** Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and mitigate** potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

State and Regional Plan Review and Revision. Senate Bill 215 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Senate Bill 215 leaves revision to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision [sections 19 and 22]. Public review is limited to plan revisions [sections 20, 21, 23].

Definition of Threatened Release. In current statute, the definition of threatened release is "an imminent danger that a release will occur." In both proposals, the new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." [sections 43, 45]

Response Corps and Depots. Senate Bill 215 transfers the response corps and depots from the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to the Alaska Department of Environmental Conservation (DEC) [sections 38, 39] and the state emergency response commission and the local emergency planning commissions from DEC to DMVA [section 47]. Despite transferring the response depots authority to DEC, SB 215 limits purchases of response depot equipment from the contingency and abatement account [section 31].

Restricted Mitigation Funds. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account [section 30].

Restoration. Under both proposals, **funds may not be used from either account for restoration of the environment** "by addressing the effects of an oil or hazardous substance release." [section 31]

Comparison with House Bill 238

Senate Bill 215 is almost identical to the "M" draft of the proposed House Resource committee substitute for HB 238. However, there are three important differences. The first is in SB 215 **section 15** ("M" draft section 15) where the **definition of "catastrophic oil discharge" is changed**. This change 1) limits the use of the catastrophic oil release response account (the three cent account) to oil, excluding hazardous substance discharges and 2) requires that when the "governor determines that an oil discharge less than 100,000 barrels presents a grave and substantial threat to the economy or environment," that the governor "issue a proclamation declaring a condition of disaster emergency under AS 26.23.020(c)." The issuing of a proclamation results in a series of potential actions including a special session of the legislature.

Under both SB 215 and the "M" draft of HB 238, the oil and hazardous substances contingency and abatement account is used to pay for all hazardous substance releases regardless of size. The catastrophic oil release response account is used only for oil release or discharges.

The second difference is in **section 29** ("M" draft section 31) regarding the **financing of the oil and hazardous substances release contingency and abatement account** (the two cent account). The insertion of "to the extent that the money recovered or otherwise received had been paid out of the oil and hazardous substances contingency and abatement account" on lines 13 through 15 results in cost recovery going to the two cent account only if money had been paid out of the account for containment and cleanup at the specific site. There is no parallel restriction on financing of the catastrophic oil release response account (the three cent account).

The third difference is **section 31** ("M" draft section 33) regarding the **uses of the catastrophic oil release response account**. In the "M" draft of HB 238, this account can be used to **purchase equipment for the response depots**. In SB 215, operating costs of response corps and depots would be paid for from the oil and hazardous substances contingency and abatement account. Purchase of equipment for the response depots could be paid for by the catastrophic account.

January 23, 1994



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 Senate Bill 215, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund (5/8/93)

Section 1. This is a technical change amending the powers of the Governor to allow for use of money from the oil and hazardous substance release *prevention and* response fund, consistent with the renaming of the fund adding the words "prevention and." Similar renaming occurs in sections 4, 6, 7, and 41.

Section 2. In this version, the changes revise the priority order in which the governor may have access to money to respond to a disaster. In the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance prevention and response fund, then money regularly appropriated to state and local agencies and the disaster release fund.

Section 3. This section makes a drafting change relating to section 2 in order to address circumstances in which there may be insufficient money available for response. It authorizes the governor to spend money appropriated for other purposes or to borrow money for a term not to exceed two years.

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

Section 5. Makes additional changes reflecting the division of the fund into two accounts. However, direct access to local impact grants are restricted to catastrophic oil releases. If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated--significantly limiting access to local impact grant money.

Sections 6 and 7 that provide technical changes resulting from the renaming of the fund, adding the words "prevention and."

Section 8 is consistent with the renaming of the accounts within the funds.

Section 9. This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

Section 10 carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge.

Section 11 directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

Section 12. Requires the commissioner of administration to determine the balance of the catastrophic oil release account within 30 days after the end of each calendar year, for the purpose of computing the \$50 million account cap. Once the \$50 million cap is reached, the \$0.03 per barrel portion of severance tax conservation surcharge deposited into the general fund is suspended.

This section alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account.

This amended provision to calculating the fund balance also reflects the substitution of the catastrophic oil release account. Under subsection (e), in lieu of quarterly determination of the trigger mechanism, when the catastrophic oil release account reaches \$45 million, the determination is to be made more frequently.

This section relates also to section 48 of the bill, which clarifies how appropriations, if any, made to the spill reserve fund mentioned within the context of former AS 29.60.510(b), are to be treated for purposes of determining the suspension or re imposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

Section 13 amends the mechanism by which the surcharge on/off trigger shall be computed.

Section 14 imposes a 2 cents per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substances release contingency and abatement account."

Section 15 is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges. The redrafting of this version tends to emphasize that a catastrophic spill can be less than 4.2 million gallons if "the governor determines it presents a grave and substantial threat to the economy or environment."

Section 16 provides a revised definition for the term "surcharge."

Section 17 modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

Section 18 is consistent with section 17 and addresses the review and approval of contingency plans when a response action contractor is identified in a contingency plan for the provision of containment and clean up services.

Section 19 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Plan revision is left to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision.

Section 20 would eliminate the participation of the public and other agencies in the annual review of the state master plan. Federal, state, and Oil Spill Commission recommendations all identified the necessity of public input to eliminate complacency in spill prevention. This was the premise for the federal and state laws establishing citizens' advisory councils. Due to the diverse and unique coast line and communities potentially affected by oil and hazardous substance spills, site specific community input is essential in creating a workable plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

Section 21 allows for public and SERC review when a revision is made to the state plan. Current statute allows for public input during the annual review and revision process.

Section 22 essentially does for regional plans what section 21 did to the state master plan. Again, plan revision occurs at the discretion of the commissioner of DEC.

Section 23 is a technical amendment that incorporates the changes made in section 21 for master plans to the regional plan changes in section 22.

Section 24 offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 4.2 million gallons of oil.

Section 25. Amends the statement of purpose of the oil and hazardous substance release response fund in light of the amendments made to the chapter and related provisions by this bill. Specifically, the purpose of the new oil and hazardous substance release **prevention and response** fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."

This section allows for use of the fund "to pay for expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law."

Section 26 identifies the two accounts that constitute the fund.

Section 27 makes a related substitution of a reference to "account" for fund.

Section 28. Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 31. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. This section allows the fund to be used for the purchase of equipment to be placed in the oil and hazardous substance response depots.

Section 29 amends AS 46.08.020 and the financing of the Oil and Hazardous Substances Release Contingency and Abatement Account. It excludes money recovered or received due to a catastrophic oil discharge and money from performance bonds, and fines, penalties, and damages recovered by the state. These funds are to be deposited into the general fund and credited to the oil and hazardous substances release contingency and abatement mitigation account. Funds from the mitigation account can be appropriated annually to the oil and hazardous substances release contingency and abatement account.

Section 30. Similar to section 29 which requires non-catastrophic spill cost recovery to be credited to a mitigation account, with the exception of performance bonds, all fines, penalties, or damages recovered from catastrophic oil spills are credited to the catastrophic oil release response mitigation account and may be appropriated annually to the catastrophic oil release response account.

Section 31. This section eliminates the authority to use funds in the catastrophic oil release response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response preparedness; and 4) verification of financial responsibility. These functions are to be funded by the oil and hazardous substances release contingency and abatement account. This section repeals use of funds by Alaska Department of Military Affairs, Division of Emergency Services for the Oil and hazardous substances response corps and depots. Section 38 authorizes DEC use of funds for response corps and depots.

Money from the catastrophic oil release response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release, and 4) purchase of equipment for response depots.

Funds may not be used from either account for restoration of the environment "by addressing the effects of an oil or hazardous substance release."

Sections 32 and 33 relate to the governor's use of money in the oil and hazardous substance release prevention and response fund in the face of a disaster emergency. The sections are alternatives to each other, with appropriate related contingency provisions set out in bill sections 52 and 53, relating to whether Senate Bill 90 is passed. As SB 90 was passed, section 33 would be effective and section 32 would not be.

Section 33. Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

Section 34. Requires specific appropriation for the following uses of the fund. Money for federal matching or cost recovery from the catastrophic oil release response account or *all* uses of the oil and hazardous substances release contingency and abatement account can not be used unless an appropriation has been made specifically for that purpose.

Section 35. Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill. It reduces the DEC auditing requirements for uses of the fund.

Section 38 transfers the responsibility of maintaining emergency response depots to DEC.

Sections 39 reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

Section 40. Eliminates funding for the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Section 41 is a technical change consistent with the renaming of the fund adding the words "prevention and."

Sections 42, 43 and 45. These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 42 provides a technically revised definition of "release" and section 43 substantially amends the definition of "threatened release." In current statute, the definition of threatened release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent.

A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." Sections 36 and 37 are conforming changes to these revised definitions. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

Section 45. Modeled after the definition made in bill section 44 mentioned earlier, this section revises the definition of the term "threatened release" applicable to AS 46.09. Similar to the change in section 43, this definition explicitly includes damages to the environment.

Section 46 moves the Alaska State Emergency Response Commission from DEC to DMVA.

Section 47. Repeals a number of provisions in law regarding activities for which the fund can be used to support including:

Regional Citizens' Advisory Council of Prince William Sound

- state ferry construction, AS 19.65.025 and AS 46.08.040(d);
- the Citizens Oversight Council, AS 46.08.040(d)
- the repeal of the Conservation Surcharge on Oil replaced by this bill, AS 43.55.200-240---these three are the same as the previous "D" draft, plus
- removes DES's authority to contract for personnel to respond to releases, AS 26.23.195(b); and
- reference to the Division of Emergency services in AS 46.08.190(3), a technical change to reflect the shift in department assignments.

Section 48 is inserted to clarify how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures for the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or re imposition of the severance tax conservation surcharge. Since, in **bill section 5**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Section 49. Explains the applicability of the new definition of "catastrophic oil discharge."

Section 50 sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effective date of this Act.

Section 51 protects or "holds harmless" the terms of members of the response commission despite transfer of the commission by **bill section 47**.

January 23, 1994

Appendix B

**Oil Spill U.S. Law Report
Legislative Research Agency Memorandum**

U.S. LAW REPORT

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

RECEIVED
MAR 11 1993

DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
OIL SPILL PREVENTION & RESPONSE

page 2... **Officials Are Inundated With Last-Minute Response Plans.** Thousands of plans poured into Washington, DC, and various regional offices around the country within days of the February 18 deadline. Now it's up to the federal agencies to review the plans by August 18, or to issue interim letters of approval that will be valid for two years.

In the interim, the agencies are still plowing through the rulemaking process: the USCG published interim final rules for vessels and marine transportation-related facilities on February 5; EPA published its proposed rule for non-transportation-related onshore facilities on February 17; the RSPA put an interim final rule for onshore pipelines into effect on January 5; and MMS published an interim final rule for offshore facilities on February 8. Also: the USCG has classified 22 OSROs to date (see column on page 3).

page 7... **First Settlements Under OPA 90 Total \$14.7 Million.** DOJ filed the first two judicial settlements under OPA 90 with a US district court in Washington State on February 10. DOJ resolved complaints concerning oil spills in 1991 against Texaco and US Oil that totaled \$14.7 million — an amount attorneys say they could never have gotten under the Clean Water Act.

page 8... **Congressional Committees Vie for Jurisdiction Over OPA 90.** The recent shifts in Congress have caused a stir between the House Merchant Marine and Fisheries (MM&F) Committee and the House Natural Resources (NR) Committee. On February 4, an NR subcommittee held a hearing on the status of oil spill response in light of the Shetland Islands spill. Then on February 17, an MM&F subcommittee held its own hearing to discuss progress on the implementation of OPA 90.

page 10... **Attorneys Consider Ways to Avoid International Liability Limits in the Braer Case.** Speculation has mounted in recent weeks over whether US attorneys may be able to try a

case for damages from the January 5 Shetland Islands spill in US courts. They think it may be possible to show that the owner of the tanker Braer has some US connection.

page 11... **Study of Leak Detection Devices on Tankships Precedes NPRM.** On February 5, the USCG made available its report entitled *Tank Level Detection Devices for the Carriage of Oil*. The USCG said it would use the study to develop a notice of proposed rulemaking to implement section 4110 of OPA 90. The study evaluates leak scenarios and suggests an approach to developing standards for the approval of devices.

page 11... **Alaska AG Raises Concerns About the Exxon Valdez Trustee Council.** Alaska Attorney General Charles Cole is a member of the trustee council that must determine how the Exxon Valdez settlement money must be spent. He spoke at the *Exxon Valdez Oil Spill Symposium* on February 2-5 in Anchorage on some of the problems inherent in the current system of using trustees to determine restoration projects.

page 12... **More States Are Charging Fees for Oil Spill Response.** The OSLR staff has put together a chart comparing state per-barrel/per-gallon fees on oil that help fund the cleanup of oil spills. We learned during our research that a few states currently have bills in committee that deal with this issue. HB 1194 in Hawaii, for example, proposes a 6-cents-per-barrel tax on oil to support a \$7 million fund for prevention and response.

page 16... **News Briefs**

- State and Federal Agencies Work with Industry to Schedule Drills in Washington
- USCG to Regulate the Transfer of Oil to or from Motor Carriers and Railroads

page 16... **Hotline**

on the proposed restoration plan. Cole said many people were concerned that the trustees and restoration team are "too closely associated with the state and federal agencies involved with the damage assessment and restoration process." Currently, each trustee appoints a member of the restoration team, whose purpose is to take on the day-to-day management and administrative functions of implementing the restoration program.

They raised interesting questions, Cole said, such as: Do the projects recommended by the restoration team include work that the government agencies should be doing as part of normal agency operations? Are the proposed projects related to the assessment of damage from the oil spill, or are they directed to the study of decreases in species observed before the spill? Is the amount of funding sought for the projects designed to supplement the agencies' legislative appropriations, particularly in the area of overhead? and Does the fact that restoration team members propose projects that will be performed by the

agencies that employ them inhibit their ability to make critical evaluations of other projects?

"I think we should give consideration as trustees to providing more balance in the restoration team and perhaps having it composed of a lesser proportion of members from state and federal agencies," advised Cole. "If this restoration process is not viewed as wholesome by the public, it will not be successful."

Cole also reminded the audience that no one, by way of legislation or otherwise, can change the terms of the settlement. "I say that because there has been support, particularly in the environmental community, to have Congress enact legislation that would require the trustees as part of their duties under the agreement to spend between 70% and 80% of the available funds for the acquisition of habitat. Under the agreement, the trustee council can only deal with resources affected by the spill. "Unless lands were affected, we can't consider acquiring them," he said.

More States Are Charging Fees for Oil Spill Response

In response to a hotline call concerning a comparison of state fees on oil for spill response purposes, the **OSLR** staff decided to research the issue. We collected some interesting findings. For one, agencies in nearly all of the states charge some sort of fee on facility and/or vessel owners and operators for oversight activities (e.g., annual licensing fees), and the majority of states in the US charge a per-gallon or per-barrel fee on the oil itself (either on crude oil, motor fuels, or on all types of petroleum) to be used in the event of a leak or spill. (Unlike any other state, Oregon charges a substantial annual fee of \$3,000 for facilities and a per-trip fee for vessels.)

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administration costs to the reimbursement of cleanup/remediation expenditures. Some funds are treated as insurance policies, while others are financed primarily through the collection of penalties. Likewise, some fee/fund systems are designed so that the fund could reach a cap at which point the fee would be shut off, while others are designed to generate the same amount of available money each year.

During our research, we also found that a number of states have bills in committee that deal, in some way, with the issue of fees on oil for spill response. Among them are: SB 228 in Montana

(that would charge $\frac{3}{4}$ of a cent per gallon on diesel and other oil products in addition to gasoline; HB 172 and HB 434 in New Hampshire that would allow the state to collect the fee at the time of import rather than at the time of sale to ease the collection process; HB 1739 in Virginia that would also change how the state collects the fee; HB 228 in Idaho that would impose an additional 1 cent-per-gallon fee on petroleum to finance the Idaho Petroleum Remediation Fund; and HB 1194 in Hawaii that would establish a 6 cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at \$7 million (officials expect that the fund will not reach the \$7 million cap for eight years). (The Washington State Office of Marine Safety's legislative proposal to charge a per-trip fee on vessels coming into Puget Sound died in its early stages.)

The accompanying chart provides a run-down of each state's fee policies. Note: to keep things simple, we only included information concerning fees on oil (not on hazardous substances) and fees specifically meant for spill/leak response or remediation (we did not include information, for example, on New Mexico's fund for abandoned wells).

State Fees on Oil for Spill Response and Administration Costs*

State	Fee**	Who Must Pay	Where the Money Goes
Alabama	None	—	—
Alaska	5 cents per barrel	Every oil producer in the state	The Oil and Hazardous Substance Release Response Fund (now at about \$40 million; capped at \$50 million)
Arizona	1 cent per gallon of gasoline (all kinds), diesel, and kerosene	The UST owner when oil is purchased or when the annual tax return is due	10% goes into a Loan Account, the rest goes into the State Assurance Fund (now at about \$40 million; no cap)
Arkansas	None	—	—
California	25 cents per barrel for response (this has not been collected since Feb 1991 when the fund reached its cap); 4 cents per barrel for administration (this may be reduced by the administrator in future years)	Every marine terminal operator for oil delivered through the terminal; every pipeline operator for oil transported into the state; and just the 25-cent fee for refinery operators for crude oil received at the refinery	The Oil Spill Response Trust Fund (\$50 million) and the Oil Spill Prevention and Administration Fund (meant to generate about \$20 million annually)
Colorado	None	—	—
Connecticut	None	—	—
Delaware	1/10 of a % of the gross receipts tax	The wholesaler of petroleum and petroleum products (an exemption is allowed for crude oil)	The DE Hazardous Substance Cleanup Act Fund (now at about \$4 million; no cap)
Florida	2 cents per barrel	Any person who engages in the production or importation of oil	The Coastal Protection Trust Fund (now at about \$18 million; capped at \$50 million)
Georgia	None	—	—
Hawaii	None	—	—
Idaho	1 cent per gallon (42 cents/barrel)	The first licensed distributor who transfers a petroleum product to another legal entity within the state	The Petroleum Clean Water Storage Tank Trust Fund (now at about \$20 million; capped at \$30 million)
Illinois	None	—	—
Indiana	None	—	—
Iowa	None	—	—
Kansas	16 cents per barrel	The first purchaser of the oil	A portion funds the conservation division of the Kansas Corporation Commission, and the rest goes into the Conservation Fee Fund (now at least \$500,000; capped at \$1 million)
Kentucky	None	—	—
Louisiana	2 cents per barrel	Every person owning crude oil in a vessel at the time the oil is transferred to a marine terminal within the state (except for at LOOP)	The Oil Spill Contingency Fund (now at about \$10-12 million; capped at \$15 million, but only if that amount is reached through the collection of fees)

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.

**Fees are assessed only once for the same oil.

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

State	Fee**	Who Must Pay	Where the Money Goes
Maine	4 cents per barrel for coastal and inland cleanup; 44 cents (gasoline), 25 cents (#2, kerosene, jet fuel, and diesel), and 10 cents (#6) per barrel for groundwater cleanup	For coastal and inland cleanup: every person that first transports oil in Maine. For ground-water cleanup: terminal facilities that first transfer the products and any person that first transports oil into the state (no fee on exports)	The Maine Coastal and Inland Surface Oil Cleanup Fund (now at about \$4 million; capped at \$6 million), and the Groundwater Oil Cleanup Fund (now at about \$12 million; capped at \$15 million)
Maryland	¾ of a cent per barrel for cleanup; 5 cents per barrel for upgrading underground storage tanks	The tank owner	The Maryland Oil Disaster Containment, Cleanup, and Contingency Fund (capped at \$5 million), and the Underground Storage Tank Upgrade and Replacement Fund (now at about \$4.5 million; capped at \$5 million)
Massachusetts	None	—	—
Michigan	7/8 of a cent per gallon of petroleum products (36.75 cents/barrel)	All those selling refined oil for resale	The MI Underground Storage Tank Financial Assurance Fund (now at about \$52 million; no cap)
Minnesota	None	—	—
Mississippi	None	—	—
Missouri	\$25 per 8,000 gallons	The tank owner upon delivery of gasoline	The Underground Storage Tank Insurance Fund (capped at \$8 million)
Montana	¾ of a cent per gallon (the fee is currently shut off until the fund drops below \$4 million)	The gasoline distributor	The Petroleum Tank Release Cleanup Fund (now at about \$5 million; capped at \$8 million)
Nebraska	¾ of a cent per gallon on motor fuels (although now it is at 5/10 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 ¾ 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	5/10 of a cent per gallon on most petroleum products (25.2 cents/barrel)	The refiner or importer	The State Petroleum Fund (now at about \$4 million; capped at \$7.5 million)
New Hampshire	5/10 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 5/10 of a cent fee); the distributor of all oil at the time of sale (for the 1/10 of a cent fee)	The Oil Discharge, Disposal, and Cleanup Fund (the ODD Fund: now at about \$9.1 million; capped at \$10 million); The Oil Pollution Control Fund (the OPC Fund: now at about \$3.5 million; capped at \$5 million)
New Jersey	1½ cents per barrel for major facility owners	The operator or owner of the receiving or transferring major facility	The NJ Spill Compensation Fund (now at about \$72 million; no cap)
New Mexico	None	—	—

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.

**Fees are assessed only once for the same oil.

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

State	Fee**	Who Must Pay	Where the Money Goes
New York	Currently at 4 cents per barrel for major facility owners	The major facility owner at the point of import or receipt	The NY Environmental Protection and Spill Compensation Fund (now at about \$17 million; capped at \$25 million)
North Carolina	None	—	—
North Dakota	None	—	—
Ohio	None	—	—
Oklahoma	1 cent per gallon (42 cents/barrel)	The fuel distributor	The OK Petroleum Underground Release Indemnity Fund (now at about \$6-\$7 million; no cap)
Oregon	\$650 per trip for tank vessels; \$28 per trip for barges; and \$25 per trip for cargo vessels (facilities must pay \$3,000 per year)	All vessels and facilities	The Oil Spill Prevention Fund (capped at \$153,600)
Pennsylvania	None	—	—
Rhode Island	None (There is an Oil Release Response Fund)	—	—
South Carolina	1/2 cent per gallon on all petroleum (21 cents/barrel)	The refiner or tank owner that first sells the oil in the state	The State Underground Petroleum Response Bank (capped at \$15 million)
South Dakota	1 cent per gallon	The oil distributors	The SD Petroleum Release Compensation Fund (now at about \$100,000; capped at \$5 million)
Tennessee	None	—	—
Texas	2 cents per barrel	Every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal	The Coastal Protection Fund (now at about \$20 million; capped at \$25 million)
Utah	None	—	—
Vermont	1 cent per gallon	Motor fuels distributors	The Vermont Petroleum Cleanup Fund
Virginia	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 for the same oil.

Alaska State Legislature

Legislative Research Agency




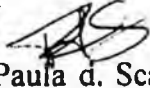
130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

April 16, 1993

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski  and Paula d. Scavera 
Legislative Analysts

RE: **Other States' Funds Similar to Alaska's Oil and Hazardous Spill Response Fund**
Research Request 93.186

You asked for information about funds established in other states that are similar to Alaska's Oil and Hazardous Spill Response Fund (the so-called "470 Fund"). We contacted six states (California, Florida, Louisiana, New Jersey, Texas and Washington) to obtain comparative information. Although other states have similar funds, these are a sample of those that tax oil, petroleum products or other pollutants to pay for a cleanup or response fund.

The attached table summarizes key features of oil spill funds in those states. We listed only those funds which are financed primarily by a tax and not by pollution fines or settlements. In a preliminary version of this memorandum, we provided copies of relevant statutes from the six states listed above and a report from Texas, *Oil Spill Prevention and Response Act Progress Report*.

Representative Brown
April 16, 1993
Page 2

Attached to this memorandum is an article from the *Oil Spill U.S. Law Report* (March 1993) containing information on a 50-state survey of state fees on oil for spill response and administrative costs.¹ This table, along with the information compiled by our office, show that state taxes on petroleum products for spill response vary from zero to the 87 cents per barrel in Florida.²

We hope this information is useful for your purposes. Please do not hesitate to contact us if you have additional questions.

Attachments

¹This article (pages 12 - 15 of the March 1993 issue) is reprinted with permission from Cutter Information Corporation, 37 Broadway, Arlington, MA 02174, (telephone 800-881-1950 or 617-648-8700). Reproduction without express permission of the publisher is forbidden by law.

²It appears that in Florida some petroleum products are taxed for three separate funds--80 cents per barrel plus 2 to 5 cents per barrel plus 2 cents per barrel (totaling 87 cents per barrel). No single state official in Florida seemed to know about all three funds listed on the table prepared by this agency. Florida officials with whom we spoke were able to speak only about the fund they administered and were unable to confirm with 100 percent certainty that petroleum fuels (gasoline, diesel, kerosene, aviation fuel, heating oil, etc.) were taxed by all three funds. They all, however, "thought it was true" that some petroleum products were taxed three times.

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

State Fund	Primary Revenue Source	Purpose / Use	Comments	Contact
California Oil Spill Response Trust Fund	25 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	for cleanup of oil in marine waters or cleanup of oil that will impact marine waters	Fund has reached its cap of \$50 million	Department of Fish and Game, Oil Spill Prevention and Response Office (916) 445-9338
California Oil Spill Prevention Administrative Fund	4 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	administering, operating, managing, staffing, and plan reviewing of oil spills in marine waters or impacting marine waters	Approximate annual revenue = \$20 million Approximate number of personnel funded = 190 Approximate annual expenditures = \$18 million	
Florida Inland Protection Trust Fund (Chapter 376, Section 3071)	30, 60, or 80 cents/barrel tax on pollutants (petroleum fuels) produced or imported into the state (rate varies with unobligated balance of fund); tax is currently at the highest level and is expected to remain there indefinitely (annual revenue at 80 cents is still not sufficient to pay all the claims against the fund)	cleanup of discharges of petroleum or petroleum products from stationary petroleum storage facilities; investigation and assessment of contaminated sites; restoration or replacement of potable water supplies; rehabilitation, maintenance and monitoring of contaminated sites; cost recovery expenses; administrative expenses including costs incurred by the Department of Health in providing field and laboratory services; some activities related to the removal and replacement of petroleum storage systems	Approximate annual revenue = \$155 million Approximate number of personnel funded = 50 Approximate annual expenditures = \$155 million	Department of Environmental Regulation, Division of Petroleum Cleanup (904) 487-3299
Florida Water Quality Assurance Trust Fund (Chapter 376, Section 307)	varies with type of product and amount in fund; \$1 or \$2/lead acid battery; 2.3 or 5.9 cents/gallon solvents; 1 or 2.5 cents/gallon motor oil; 2 to 5 cents/barrel petroleum products	to restore or replace potable water supplies; for the investigation, assessment, cleanup, restoration, maintenance, and monitoring of any site contaminated with hazardous wastes, hazardous substances as defined by CERCLA, pollutants, substances suspected to be carcinogenic or toxic to humans, or substances which pose a serious danger to public health or welfare	Approximate annual revenue = \$25 million Approximate number of personnel funded = 35 Approximate annual expenditures = \$25 million	
Florida Coastal Protection Trust Fund (Chapter 376, Section 11)	2 cents/barrel tax on pollutants (includes pesticides ammonia, chlorine, and other oil products) produced or imported into the state; tax suspended when fund reaches \$50 million, reimposed at \$40 million	to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages	Approximate annual revenue = n/a Approximate number of personnel funded = 17 Approximate annual expenditures = n/a	

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

State Fund	Primary Revenue Source	Purpose / Use	Comments	Contact
Louisiana Oil Spill Contingency Fund (RS 30: 2451 - 2496)	2 cents/barrel fee on all crude oil transferred to or from a vessel at a marine terminal within the state; fee suspended when fund reaches \$15 million, reimposed at \$8 million; under certain conditions, fee can double to 4 cents until fund reaches \$30 million	administrative expenses of the office of the coordinator (not to exceed \$350,000 annually); removal costs and damages related to actual or threatened discharges of oil; removal costs related to abatement and containment of actual or threatened discharges of oil; protection, assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; operating costs and contracts for response prevention (not to exceed \$5000,000 annually); other costs and damages authorized by statute; grants to universities for Research and Development (not to exceed \$750,000 annually)	Approximate annual revenue = \$9 million Approximate number of personnel funded = 10 Approximate annual expenditures = \$500,000	Office of the Louisiana Oil Spill Coordinator (504) 922-3230
New Jersey Spill Compensation Fund (NJSA 58:10-23.11)	1.5 cents/barrel tax on oil and petroleum products transferred within state; 1.75 to approximately 4 cents per barrel tax on all hazardous substances transferred within the state	all direct/indirect costs for oil and hazardous substance spills; research and development; administrative costs of oil spill plan reviews	Approximate annual revenue = \$14 million Approximate number of personnel funded = 100 Approximate annual expenditures = \$5 million Approximately \$70 million currently in fund; interest from fund pays for research (approximately \$500,000 annually)	Department of Environmental Protection, Bureau of Discharge Prevention (609) 984-4306
Texas Coastal Protection Fund (Texas Natural Resource Code, Section 40.152)	2 cents/barrel tax on all crude oil loaded or off-loaded in Texas ports; tax suspended when fund reaches \$25 million, reimposed at \$14 million	administrative expenses, personnel and training expenses, equipment maintenance, and operating costs related to implementation and enforcement of statute; response costs related to abatement and containment of actual or threatened discharges of oil; damages related to actual or threatened discharges of oil; assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; interagency contracts (not to exceed \$1.25 million annually); purchase of response equipment (not to exceed \$4 million) and the purchase of replacement equipment as necessary; other costs and damages authorized by statute	Approximate annual revenue = \$12 million Approximate number of personnel funded = 40 Approximate annual expenditures = \$6 million	General Land Office, Oil Spill Prevention and Response (512) 463-5329

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

State Fund	Primary Revenue Source	Purpose / Use	Comments	Contact
Washington Oil Spill Response Account (RCW Chapter 90.56)	2 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for cleanup costs of oil and petroleum product spills, when the spill costs exceed \$50,000	Approximate annual revenue = \$3 million Approximate number of personnel funded = 0 Approximate annual expenditures = n/a	Department of Ecology, Response to Hazardous Material Spills (206) 459-6658
Washington Oil Spill Administration Account (RCW Chapter 90.56)	3 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for routine cleanup response, management, staff, enforcement, plan review, coordination and public outreach.	Approximate annual revenue = \$4 million Approximate Number of personnel funded = 35 Approximate annual expenditures = \$4 million	

n/a = not available at this time

Sources: Statutes of, and interviews with officials in, states listed.

Prepared by the Legislative Research Agency, April 1993 (93.186).

"State Fees on Oil for Spill Response and Administration Costs"
1993 Cutter Information Corp.
Oil Spill, U.S. Law Report
March 1993
Pages 12 - 15

Reprinted with Permission from

Cutter Information Corporation
37 Broadway
Arlington, MA 02174
1-800-964-5125 or
617-648-8700

Appendix C

Alaska North Slope Oil Profits Report

Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures

Richard A. Fineberg
Box 416
Ester, Alaska 99725

(Advance copy of a paper prepared for presentation at the 15th Annual North American Conference of the International Association for Energy Economics, Westin Hotel, Seattle, Washington, Oct. 11-13, 1993 [revised 8/18/93])

ABSTRACT

This paper describes a model that uses available public information on North Slope production economics to place proposed expenditures on environmental measures in the context of North Slope per-barrel costs and profits. It is estimated that after-tax profits from North Slope production and pipelining operations exceed \$3 billion annually. If these operations were controlled by one firm (in fact, three companies control more than 90% of Alaska's production and pipeline facilities), that company would rank among the five most profitable industrial corporations in the nation. Using the per-barrel model and Alaska Department of Revenue forecast scenarios, it is also possible to estimate future North Slope profits. It is estimated that currently debated expenditures of \$150 million for spill prevention and environmental mitigation measures would reduce industry profits in the year 2000 by approximately one cent per barrel, compared to total after-tax profits in excess of \$5.00 per barrel.

INTRODUCTION

Alaska is often the reluctant host to intense public policy battles between environmental protection and development. These issues are frequently cast in economic terms: How much can the proponents of a proposed project afford to pay for environmental protection measures? Or: What will be the economic consequences of going forward with, delaying or halting the project? Because economics frequently frames these questions, it seems appropriate to ask whether economics can also provide answers. Certainly economics is the correct discipline for analyzing the costs. At the same time, it must be recognized that assessment of environmental risk is not turf on which economists are necessarily expert. With this background in mind, we will look at one manifestation of Alaska's perpetual debate: How much spending on environmental protection — principally on prevention of oil spills and mitigation of other potential environmental hazards — should the owners of the Trans-Alaska Pipeline¹ (TAPS) be required to bear?

This question frequently finds its way into the public policy arena, especially since March 24, 1989, when the tanker Exxon Valdez banged into Bligh Reef in Prince William Sound. The ruptured tanker caused the largest oil spill in the history of this nation.² It is widely understood by all but oil industry attorneys and officials that the oil companies that were charged with responsibility for safe shipment of Alaska North Slope (ANS) oil failed miserably on their long-standing promises to

build and operate the safest system in the world, and to respond promptly and effectively to any spill that should occur.³ It is also undisputed that since 1989, the owners have spent hundreds of millions of dollars in repairing pipeline problems and upgrading their inadequate prevention and response systems.

Two currently debated proposed environmental mitigation measures are a vapor emissions recovery system to capture potentially toxic emissions vented during loading and off-loading tankers at Valdez and specially-designed tractor tugs to handle a disabled tanker. Both measures are in place at other ports, but not at the Alaska terminal that ships approximately 20 percent of the nation's domestic crude oil production. Together, it is estimated that these improvements would cost the North Slope owners up to \$150 million. Should these measures be required, or has Alaska's leading industry and revenue producer spent enough? To answer this question requires balancing environmental risks against the costs of prevention and mitigation measures. This paper focuses on the second half of this equation.

THE PROBLEM: WILL ENVIRONMENTAL EXPENDITURES KILL ALASKA'S GOLDEN GOOSE?

Each year the nation's largest oil shipment facility, situated three miles across Port Valdez from the town of Valdez, puts one million pounds of benzene, a known carcinogen, into the atmosphere. Alyeska asserts that no serious documentable health risk exists from the pipeline terminal. Unpersuaded by its review of the industry-funded scientific study on which Alyeska relies, in September 1992 the Congressionally-mandated Prince William Sound Regional Citizen's Advisory Council passed a unanimous resolution asking Alyeska to install immediately a vapor recovery system to capture and incinerate the gasses vented when tankers deballast and load at Valdez. Alyeska declined. In his response to the oversight group, Alyeska's then-President J.B. Hermiller cited current regulations that do not require the venting system, current health risk information and the \$120 million cost as the driving factors in his rejection of the petition.⁴

Special escort vessels known as tractor tugs have been commissioned to accompany tankers in and out of port at the Louisiana Off-Shore Oil Port facility (LOOP), Puget Sound and San Francisco Bay. With a special, mid-ship propulsion system that allows the tractor tug to apply power in any direction, not just forward, the tractor tug is judged by many experts as superior to the conventional tug because it can provide both retarding forces and effective steering assistance. Two tractor tugs would cost approximately \$25 million. Alyeska's owners have deferred obtaining for Prince William Sound the vessels they have procured for other ports.⁵

The motivation for these decisions is reflected in the statements of Alyeska officials, who have warned repeatedly that the costs of the environmental protection measures at Port Valdez and on the TAPS line itself must be weighed carefully against the fact that oil production is now declining and increased costs will cut into long-term North Slope production, inevitably hastening the demise of Alaska's golden goose. For example, speaking at an international conference on energy issues in Anchorage in July 1992, Alyeska Vice President for Environment and Contingencies M.F.G. Williams pointed out that "there comes a time when all of those small costs [on environmental measures] become factors in future operating or investment decisions." As an example, Williams turned to his experience in coal mining to suggest that foreign coal producers seemed to undercut their U.S. competitors "by the amount we had to pay to the U.S. for end of mine reclamation."⁶

In a January 6, 1992 speech to the Anchorage Chamber of Commerce, Alyeska's Hermiller warned that North Slope production was declining and put out his usual strong plug for a cost-benefit approach to environmental regulation. "If the state imposes excessive financial burdens on the owners of the production going through the line or on the pipeline system itself," Hermiller said, "the line will close sooner than later." As an example of a cost Alyeska should not be asked to bear until unacceptable harm to the environment or to public health is shown, Hermiller cited the vapor recovery system he later rejected.

"We must live within our means," Hermiller said. "If as throughput declines one third over the next six years and our costs are reduced by less than one third during the same period, our cost per barrel will increase. Accordingly, we must find ways to reduce costs to be able to keep the pipeline a viable economic enterprise for as long as possible in the coming years."⁷

To assess the economic validity of the Alyeska position, it is necessary to ask what level of expenditures might — or might not — be within the means of Alyeska and its owner companies.

ANS PRODUCTION AND PIPELINE PROFITS

Although profits from Alaska North Slope production and pipelining are not reported by the producing companies or any government entity, using a variety of published sources it is possible to estimate average profits with a fair degree of precision. Once the data are assembled, profits to the North Slope owners can be estimated by subtracting production and shipping costs, taxes and royalties from the market price of oil. An example of profit calculations for 1991 is provided in Table 1 on the following page. That table begins with the Lower-48 sales price of oil (line 1), then subtracts pipeline charges (lines 4 and 5) and marine transportation (line 12) to establish a field or basis price (line 13) for calculating state royalties and production and property taxes (line 14). After those payments are calculated, operating and capital costs (line 15) are removed. State income tax, estimated from published figures (line 17), is then subtracted. The resulting net revenue figure is the basis for estimating federal income tax (line 18). The producers also own TAPS and the feeder pipelines in shares roughly equal to their production shares, with the exception of Conoco (which produces the Milne Point field — less than two percent of total ANS production — but has no ownership share in TAPS). To develop a comprehensive picture of North Slope profitability, TAPS profits (line 11) and feeder line profits (line 8) therefore must be added to production profits. The resulting total appears at line 22. To account for different market and transportation prices for West and Gulf Coast oil, calculations are made for each destination. The weighted average of West Coast and Gulf Coast ANS dispositions appears at line 23.⁸

Where official data are not available or are in dispute, the model relies on conservative estimates that tend to understate ANS profits. For example, the property tax is based on a gross Alaska tax figure that includes Cook Inlet facilities and therefore overestimates the tax on ANS production and, correspondingly, underestimates industry profits. Similarly, the federal income tax is estimated at 32.1% — very near the nominal rate of 34% and much higher than the rate that the limited information available from published studies indicates that oil companies actually pay.⁹

Table 1. Estimated Alaska North Slope Production & Pipeline Profits for 1991

North Slope Profit Analysis: ALL FIELDS	/-- ANS Avg. (\$/bbl) --/		Notes
	Gulf Coast	W. Coast	
1 Average Price for ANS (Spot)	\$18.35	\$17.21	Alaska Dept. of Revenue (ADOR) data
2 Quality Adjusted Price			[Used for individual field analysis]
3 Production / Disposition <i>MM bbls. yr. / day</i>			
a Production	664.870	1,822	Alaska Dept. of Natural Resources data
b. Volume to East / West Coast (%)	21.93%	78.07%	From ADOR data
4 Feeder Pipeline Tariffs	(\$0.10)	(\$0.10)	Wghtd. avg. sum of items 4a thru 4g
a Operating & capital costs	(\$0.04)	(\$0.04)	Alaska Dept. of Law (ADL; 7/29/92) less 4b
b State & local property tax (pipelines)	\$0.00	\$0.00	30% of total ADOR property tax
c State income tax (pipelines)	\$0.00	\$0.00	4d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	(\$0.01)	(\$0.01)	ADL (7/29/92) less item 4c
e After-tax margin	(\$0.02)	(\$0.02)	ADL (7/29/92)
f Recovery of deferred return	(\$0.01)	(\$0.01)	"
g DR&R allowance	\$0.00	\$0.00	"
5 TAPS Pipeline Tariff	(\$3.41)	(\$3.41)	Sum of items 5a thru 5h
a Operating & capital costs	(\$1.31)	(\$1.31)	Alaska Dept. of Law (ADL; 7/29/92) less 5b
b State & local property tax (pipelines)	(\$0.15)	(\$0.15)	30% of total ADOR property tax
c State income tax (pipelines)	(\$0.09)	(\$0.09)	5d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	(\$0.65)	(\$0.65)	ADL (7/29/92) less item 5c
e After-tax margin	(\$0.49)	(\$0.49)	ADL (7/29/92)
f Recovery of deferred return	(\$0.64)	(\$0.64)	"
g DR&R allowance	(\$0.08)	(\$0.08)	"
h Pumpability Charge			[Used for individual field analysis]
6 State Share (Feeder Lines)	(\$0.01)	(\$0.01)	Sum of items 4b, 4c
7 Federal Share (Feeder Lines)	(\$0.01)	(\$0.01)	Item 4d
8 Industry Profit (Feeder Lines)	\$0.03	\$0.03	Sum of items 4c, 4f
9 State Share (TAPS)	(\$0.25)	(\$0.25)	Sum of items 5b, 5c
10 Federal Share (TAPS)	(\$0.65)	(\$0.65)	Item 5d
11 Industry Profit (TAPS)	\$1.13	\$1.13	Sum of items 5e, 5f
12 Tanker (to Gulf / West Coast)	(\$3.83)	(\$1.07)	USFRA data (ADOR)
13 Wellhead value	\$11.02	\$12.64	Sum of items 1, 4, 5, 12
14 State Royalties, Production & Property Taxes	(\$3.01)	(\$3.41)	Sum of items 14a thru 14d
a Royalty	(\$1.30)	(\$1.50)	Item 13 less field costs * est. field royalty
b Severance tax	(\$1.31)	(\$1.51)	Item 13 * .875 * nominal severance * ELF
c Spill Response & Conservation Taxes	(\$0.05)	(\$0.05)	\$.054 * .875
d State & local property tax (production)	(\$0.36)	(\$0.36)	70% of total DOR property tax
15 Production costs	(\$3.49)	(\$3.49)	Sum of items 15a, 15b
a Lifting Costs	(\$1.19)	(\$1.19)	Derived from trade publication estimates
b Depletion, Depreciation & Amortization	(\$2.30)	(\$2.30)	Derived from trade publication estimates
16 Net Revenue (production)	\$4.52	\$5.74	Sum of items 13, 14, 15
17 State Income Tax (production)	(\$0.15)	(\$0.15)	From ADOR Spr. 92 frst. less items 4c, 5c
18 Federal Income Tax (production)	(\$1.40)	(\$1.79)	Est. 32.1% of items 16 + 17
19 Industry Profit (production)	\$2.96	\$3.79	Sum of items 16 thru 18
20 Total State Share (production + pipelines)	\$3.42	\$3.82	Sum of items 6, 9, 14, 17
21 Total Federal Share (production + pipelines)	\$2.06	\$2.45	Sum of items 7, 10, 18
22 Total Industry Profit (production + pipelines)	\$4.12	\$4.95	Sum of items 8, 11, 19
23 CY 91 Industry Avg. per-barrel ANS Profit		\$4.77	(Gulf [line 22 * line 3b] + West Coast [line 22 * line 3b])

(From: North Slope Profits and Production Prospects, p. 43)

As Table 1 indicates, in 1991 after all costs, royalties and taxes were paid, North Slope owners earned an estimated profit of \$4.77 per barrel on their Alaska production and pipeline operations. TAPS profits accounted for approximately \$1.13 per barrel, or 23.7 percent of this total.¹⁰

Daily profits can be derived from Table 1 by multiplying the daily per-barrel estimated profits (line 23) by the average daily production (line 3a). At an average 1991 daily production rate of 1.82 million barrels per day, after-tax net profits on Alaska operations totalled approximately \$8.7 million per day. Of this amount, TAPS profits of \$1.13 per barrel contributed approximately \$2.0 million per day. Total ANS production and pipeline profits for 1991, estimated by multiplying the daily average by 365 days, were \$3.17 billion.

Insofar as the profits from ANS production and pipelining are concerned, was 1991 a typical year? As indicated above, profitability of North Slope operations is not tabulated in any form that will answer that question. ANS production and pipeline profits for the years 1977 through 1987 were estimated in a 1989 accountancy study commissioned by the Alaska Department of Revenue. That report was prepared by Dr. Edward Deakin, Price-Waterhouse Professor of Petroleum Accounting at the University of Texas. The per-barrel profits model was tested against Deakin's results for 1987 and the results tracked quite closely, producing a nearly identical division of the economic rents.¹¹ To fill the gap between 1988 and the present, a simplified version of the model in Table 1 was created for the years 1988-90 and 1992.¹² The results of this exercise are shown, with the Deakin's 1977-87 figures and the 1991 estimate, in Tables 2 and 3 on the following pages.

From these data, it is clear that the 1991 results were not unusual. As Table 3 indicates, estimated ANS production and pipeline profits for the seven-year period between 1986 and 1992 averaged approximately \$3.7 billion in 1993 dollars.

When the 1977-87 profits estimates from the earlier study are summed with the 1988-92 profits estimated in this report, the North Slope producers have earned a cumulative after-tax profit of approximately \$58.6 billion (nominal) from their Alaska production and pipeline operations since 1977. Of this sum, \$42.3 billion is from production and \$16.3 billion is from pipeline operations.

Expressed in inflation-adjusted (1993) dollars, estimated North Slope production and pipelining profits exceed \$85 billion.

Table 2.

**Estimated Alaska North Slope Production and Pipeline Profits
(Nominal \$)**

(1)	(2)	(3)	(4)
Year	North Slope Production & Feeder Line Profits	TAPS Profits	North Slope Production & Pipeline Profits (Nominal \$)
1977	\$260,000,000.00	\$0.00	\$260,000,000.00
1978	\$639,000,000.00	\$570,000,000.00	\$1,209,000,000.00
1979	\$3,030,000,000.00	\$1,019,000,000.00	\$4,048,000,000.00
1980	\$3,212,000,000.00	\$949,000,000.00	\$4,161,000,000.00
1981	\$3,443,000,000.00	\$1,046,000,000.00	\$4,490,000,000.00
1982	\$3,483,000,000.00	\$1,250,000,000.00	\$4,733,000,000.00
1983	\$4,026,000,000.00	\$1,457,000,000.00	\$5,483,000,000.00
1984	\$4,313,000,000.00	\$1,686,000,000.00	\$5,999,000,000.00
1985	\$3,468,000,000.00	\$1,386,000,000.00	\$4,854,000,000.00
1986	\$1,250,000,000.00	\$1,768,000,000.00	\$3,018,000,000.00
1987	\$1,989,000,000.00	\$1,226,000,000.00	\$3,215,000,000.00
1988	\$1,806,922,980.00	\$877,278,080.00	\$2,684,201,060.00
1989	\$2,591,784,520.00	\$811,221,680.00	\$3,403,006,200.00
1990	\$3,966,079,950.00	\$790,558,650.00	\$4,756,638,600.00
1991	\$2,420,126,800.00	\$751,303,100.00	\$3,171,429,900.00
1992	\$2,357,119,971.00	\$709,052,349.00	\$3,066,172,320.00
1993			
Totals:	\$42,255,034,221.00 (or) \$42.3 billion nominal \$	\$16,296,413,859.00 (or) \$16.3 billion nominal \$	\$58,551,448,080.00 (or) \$58.6 billion nominal \$

Notes

- (2) 1977-87 profits from: Edward B. Deakin, *Oil Industry Profitability in Alaska 1969 thru 1987* (Alaska Dept. of Revenue, March 15, 1989, Table III-1, III-3); 1988-92 profits calculated by the author from published sources..
- (3) 1977-87 profits from: Edward B. Deakin, *Oil Industry Profitability in Alaska 1969 thru 1987* (Alaska Dept. of Revenue, March 15, 1989, Table IV-3); 1988-92 profits calculated by the author from published sources.
- (4) = (Col. 2) + (Col. 3)

Table 3.

**Estimated Alaska North Slope Production and Pipeline Profits
(Nominal and Inflation-Adjusted \$)**

(1)	(2)	(3)	(4)	(5)
Year	Inflation Rate	Index Factor	N. Slope Production & Pipeline Profits (Nominal \$)	N. Slope Production & Pipeline Profits (1993\$)
1977	6.5%	2.4636	\$260,000,000.00	= \$640,533,059.05
1978	7.6%	2.3132	\$1,209,000,000.00	= \$2,796,693,638.12
1979	11.3%	2.1498	\$4,048,000,000.00	= \$8,702,555,990.47
1980	13.5%	1.9316	\$4,161,000,000.00	= \$8,037,275,842.70
1981	10.3%	1.7018	\$4,490,000,000.00	= \$7,641,201,239.06
1982	6.2%	1.5429	\$4,733,000,000.00	= \$7,302,579,412.79
1983	3.2%	1.4528	\$5,483,000,000.00	= \$7,965,875,475.50
1984	4.3%	1.4078	\$5,999,000,000.00	= \$8,445,287,367.71
1985	3.6%	1.3497	\$4,854,000,000.00	= \$6,551,655,202.82
1986	1.9%	1.3028	\$3,018,000,000.00	= \$3,931,974,942.87
1987	3.6%	1.2785	\$3,215,000,000.00	= \$4,110,534,516.59
1988	4.1%	1.2341	\$2,684,201,060.00	= \$3,312,627,556.22
1989	4.8%	1.1855	\$3,403,006,200.00	= \$4,034,312,887.15
1990	5.4%	1.1312	\$4,756,638,600.00	= \$5,380,785,880.80
1991	4.2%	1.0733	\$3,171,429,900.00	= \$3,403,768,854.47
1992	3.0%	1.0300	\$3,066,172,320.00	= \$3,158,157,489.60
1993	-	1.0000		
Total Profits (ANS Production and Pipelines):			\$58,551,448,080.00	= \$85,415,819,355.91
			(or)	(or)
			\$58.6 billion nominal \$	= \$85.4 billion 1993 \$

Notes

- (2) Consumer Price Index (CPI-U); annual % change from previous annual U.S. city average, all items (U.S. Department of Labor, CPI Detailed Report: Data for January 1993, p. 80).
- (3) = (Subsequent year index factor) * (current year inflation)
- (4) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Appendix E); 1988-92 profits calculated by the author from published sources.
- (5) = (Col. 3) * (Col. 4)

DISCUSSION

This analysis indicates that the disputed vapor recovery system could be purchased at a cost of approximately four percent of one year's after-tax profits. Tractor tugs could be purchased for less than one percent — approximately three days' profits. Put otherwise: Spread across the 6.8 billion barrels forecasted North Slope production between now and 2010,¹³ the combined expenditure for these environmental amenities would come to less than \$0.0225 (2-1/4 cents) per barrel.

How big is the 1986-93 average annual ANS production and pipelining profit of \$3.7 billion, anyway? To answer that question, it will be useful to look at the annual "Fortune 500" ranking of the nation's largest industrial corporations. If ANS production and pipelining profits were controlled by one firm instead of three, that company would have equalled the performance of the second most profitable company on the Fortune 500 in 1991 and would have ranked fourth in 1992.¹⁴

What about the thesis of Alyeska's Hermiller's that the pipeline operator must cut costs in order to "keep the pipeline a viable economic enterprise" because production is declining? First of all, since the TAPS line is wholly owned by the North Slope producers, its sole function is to transport ANS and there is no alternative means of transport, it is fatuous to consider TAPS on a stand-alone basis. The pipeline is an integral part of North Slope operations.¹⁵ Hermiller's warning, then, is properly analyzed in terms of production and pipeline profits together, as shown in the previous tables. To examine Hermiller's argument, ANS operations for the year 2000 can be analyzed in terms of Table 1, using the Alaska Department of Revenue's forecast assumptions for price and volume.¹⁶ The results are summarized in Table 4.

Table 4. Estimated ANS Production and Profits in 2000 A.D.
(1992 \$ per barrel)

Forecast Production 355.4 million barrels (971,000 barrels per day)

Forecast Price	\$19.54
Forecast TAPS, Feeder Line Tariffs	(\$2.80)
Forecast Tanker Costs	(\$1.44)
State Royalties, Production & Property Taxes	(\$3.87)
Production Costs	(\$4.45)
State, Federal Income Tax	(\$2.36)
Industry Production Profit	\$4.62
Industry TAPS, Feeder Line Profit	<u>\$0.71</u>
Total Industry Profit per-barrel	\$5.34

Source: *North Slope Profits and Production Prospects*, p. 72 (using Alaska Dept. of Revenue Spring 1992 forecast assumptions for state fiscal year 2000).

In the year 2000, additional costs of \$0.0225 (2-1/4 cents) per barrel for hard-piping and tractor tugs would have a negligible effect on profits. Because these costs are effectively shared with state and federal governments, the loss to the producers would

amount to approximately one cent per barrel, compared to estimated tax-paid North Slope production and pipeline profits of \$5.34 per barrel. Over the course of that year, those expenditures would result in a reduction of less than \$4 million to estimated net profits totalling \$1.9 billion. In making long-term production decisions, a two to three cent per-barrel change in costs is apt to be lost in the noise of the much larger uncertainty about prices. Long-range planning forecasts often consider price changes in \$5-per-barrel increments. Finally, these data indicate that in terms of net income, at the end of the century profits from North Slope operations would still be on a par with the seventh most profitable corporation in the nation in 1991.

In the absence of information the industry treats as proprietary, it is difficult to make useful internal rate of return calculations. However, it is interesting to note that Deakin's accountancy study estimated the internal rate of return through 1987 at 43.7% if 75 percent of the total investment were financed with debt. Assuming 100% equity financing, Deakin estimated an after-tax rate of return on cash flow of 29.7%.¹⁷ These data indicate that Hermiller's thesis, although logically correct, is practically useless. Due to the extraordinary profit from ANS operations, the environmental costs against which Alyeska officials habitually rail are virtually irrelevant to long-term planning.

Many pieces of the oil market price puzzle are not reported publicly. Even those that are published are often subject to dispute. These results should therefore be regarded as estimates rather than precise statements of North Slope profits. After reviewing the effects of changing key factors, Deakin estimated that with better public information, his estimate might range downward by 4% or upward by 10%.¹⁸ Similar revisions to the 1988-92 numbers are possible, although upward revision in industry profits seems much more likely than downward. In sum, while the North Slope producers have consistently declined to make profit figures public, it is believed that the data used in this analysis produce an estimate of profits that is quite conservative.

This analysis considers only the profits earned from North Slope production, feeder line shipments to Prudhoe Bay and TAPS shipments to Valdez. These figures do not include the profits North Slope producers derive from transportation from Valdez to the Lower 48, or from refining and marketing of ANS. One reason for excluding these downstream profit sources is that even without ANS, the producers arguably could realize similar profits using non-ANS crude oil sources to run equivalent transportation and essentially identical refining and marketing operations.

Two other values of ANS have been identified. One is the value of a stable supply of crude oil that North Slope development provides the owner companies. Without ANS, the companies would have to rely for their oil supply on the shifting sources of the open market. Ownership of ANS production enables the major North Slope producers to plan and design their refineries with an assured supply. Quantification of this advantage, however, would require the introduction of assumptions whose bases would be difficult to validate.

The second additional benefit of North Slope operations resides in the collection by TAPS owners, through the TAPS tariff, of funds for the eventual dismantling and removal and restoration (DR&R) of the 800-mile pipeline corridor. This is the item cited by Alyeska's Williams as the kind of environmental cost that could cause

Alaska's golden goose to cackle its last. In fact, DR&R has turned into a hidden or off-book cash cow for the North Slope producers of uncelebrated but astonishing proportions. Instead of requiring that the funds collected against this vague legal obligation be held in an identifiable reserve account or placed in escrow to ensure their availability for future use, the 1985 TAPS tariff settlement¹⁹ allows the TAPS owners to co-mingle this money with internal accounts, re-invest it for profit or distribute it to shareholders. According to the terms of the 1985 settlement, the money collected for DR&R was supposed to equal the amount required to restore the pipeline corridor to its previous condition. Due to changes in calculating factors such as inflation, tax rates and estimated corporate earnings on internally-held funds over the 35-year estimated life of the pipeline, it has been estimated that if dismantling actually takes place in the second decade of the next century, TAPS DR&R collections will exceed requirements by \$11.7 to \$22.1 billion in 1992 dollars.²⁰ This projected gain to the TAPS owners from TAPS DR&R is in excess of — over and above — the annual after-tax profits calculated in this report. Many industry observers believe the pipeline will be in operation for a much longer period, further increasing the value of the precollected DR&R payments to the owner companies.

One of the surprising facets of North Slope economics is that its extraordinary profitability is so dimly understood by the public. In a lengthy front-page report in May 1993, the Anchorage Daily News explained ARCO's presence and prospects in Alaska this way:

ARCO is here, [CEO Lodwick] Cook and analysts said, because it has to be: because it understands Alaska and Alaskans, because it owns so many oil leases in the state and because its enormously profitable refining and retailing system is geared for North Slope crude.²¹

All of this may be true, but the article omitted all reference to North Slope profits, which are roughly twice that of the company's "enormously profitable refining and retailing system."

CONCLUSIONS

Alaska is the frequent scene of intense debates in which environmental and economic values are pitted against each other. In those debates, crucial facts about energy and the environment are frequently obscured. The public, groping blindly in the absence of meaningful data, looks to its elected officials and bureaucrats for leadership and information. Public officials, in turn, seem perpetually impaled on the horns of the environment v. development dilemma. Even development spokesmen sometimes seem to be confused about key facts that underlie the central issues.

A straight-forward approach to North Slope profitability cuts through rhetoric to produce estimates of the extraordinary per-barrel net profitability of Alaska's North Slope operation. These data indicate that the North Slope producers have ample room to make additional environmental expenditures, if warranted, despite public pronouncements to the contrary by industry officials.

Decisions involving energy and the environment inevitably involve a balancing of economic and ecological factors. In view of the statements of Alyeska Pipeline Service Co. officials on Alaska North Slope economics, it is to be hoped that industry's environmental assessments are better than its public economic analyses.

NOTES

1. Seven major oil companies own the 800-mile TAPS pipeline, which transports Alaska North Slope crude oil from Prudhoe Bay to Valdez, where the oil is loaded on tankers for the Lower 48 states. Three companies — ARCO, BP and Exxon — own approximately 91.5% of TAPS and 93% of ANS production (the latter figure is net of royalty). For specific field and TAPS ownership percentages, see British Petroleum, Prudhoe Bay and Beyond (7th Edition; n.d.), p. 2.
2. Damage from the Exxon Valdez spill is the subject of debates among oil spill specialists. See, for example, "Information on Valdez Oil Spill — Scientific Studies Sponsored by Exxon" (Exxon press packet summarizing materials presented at the Symposium on Environmental Toxicology and Risk Assessment, sponsored by the American Society for Testing and Materials), April 26-29, 1993 and "NOAA Response to Exxon Challenge to Exxon Valdez Natural Resource Damage Assessment Database" (National Oceanic and Atmospheric Administration), April 27, 1993.
3. In 1971, British Petroleum's head of Environmental Studies promised "[f]or any oil spill . . . prompt and effective containment. . . . The best equipment, materials and expense . . . will make operations and Port Valdez and in Prince William Sound the safest in the world." In subsequent years industry officials frequently made similar promises. However, by 1989 Exxon had entrusted the newest and largest ship in its Alaska fleet to a Captain who had been barred from driving in two states for drunk driving. The Captain, in turn, left the supertanker in control of an inexperienced and overworked Third Mate with a helmsman at the wheel who was felt by colleagues to be incapable of painting a wall without close supervision. When the spill occurred, the Valdez-based response barge, which was supposed to have been ready to go on immediate notice, was out of the water for repairs. Key response equipment, such as pumps and containment boom, were either unavailable or buried under several feet of snow. (For promises: Alyeska Pipeline Service Co., Hearing Testimony [at U.S. Department of Interior hearings, Anchorage, February 1971], pp. 32-33. For spill and botched response, see: National Transportation Safety Board, Hearings May 1989 and Marine Accident Report—Grounding of the U.S. Tanker EXXON VALDEZ on Bligh Reef, Prince William Sound, near Valdez Alaska, March 24, 1989, esp. Findings and Probable Cause, pp. 166-170 [Report No. NTSB/MAR-90/04] and Alaska Oil Spill Commission, Final Report [State of Alaska, Feb. 1990], pp. 5-59.)
4. See: Regional Citizens Advisory Council, Resolution 92-2, Sept. 28, 1992; and letter from J.B. Hermiller, President, Alyeska Pipeline Service Co., to Scott Sterling, President, Regional Citizens Advisory Council, Nov. 16, 1992.
5. See: Analysis of Tanker Escort Services for San Francisco Bay, July 1992 (prepared for Harbor Safety Committee of the San Francisco Bay Region by Robert Allan Ltd.); Foss/ARCO Tanker Escort Study (Puget Sound), Sept. 1991; Crowley Maritime Corporation, "Crowley Marine Services to Purchase Eight New 9,000 h.p. Tractor Tugs," Feb. 9, 1993 (press release).
6. M.F.G. Williams, "Economic Regulations and Development" (Conference on Energy Issues for the 1990s [University of Alaska Anchorage School of Business and Organization of Petroleum Exporting Countries conference], Anchorage, July 23-24, 1992), p. 2. Mr. Williams omitted mention of the fact that TAPS owners have already collected a sizable fortune for this purpose through the liberal terms of the 1985 TAPS tariff settlement (see "Discussion," below).
7. Anchorage Times, Jan. 12, 1992 (speech reprinted in its entirety by Alyeska Pipeline Service Co.)
8. For a more detailed discussion of the sources and factors employed in this spreadsheet, see the author's North Slope Profits and Production Prospects (report to the Alaska State Senate Finance Committee, Nov. 11, 1992), pp. 30-41. The approach used in this analysis is similar to the model of per-barrel profitability laid out by Charles Logsdon, Ph. D., Alaska Dept. of Revenue Chief Economist, in a July 1992 paper. ("Alaska's Relationship with the Major Oil Producers," Conference on Energy Issues for the 1990s [University of Alaska School of Business and OPEC; Anchorage, July 23-24, 1992], p. 6.) However, Dr. Logsdon's table delineates production revenue and therefore omits pipeline profits.

9. A 1984 study found the North Slope's three major producers paid an average of 23.25% in federal taxes from 1981 to 1983. In a 1988 update, ARCO and BP were not reported but Exxon paid approximately 23% from 1981 through 1987. (Robert S. McIntyre and Robert Folen, Corporate Income Taxes in the Reagan Years: A Study of Three Years of Legalized Tax Avoidance [Citizens for Tax Justice, 1984], pp. 32-33, 36; Robert S. McIntyre, Johathan M. Crystal and David C. Wilhelm, The Corporate Tax Comeback [Citizens for Tax Justice and the Institute on Taxation and Economic Policy, 1988], p. 43.

10. TAPS profits include both the after-tax margin and the recovery of deferred return (lines 5e and 5f, Table 1).

11. Edward B. Deakin, Oil Industry Profitability in Alaska, 1969 through 1987 (Alaska Dept. of Revenue, March 15, 1989). For a comparison of the results produced by the two models, see North Slope Profits and Production Prospects, p. 60.

12. The 1991 data in Table 1 were produced from separate calculations for each of the five major North Slope producing fields, each of which has its own operating, capital and pipelining costs, as well as its own market value (based on the quality of the oil produced). A simplified version of the model was developed, using estimating factors to produce average North Slope profit figures for 1988 through 1990, and for 1992. Results from the 1992 field model closely matched those of the simplified version.

13. Alaska Department of Revenue, Spring 1993 Revenue Source Book, mid-scenario simulated oil production, p. 47.

14. According to the Fortune 500, the five most profitable companies in the United States in 1991 and 1992 (followed by their net after-tax income, in millions of dollars) were: 1992: (1) Phillip Morris, \$4,939.0; (2) Exxon, \$4,770.0; (3) General Electric, \$4,725.0; (4) Merck, \$1,984.2; (5) Bristol Meyers-Squibb, \$1,962.0. 1991: (1) Exxon, \$5,600.0; (2) Phillip Morris, \$3,006.0; (3) General Electric, \$2,636.0; (4) Merck, \$2,121.7; (5) Bristol Meyers-Squibb \$2,056.0.

15. In fact, it is conceivable that TAPS profits, which are guaranteed in the tariff agreement, could enable the owners to continue producing profitably despite short-term production revenue losses due to relatively low oil prices. Whether Alyeska officials actually misperceive TAPS as a stand-alone economic entity, as their public pronouncements indicate, is beyond the scope of this paper.

16. The price and production assumptions used in this analysis, from the Alaska Department of Revenue's Spring 1992 forecast, are rather conservative. For example, that forecast assumed a 50% production decline at Kuparuk by the year 2000 with little or no replacement production from the West Sak reservoir. ARCO, which has the major interest in both fields, has indicated that Kuparuk will probably hold at current levels through the end of the century, and that West Sak production may be brought on line when Kuparuk does slow down. (For a detailed look at the assumptions used and the results, see North Slope Profits and Production Prospects, pp. 69-79.)

17. Oil Industry Profitability in Alaska, 1969 through 1987. pp. T74-75.

18. Oil Industry Profitability in Alaska, 1969 through 1987. pp. 20, T58-T63.

19. "Settlement Agreement between the State of Alaska and ARCO Pipe Line Co. [et al.]," June 28, 1985, p. 14.

20. For the history of the DR&R provision in the TAPS settlement and an analysis of its economic consequences, see the author's Hidden Billions: The TAPS DR&R Provision (report prepared for Stan Stephens, PO Box 1297, Valdez, Alaska, 99686, August 21, 1992).

21. Kim Fararo, "Stuck on Alaska: Arco's bet pays off for state, company," Anchorage Daily News (May 23, 1993), p. A-1.

Richard A. Fineberg
P.O. Box 416
Ester, Alaska 99725

(Resume)

Phone / Fax (907) 479-7778

Date: August 15, 1993

Date of Birth: September 9, 1941
Place of Birth: St. Louis, Missouri, USA
Nationality: U.S.A.

Sex: Male
Marital Status: Single
SS#: 489-46-2462
Alaska Bus. License #: 118587

Present Position:

Freelance research and writing (October 1989 - present). Primary focus: Alaska North Slope oil and gas economics, production prospects and environmental policy.

Previous Positions:

Policy Analyst, Office of Management and Budget, Office of the Governor of Alaska (1987-89). Duties: special advisor to the governor on oil and gas issues; member of state oil and gas litigation policy working group; member of state revenue forecasting group; special assignments.

Senior Analyst, Office of Management and Budget, Office of the Governor of Alaska (1983-1987). Duties: compilation of state revenue and budget totals, preparation and publication of annual report on same; special assignments.

Freelance investigative reporting and research (1976-1982).

Resources and Staff Investigative Reporter, Fairbanks Daily News-Miner (1975-1976).

Freelance investigative reporting (1972-1975).

Assistant Professor of Political Science, University of Alaska (1969-71). Duties: Teaching undergraduate and graduate courses in government; setting up and leading Master's in Public Administration Program at the University's Juneau branch.

Academic Training: Beloit College, B.A., 1964; Claremont Graduate School, M.A., 1967; Claremont Graduate School, Ph.D., 1970 (all degrees in government). Major areas of focus include Contemporary China and comparative politics, public administration. Doctoral dissertation on "Green Card" Labor and the 1968 California Grape Strike in the San Joaquin Valley; master's essay on the sociological theory of collective behavior.

Academic Awards: National Defense Foreign Language Fellowship, 1966-67; National Endowment for the Humanities Post-Doctoral Fellowship, 1971 (declined); Danforth Fellowship for Economic Reporting, University of Missouri School of Journalism, 1976.

*Print Journalism (partial list of publications):*¹ Articles on a wide range of subjects ranging from the use of chemical and biological warfare in Southeast Asia to investigation of a U.S. Senator's mismanagement of the bank he previously headed have appeared in magazines such as Alaska, Alaska Business, Lithopinion, The Nation, The New Republic, The Progressive, Saturday Review / World and newspapers including The All-Alaska Weekly, The Anchorage Daily News, The Boston Globe, The Chicago Tribune, The Miami Herald, The St. Louis Post-Dispatch and The Washington Star.

Print Journalism (awards): Amos Tuck Award for Excellence in Economic Reporting (\$5,000 first prize, 1979, for a series on the Northwest Energy Co.'s efforts to build a natural gas pipeline from Alaska's North Slope to the Lower 48); best weekly column, Alaska Press Club (1975, for coverage of construction of the trans-Alaska oil pipeline); best reporting (weekly) and second best reporting (daily), Alaska Press Club (1979, for reporting on workers' compensation problems).

Research Reports, Monographs:

- "Cook Inlet Oil Platform Hiring Practices," Alaska State Legislature (1980);
- "Fatalities during Construction of the Trans-Alaska Pipeline," Alaska Science Conference (1980);
- "Workers' Compensation Problems in Alaska," Alaska State Legislature (1981);
- "Chaos in the Capitol: The Alaska State Budget System in Crisis," Alaska Public Interest Research Group (1982);
- "Oil and Gas Revenue Disputes: Status Report and Recommendations," Alaska State Legislature (1990);
- "The 1985 TAPS Tariff Settlement: A Case Study in the Effects of Confidentiality on Information Available to Decision Makers" (supplemental report to "Oil and Gas Revenue Disputes"), Alaska State Legislature (1990);
- "Corexit 9580: Report and Recommendations," Alaska Department of Environmental Conservation Oil Spill Response Center (1990);
- "North Slope Production Prospects, 1990-2010," Alaska State Legislature (1990);
- "Worker Safety and the Dutch Harbor Fishery Boom," Alaska State Department of Labor (1991);
- "Alyeska Pipeline Terminal Ballast Water Treatment and Northbound Shipments: Final Report," Prince William Sound Regional Citizens' Advisory Council (1991);
- "Hidden Billions: The TAPS DR&R Provision," under contract to Stan Stephens, Valdez, Alaska (1992);
- "North Slope Profits and Production Prospects," Alaska State Legislature (1992);
- "Alaska North slope Oil Profits and Proposed Environmental Mitigation Measures," for presentation to the N. Amer. Conference, International Association for Energy Economics (1993).

Book chapters:

"Cambodia: The Struggle Continues," in Vietnam: What Kind of Peace? (Washington, D.C.: Indochina Resource Center, 1973);

"The Press in Alaska," in McBeath and Morehouse (eds.), Alaska State Government and Politics (Fairbanks, Alaska: University of Alaska Press, 1987).

Additional Experience In Oil & Gas:

1. Legal and Accounting: In addition to extended field trips to assist the Alaska Department of Law and its consultants on disputes over payments to the state due from (or related to) North Slope oil production and income taxes, royalties and pipeline tariffs while working for the State of Alaska, I furthered my professional training in these areas by attending the following meetings or professional conferences of special note:

Oil Pipeline Ratemaking Workshop, Executive Enterprises, Inc. (Houston, Texas, May 1985);

Short Course on the Fundamentals of Oil and Gas Law and Taxation , Southwestern Legal Foundation (Dallas, Texas, May 1988);

OPEC Meeting (observer for State of Alaska; Vienna, Austria, November 1988).

2. Environmental: In 1989 I spent more than a month in Prince William Sound assisting the State Department of Environmental Conservation in the cleanup of the Exxon Valdez oil spill. In addition to frequent follow-up visits to Prince William Sound, I subsequently attended the following major conferences (partial list);

Arctic Marine Oil Pollution Conference (Calgary, Alberta, June 1989; and Vancouver, B.C., June 1991);

International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), American Petroleum Institute, U.S. Coast Guard and U.S. Environmental Protection Agency (San Diego, California, March 1991);

Third American Society for Testing and Materials (ASTM) Symposium on Environmental Toxicology and Risk Assessment — Exxon Valdez oil spill (Atlanta, Georgia, May 1993).

References: Available on Request.

International Association for Energy Economics 15th Annual North American Conference

Westin Hotel, Seattle, Washington
October 11-13, 1993

Conference Theme:

Energy and the Environment

Panels and topics for consideration include:

Energy/Environment Balance

Externalities in planning and operation
Command and control vs. marketable rights
Structure of pollution markets
Mitigation options

Emerging Energy Technologies

Alternate fuel vehicles
Distributed production
Renewable technologies
Electro-technologies

Energy Conservation Forecasting

Utility incentives
Conservation lifecycle costs
Energy system impacts

Energy Modeling and Forecasting

Integrated energy planning
Industrial customer demands
Full fuel cycle analysis

Electricity/Gas Markets & Regulation

Transmission
Retail competition
Incentive regulation
Nonutility suppliers

Energy Planning

Computer Technologies
User-friendly forecasts
Oil and gas trading
Project analysis

Energy Development

Energy and economic growth
Developing nations' energy strategies
Privatization

Frontier Oil & Gas Development

Alaska
Canada
International

Energy Taxes

BTU tax impacts
Carbon tax options
Import fees
State royalties and severance taxes
Credits for renewables

West Coast Energy Issues

Pacific NW and California energy plans
PADD V oil and gas

Pacific Rim Energy Trade

NAFTA and Energy Markets

Mexican oil and gas exports
Canadian gas exports
U.S. energy exports and imports

Submit abstracts of less than 250 words by June 4, 1993 to:

Sam Van Vactor and Bill Kemp
Program Co-Chairmen
IAEE North American Conference
1101 Fourteenth St., NW, Suite 1100
Washington, DC 20005-5601
Fax (202) 371-1090

Audit Report

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
OIL AND HAZARDOUS SUBSTANCE
RELEASE RESPONSE FUND

January 10, 1994



Audit Control Number:

18-4463-94

Division of Legislative Audit

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

SB 215 SFM 13/94

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.

BUDGET AND AUDIT COMMITTEE

Senator Randy Phillips, Chairman
Senator Al Adams
Senator Steve Frank
Senator Steve Rieger
Senator Bert Sharp
Senator Jay Kerttula (alternate)

Representative Terry Martin, Vice Chair
Representative John Davies
Representative Mark Hanley
Representative Ron Larson
Representative Eileen MacLean
Representative Sean Parnell (alternate)

DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA
Legislative Auditor
Merle R. Jenson, CPA
Deputy Legislative Auditor

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

(907) 465-3830, Juneau
(907) 561-1445, Anchorage
(907) 465-2347, Juneau FAX

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

January 10, 1994

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number

18-4463-94

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

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

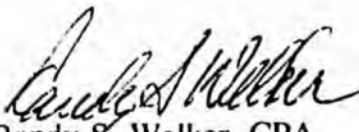

Randy S. Welker, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	5
Background Information	11
Report Conclusions	19
Findings and Recommendations	27
Auditor Comments	33
Issues Needing Further Study	35
Table A: Response Fund Summary as of June 30, 1993	37
Table B: Summary of Expenditures by Fiscal Year	38
Table C: Description of Response Fund Activities Appropriated in FY 92 and FY 93	43
Table D: Examples of External FY 92 and FY 93 RSAs	51
Agency Response:	
Department of Environmental Conservation	55

OBJECTIVES, SCOPE, AND METHODOLOGY

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

Objectives

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

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

Scope

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

Methodology

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

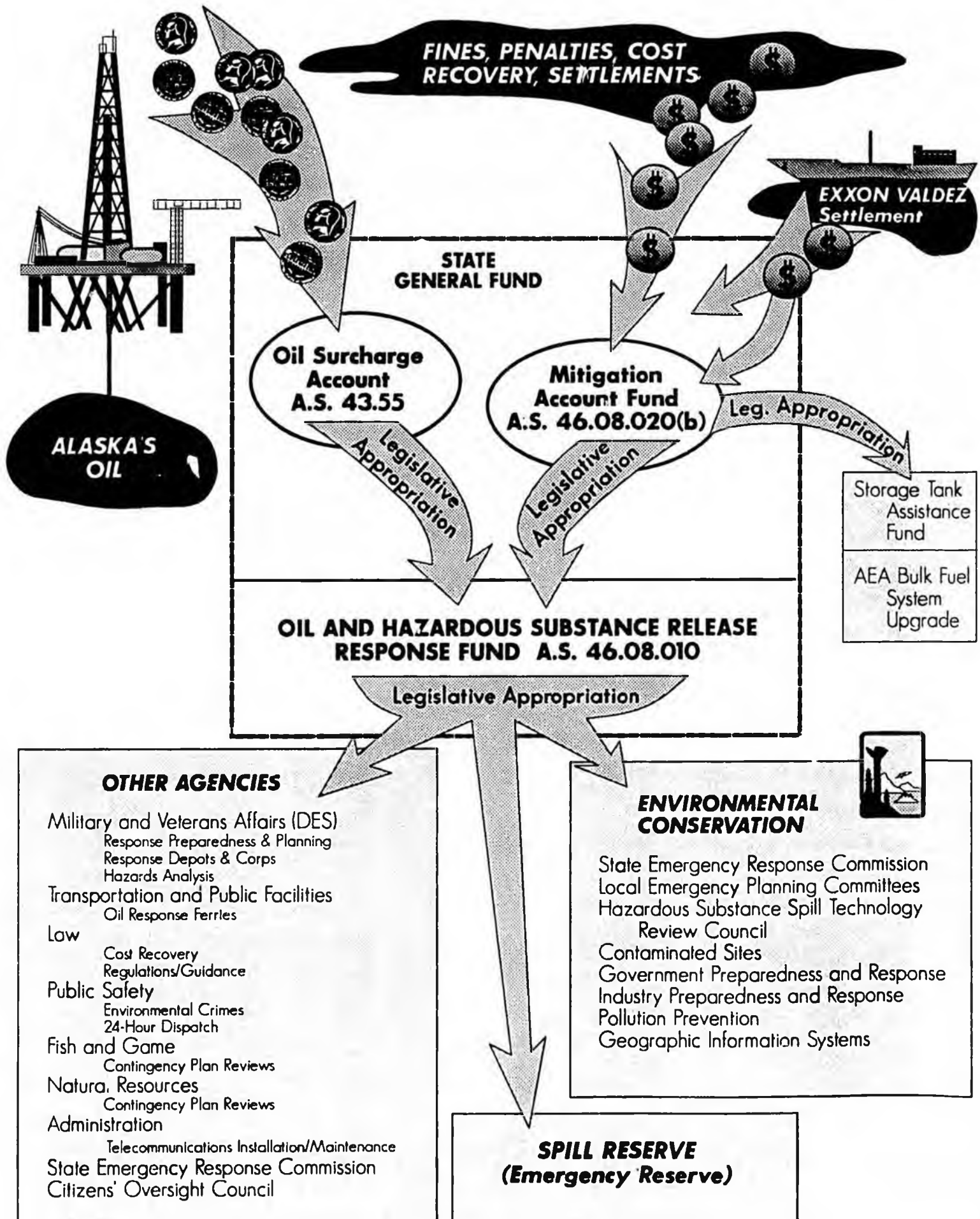
1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.
2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, SLA 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13, SLA 1989.
4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29, SLA 1989.
5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 39, SLA 1989.
6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90, SLA 1989.
7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112, SLA 1989.
8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113, SLA 1989.
9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190, SLA 1990.
10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191, SLA 1990.
11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199, SLA 1990.
12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48, SLA 1991.
13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83, SLA 1991.
14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.
15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.
16. Response Fund Annual Reports for FY 87 through FY 93.
17. DEC Policy Statements on the Response Fund.
18. Attorney General Opinions and memorandums on the Response Fund.
19. Industry contingency plans and corresponding documentation maintained at DEC.

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

Additionally, we interviewed the following:

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



ORGANIZATION AND FUNCTION

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

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

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

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

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

Spill Prevention and Response Division

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

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

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

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

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

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

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

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

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

**PURPOSES OF THE RESPONSE FUND
AS 46.08.040**

<p style="text-align: center;">Senate Bill 25 [Ch 83, SLA 91]</p>	<p>(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to</p>
<p style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]</p>	<p>(2) pay all costs incurred to</p> <p>(A) establish and maintain the oil and hazardous substance response office;</p>
<p style="text-align: center;">House Bill 567 [Ch 191, SLA 90]</p>	<p>(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030;</p> <p>(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</p> <p>(D) to verify or establish proof of financial responsibility required by AS 46.04.040;</p>
<p style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">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 59, SLA 86]

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

Senate Bill 261
[Ch 90, SLA 89]

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

House Bill 566
[Ch 190, SLA 90]

- (b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020, 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.

(Intentionally left blank)

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

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

Imposition of a 5¢ per barrel conservation surcharge

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

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

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

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

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

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

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

Uses of Response Fund continue to expand

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

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

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 the sites.

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

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

Senate Bill 25 [Ch 83, SLA 91] amend. 1 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

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

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

Various budgeting procedures used to track Response Fund expenditures

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

Different budget processes were used in FY 93 and FY 94

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

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

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

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.

(Intentionally left blank)

REPORT CONCLUSIONS

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

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

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

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

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

⁶In 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.

⁷Quote 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

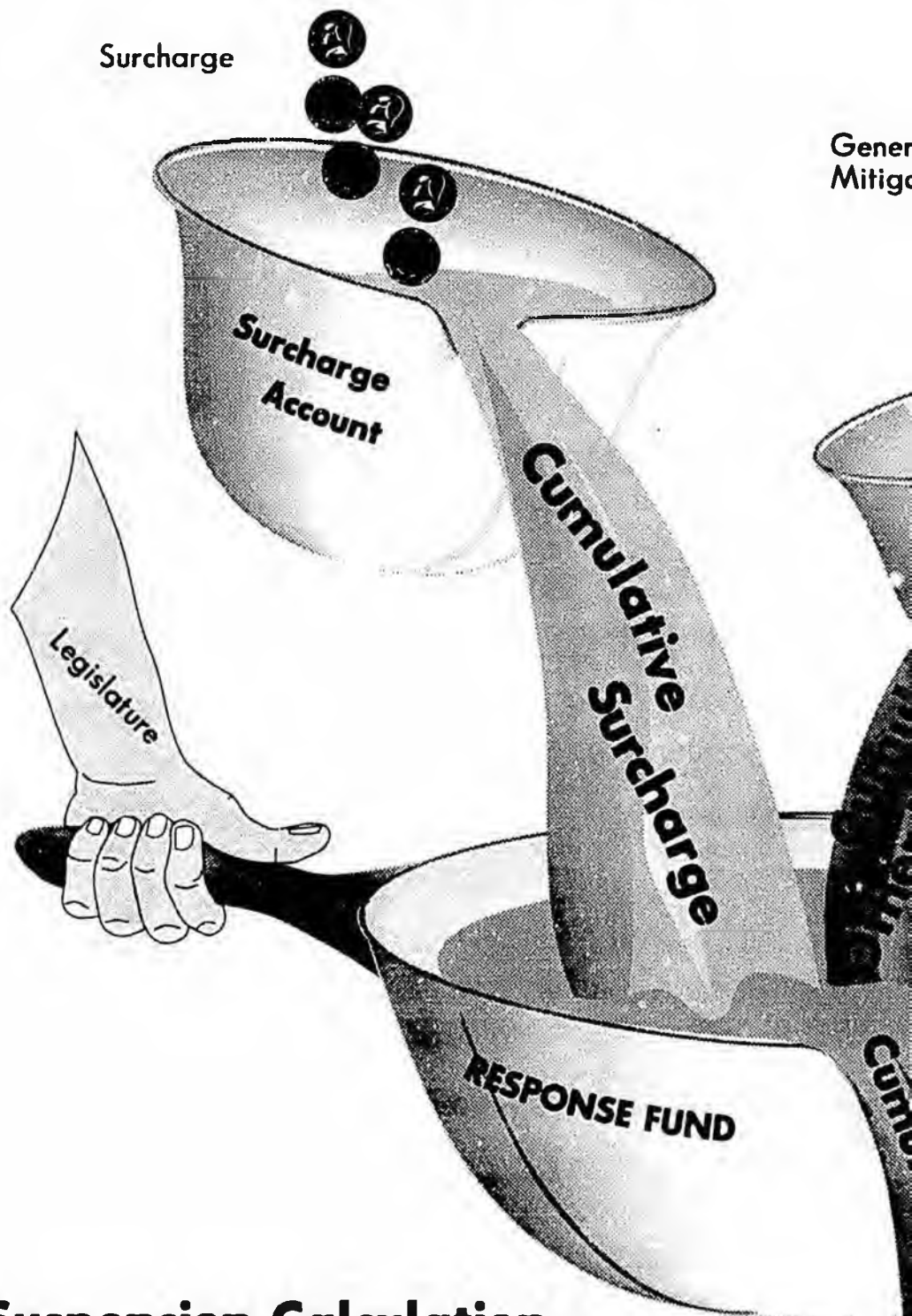
As discussed above, the State had over \$27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a deficit balance of over \$8.5 million as of the same time. It should be recognized that there 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 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.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

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

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

- (1) shall maintain accounting records showing the income and expenses of the fund; and
- (2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

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

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

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

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

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

B. Some of the information DEC is required to submit in their annual report is either too voluminous or 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-lead⁸ 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.

⁸As 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.

(Intentionally left blank)

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>\$30,409,091</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
\$320,900	\$774,500	\$1,671,700	\$1,262,400	\$2,926,700	\$7,714,992
	211,000	690,200	378,500	71,000	1,350,700
		1,056,200	3,846,200	5,385,800	10,288,200
	158,400	556,700	223,500	54,700	993,300
	199,800	967,700	1,125,100	2,663,000	4,955,600
	112,800	4,800			117,600
	245,500	313,600	71,400	268,500	899,000
		448,500	105,700		554,200
		583,700	555,900	177,900	1,317,500
		399,600	257,000	186,200	842,800
			575,200	1,039,700	1,614,900
				88,400	88,400
		119,800			119,800
		119,500	237,300	88,300	445,100
			112,400	275,300	387,700
			100,000	90,000	190,000
			57,200	10,200	67,400
			29,900		29,900
				3,300	3,300
			84,200	15,000	99,200
				91,600	91,600
			120,300		120,300
			102,400	7,501,500	7,603,900
			1,358,400	59,400	1,417,800
\$320,900	\$1,702,000	\$6,932,000	\$10,603,000	\$20,996,500	\$41,313,192

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

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

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

(Intentionally left blank)

TABLE C

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

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

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

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

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

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$5,731,300	\$7,339,300	✓	✓	SB 261 [Ch 90, SLA 89] HB 567 [Ch 191, SLA 90]
\$20,081,900	\$3,318,000	✓	✓	SB 261 [Ch 90, SLA 89] SB 264 [CH 113, SLA 89]
\$4,203,200	\$3,528,600	✓		
S0	\$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.

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]
S0	\$1,200,000		✓	HB 567 [Ch 191, SLA 90]
S0	\$177,300		✓	SB 261 [Ch 90, SLA 89]
S0	\$689,300	✓	✓	SB 261 [Ch 90, SLA 89]
\$236,800	\$420,000		✓	HB 567 [Ch 191, SLA 90]

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

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

(Intentionally left blank)

TABLE D

EXAMPLES OF EXTERNAL FY 92 AND FY 93 RSAs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

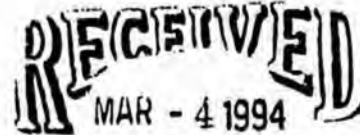
(Intentionally left blank)

DEPT. OF ENVIRONMENTAL CONSERVATION

410 Willoughby St., Juneau, AK 99801

(907)465-5010

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



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

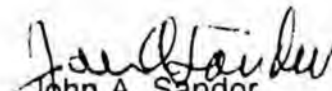
DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

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

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

March 2, 1994

Alaska-Juneau
Court Reporting & Secretarial
Services
326 4th Street, Suite B
Juneau, Alaska

Re: Transcript of March 1, 1994, Senate
Finance Committee Hearing on
SB 215 - Oil/Hazardous Subs. Release Response Fund

Enclosed are copies of Senate Finance Committee tapes no. 22 and no. 24 containing local and teleconference testimony on Senate Bill 215 from the committee's March 1, 1994, meeting. SB 215 relates to the five-cent surcharge on oil, the income from which flows to the oil and hazardous substance release response fund (the 470 fund). Please prepare a transcript of testimony on the bill. Tape No. 22 has been rewound to begin with that subject matter on side 1. Also enclosed is a brief log of the discussion, listing both department representatives and individuals who spoke from teleconference sites.

Our office received a request from Senator Kerttula for a transcript as soon as possible.

Please give me a call at 465-2618 if you have questions or I can be of further assistance.

Sincerely

A handwritten signature in cursive script, appearing to read "Kathy Holmquist".

Kathy Holmquist
Secretary
Senate Finance Committee

Enclosures

SENATE FINANCE COMMITTEE
March 1, 1994

SB 215 - OIL/HAZARDOUS SUBS. RELEASE RESPONSE FUND

SFC-94, #22, Side 1, Footage 435

Senator Pearce: Brief comments re: packet materials

Senator Miller: Sponsor statement and review of provisions within the bill.

Senator Kelly: Question

Senator Miller: Response

Senator Kerttula: Question

Senator Rieger: Question re: releases

Senator Miller: Response

Reverse Tape, SFC-94, #22, Side 2

Senator Kerttula: Conforming amendments?

Senator Miller: Relate to other statutes

John Sandor, Commissioner, Dept. of Environmental Conservation

Senator Pearce: Who has jurisdiction over North Slope operations?

Sandor: Response

Senator Pearce: What could DEC have done that it didn't do?

Sandor: Response

Senator Pearce: Does bill impact your ability to respond?

Sandor: Response

Senator Pearce: I don't think SB 215 is going to impact that.

Sandor: Response

Senator Kelly: Question

Sandor: Response, 10,000 gallons. Issue is not the size of the

spill.

Senator Frank: Trying to determine how the fund works.

Mike Conway, Director, Division of Spill Prevention and Response,
Dept. of Environmental Conservation

Senator Pearce: Where is break between DEC budget and 470 fund?

Conway: Response

Senator Frank: Statements re: use of 470 fund for DEC travel
and per diem.

Conway: Response

Sandor: Response

Senator Jacko: Question re: catastrophic account

Sandor: Response

Bob Poe, Director, Information and Administrative Services,
Dept. of Environmental Conservation

Senator Frank: Question re: DEC's part in spill cleanup.

Conway: Response, approx. 22 spills annually.

Senator Frank: Question regarding total costs recovered.

Conway: I have that back at the office.

Poe: Reports from Central and Northern regions.

Senator Frank: Question

Conway: Response regarding payment for cleanup and monitoring.

Senator Frank: Need clear picture of what fund should be used for.

Poe: Citing of figures relative to response effort.

Conway: Statement re: spills where we have to hire a contractor
to handle the spill.

Senator Pearce: Question

Conway: Will have to look at that information. Statement re:
human error prevention.

Senator Frank: Assume amount of activity has not increased.

TELECONFERENCE

Anchorage -

Mary Shields
Ken Freeman
Walt Furnace
Ardie Gray
Patti Saunders
Tom Lakosh

Homer -

Larry Smith
Mike O'Meara

Change Tape, SFC-94, #24, Side 1

Fairbanks -

Martin King
Randy McGovern

Kodiak -

Wayne Coleman
Mary Forbes

Kenai -

Bill Frazer
Bill Stamps
Gerald Brookman

Testimony from Juneau -

Dave Parish, Exxon Company, USA (Distributed handout)

Senator Kerttula: Who is your employer?

Parish: Exxon

Senator Kerttula: Do you support no longer contributing to this fund?

Parish: Blackmail clause is part of existing law. Support having the existing spill reserve preserved.

Senator Kerttula: Question

Parish: I would not paraphrase my comments as that extreme.

We support the transition of the spill reserve into some type of ongoing reserve.

Senator Kerttula: Would like to talk to some of your principals. No. three man.

Parish: Senate Resources adopted that provision.

Senator Kerttula: Comment.

Ginny Faye: Take exception to citing of "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, as source of handout figures.

Parish: Response, referencing page nos.

Faye: Statement regarding what chart fails to convey.

Parish: Legislature has continued to go back and expand use of the fund.

Russell Heath, Alaska Environmental Lobby

Senator Pearce: Statement re: fact that the fund by would emptied by a budget crunch. Lack of establishment of corps and depots.

Heath: Do not see how SB 215 solves the problem. Dispute between Dept. of Environmental Conservation and Dept. of Military and Veterans Affairs.

Reverse Tape, SFC-94, #24, Side 2

Senator Pearce: Statement regarding DEC budget. Request that DEC provide information sought by Senator Frank.

Senator Kerttula: Fax no. for written testimony.

Senator Frank: Additional request for info. from DEC.

Jerry McCune, Cordova District Fishermen United, and United Fishermen of Alaska

ADJOURNMENT

2/1/94
(5) RES
THEN FIN

BILL NO. SB 215

Outdated Form

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____

Affected: Administration

Title: "An Act redesigning the oil/hazardous
substance release response fund: ..."

Component: Finance

Sponsor: Senator Miller

Requestor: Senate Resources

COMPONENT SERIAL 59

Expenditures/Revenues:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Wanie *DW*
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Nancy Bear Usara *NBU*
Agency: Administration

Date: 1/26/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 5/8/93

FURTHER: FINANCE

Date of 5-Day Notice: 1/13/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

RESOURCES Committee considered SB 215

Oil and hazardous substance release response fund/repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; etc.

and recommends:

and a majority of the committee recommends it be replaced with

replace with _____ CS SB 215 (RES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and do pass**

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

2 FW's

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
CS DEC	2-24-94		550.0
DEC	1-19-94		5.1

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

~~_____~~
~~_____~~
[Signature] (NO REC)
[Signature] (No Fees - No Rec)

Mike Miller DO PASS
Chair: Signature and Recommendation