

SB

295

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL 1

Bill Version: SB 295

(S) Publish Date: 3-10-94

Revision Date: _____
Title: Grants/Loans for Storage Tank Owners

Department Affected: Environmental Conservation
BRU: Spill Prevention and Response

Sponsor: Senate Labor and Commerce Committee
Requestor: Senate Resources Committee

Component: Underground Storage Tank

COMPONENT SERIAL NO. 1207

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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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: \$ 0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 465-5010
Date: 2/25/94

Approved by Commissioner: _____
Agency: Department of Environmental Conservation

Date: 2/25/94

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SENATE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/11/94
Referred: RES, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to financial assistance for certain owners or operators of
2 underground petroleum storage tank systems; and providing for an effective date."

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

4 * Section 1. AS 46.03.360(f) is amended to read:

5 (f) If the department determines that an owner or operator is not eligible for
6 assistance under AS 46.03.410 - 46.03.430 or that a cost is not eligible under
7 AS 46.03.415 - 46.30.430 and the affected owner or operator disputes that
8 determination, or if an owner or operator disputes the ranking assigned to a request for
9 assistance under AS 46.03.420, the owner or operator may apply to the board for
10 resolution of the dispute. The board may issue a decision in a dispute brought to it
11 under this subsection. The decision is binding on the owner, operator, and department.

12 * Sec. 2. EXTENDED APPLICATION PERIOD FOR FINANCIAL ASSISTANCE
13 RELATING TO UNDERGROUND STORAGE TANK SYSTEMS. (a) Notwithstanding
14 AS 46.03.420, the owner or operator of an underground petroleum storage tank system, other

1 than the state or federal government, may apply for grants and loans under AS 46.03.420 if

2 (1) before July 1, 1994, the owner or operator applied under AS 46.03.430 for
3 a grant for upgrading or closure of an underground petroleum storage tank;

4 (2) while the person's grant application under AS 46.03.430 was pending or
5 while closure or upgrading was taking place under an approved grant, contamination from the
6 tank was discovered that the department determines was not reasonably obvious before
7 December 22, 1993; and

8 (3) the owner or operator reported the contamination to the department in
9 compliance with state and federal law before July 1, 1996; for purposes of this section, the
10 time deadline of AS 46.03.420(c)(1)(A) does not apply.

11 (b) Except as provided in (a) of this section, an applicant who applies under this
12 section for assistance under AS 46.03.420 must comply with all of the requirements of
13 AS 46.03.420, including the requirement to demonstrate that the release occurred before
14 December 22, 1993.

15 (c) A determination by the Department of Environmental Conservation relating to an
16 application authorized under this section is subject to the same dispute resolution procedures
17 under AS 46.03.360(f) that other applications for assistance under AS 46.03.410 - 46.03.430
18 are subject to.

19 * Sec. 3. This Act takes effect July 1, 1994.

*see HB 513
or amendments*

The Storage Tank Assistance Fund

Questions and Answers

Headlines are commonplace throughout the state concerning tank owner problems and pollution resulting from leaking underground storage tanks. Many tank owners are reducing their liability and cutting back on services while others have simply gone out of business altogether.

The Storage Tank Assistance Program was established to protect Alaska's drinking water supplies and to help Alaska's regulated tank owners and operators meet EPA's tough new environmental laws and regulations pertaining to underground petroleum storage tanks.

The goals of the program were simple.

- * cleanup existing leaks.
- * prevent future leaks.
- * help Alaska's tank owners and operators through educational, technical and financial assistance.



WHAT IS A REGULATED TANK?

- * Regulated tanks are predominantly motor fuel tanks
- * In general, gasoline, diesel and waste oil tanks greater than 110 gallons are regulated although there are exemptions
- * Heating oil tanks are NOT regulated.
- * Residential motor fuel tanks less than 1100 gallons for farm or residential use are NOT regulated.
- * Several other types of tanks are not regulated depending upon their use.

WHO REGULATES UNDERGROUND STORAGE TANKS?

- * EPA regulates tanks under 40 CFR 280 and 281
- * State of Alaska regulates tanks under 18 AAC 78 and 18 AAC 75
- * Local governments may regulate tanks under the Uniform Fire Code and the National Fire Protection Association.

WHO IS ELIGIBLE FOR FINANCIAL ASSISTANCE?

- * Any commercial or private owner or operator of tanks regulated by the Underground Storage Tank Regulations, 18 AAC 78, is eligible for financial assistance. Essentially, if a tank owner pays into the program, through a registration fee, then the tank is eligible for assistance.
- * Village, City, Borough or municipally owned tanks are eligible.
- * State and Federal owned tanks are NOT eligible.

WHAT KIND OF TANKS ARE ELIGIBLE?

- * Industrial, Contracting, Auto Dealerships, Car Rental Agencies, Trucking and Transportation firms comprise 26% of the eligible tanks
- * Nearly 20% of the eligible tanks are used for aircraft refueling, both commercial and private.
- * Utilities, Fire Stations, Police and Ambulance services total another 19% of the eligible tanks.
- * Less than 30% of the eligible tanks are fuel retailers such as gas and service stations.

WHAT KIND OF ASSISTANCE IS AVAILABLE?

- * Technical assistance is available through the Department of Environmental Conservation. Staff provide guidance documents and technical assistance in the proper handling of stored products, system upgrading or closing and cleanup of contamination resulting from leaking tanks.
- * Educational Assistance is provided by both the Department of Environmental Conservation and the Board of Storage Tank Assistance. Workshops are conducted annually and staff are provided to assist nationally recognized training courses for presentation in Alaska. A quarterly newsletter "Alaska Underground", is published by the Department to provide timely information on technical and regulatory aspects of tank ownership and maintenance, installation and closure as well as the latest developments in cleanup and remediation techniques. The newsletter also provides information to contractors and consultants actually conducting tank work.
- * Financial Assistance is provided in the form of grants and loans to offset the high cost of upgrading to EPA standards, proper closure and release investigation, corrective action and cleanup.

WHAT TYPE OF FINANCIAL ASSISTANCE DOES THE PROGRAM PROVIDE?

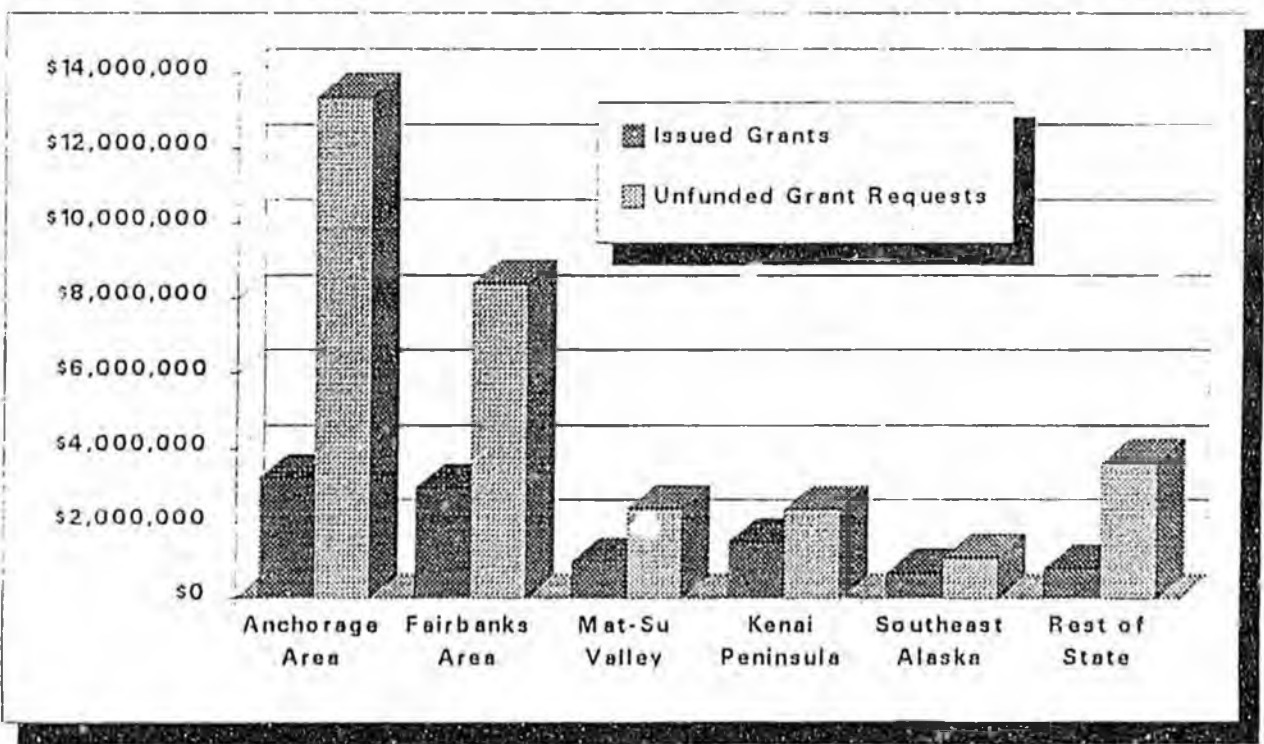
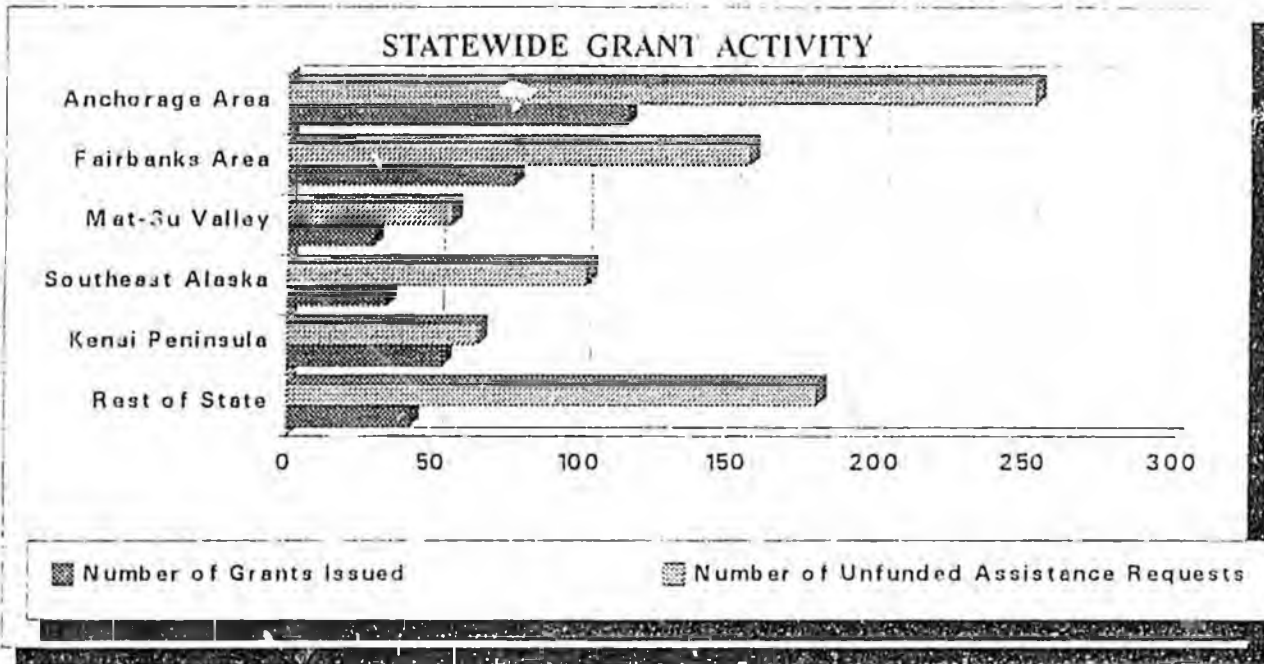
- * The Storage Tank Assistance fund provides grants for upgrading or closing at 60% of the eligible costs up to a maximum combined grant of \$60,000 per facility.
- * Grants for cleanup of petroleum contamination are provided to a maximum of \$1 million per occurrence. The owner is responsible for 10% of the cost up to a maximum of \$25,000.
- * Loans are available for the 10% not covered by the cleanup grant up to a maximum of \$25,000. Owners receiving loans must pay back the loan to the state over five years.

DOES THE PROGRAM ENCOURAGE PRIVATE PARTICIPATION?

- * Most upgrades involve multiple tanks and usually range from \$120,000 to well over \$200,000. Typically a grant from the Storage Tank Assistance Fund actually covers only 30% to 40% of the owners cost. The owner must pay the majority of costs involved.
- * The balance of the upgrading cost is provided by banks in the form of direct loans to the tank owner or operator. Many banks require that an owner or operator be eligible to receive funds from the Storage Tank Assistance Fund and that a letter be provided from the Department stating that the owner will be receiving financial assistance. The banks are then assured that the work will be conducted according to standard practice and in compliance with applicable laws and regulations.
- * The tank owner or operator actually receives the funds and is directly responsible for supervising the funded activity and insuring the work is conducted in accordance with applicable laws and regulations. The Department of Environmental Conservation only provides guidance and oversight to insure all work is completed properly and consistent with customary practice and costs.
- * Private sector firms that are approved by the Department or certified by the State conduct work for the owners and operators. The owner or operator contracts directly with the contractors and consultants.

ARE THE GRANT REQUESTS JUST FROM INTERIOR ALASKA?

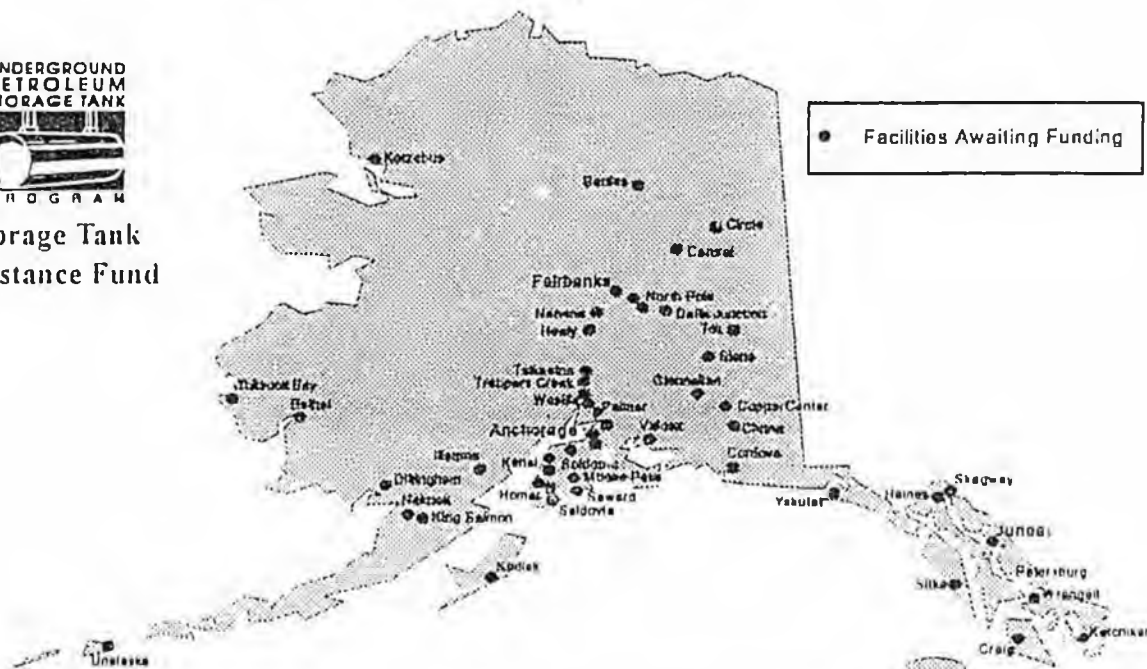
* The problems associated with underground petroleum storage tanks are statewide. Currently, the program has received 368 applications for assistance from the Anchorage area, of which 115 have already been funded. In the Fairbanks area, 234 requests have been received and 77 grants have already been issued. The Kenai Peninsula has made 118 requests, of which 53 have been funded. Southeast Alaska has submitted 136 grant applications while only 34 have been funded to date. The DEC has received 85 assistance requests from the Mat-Su Valley area and 29 applicants have received grants. The rest of the State has accounted for 222 requests and 42 of those requests have been funded.



Statewide Distribution of UST Closure, Upgrade and Cleanup Assistance Requests



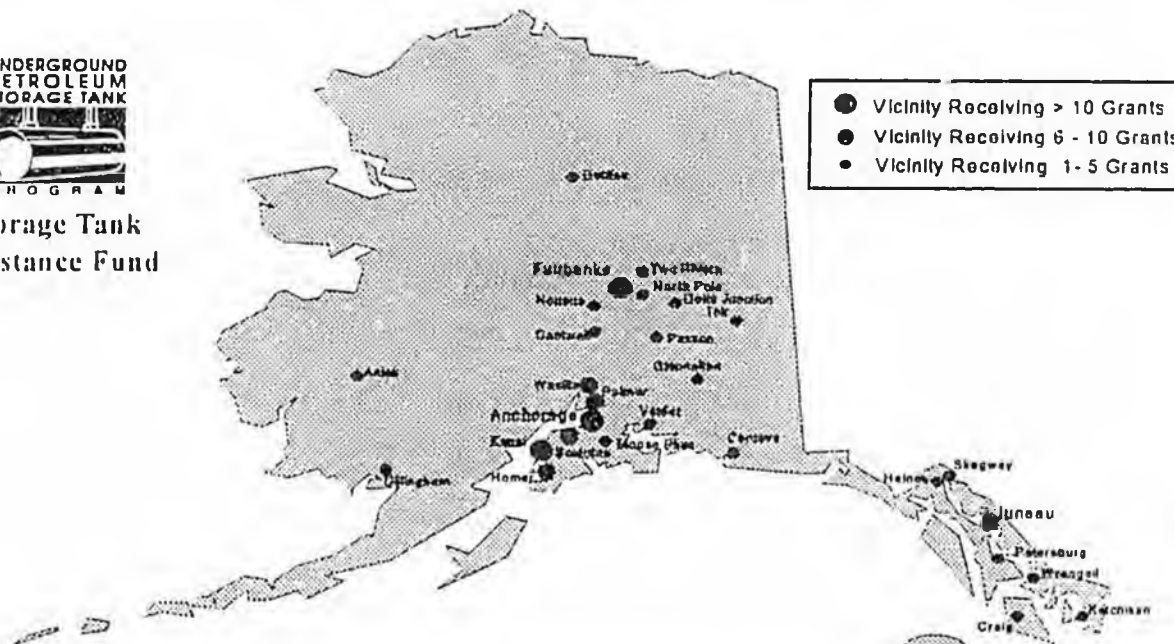
Storage Tank Assistance Fund



Statewide Distribution of UST Closure, Upgrade and Cleanup Grants



Storage Tank Assistance Fund



DON'T LARGE FIRMS GET MOST OF THE FUNDS THAT ARE AVAILABLE?

* Although all regulated tank owners and operators are eligible, all applicants are priority ranked for funding according to regulations and criteria established by the Board of Storage Tank Assistance. The ranking system emphasizes public health threat foremost followed by numerous other considerations such as size of business, i.e. number of tanks owned, whether the company is too small to be self-insurable, nearest alternative fuel source and whether the facility is in a rural location. Several other criteria are used to rank applications with an emphasis on small rural tank owners that pose an imminent public health threat and have acted in good faith to undertake as much of the work as possible on their own. This usually means that unless an imminent public health threat exists, larger companies tend to rank lower on priority ranking lists.

* All regulated tanks must pay a registration fee, except state and federal tanks, and are therefore eligible for assistance. Although large companies do not normally rank very high on the annual priority ranking lists, it should be noted that larger companies do tend to pay their share of the cost of the program. Registration fees of up to \$500 per tank per year are paid by several large firms with dozens of tanks. Many of these firms consistently rank very low for funding but continue to pay large annual registration fees. Several large firms pay registration fees in excess of \$10,000 annually. When a large company does receive funds, it may have already paid or will eventually pay the State more than it will receive.

WHY CAN'T OWNERS AND OPERATORS JUST GET A BANK LOAN?

* Banks do provide loans for certain activities such as closure or upgrading of a facility. The cost of an upgrade ranges from \$120,000 to \$200,000 or more to meet the federal standards. Banks will provide loans to cover that portion of the upgrade that is not covered by a grant from the Storage Tank Assistance Fund. Without assistance from the state, many small tank owners would not have sufficient resources to undertake an upgrade even with bank financing.

* Banks do not generally provide loans for cleanup purposes. The total cost of a cleanup is not known until the actual cleanup is complete and extremely difficult to estimate. Most Alaska tank owner's principal asset is the actual property that requires cleanup. A parcel of land that is contaminated essentially has no value until clean and actually represent a significant liability. Since collateral is required for nearly all loans, tank owners with contaminated sites normally cannot provide sufficient collateral to back a loan large enough to undertake the cleanup. The average cost of cleanup in Alaska is presently \$140,000 per site although some cleanups are currently approaching \$500,000. These very high cleanup costs are virtually impossible to cover for the average Alaska tank owner.

* Joint and several liability laws also provide a detriment to bank financing for cleanup activities. Banks that foreclose on property that is contaminated become liable for completion of the cleanup. Many times the cost of the cleanup will be 3 or 4 times the clean site value of the property. Banks also will not provide a loan to a tank owner if the business itself must be shutdown to conduct the cleanup. If a business has no income, it cannot repay a loan. Many businesses have been closed for a year or more while cleanup activities are completed. In numerous cases, the loss of revenues have caused bankruptcy and foreclosure, a fact that banks understand all too well.

WHY DO TANK OWNERS HAVE TO UPGRADE THEIR TANKS?

* In 1984, federal law (Subtitle I of the Resource Conservation and Recovery Act) mandated that owners of certain kinds of underground storage tanks (UST) containing petroleum products and other regulated substances meet standards which would prevent leaks and assure adequate cleanup where leaks occurred. That law was followed by federal UST regulations in December of 1988.

* Over 4,400 underground storage tanks have been identified in the State of Alaska. Other tanks probably exist which have not been reported. Most of these tanks are not protected from leaks and spills. These tanks may be unknowingly damaging the State's drinking water supplies. Since groundwater provides drinking supplies for nearly 70% of the population in Alaska, any contamination that reaches groundwater could cause a serious public health threat. Additionally, the vapors from leaks may seep into basements of homes and buildings and cause other safety and health hazards.

WHY DO WE HAVE ALL THIS CONTAMINATION FROM TANKS?

* Piping leaks, overfills and spillage during deliveries are common problems.

* A leaking tank can be nearly impossible to detect without special equipment. A considerable number of leaks occur due to failed fittings between the tank and piping, spillage during filling or overfilling, or corrosion.

* Corrosion holes in steel tanks cannot be seen until the tank or piping has been removed or exposed. A corrosion hole that causes a tenth of a gallon per hour leak would release over 800 gallons of fuel per year into the lands of the state. The leak could go unnoticed for years, slowly percolating through the soil and possibly into the water table. This leaking fuel can eventually migrate toward a private or municipal drinking water well.

AREN'T THESE PROBLEMS THE TANK OWNERS FAULT?

* Although the leak originates from an owner's facility, the leak is very rarely caused by negligence on the owner's part. The facility was usually installed and operated to a standard of practice that was considered sound and conscientious at the time of installation. Many times the facility owner or operator is treated as a criminal, when in fact the leak or spill might have been caused by natural processes such as corrosion over time or by an accident caused by a passerby. Just a simple case of pouring old fuel or waste oil on the ground or repeated overfilling of vehicle gas tanks by customers can add up to a serious contamination problem for a facility owner.

* It is worth noting that petroleum contamination was not considered a serious health hazard until just a few years ago, long after these facilities had been installed. The State of Alaska only recently halted routine oiling of roads, now considered dangerous to public health and critical habitats. The underground storage tank rules imposed by EPA are "after the fact" environmental regulations that have caused a notable and detrimental economic impact to small businesses.

AREN'T THESE PROBLEMS JUST THE "COST OF DOING BUSINESS"?

* The requirements to clean up contamination from leaking tanks are new "after the fact" regulations from EPA that did not exist when these businesses started nor during most of their existence. Many businesses acquired facilities with old contamination that are now faced with the formidable task of "making right what wasn't a problem before". The cost to clean these contaminated sites has skyrocketed beyond the reach of an average business in Alaska. The cost can easily reach several hundred thousand dollars per site. Investigating the extent of contamination, soil and water sampling, excavation, contaminated soil disposal, total tank and piping system replacement, interim business shutdown, loss of revenues and threats of penalties regarding contamination that occurs through natural corrosion, customer negligence and accidents was not a consideration when these businesses began.

WHY DID THE STATE GET INVOLVED?

* During the years 1986 through 1990, increased federal regulations and aggressive EPA enforcement action forced numerous Alaska tank owners out of business. Many of these tank owners could not afford the high cost of cleanup of contamination from their leaking tanks. If an owner cannot pay the cost of cleanup, the State actually undertakes the task using Response Funds. The 1990 Legislature determined that the State should have an assistance-based tank program to keep these affected businesses "in business" as productive members of the Alaska economic community.

* Many of the facilities affected by the EPA requirements are in outlying areas of the State, on the Alaska Highway, remote lodges, rural community airstrips and fishing villages. Although protecting drinking water supplies in urban areas such as Anchorage and Fairbanks is critical, maintaining essential fuel services for the State is undeniably an important consideration for stable economic growth, tourism and access.

* After December 31, 1993, most tank owners will be required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to comply may result in \$10,000 daily fines from EPA. Alaskan tank owners can meet the financial responsibility requirement by purchasing pollution liability insurance. Pollution liability insurance is available but very expensive for most small tank owners. The problem still involves the question of eligibility for insurance. Is a facility actually insurable? Many insurance plans call for a clean site to be demonstrated. However, most of these facilities have had numerous incidents of overfilling and spillage during fuel deliveries or in some cases, actual leaks. The Storage Tank Assistance Fund helps owners help themselves by assisting owners of contaminated sites to undertake proper cleanup and become insurable. Insurance policies can then be purchased from the private sector thereby allowing a tank owner to meet the federal financial responsibility requirement.

* Developing an assistance-based program was considered to be the best way to promote strong pollution prevention practices to avoid future contamination of drinking water supplies. By providing assistance to tank owners to cleanup contamination and to promote the upgrade of their facilities to federal standards, the regulated community was more willing to step forward and report old spills or leaks without the fear of fines and penalties from the EPA. Although the "big stick" approach from EPA got attention, the State's "white hat" approach got results.

* Alaska was not the only state that recognized the problem tank owners were facing with the new federal requirements. Currently, forty-five states have a financial assistance program for underground storage tanks. Seventeen of those states have recently expanded their programs to include aboveground tanks as well.

AREN'T MOST OF THE LEAKING TANKS OWNED BY BIG COMPANIES?

* Just because a facility is named "Alaska Chevron" does not mean its owned by Chevron. The name signifies just the brand of product sold in most cases. Most businesses covered by the EPA's underground storage tank regulations are small, "Mom-and-Pop" businesses who cannot afford to meet the financial responsibility requirements, pay the fines or clean up contaminated sites. DEC estimates that of the over 4,000 tanks that are in the ground in Alaska, there are over 3,000 presently in use of which nearly 2,000 are privately owned. It is estimated that over two-thirds of the privately owned tanks in Alaska are owned by small, independent companies.

IS THERE MUCH DEMAND FOR FINANCIAL ASSISTANCE?

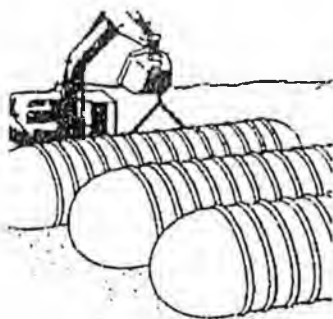
* Presently, there are 813 unfunded requests for financial assistance for testing, closure, upgrade or cleanup activities in the State of Alaska. The unfunded requests total in excess of \$31 million. Not counted in the total are another 158 requests for reimbursement of work completed between December 22, 1988 and September 5, 1990 that totals \$3.4 million. These requests are eligible for reimbursement after all other requests have been funded.

* Over \$10.6 million has been expended or encumbered to date on previous requests. Another \$4.5 million is obligated for projects that will begin work in the spring of 1994. It is estimated that an additional 400 applications will be received during fiscal year 94.

HOW MUCH MONEY HAS THE PROGRAM RECEIVED SO FAR?

* The Storage Tank Assistance Fund had received an initial capitalization of \$6 million in fiscal year 1991. In fiscal year 1992, no new monies were appropriated to the Fund. For fiscal year 1993, the Alaska Legislature appropriated \$5 million to the Storage Tank Assistance Fund. The Alaska Legislature has appropriated \$4.5 million to the UST Financial Assistance Program for fiscal year 1994 which began July 1, 1993.

* Funds appropriated by the Alaska State Legislature to the Storage Tank Assistance Fund are allocated annually by the Board of Storage Tank Assistance to different financial assistance programs, the tank cleanup program, the tank upgrading and tank closure program. The Board of Storage Tank Assistance makes the annual allocations after taking into consideration the amount of money in the Fund, the money required to meet the needs for each program, as supported by approved applications and the requirement that the greatest priority be given to funding UST's that present the greatest threat or potential threat to human health.



WHAT AGENCY ADMINISTERS THE STORAGE TANK ASSISTANCE FUND?

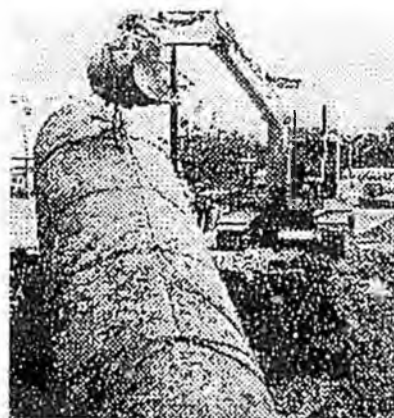
* The Department of Environmental Conservation administers the Storage Tank Assistance Fund. The Department is responsible for advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

* The Department of Environmental Conservation has a staff of two Environmental Specialists in Anchorage to process the actual grant applications. A Grants Administrator, Environmental Technician and a Clerk Typist provide additional support for the program. A Project Manager supervises the activities and provides application and project guidance to UST owners and operators, contractors and consultants.

* The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. Members are appointed by the Governor and serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee. The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

* The Board is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations.

* Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.



For Further Information Contact the Board of Storage Tank Assistance at (907)465-5219 or the Department of Environmental Conservation, UST Program, at (907) 465-5200. The UST Financial Assistance Office Can Be Contacted at (907) 273-4342.



THE STORAGE TANK ASSISTANCE PROGRAM

The Storage Tank Assistance Fund -- What is it all about?

- AN ENVIRONMENTAL CLEANUP PROGRAM RESTORING ALASKA'S DRINKING WATER SUPPLIES.

- Providing grants and loans to Alaskan businesses to offset the high cost of environmental cleanups to keep Alaskan businesses in business.

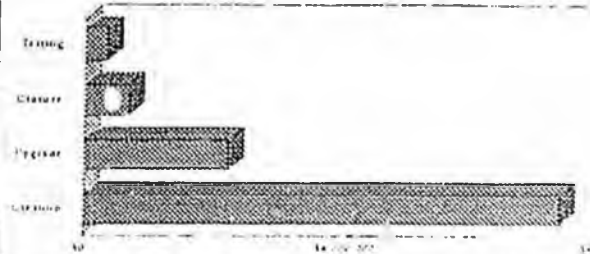
- A POLLUTION PREVENTION PROGRAM FOR UNDERGROUND PETROLEUM STORAGE TANKS.

- Providing incentives and grants to tank owners and operators to upgrade or close their tanks to prevent future leaks.

- AN ALASKAN BUSINESS ASSISTANCE PROGRAM.

- Providing relief to Alaskan businesses and private individuals faced with the high cost of environmental compliance.

Storage Tank Assistance Fund Expenditures Since 1991



Since Program Inception in 1991

- Over \$10.6 Million has been expended or encumbered for financial assistance grants and loans.

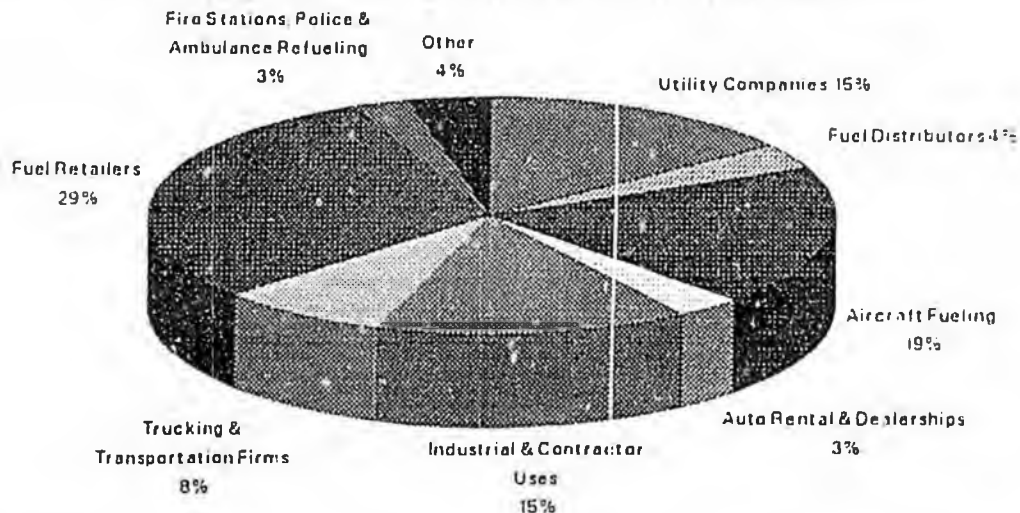
- A total of 386 financial assistance requests for tank tightness testing or site assessments have been funded.

- 75 financial assistance requests for soil or groundwater cleanup have been funded.

- 52 financial assistance requests to upgrade tanks to new EPA standards and prevent future leaks have been funded.

- 33 financial assistance requests to close out old or unused tanks have been funded.

Tank Uses for USTs Eligible for Financial Assistance



The Storage Tank Assistance Fund

*Board of Storage Tank Assistance
410 Willoughby Ave.
Juneau, Alaska 99801*

*Phone (907) 465-5219
Fax (907) 465-5218*

*Department of Environmental Conservation
UST Financial Assistance Unit
3601 "C" Street, Suite 398
Anchorage, Alaska 99503*

*Phone (907) 273-4342
Fax (907) 563-6032*