

**SB**

**215**

MEMORANDUM

STATE OF ALASKA  
Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: April 2, 1993

File Ref:

From: Nancy Bear Usana  
Commissioner  
Department of Administration

Phone: 465-2200

Subject: First Quarter 1993 Report for the Oil Surcharge Account

AS 43.55.230(b) requires that I report to you the difference between the cumulative amount received in the General Fund Oil Surcharge account and the cumulative amount expended from the Oil and Hazardous Substance Release Response Fund (OHSRRF) on a quarterly basis.

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by \$50,000,000. For the quarter ended March 31, 1993, the amount expended from the OHSRRF exceeded the revenue of the General Fund Oil Surcharge account by \$12,001,425. The calculation is as follows:

Oil Surcharge Account cumulative revenue	\$100,330,066
Oil and Hazardous Substance Release Response Fund cumulative expenditures	<u>112,331,491</u>
Difference AS 43.55.230 (b)	<u>- \$ 12,001,425</u>

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2240.

cc: John A. Sandor  
Commissioner  
Department of Environmental Conservation

Don Wanie, Director  
Division of Finance  
Department of Administration

# MEMORANDUM


STATE OF ALASKA

Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: August 20, 1993

File Ref:

From: Nancy Bear Usera   
Commissioner  
Department of Administration

Phone: 465-2200

Subject: Second Quarter 1993 Report for the Oil Surcharge Account

AS 43.55.230(b) requires that I report to you the difference between the cumulative amount received in the General Fund Oil Surcharge account and the cumulative amount expended from the Oil and Hazardous Substance Release Response Fund (OHSRRF) on a quarterly basis.

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by \$50,000,000. As of June 30, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by \$8,543,037. The calculation is as follows:

Oil Surcharge Account cumulative revenue	\$109,709,198
Oil and Hazardous Substance Release Response Fund cumulative expenditures	<u>118,252,285</u>
Difference AS 43.55.230 (b)	<u>(\$ 8,543,087)</u>

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2240.

cc: John A. Sander  
Commissioner  
Department of Environmental Conservation

Don Wanie, Director  
Division of Finance  
Department of Administration

# MEMORANDUM


STATE OF ALASKA

Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: November 10, 1993

File Ref:

From: Nancy Bear Usera   
Commissioner  
Department of Administration

Phone: 465-2200

Subject: Third Quarter 1993 Report for the Oil Surcharge Account

AS 43.55.230(b) requires that I report to you the difference between the cumulative amount received in the General Fund Oil Surcharge account and the cumulative amount expended from the Oil and Hazardous Substance Release Response Fund (OHSRRF) on a quarterly basis.

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by \$50,000,000. As of September 30, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by \$13,014,244. The calculation is as follows:

Oil Surcharge Account cumulative revenue	\$112,085,145
Oil and Hazardous Substance Release Response Fund cumulative expenditures	<u>125,099,389</u>
Difference AS 43.55.230 (b)	<u>(\$ 13,014,244)</u>

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2240.

cc: John A. Sandor  
Commissioner  
Department of Environmental Conservation

Don Wania, Director  
Division of Finance  
Department of Administration

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To: Teresa	From: Eileen Plat
Co: Sen Miller	Co: DOA
Dept:	Phone #: 465-2200
Fax #: 465-3344	Fax #: 465-7491

# Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

November 18, 1993

## MEMORANDUM

TO: Senator Mike Miller

FROM: Maria Gladziszewski *MG*  
Legislative Analyst

RE: Questions Regarding the Oil and Hazardous Substance Spill Response Fund  
Research Request 94.070

You asked several questions regarding the Oil and Hazardous Substance Release Response Fund (the "470 Fund"). Each is answered below.

**What is the current balance in the Spill Response Fund and the emergency spill reserve?**

According to an administrative officer at the Department of Environmental Conservation, the response fund balance available for appropriation on July 1, 1993 was \$54,445,300. For fiscal year 1994 (FY 94), the legislature appropriated a total of \$16,857,000 to state agencies (Departments of Environmental Conservation, Military and Veterans Affairs, Transportation and Public Facilities, Natural Resources and the University of Alaska). The spill reserve balance, therefore, was \$37,588,300 at the beginning of FY 94. Between July 1, 1993 and November 17, 1993, DEC officials spent \$155,200 from the spill reserve. The current spill reserve balance, then, is approximately \$37,433,100.

Between July 1, 1993 and November 18, 1993, expenditures and encumbrances totaled approximately \$5,221,800 from the \$16,857,000 appropriated to state agencies.<sup>1</sup>

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<sup>1</sup>According to the state accounting system (AKSAS), as of November 18, 1993, \$2,634,000 had been expended and \$1,696,000 had been encumbered for operating expenditures. As of November 18, 1993, \$891,800 had been encumbered for capital expenditures.

Senator Miller  
November 18, 1993  
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Please see Table One, a flow chart prepared by this agency, for a graphic representation of the response fund balance at the beginning of FY 94. In addition, Attachment A, prepared by DEC ("Oil and Hazardous Substance Release Response Fund"), contains additional details.

**Is a legislative appropriation to the emergency spill reserve considered an expenditure for the purpose of AS 43.55.230 (suspension and reimposition of the \$0.05/bbl surcharge)?**

According to Assistant Attorney General Ereck Tostevin, an appropriation to the spill reserve is not considered an expenditure for the purpose of AS 43.55.230. Mr. Tostevin concluded in a memorandum of April 28, 1993 that "money that is simply appropriated to the spill reserve is not 'expended' for purposes of calculating whether to suspend the surcharge." A copy of Mr. Tostevin's memorandum is included as Attachment B.

**What is the current status of *Exxon Valdez* settlement reimbursements to the state of Alaska and the Response Fund? How much has been reimbursed so far and how much is likely to be reimbursed in the future?**

The settlement does not specify how much the state will receive directly. Except for reimbursement of certain expenses incurred by the state and federal government, the \$900 million in civil settlement money is to be managed jointly by both governments. State officials with whom we spoke were extremely reluctant to estimate the amount of additional reimbursements under the settlement that the state is likely to receive. The spending guidelines for the \$900 million in civil settlement payments are contained in the Memorandum of Agreement and Consent Decree dated August 28, 1991. Provisions in that agreement specify what costs qualify for reimbursement and limit certain reimbursements that can be made to the governments.<sup>2</sup>

The first installment of the \$900 million in civil payments was made by Exxon in December 1991. The state received approximately \$29.3 million of the \$90 million installment. The state's share of the second payment, received in December 1992, was \$29 million. The state's share of the third payment, received in September 1993, was \$20 million.

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<sup>2</sup>In addition, the state received \$50 million in the fall of 1991, which is half of the \$100 million criminal penalty received by the Exxon Shipping Corporation and the Exxon Corporation. The \$50 million is currently in a segregated interest-bearing account of the general fund ("The Exxon Valdez Oil Spill Restitution Expendable Trust Fund").

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Alaska Statute 37.14.410 specifies that all money received as reimbursement for expenses related to the *Exxon Valdez* oil spill incurred by the state shall be deposited to the general fund.<sup>3</sup> A percentage of each payment is to be credited to the oil and hazardous substance mitigation account. "That percentage is determined by dividing (1) the amount of expenses. . .that were paid from the oil and hazardous substance release response fund. . .by (2) the total amount of expenses for which the state may be reimbursed.

Of the first three settlement payments to the state totaling \$78.3 million, \$21.3 million has been or will be deposited into the oil and hazardous substance mitigation account and \$57 million has been deposited into the general fund. See Table Two, for additional information regarding the Exxon settlement reimbursements.

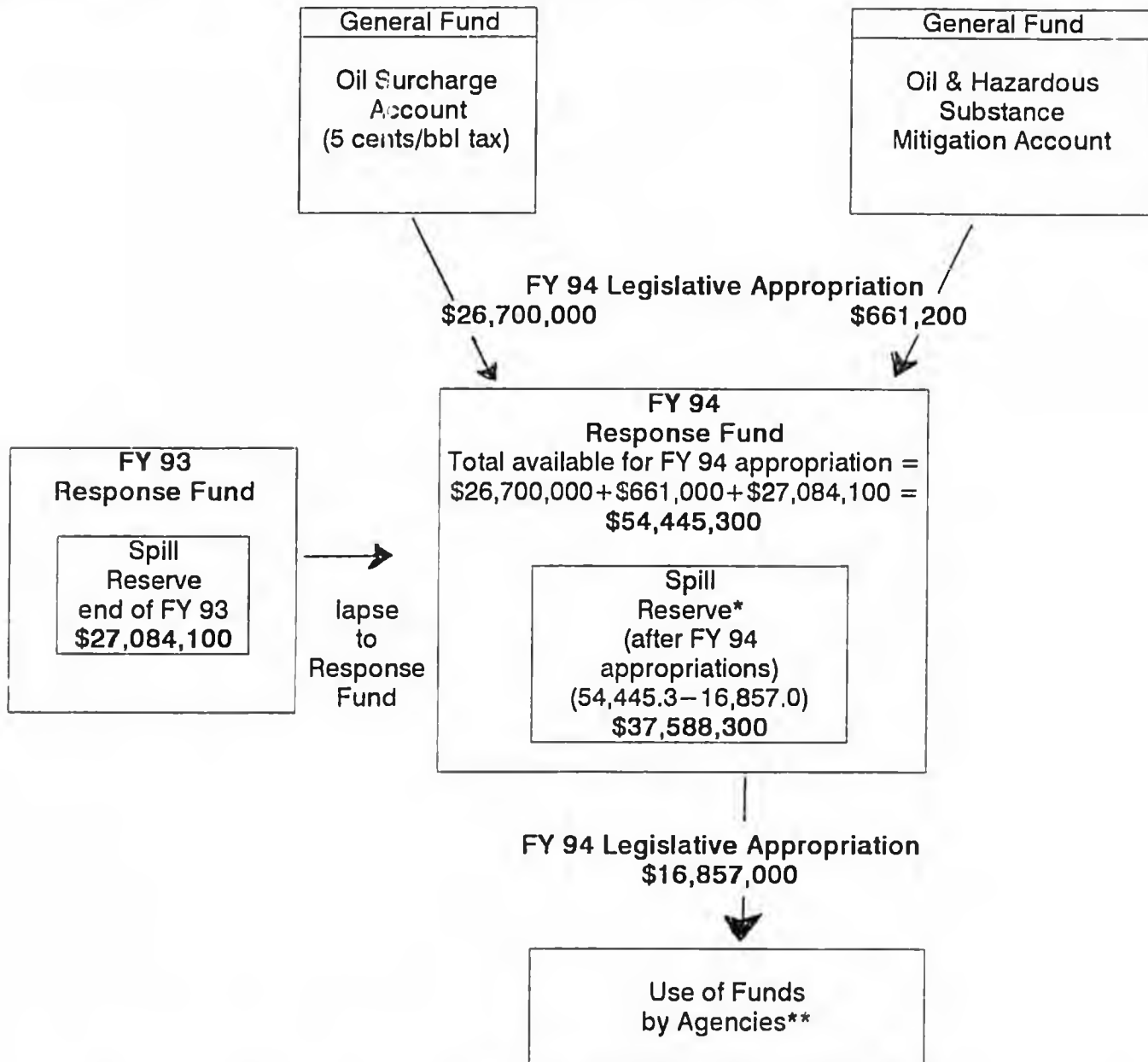
I hope this information is useful for your purposes. Please do not hesitate to contact this agency if you need further assistance.

Attachments

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<sup>3</sup>The first \$50 million payment is considered restitution and not reimbursement to the state for expenses incurred. That money, therefore, is not subject to the provisions of AS 37.14.410.

**TABLE ONE  
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**



\* The legislature can appropriate a specific dollar amount to the spill reserve or, as is often the case, appropriates the difference between the balance in the response fund and the amount otherwise appropriated from the response fund.

\*\* Regardless of whether or not funds have been appropriated to the "spill reserve" subaccount, DEC is authorized to use Response Fund money for emergency response to sites which pose an imminent and substantial threat to human health or the environment. Historically, however, DEC has used very little of the Response Fund that has not specifically been appropriated to it by the legislature. Between July 1, 1993 and November 17, 1993, DEC officials expended \$155,200 from the spill reserve. These are the only DEC expenditures made without legislative approval. Authority to expend funds from the response fund/spill reserve for emergency response is found in AS 46.08.040(a)(1).

SOURCE: Alaska Department of Environmental Conservation, Division of Administrative Services

Prepared by the Legislative Research Agency, November 1993 (94.070A).

**TABLE TWO**  
**SCHEDULE OF PAYMENTS TO BE MADE BY EXXON SHIPPING CORPORATION & THE**  
**EXXON CORPORATION RESULTING FROM THE EXXON VALDEZ OIL SPILL**

DATE & TYPE OF PAYMENT	TOTAL PAYMENTS & DISPOSITION OF MONEY			
	TOTAL AMOUNT OF PAYMENT	TO THE STATE OF ALASKA	TO THE U.S. GOVERNMENT	TO THE JOINT TRUST FUND
Criminal Penalty May 1, 1991	\$100,000,000	\$50,000,000	\$50,000,000	\$0
<b>Civil Payments</b>				
December 1, 1991	\$90,000,000	\$29,300,000 *	\$24,500,000	\$36,200,000
December 1, 1992	\$150,000,000 **	\$29,000,000 *	\$24,500,000	\$56,500,000
September 1, 1993	\$100,000,000	\$20,000,000 *	\$11,600,000	\$68,400,000
September 1, 1994	\$70,000,000	<div style="border: 1px solid black; padding: 5px;"> <p>Some deposits to state &amp; federal treasuries are likely (as payment for certain costs incurred).  SEE NOTE ***, BELOW.</p> </div>		\$70,000,000 ***
September 1, 1995	\$70,000,000		\$70,000,000 ***	
September 1, 1996	\$70,000,000		\$70,000,000 ***	
September 1, 1997	\$70,000,000		\$70,000,000 ***	
September 1, 1998	\$70,000,000		\$70,000,000 ***	
September 1, 1999	\$70,000,000		\$70,000,000 ***	
September 1, 2000	\$70,000,000		\$70,000,000 ***	
September 1, 2001	\$70,000,000		\$70,000,000 ***	
<b>TOTAL</b>	<b>\$1,000,000,000 ****</b>	<b>\$128,300,000</b>	<b>\$110,600,000</b>	<b>\$721,100,000</b>

\* AS 37.14.410 specifies that settlement money received as reimbursement of incurred expenses be deposited into the general fund but that a percentage be credited to the oil and hazardous substance mitigation account. See the lower portion of this table for how these payments were distributed between the general fund and the mitigation account.

\*\* This payment was actually approximately \$110 million because of \$40 million in credits for cleanup costs already paid by Exxon.

\*\*\* The MOA between the State of Alaska and the U.S. Government specifies that all money paid by Exxon be deposited into the joint trust fund unless reimbursements should be made to the state or federal governments for certain expenses incurred. The governments agreed that certain costs shall be "advanced or reimbursed to each Government, at its election, out of any natural resource damage recoveries related to the Oil Spill and shall not be placed in the joint trust fund. . ." Assistant Attorney General Craig Tillery expects the state to receive additional monies from Exxon settlement payments.

\*\*\*\* In addition, Exxon Shipping Corporation received a \$125 million fine, \$105 million of which was remitted. The U.S. Treasury received \$13 million from this fine, the North American Wetlands Conservation Fund [16 U.S.C. 4406(b)] received \$7 million. Also, the Exxon Corporation received a \$25 million fine, \$20 million of which was remitted. The North American Wetlands Conservation Fund received this \$5 million payment.

**DEPOSITS TO THE STATE OF ALASKA GENERAL FUND**

Criminal Penalty	\$50 million
1st Payment (December 1991)	\$25.3 million
2nd Payment (December 1992)	\$16.7 million
3rd Payment (September 1993)	\$15 million (approximately)
	<b>\$107 million TOTAL</b>

**DEPOSITS TO ALASKA'S OIL SPILL MITIGATION ACCOUNT**

1st Payment (December 1991)	\$4 million
2nd Payment (December 1992)	\$12.3 million
3rd Payment (September 1993)	\$5 million (approximately)
	<b>\$21.3 million TOTAL</b>

SOURCES: Alaska Department of Law (Craig Tillery); Alaska Department of Environmental Conservation.  
 Prepared by the Legislative Research Agency, November 1994 (94.070B).

ATTACHMENT A  
"Oil and Hazardous Substance Release Response Fund,"  
Department of Environmental Conservation, November 1993

# — ATTACHMENT A —

## OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

### Calculation of Current Available Balance of Spill Reserve (in thousands)

June 30, 1993 Lapse of the Unreserved/ Unobligated Spill Reserve to the Response Fund	27,084.1
<i>(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.)</i>	
FY94 Appropriation of 5 Cent Surcharge from the General Fund to the Response Fund	+ 26,700.0
FY94 Appropriation of Mitigation Account to the Response Fund	+ <u>661.2</u>
<i>(This number represents a net amount after legislative appropriations from the mitigation account have been deducted.)</i>	
TOTAL RESPONSE FUND AVAILABLE FOR FY94 APPROPRIATION	54,445.3
FY94 RF Appropriation DEC Budget	+ 11,513.6
FY94 RF Appropriation DEC - Other Agencies	+ 2,569.4
FY94 RF Capital Approp. (DMVA, DOT/PF, UA, DNR)	+ <u>2,774.0</u>
TOTAL FY94 RESPONSE FUND APPROPRIATIONS	<u>16,857.0</u>
SPILL RESERVE BALANCE AVAILABLE DURING FY94	37,588.3
<i>(This number reflects the balance of the Response Fund after total FY94 Response Fund Appropriations are subtracted from the total FY94 Response Fund Available for appropriation. This amount is also considered what is available as the Spill Reserve. This is clarified by legislative appropriation of this balance to the Spill Reserve.)</i>	
FY94 EXPENDITURES FROM SPILL RESERVE	155.2
<i>(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 response fund/spill reserve for emergency responses is found under AS 46.08.040(a)(1).)</i>	
AVAILABLE SPILL RESERVE BALANCE AS OF 11/17/93	<u><u>37,433.1</u></u>

ATTACHMENT B  
Memorandum from Breck Tostevin to  
Tracy Kramer Regarding Treatment of Spill Reserve  
Appropriation Under AS 43.55.230(a)(2)

- ATTACHMENT B -

MEMORANDUM

State of Alaska  
Department of Law

TO: Tracy Kramer  
Office of Management and  
Budget

DATE: April 28, 1993

FILE NO:

TEL. NO: 269-5274

SUBJECT: Treatment of Spill  
Reserve Appropriation  
under AS 43.55.230(a)(2)

FROM: Brack C. Toksvin *BCT*  
Assistant Attorney General  
Environmental Section

You have asked whether an appropriation of funds from the oil and hazardous response fund (AS 46.08.010) to the Department of Environmental Conservation ("DEC") spill reserve (see, e.g. 1992 SLA Ch. 136 §22) is considered an expenditure under AS 43.55.230(a)(2) for purposes of the calculation used to determine whether to suspend the conservation oil surcharge.

For the reasons set forth below, I conclude that money that is simply appropriated to the spill reserve is not "expended" for purposes of calculating whether to suspend the surcharge.

In fiscal year 1993, the Legislature appropriated \$23,655,700 from the oil and hazardous substance release response fund ("response fund") to DEC as a spill reserve in order to serve as a source of funds for response to potential oil or hazardous substance releases. 1992 SLA Ch. 136, § 22. I understand that this sum represented the balance left in the response fund after other specific appropriations were made. I further understand that in past fiscal years, the majority of the funds in the spill reserve were not spent by DEC and these monies lapsed back into the general fund and were reappropriated to the response fund in the next fiscal year.

*Should say "Response Fund"*

AS 43.55.230 provides that:

(a) No later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

(2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.09.010.

In determining whether an appropriation from the oil and

Tracy Kramer  
Treatment of Spill  
Reserve Appropriation

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In determining whether an appropriation from the oil and hazardous substance fund to DEC for use as a spill reserve is "expended" within the meaning of AS 43.55.230(a)(2), I have considered two factors.

First I have looked at technical accounting principles in determining whether money has been expended. Under this approach funds are not expended until they are unequivocally committed for specific purposes without the possibility of lapse. Even if moneys from the oil and hazardous substance fund are set aside or otherwise obligated for a specific purpose, the moneys are not yet expended until they are paid out to cover specific invoices or costs. Therefore moneys appropriated to the spill reserve would not be considered expended until they were disbursed to cover specific costs incurred in responding to a spill. This conclusion is further supported under this accounting approach because the spill reserve monies remain in the oil and hazardous substance fund until they are actually used by DEC. Therefore under fund accounting principles, the monies are not expended or paid out until DEC actually uses them to cover response expenses. ]

The second factor focuses on the Legislature's purpose in adopting AS 43.55.230(a). In imposing the nickel a barrel conservation oil surcharge, the Legislature found 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 cleanup capacity in the event of future discharges of oil or a hazardous substance." 1989 SLA Ch. 112, §1(a). In establishing the response fund in 1986, the Legislature found that "it is in the best interests of the state and its citizens to provide a readily available fund for the payment of the expenses incurred . . . in the protection of the environment of the state from the release of oil and hazardous substances." AS 46.08.005. This legislation specifically declared that "it is the intent of the Legislature and the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available." AS 46.08.030.

The spill reserve is an appropriation which remains available for the purposes of this legislation. The reserve is not obligated for specific, anticipated expenses. Rather, the spill reserve acts as a contingency fund for response to potential

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I do not address the issue of whether funds that are obligated but not yet paid out for lawful expenses are "expended" under AS 43.55.230(a)(2).

Tracy Kramer  
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releases. The spill reserve funds have not changed in character by virtue of their appropriation. AS 46.08.040 specifically authorizes DEC to use response fund monies without a specific appropriation for response to a release of oil or hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. Thus, DEC could use unappropriated money in the response fund for the same purposes as money in the appropriated spill reserve account. The spill reserve account simply allows for better accounting of the balance of the response fund.

In sum, the appropriation of response fund monies to the spill reserve has not changed the fundamental character of those monies. Rather, the transfer is made for technical accounting purposes. This consideration leads us to the conclusion that the transfer of the balance of the response fund to a spill reserve for accounting purposes should not be considered an expenditure of those funds.

In summary, both of these considerations indicate that an appropriation to the spill reserve is not an expenditure for purposes of AS 43.55.230.

BCT:vo

cc: Craig Tillery  
Janice Adair  
Deborah Behr

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

MEMORANDUM

January 24, 1994

**SUBJECT:** Senate Bill 215 -- sectional analysis. (Work Order No. 8-LS1107AE)

**TO:** Senator Mike Miller  
ATTN: Teresa Sager-Stancliff

**FROM:** Jack Chenoweth  
Legislative Counsel

The bill you introduced derives from the "M" draft of CSHB 238( ) prepared during the First Session of the current legislature. In general terms, the bill amends the purposes for which the oil and hazardous substance release response fund ("470 Fund") may be expended, replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges, reassigns responsibilities for the oil and hazardous substance response corps, depots, and Emergency Response Commission, and makes a series of related changes.

I

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

The bill establishes a series of funds and accounts:

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

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020), the first component, with its companion oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020), a holding account from which money is transferred in and out;

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

response mitigation account (AS 46.08.025), also a holding account from which money is transferred in and out. <sup>1/</sup>

With reference to this collection of funds and accounts:

**Bill section 25** 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 26** identifies the two accounts that constitute that fund.

**Bill section 27** makes a related substitution of a reference to "account" for fund.

The deletion made in **bill section 28** reflects the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill.

**Bill section 29**, revising AS 46.08.020, spells out the manner in which the oil and hazardous substances release contingency and abatement account is to be financed.

**Bill section 30**, adding a parallel section, AS 46.08.025, sets out the manner in which the catastrophic oil release response account is to be financed.

**Bill section 31:** The amendments made by this section to AS 46.08.040(a) revise the objectives for which money in the oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. All the purposes except activity directly related to a catastrophic oil release or threatened catastrophic oil release and use of the fund balance for related oil cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to a catastrophic oil release or threatened catastrophic oil release and those involving related oil cleanup activity cost recovery purposes are to be met from the catastrophic oil release response account. New in this version is the directive that the catastrophic oil release response account be used to acquire the equipment for the response depots.

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<sup>1/</sup> In addition to the renamed funds and the four accounts, carried forward in AS 46.04.010--not amended in this bill--and in AS 37.14.010(a)--amended in other ways by section 8 of this bill--are the references in current law to the "oil and hazardous substance release mitigation account." Those references need to be corrected or removed.

Senator Mike Miller

January 24, 1994

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Bill section 32 and 33 limits the governor to drawing disaster emergency money from the catastrophic oil release response account. <sup>2/</sup>

Bill section 34: Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release response fund would still be required before money could be used for any purpose other than the immediate response action authorized by AS 46.08.040(a)(1)(A) for catastrophic oil spills.

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

As in the last previous version, the measure seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." Bill section 42 provides a technically revised definition of "release" and bill section 43 substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by bill sections 36 and 37.

Under one of the repealer sections set out in bill section 47, the oil and hazardous substance release response fund would no longer be available to support ferry construction. <sup>3/</sup>

As I earlier noted, the "oil and hazardous substance release response fund" is renamed the "oil and hazardous substance release prevention and response fund." You'll find those changes set out in bill sections 1, 4, 6, 7, and 41 of the bill, and elsewhere as appropriate.

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

Bill section 44 provides a definition of "catastrophic oil discharge" into AS 46.08, while bill section 49 explains that definition's applicability.

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<sup>2/</sup> These two sections were originally drafted as alternatives that reflected a question as to whether the First Session's SB 90 am H would become law. That bill has become law--ch. 11, SLA 1993--so one of these alternatives and the two related reference sections at the end of the bill should be eliminated.

<sup>3/</sup> The authorization to use the fund to build one or more new ferries would be terminated by the bill's repeal of AS 19.65.025 and AS 46.08.040(d).

II

Amendments related to the oil conservation surcharge:

In its sections 9 - 16, the bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, one levied at 3 cents per barrel, the other imposed at a rate of 2 cents per barrel.

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

**Bill sections 10 - 13** essentially carry forward the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but make them applicable to the new surcharge.

**Bill section 11** directs the deposit of the three cent per barrel surcharge to the "catastrophic oil release response account" in the fund.

**Bill section 12** sets out the conditions under which the severance tax surcharge shall be suspended or reimposed. It alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund that have been recovered and redeposited into the mitigation account. The amended provision also reflects the substitution of the catastrophic oil release response account. Under subsection (f), in lieu of quarterly determinations of the trigger mechanism, when the account balance exceeds 45 million dollars, the determinations are to be made more frequently.

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

**Bill section 14** imposes a two cent per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substance release contingency and abatement account."

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

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

A related provision of the bill, **bill section 48**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are

to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. Since, in **bill section 5**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Another related provision, **bill section 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. <sup>4/</sup>

### III

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

**Bill section 38** reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

**Bill section 39** transfers the responsibility for maintaining the emergency response depots to that department.

**Bill section 46** moves the Alaska State Emergency Response Commission from that department to the Department of Military and Veterans' Affairs.

**Bill section 51** protects or "holds harmless" the terms of members of the response commission despite the transfer of the commission by bill section 46.

### IV

#### **Related matters:**

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

**Bill section 2:** With the division of the existing fund into two accounts, the changes revise the priority order in which the governor may have access to money to respond to a disaster.

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

---

<sup>4/</sup> This section, too, would require revision to update the references by the one year that has passed since introduction of the bill in the First Session.

Bill sections 17 and 18 conform language of AS 46.04.030(e) to the definition of the phrase "containment and cleanup" already provided for that chapter. <sup>2/</sup>

\*

**Bill section 19:** The amendment to AS 46.04.200(a) retains the requirement of annual review of the statewide prevention and contingency plan but removes from current law the requirement of annual revision of the plan and substitutes revision at the discretion of the commissioner of environmental conservation.

**Bill section 20:** The section, amending AS 46.04.200(c), deletes from current law the explicit requirements that, as part of the annual review of the state master plan, the proposed draft revisions of the state master plan be offered for public review and comment, for legislative review, and for review by the state emergency response commission (AS 46.13.010).

**Bill section 21:** In line with the changes made in the preceding bill section, this bill section restates the requirements applicable to a plan revision, directing submission of the proposed revised master plan to the same three groups.

**Bill sections 22 and 23:** The changes and addition made by these two bill sections, applicable to regional prevention and contingency master plans, parallel those with respect to the state plan as set out in bill sections 19 and 20.

**Bill section 24** offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 100,000 barrels of oil.

7 8

V

Other topics:

**Bill section 40** eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research, and assigns the office authority to contract to provide personnel for certain release-related work.

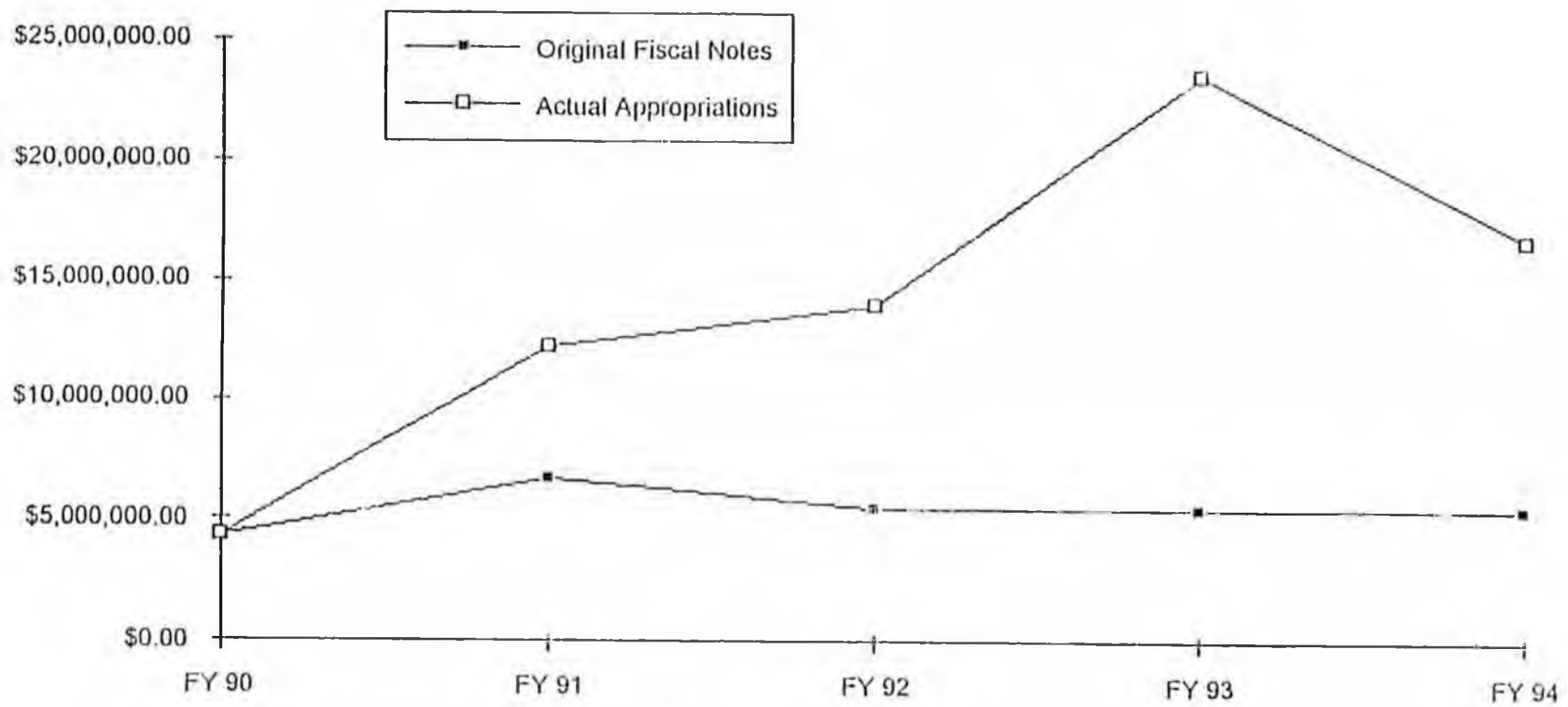
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<sup>2/</sup> AS 46.04.030(a) was to have been amended, and was amended, effective January 1, 1994. Bill section 54 speaks to what was, at the time of the bill's introduction, a pending amendment. One of these alternatives and the contingent provision may be removed from the bill.

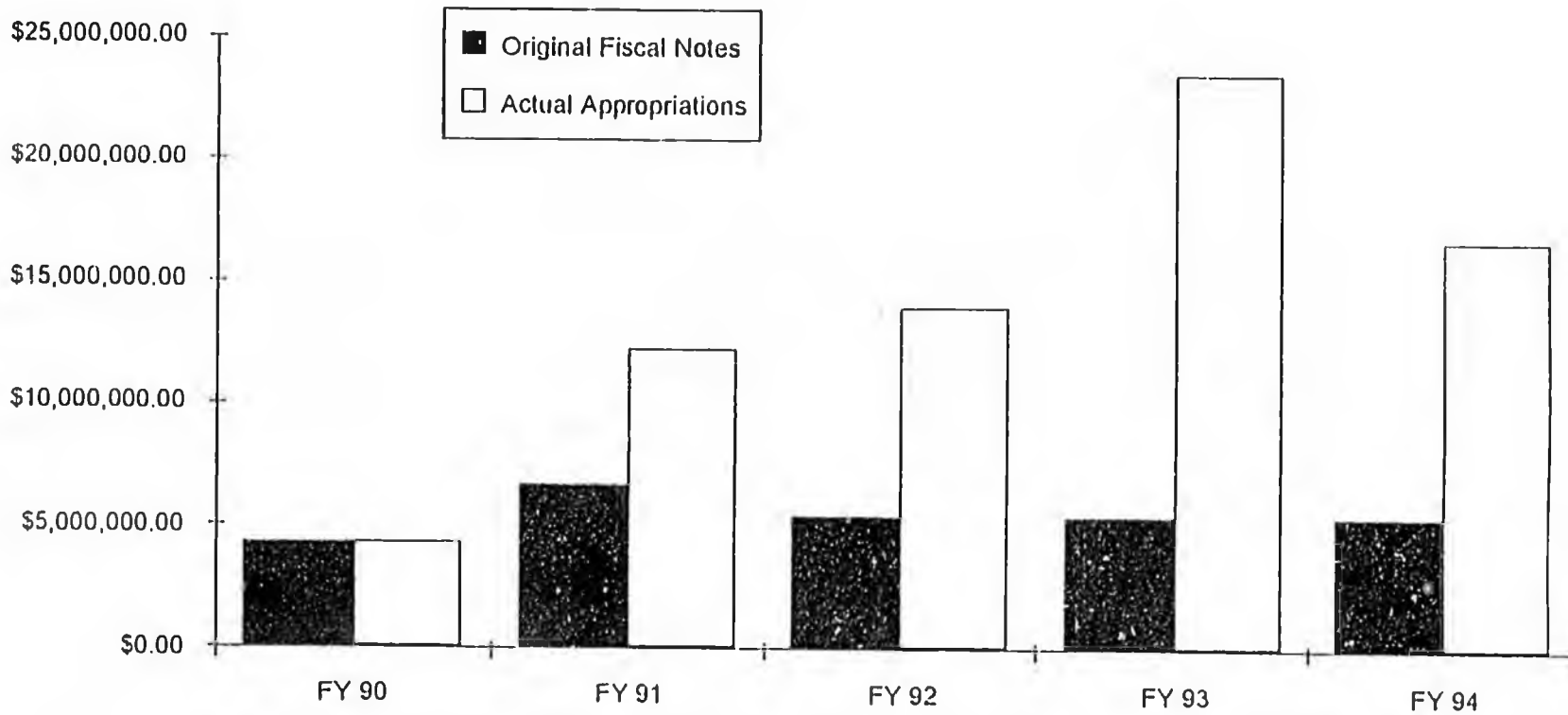
Senator Mike Miller  
January 24, 1994  
Page 7

Modeled after the revision of the definition made in bill section 43 mentioned earlier, **bill section 45** revises the definition of the term "threatened release" applicable to AS 46.09.

JBC:pl  
94-060.plm



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.

BUDGET PREVENTION RESPONSE PROGRAMS

	DEC/OMB 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	45.10
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
<b>TOTAL EXPENDITURES</b>	<b>10727.30</b>
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
<b>MINIMUM TOTAL REVENUES AVAILABLE</b>	<b>16400.00</b>

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB 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	185.50
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
<b>TOTAL EXPENDITURES</b>	<b>13514.60</b>
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
<b>MINIMUM TOTAL REVENUES AVAILABLE</b>	<b>16400.00</b>

# Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

Senate District C

While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976

## Senate

### SENATE BILL 215 SPONSOR STATEMENT

Last session, SB 215 was introduced to address several critical concerns relating to the 5 cents/barrel Oil and Hazardous Substance Release Response Fund. It has become increasingly clear that legislation is needed this session to address these concerns, and get the 470 Fund back to what it was originally intended when the Legislature enacted the nickel tax in 1989 - the creation of a \$50 million emergency reserve fund to have immediately available for response activity in case of a major oil spill, and the ability to fund certain necessary state programs in the area of spill prevention and response.

Last fall, the Senate Resources Committee held a full-day public hearing on SB 215. Testimony was taken from the Governor's Office of Management and Budget, the Department of Law, the Legislative Research Agency, Legislative Legal Services, the Department of Environmental Conservation, and the public through the statewide teleconference network.

The purpose of this second hearing is to have Legislative Legal Services again provide a sectional summary of Senate Bill 215 for the benefit of those members who were unable to attend the meeting in November, and to give another opportunity for further public testimony on this important issue.

For those committee members and members of the public who did not attend our last hearing, it may be helpful to briefly summarize some of the key issues that were raised.

First, the Department of Administration's quarterly reports show that the fund has a negative balance of \$-8 to -13 million. The Governor's office and DEC testified that it is clear that a change in the law is necessary to correct this problem.

Second, there are numerous questions about what specific programs should be paid for from the 470 Fund, and how much money should go into these programs. Serious concerns have been raised about whether current policy and expenditures are consistent with the original intent of the Legislature in 1989.

Third, questions have been raised as to the appropriateness of a crude oil tax enacted for very specific purposes now being used to address environmental problems created by other industries.

It is the sponsor's belief that the 470 Fund needs to be fixed through legislation. The goal is to ensure that the State of Alaska will have a true oil spill emergency reserve of \$50 million in immediately available cash, to spend in case of a major spill - and to provide a guaranteed and secure source of funding for the necessary state oil spill prevention and response programs.

**DRAFT**

12

12

by OMB

**Response Fund Summary as of November 5, 1993**

	<b>AS 43.55.230(b) Calculation</b>	<b>Response Fund</b>
Cummulative Surcharge Collected	112,085,145	109,200,000
Cummulative Expenditures	-127,190,873	-127,190,873
Difference	-15,105,728	-17,990,873
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	-3,049,952
Reserve For Encumbrances	0	-8,690,862
Reserve For Capital Appropriations	0	-3,191,125
Reserve for FY 94 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-9,302,319
Balance or Spill Reserve	-15,105,728	37,229,669

**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 (RES)

- 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]

OTHER RECOMMENDATIONS:

~~[Signature]~~  
[Signature] (NO REC)  
[Signature] (No Fees - No Rec)

[Signature]  
Mike Miller DO PASS  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 215

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.

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

Phone: 465-3672  
Date: January 28, 1994

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

Date: January 28, 1994

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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. 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)

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						
<b>TOTAL OPERATING</b>	<b>\$550.0</b>	<b>\$1,449.0</b>	<b>\$2,860.0</b>	<b>\$4,283.0</b>	<b>\$5,469.0</b>	<b>\$6,918.0</b>
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						
<b>TOTAL</b>	<b>\$550.0</b>	<b>\$1,449.0</b>	<b>\$2,860.0</b>	<b>\$4,283.0</b>	<b>\$5,469.0</b>	<b>\$6,918.0</b>

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: \_\_\_\_\_  
Agency: Department of Environmental Conservation

Date: 2/24/94

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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

**SENATE RESOURCES COMMITTEE**

November 19, 1993  
9:00 A.M. Anchorage  
(INTERIM HEARING)

**MEMBERS PRESENT**

Senator Mike Miller, Chairman  
Senator Loren Leman, Vice-Chairman  
Senator Dave Donley  
Senator Fred Zharoff

**MEMBERS ABSENT**

Senator Steve Frank  
Senator Drue Pearce  
Senator Al Adams

**COMMITTEE CALENDAR**

SENATE BILL NO. 215  
"Oil & Hazardous Substance Release Response Fund"

**PREVIOUS SENATE COMMITTEE ACTION**

SB 215 - No previous action to record.

**WITNESS REGISTER**

Jack Chenoweth, Legislative Legal Services  
130 Seward Street  
Juneau, Alaska 99801  
POSITION STATEMENT: Provided sectional review of SB 215.

Maria Gladziszewski, Legislative Research Agency  
130 Seward Street, Ste. 218  
Juneau, Alaska 99801-2196  
POSITION STATEMENT: Provided review of memo regarding SB 215.

Shelby Stastny, Director  
State Office of Management & Budget  
P.O. Box 110020  
Juneau, Alaska 99801-0020  
POSITION STATEMENT: Provided review of DOA memos regarding SB 215.

Senate Resources

-1-

November 19, 1993

Craig Tillery  
Department of Law  
1031 West Fourth Avenue, Ste. 200  
Anchorage, Alaska 99501-1994  
POSITION STATEMENT: Testified regarding reimbursements of Exxon Valdez  
settlement monies to the "470 Fund."

Mead Treadwell, Deputy Commissioner  
Department of Environmental Conservation  
410 Willoughby, Ste. 105  
Juneau, Alaska 99801-1795  
POSITION STATEMENT: Commented on SB 215.

Ardie Gray, Public Affairs Manager  
Alaska Oil & Gas Association  
121 West Fireweed Lane, Ste. 207  
Anchorage, Alaska 99503  
POSITION STATEMENT: Supports SB 215.

Walt Furnace  
Alaska Support Industry Alliance  
4220 B Street, #200  
Anchorage, Alaska 99501  
POSITION STATEMENT: Supports SB 215.

Richard Mullen, Manager  
South East Alaska Petroleum Resource Organization  
3350 Denali  
Ketchikan, Alaska 99901  
POSITION STATEMENT: Commented on SB 215.

Charles McKee  
7800 East DeBarr Road, #63  
Anchorage, Alaska 99504  
POSITION STATEMENT: Opposes SB 215.

Chip Thoma  
2 Marine Way  
Juneau, Alaska 99801  
POSITION STATEMENT: Opposes SB 215.

#### **ACTION NARRATIVE**

**SENATOR MILLER** called the Resources Committee meeting to order at 9:23

a.m. and announced S3 215 OIL & HAZARDOUS SUBS. RELEASE RESPONSE FUND to be up for consideration.

**SHELBY STASTNY**, Director of the State Office of Management & Budget, gave an overview of the First, Second and Third Quarter Reports for the Oil Surcharge Account (dated 4/2/93, 8/20/93 and 11/10/93) issued by the Dept. of Administration which are required by AS 43.55.230(b). He acknowledged there is concern that the balance of the fund is a negative number.

He referred to a memo from his office included in a packet submitted by DEC to the House Resources Committee hearing last week, dated November 5, 1993, regarding similar legislation (House Bill 238). He explained that the statute requires that the quarterly reports simply show the cumulative surcharge, or total collected through the nickel-per-barrel tax, minus the total cumulative expenditures, which produces a negative balance of \$ -15,105,728 according to his 11/5/93 memo. The amount actually available in the Response Fund as of that date, however, was \$37,229,669.

The difference between the Fund balance prepared by DOA and the Fund balance prepared by OMB occurs because funding for the cumulative expenditures is provided by the nickel-per-barrel tax as well as program receipts and other general fund contributions from the oil industry. Therefore, based on the statutory calculation, the ending balance will never reach \$50 million unless there is \$125 million in the Fund.

The Administration would like to see some sort of correction so the quarterly reports reflect the true Fund balance. He stated that if the Legislature's goal is to provide a \$50 million fund, then there should be a better way of calculating when the tax "turns off." The administration's position is that the state should accumulate a \$50 million fund that will always be available to respond to disasters and other significant spills, releases, etc.

**SENATOR MILLER** asked Mr. Stastny to clarify if and when the tax would

cease based on the \$ -15 million and \$37 million figures presented in the OMB memorandum.

**MR. STASTNY** said he believes the tax would stop when the figure in the right hand column (\$37 million) reached approximately \$125 million due to the \$75 million in expenditures which come from revenues other than the nickel-per-barrel tax. He noted that when the present administration took office the balance of the fund was between \$8 and \$9 million and has increased to the present \$37 million.

**SENATOR LEMAN** asked why the figures reflecting the *Cumulative Surcharge Collected* were different under the columns titled *AS 43.55.230(b) Calculation* and *Response Fund*.

**MR. STASTNY** said the *Response Fund* figure is an amount appropriated by the Legislature annually. However, the state continually collects the surcharge (reflected in the *AS 43.55.230(b) Calculation* column) even though it has not yet been appropriated by the Legislature.

**CRAIG TILLERY**, Department of Law, explained the process for reimbursements of Exxon Valdez settlement monies to the Fund. He testified that Exxon is required to pay \$900 million in settlement money. Of that amount, the state and federal governments are entitled to take their reimbursements from certain Exxon Valdez oil spill related expenses. The remainder goes into the Exxon Valdez Trust Fund where it is spent under the direction of the joint federal and state trustees. The governments determine what their restoration needs will be for a given year, then look at how much will be left over and from that, take the appropriate amount due.

That money does not go through the Trust Fund but straight to the governments via the General Fund. The money being reimbursed from the Response Fund goes into the Mitigation Account from which the Legislature may, as it always has done, appropriate it back into the Response Fund.

He pointed out that under the proposed bill, the money would go to the Oil & Hazardous Substance Release Contingency and Abatement Account (OHSRCAA) from which the commissioner may spend money. He views this as bypassing the process of legislative appropriation of the money into the OHSRCAA which could be viewed as setting up a dedicated fund. He suggested the committee explore the possibility of running the money through the Mitigation Account, then allowing the Legislature to appropriate it into the OHSRCAA.

**MARIA GLADZISZEWSKI**, Legislative Research Agency, reviewed her memo dated 11/18/93 in response to questions posed by Senator Miller. The first asked for the current balance in the Spill Response Fund and the emergency spill reserve. She said the committee heard from Mr. Stastny regarding the balance of the fund and referred to the flow chart (Table One) attached to her memo. She also referred to Table Two in the memo which explains the process discussed by Mr. Tillery regarding reimbursements.

The second question asked if a legislative appropriation to the emergency spill reserve is considered an expenditure for the purpose of AS 43.55.230(b) (suspension and reimposition of the \$0.05/bbl surcharge). She referred to a memo by Mr. Breck Tostevin, Department of Law, which concludes that money appropriated to the spill reserve is not considered an expenditure for the purpose of calculating whether to suspend the surcharge.

The third question asked for (1) the current status of the Exxon Valdez settlement reimbursements to the State of Alaska and the Response Fund, (2) the amount that has been reimbursed so far and (3) how much is likely to be reimbursed in the future. A detailed response is contained in Ms. Gladziszewski's memo.

**JACK CHENOWETH**, Legislative Legal Services, gave a sectional summary of SB 215.

The principal changes occur with respect to the structure and objects of expenditure of the Oil & Hazardous Substance Release Response Fund. It is divided into two accounts; the Release Contingency and Abatement Account, and the Catastrophic Oil Release Response Account.

Section 25 identifies the division of the current fund into two accounts.

Section 26 identifies, by name, the two accounts.

Section 27 is a drafting change to reflect the fact that the Fund is divided into two accounts.

Section 28 adds in the proviso that equipment that can be used at the substance response depots may be purchased out of the Fund and that the current authorization of expenditure for marine ferries is to be repealed.

Section 29 discusses the composition of the Oil & Hazardous Substance Release Contingency and Abatement Account (OHSRCAA); Section 30 discusses the composition of the Catastrophic Oil Release Response Account (CORRA) and essentially requires what is currently required of the Fund as a whole.

Section 31 makes changes in what the two accounts may be used for. The Catastrophic Release Account may be used for major oil releases; the Contingency and Abatement Account is used for events that fall short of catastrophic or threatened catastrophic oil releases.

Sections 32 and 33 are companion measures which both discuss what the Governor may do with the balance of funds in the Catastrophic Release Account. Following the passage of Senate Bill 90 in 1993, Section 32 is no longer necessary in SB 215 and Section 33 would become the operative section.

Section 34 speaks to the use of monies from either account and requires a specific appropriation for most purposes except for immediate response action currently authorized in law.

Sections 8 and 35 reflect the division of the Fund into two accounts.

Sections 42 and 43 reflect revisions of definition of the terms "release" and "threatened release."

Sections 36 and 37 make conforming changes.

Sections 1, 4, 6, 7 and 41 make reference to the renamed accounts.

Section 5 refers to the two accounts and touches upon grants to municipalities for disaster emergencies.

Sections 44 and 49 reflect changes in the definition of "catastrophic oil discharge" in an effort to explain that definition's applicability.

**MR. CHENOWETH** summarized that all the above sections make changes that reflect the fact that the current 470 Fund would be divided into two accounts, and the purpose of the accounts would differ in that the Catastrophic Release Account would be used for major oil releases, and the Contingency and Abatement Account would handle other purposes spelled out in the bill revisions.

Sections 9 through 16 reflects a revision in the oil & gas conservation surcharge, or nickel-per-barrel surcharge. This would be replaced by two surcharges, one at three cents and one at two cents. The .03 levy is deposited into the Catastrophic Release Account and is subject to suspension or termination when the balance of the fund reaches \$50 million. The .02 levy is deposited into the Contingency and Abatement Account and continues without limitation.

Section 38 reassigns the Oil & Hazardous Substance Response Corps to DEC.

Section 39 transfers responsibility for maintaining the response depots to DEC.

Section 46 moves the State Emergency Response Commission from DEC to DMVA.

Section 51 holds harmless the terms of persons serving on the Response Committees despite the agency transfer.

Sections 2 and 3 address the Governor's authority to declare disaster emergencies.

Sections 32 and 33 make changes that relate to the Governor's use of money in the Oil and Hazardous Substance Release Prevention & Response Fund in the face of a disaster emergency.

Sections 17 and 18 make conforming changes.

Sections 19 and 20 make changes in the statewide prevention and contingency master planning process.

Sections 22 and 23 make changes in the regional prevention and contingency master planning process and eliminate the Oil & Hazardous Substance Response Office's ability to conduct spill technology research.

Section 24 amends the definition of "catastrophic oil discharge" to include the declaration of a disaster emergency by the governor.

Section 40 assigns the Oil & Hazardous Substance Response Office the authority to contract to provide personnel for certain release related work.

Sections 43 and 45 revise the definition of "threatened release."

**MR CHENOWETH** suggested that some technical drafting changes should be considered to "clean up" the bill based on action taken during the first session of the 18th Legislature before reporting the measure from committee.

**MEAD TREADWELL**, Deputy Commissioner, Dept. of Environmental Conservation referred to a draft package submitted to the Committee entitled "DRAFT 11/12/93: Principles for Consensus on the Response Fund Funding." He emphasized the Department's desire to work with all interested parties in maintaining a strong spill response program. He also emphasized that DEC does want to build and maintain a \$50 million spill reserve and believes that will be achieved this year. Finally, he pointed out that DEC agrees that greater equity should be achieved in funding sources for the non-crude and hazardous substance prevention and response aspects of the program.

The Department's strategy is to look at other ways to expand response fund sources including cost recovery. The fund is owed approximately \$30 million from Exxon Valdez expenditures and DEC estimates the recovery schedule on page 6 of the draft. DEC is also increasing, in cooperation with the Department of Law, cost recovery efforts.

Damages and fines currently collected by the Mitigation Account could possibly be figured in when determining suspension of the tax.

Fees to be paid by non-crude facilities for contingency plan review, as well as fees for financial responsibility submissions, could be imposed. Loading fees as a source of UST funding has been discussed. Substitution of General Funds, including interest on the spill reserve and use of other tax revenues, were suggested as other possible funding sources to cover the program.

Suggestions regarding the surcharge include: 1) amending the tax law to reflect that the tax is collected when the balance of the fund, less obligations

appropriated by the Legislature or spent from the spill reserve, is less than \$50 million and 2) adopting an incentive clause stating that the tax will not be collected in such a year unless other named sources are also appropriated to the fund.

DEC has reviewed methods to further limit fund expenditures including: removal of full funding for the SERC by making an all-hazards SERC, repeal of the provision that allows ferries to be built with the Response Fund, and requiring review of expenditures by a body such as the SERC in case of spill prevention and response plans, and the HSSTRC in case of research.

**MR. TREADWELL** asked that if the committee goes forward with the legislation that it review page 6 of the draft package regarding fund availability if the surcharge is split. He also discussed related options which are outlined on Page 7 of the package. Page 8 shows a spreadsheet projecting various expenditures and ways the program might continue through the year 2000.

[THE TESTIMONY OF MR. CHARLES MCKEE, MS. ARDIE GRAY AND MR. WALT FURNACE WAS INAUDIBLE DUE TO TAPE MALFUNCTION. A COPY OF MS. GRAY'S WRITTEN TESTIMONY WAS MADE AVAILABLE AND IS ATTACHED.]

**CHIP THOMA**, Juneau, testified that the 470 Fund is, for the most part, the crude and non-crude producers' profits. He stated these producers are behind the proposed gutting of the 470 Fund. Very large profits are also being made by the refiners and transporters. He believes anti-trust fraud and price fixing practices exist in the fuel industry and hopes it will be curtailed. He pointed out that a recent BLM audit of the TAPS, Alyeska, and the owner companies shows the management responsibility for serious operational shortcomings is practically nonexistent. He does not believe any of the owner companies have taken steps necessary to prevent another large spill, nor have they made the improvements necessary to protect communities and river systems in Alaska

that depend on refined products. He stated this is why the 470 Fund exists, and should remain, in its present size and form.

**RICHARD MULLEN**, manager of South East Alaska Petroleum Resource Organization (SEAPRO), a pollution response cooperative of 39 member companies, funded by non-crude oil operations, has had concerns for some time regarding the operations of the 470 Fund. SEAPRO believes the Fund is not accomplishing what the Legislature intended and they support an effort to "fix" the Fund so that money is available in the event of a catastrophic spill. A careful review should also be made of what has been accomplished in creating a pollution response capability. They feel only a portion of the potential pollution sources in the region have been passed, through regulation and statute, to prepare to do a better job of prevention and response. The vast majority of spills come from unregulated sources and in these cases, no response is undertaken unless it is done by the Coast Guard. SEAPRO believes the Fund is valuable, yet it is regionally limited, it targets only a small segment of the potential global pollution threat, and is not necessarily available to the public. The Legislature should look at what is available and determine methods to make better use of those sources to protect the general public.

**SENATOR MILLER** said the committee will take up SB 215 within the first or second week of the next session, work with concerned parties, and try to move it out of committee before the end of the first month.

**SENATOR MILLER** adjourned the meeting at 3:00 p.m.

**TESTIMONY OF THE  
ALASKA OIL AND GAS ASSOCIATION**

**OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND  
SB 215/HB 238**

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

AOGA appreciates the opportunity to testify on several issues related to the Oil and Hazardous Substance Release Response Fund ("470 Fund").

As AOGA testified at the House and Senate Economic Task Force Mini-Summit hearing and House Resources Committee hearings earlier this year, our industry considers tax stability an important element for an economic climate to encourage industry investment in Alaska projects. We also identified, as a particular industry concern, appropriations from the 470 Fund which do not serve the purpose for which the Legislature imposed a nickel per barrel tax on production in 1989.

After the Valdez oil spill, the Legislature levied this nickel per barrel tax for the purpose of accumulating 50 million dollars in a fund for emergency oil spill containment and cleanup. The original intent of the nickel per barrel tax was that it be used for emergency response and preparedness only. Four years later, more than 110 million dollars in new taxes have been collected from the oil industry for the Fund.

Most of that money has been spent. Over the past four years, money has been appropriated from the 470 Fund for things like cleaning up state campgrounds, state airports, privately-owned greenhouses, and buying new ferries. These may be important concerns, but they are not oil spill emergencies.

## **BUDGET APPROPRIATIONS:**

As the Governor's Organizational Efficiency Task Force Summary Report stated in June of 1992, "the liberal use of the Fund appears to be driving up total state spending with little concern for efficiency."

The original fiscal notes from the 1989 and 1990 sessions, according to a recent report by the Prince William Sound Regional Citizens Advisory Council (RCAC), projected annual expenditures from the 470 Fund on the order of 5 to 8 million dollars per year. Expenditures have now grown to levels significantly higher than that.

It is also very clear that the 470 Fund was never intended to fund one-third of ADEC's operating budget.

The current Legislature should be commended for the efforts undertaken during the 1993 session in an attempt to make 470 Fund appropriations more consistent with the original purposes of the Fund when the tax was enacted. It was particularly significant that the Legislature chose to end funding for environmental activist organizations to undertake activities such as hiring former legislative aides, and rejected a proposal to expand Fund uses for something called an "international increment." While significant progress was made, more changes are necessary.

## **ACCOUNTING PROBLEM:**

Two new issues relating to accounting for money in the 470 Fund arose during legislative debate last session on HB 238. The first problem relates to how the balance in the 470 Fund is calculated.

AS 43.55.230 requires that:

"not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

(1) that has been deposited through the calendar quarter into the general fund under AS 43.55.210 (the nickel per barrel tax);

(2) expended through that calendar quarter from the oil and hazardous substance response fund established in AS 46.08.010 (the 470 Fund)."

The commissioner of administration is then required to:

"within 15 days of making the determination required by this section, the commissioner of administration shall report to the commissioner (of revenue) the difference between (a)(1) of this section and the amount determined under (a)(2) of this section.

If the commissioner of administration reports that the difference determined by this section equals or exceeds \$50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.200."

To our knowledge, despite the statutory requirement that this be reported every quarter, this formal report was issued for the first time on April 2 of this year. The issuance of this first report was very disturbing to our industry. The report showed that the 470 Fund actually carried a **NEGATIVE BALANCE OF 12 MILLION DOLLARS!**

This effectively meant that our industry would have to pay an additional \$62 million dollars in nickel per barrel taxes before the 50 million dollar cap originally intended for the Fund would be reached.

The second accounting problem relates to the money accumulated in the emergency spill reserve. The question is whether this money actually counts toward the \$50 million cap on the Fund.

In order to maintain an emergency spill reserve, each year in the front section of the operating budget the Legislature has appropriated money to an emergency spill reserve fund. AOGA believes the intent of the Legislature is to be fiscally responsible, while addressing the constitutional prohibition on dedicated funds.

The problem created by this separate appropriation is whether this money has been "expended" from the 470 Fund. If this appropriation is an "expenditure" then it does not count toward the \$50 million cap on the Fund.

This issue was first raised by the Legislature Research Agency when they reported earlier in the year that the 470 Fund balance was only 100 thousand dollars. ADEC has taken a differing view, asserting that this money has not been expended. In either case, this statute is in need of clarification.

#### **SPLITTING OF THE 470 FUND:**

Given all of the confusion over what the balance in the 470 Fund is, whether appropriations to the spill reserve are considered "expenditures", and the differing views over what are appropriate uses of the money in the 470 Fund, AOGA believes it is necessary to look at a new approach to the Fund.

For this reason, AOGA strongly supports the proposal in SB 215 and HB 238 to split the current nickel into two funds; a 2 cents per barrel "oil spill preparedness account", to be funded through a permanent 2 cents per barrel tax, and a 3 cents per barrel "catastrophic oil discharge account."

This proposal is a "win-win" opportunity for all interested parties for several reasons:

First, it will provide for the \$50 million cash emergency fund originally envisioned in 1989 -- undiluted by other environmentally-related expenditures. The new proposal would ensure that there was a separate and secure independent source of \$50 million available to the state and local communities in case of an emergency. To provide initial money for the "catastrophic oil discharge reserve account", AOGA believes it is essential that the balance in the current oil spill emergency reserve fund be transferred to the new account.

Second, the permanent 2 cents per barrel tax would go into an "oil spill preparedness account", ensuring a permanent and secure source of funding for state prevention and preparedness programs as long as oil is being produced in Alaska. The 2 cent per barrel tax would provide over \$10 million per year, more than the \$5-\$8 million originally projected. While this is somewhat less than is currently being spent on operating programs from the 470 Fund, it should also be noted that ADEC has indicated that long term operating costs for prevention and response programs will decrease once initial "startup costs" have been incurred.

Third, it will provide some form of tax certainty for the industry. The current hidden tax policy will be eliminated. Industry will continue to pay the 5 cents per barrel tax until the "catastrophic oil discharge emergency reserve account" reaches \$50 million, with a permanent 2 cents per barrel tax being paid after that time. No more guessing games as to when, or if, the current temporary tax would be suspended.

Fourth, and most important, this legislation will provide certainty for Alaska's citizens. The public will know that there is a \$50 million fund sitting there in case of emergency, and only in case of an emergency. The public will also know that there is a fair and secure source of guaranteed funding available for the state's prevention and preparedness programs.

#### **UNDERGROUND STORAGE TANKS:**

A major subject of legislative debate in recent years has been funding for the state's underground storage tank cleanup assistance program. Legislation has been proposed to tap the 470 Fund to pay for the program, and the Legislature has used the 470 Fund Mitigation Account to pay for the program during the last two sessions.

As AOGA has previously testified, we do not believe it is appropriate to use the state's supposed oil spill emergency fund to pay for this program.

However, AOGA does support continuing the policy of using mitigation account reimbursement money to fund the state's share of the underground storage tank cleanup assistance program. With future Exxon Valdez settlement reimbursement payments flowing into the mitigation account, there should be ample funding available for the underground storage tank program.

#### **PUBLIC OPINION:**

Finally, I would like to share with you the results of some recent public opinion survey work conducted by Dittman Research for AOGA.

In September of this year, Dittman Research conducted a statewide survey of 516 residents in 55 Alaska communities. We asked three questions related to the 470 Fund, with the following results.

1. "After the Prince William Sound oil spill, Alaska's state Legislature established a special tax on the oil industry of 5 cents per barrel to go into an emergency response fund to be available to respond to future spills if necessary. The goal was to build the fund up so that 50 million dollars would be available, then eliminate the tax. Do you favor or oppose this goal?"

Favor	86%
Oppose	12 %
Unsure	2%

2. "Do you feel the money placed in the emergency response fund should stay there until it builds up to 50 million dollars, or should it be spent as it is being collected in order to provide money for operating expenses of the Department of Environmental Conservation and other purposes?"

Stay there	79%
Be spent	19%
Unsure	2%

3. "The special tax was to be eliminated after the emergency fund reached a balance of 50 million dollars. However, much of the money has been spent, so even though the oil industry has paid over one-hundred million dollars in special taxes into the fund, the balance of the fund remains far below 50 million dollars and the special tax remains in effect. Do you approve or disapprove of the state's current practice of keeping the fund balance below 50 million dollars so the special tax can stay in effect?"

Disapprove	71%
Approve	22%
Unsure	7%

## CONCLUSION:

The 470 Fund is broken and it must be fixed. AOGA believes that SB 215 and HB 238 will provide the appropriate fix -- one consistent with the desire of Alaska's public to have an independent emergency spill reserve fund.

**DRAFT 11/12/1993**

## **Principles for concensus on Response Fund Funding**

### **Goals:**

**\*Maintain strong State-led spill prevention and response program.**

**\*Build and maintain \$50 million spill reserve.**

**\*Attempt to achieve greater equity in funding sources for non-crude/hazardous substance prevention and response.**

### **Strategy:**

**\*Expand Response Fund Sources, including cost recovery.**

**\*Simplify accounting mechanism to impose/suspend crude oil surcharge.**

**\*Don't diminish the Response Fund's capability to fund necessary programs until other sources are in place for non-crude/hazardous substance prevention and response.**

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**Specific concerns to meet when applying the Strategy:**

**\*Even though the Spill Reserve approaches \$37 million, and thus just \$13 million would be necessary to reach a reserve figure of \$50 million, the formula for suspending the tax requires at least \$65 million more be collected, above additional expenditures, before the tax is suspended.**

**\*There are now no built-in incentives for the legislature to credit repayments to the state from fund expenditures to the fund in collecting the tax.**

**\*There is a perception that some authorized fund expenditures should be unauthorized or further limited. Further checks and balances may be necessary.**

**\*The size of the spill prevention and response program seems to grow to match funds available from the tax, and should instead be set to meet needs for the environment and safety and funded from an equitable series of sources on the "polluter pays" principle.**

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**Other possible funding sources:**

**\*Receipts from cost recovery/reimbursement**

**\*Mitigation: damages, fines, etc.**

**\*Fees: possible fee for contingency plan review by non-crude facilities, financial responsibility submissions, etc. Loading fees have been discussed as possible UST funding source.**

**\*Substitution of general funds -- Interest on the spill reserve, use of other tax revenues.**

**Method to suspend the tax and include other sources:**

**\*Amend the tax law to state, simply, that the tax is collected when the balance of the fund, less obligations appropriated by the legislature or spent from the spill reserve as provided by law, is less than \$50 million.**

**\*Consider an incentive clause to state that the tax will not be collected in such a year unless other named sources (any the legislature chooses from the list above) are also appropriated to the fund.**

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**Method to further limit fund expenditures:**

**\*Remove full funding for the SERC by making an all-hazards SERC.**

**\*Repeal the provision that allows ferries to be built with the Fund.**

**\*Further checks and balances, such as requiring review of capital and operating expenditures by a body such as the SERC in case of spill prevention and response plans, and the HSSTRC in case of research.**

**Projected trends in current cost components:**

**SPAR Director -- Maintain Response Fund; some GF.**

**Industry Preparedness -- Program may need to grow to cover unregulated facilities or substances, as evidenced by Indian Spill and chlorine leaks statewide that required evacuation. Non-crude facilities could be asked to pay a fee for c-plan review.**

**Government Preparedness -- Convert SERC to Disaster Planning; primarily GF/Federal Funds. Other agencies' funding for SERC participation would follow suit.**

**Contaminated Sites -- Program attempts cost recovery; loading fees or other GF could increase equity; EPA is considering allowing states access to superfund; Coast Guard has given state access to oil pollution fund.**

**UST Program Administration -- Costs could be borne by same source as the UST grant program. Program should have reduced grant requirements as insurance deadlines take hold late in decade. General funds, loading fees are possible sources. Mitigation account is current source for grant program.**

**Other DEC Divisions -- Maintain Response Fund.**

**Other Departments -- Maintain Response Fund or alternate funding source for c-plan review by ADF&G, DNR. Maintain Response Fund for Dept. of Law, DMVA on cost sharing, Public Safety for investigations.**

**If surcharge is split (\$.03/.02), what is available?**

**[At a nickel a barrel, revenue estimates are \$26 million collected in 1993 available for FY 1995]**

	<u>.02</u>	<u>.03</u>
FY 95	\$10,400	\$15,600
FY 96	9,840	14,760
FY 97	9,040	13,560
FY 98	8,240	12,360
FY 99	7,560	11,340
FY 00	6,800	10,200

**Spill Reserve Projected at end of FY 1994: \$36,588.3**

**Mitigation account revenues projected:**

<b>FY95</b>	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>	<b>FY99</b>	<b>FY00</b>
5,300	8,300	8,600	8,900	9,000	1,000

**Funding need:  
\$14.1 million/yr.**

**Options:** [In all cases, look for alternate funding sources.]

1. [DEC proposal] Collect only as much is necessary for the spill reserve and to run spill prevention and response program. Channel cost recovery directly to the Fund through an incentive clause in the tax, including projected Exxon reimbursements to the fund.

2. [Current HB 238] Split the nickel: .03/.02, and channel cost recovery to the fund or the spill reserve. [This leaves potential major deficit in spill response program.]

3. [Modified HB 238] Split the nickel but Exxon Fund cost recovery directly to the Fund. [This leaves surplus that may be appropriated elsewhere.]

**Tax collected:      Option 1    Option 2/3    Deficit/Surplus**

1993 for FY '95	\$26.0	\$26.0	(3.7)/1.5
1994 '96	0.0	9.8	(4.3)/5.0
1995 '97	7.8	9.0	(5.1)/8.5
1996 '98	5.3	9.0	(5.9)/11.5
1997 '99	5.2	8.6	(6.5)/6.0
1998 '00	13.2	7.8	(7.3)/(.3)

Oil and Hazardous Substance Prevention and Response Fund				c:\windows\legislation\238\dec2.xls			
DEC Proposal 11/93				Revised 11/93			
	FY94	FY95	FY96	FY97	FY98	FY99	FY2000
<b>Revenue (In Thousands)</b>							
Balance Forward Unreserved/Unobligated Spill Reserve	27,084.1	38,588.3	53,708.3	47,822.3	50,000.0	50,000.0	50,000.0
.05 Surcharge Necessary to Maintain Spill Reserve	26,700.0	28,000.0	.0	7,780.7	5,283.0	5,183.0	13,183.0
Mitigation Account Transfers	681.2	5,300.0	8,300.0	8,600.0	8,500.0	9,000.0	1,000.0
<b>TOTAL AVAILABLE IN FUND</b>	<b>54,465.3</b>	<b>67,888.3</b>	<b>62,008.3</b>	<b>64,183.0</b>	<b>64,183.0</b>	<b>64,183.0</b>	<b>64,183.0</b>
<b>PROJECTED EXPENDITURES</b>							
SPAR Director's Office	880.7	992.0	992.0	992.0	992.0	992.0	992.0
Industry Preparedness Program	2,321.9	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0
Government Preparedness and Response Program	4,087.4	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3
Contaminated Sites Program	2,949.3	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0
Underground Storage Tank Program	108.3	108.0	108.0	108.0	108.0	108.0	108.0
Division of Information and Administrative Services	748.5	748.5	748.5	748.5	748.5	748.5	748.5
Division of Environmental Quality (Ab. Pol. Prev.)	334.0	334.0	334.0	334.0	334.0	334.0	334.0
<b>Response Fund Administration (Other Agencies)</b>							
Fish and Game	184.2	184.2	184.2	184.2	184.2	184.2	184.2
Natural Resources	108.0	108.0	108.0	108.0	108.0	108.0	108.0
Law (Cost Recovery, Prosecution, Enforcement)	1,390.2	750.0	750.0	750.0	750.0	750.0	750.0
Labor	9.5	.0	.0	.0	.0	.0	.0
Community and Regional Affairs	13.8	.0	.0	.0	.0	.0	.0
Health and Social Services	12.0	.0	.0	.0	.0	.0	.0
Public Safety	50.0	50.0	50.0	50.0	50.0	50.0	50.0
DOT/PF	8.5	.0	.0	.0	.0	.0	.0
DMVA	611.0	210.0	210.0	210.0	210.0	210.0	210.0
University of Alaska/Research	200.0	200.0	200.0	200.0	200.0	200.0	200.0
Capital Budget	2,774.0	400.0	400.0	400.0	400.0	400.0	400.0
Estimate of Spill Reserve Use	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
<b>SUBTOTAL PROJECTED EXPENDITURES</b>	<b>17,857.0</b>	<b>14,183.0</b>	<b>14,183.0</b>	<b>14,183.0</b>	<b>14,183.0</b>	<b>14,183.0</b>	<b>14,183.0</b>
Spill Reserve Balance	38,588.3	53,708.3	47,822.3	50,000.0	50,000.0	50,000.0	50,000.0
<b>ASSUMPTIONS:</b>							
FY94 Revenues are based on appropriations made in FY94 budget.							
FY94 projected is based on FY94 Adjusted Budget.							
Transfers from Mitigation Account from Exxon settlement are \$8.0 million/yr for FY98-FY99.							
Cost recovery will begin to increase based on enhanced procedures and efforts.							
Mitigation Account is appropriated to the Response Fund.							
State Owned Sites are cleaned up using General Funds (184 is projected FY98 Cost).							
Average annual expenditures for emergency response from the spill reserve will be 1,000.0.							
FY98 Other sources cover 400.0 of SERC in Govt. Preparedness Program and in other agencies.							
FY98 reduce DOL \$350.0 eliminate Exxon Project. Dept. of Law expenditures will fall or come, as needed, from Spill Reserve.							
Total Surcharge Collected reflects amount needed to cover Projected Expenditures. The Mitigation Account transfers count toward the \$50.0 million spill reserve balance. The Mitigation Account transfers are estimates projected.							

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**OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND**  
**HB 238 Version "M" work draft**  
**compared to**  
**DEC proposed changes**

HB 238 Features

- ◆ Change name of fund to include "prevention" (sec. 1,4,6,7, 28,37,42)
- ◆ Amend the Alaska Disaster Act by changing the priority in which the Governor may have access to money to respond to a disaster (sec. 2,3)
- ◆ Create catastrophic oil release fund and contingency abatement fund to replace response fund (sec. 27,28)
- ◆ create separate mitigation account for each account above (sec. 31,32)
- ◆ divide surcharge - 2¢ and 3¢ with 2¢ to be deposited into the abatement account and 3¢ to be deposited into the catastrophic acct. (sec. 9,11,14)
- ◆ catastrophic acct. cap \$50.0 m (sec. 12,13)

DEC Proposal (11/93)

- Include this change
- Leave current statute which gives first recourse to money regularly appropriated to state agencies
- Leave current statute which establishes OHSRR Fund as a single account
- Leave current statute which establishes a single mitigation account
- Leave surcharge at 5¢ whole
- include provision which would allow any other fund sources appropriated to be used for the prevention and response program, so as to increase equity on the "polluter pays" principle.
- Amends provision that suspends the surcharge to include amounts recovered as reimbursement for monies

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~~page 2~~

previously expended from the fund, considers spill reserve balance. (Tax in a given year is amount needed to replenish spill reserve to \$50.0 million after reimbursements are put in and annual funding requirement is taken out.)

begin calculating the balance of the spill reserve with a "clean slate"

Include this change

Include this change

Include this change

Include this change

Include this change

◆remove requirement that DEC annually revise the statewide master plan, commissioner makes the determination when revision is necessary (sec. 21)

◆remove requirement that the statewide master plan be submitted to the public, Legislature and SERC for annual review (sec. 22)

◆when DEC revises the statewide master plan that it go through public comment and SERC approval (sec. 23)

◆remove requirement that DEC annually revise the regional contingency plans, commissioner makes the determination when revision is necessary (sec. 24)

◆provides same procedures for review and revision of statewide plans apply to regional plans (sec. 25)

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↳ page

◆ amend definition of "catastrophic oil discharge" as >100,000 barrels or a release for which the governor has declared a disaster (sec. 26)

☑ Include a portion of the change which adds the term "release" as well as "discharge", a disaster declaration is not necessary to access spill reserve for spills and contaminated sites

◆ delete restoration, and research and development as authorized uses of the fund (sec. 41)

☑ Include technical amendment to ensure that the definition of "containment and cleanup" includes other permutations of these words

☑ Leave current statute which allows these uses

◆ repeals use of fund for the Citizen's Oversight Council (sec. 48)

☑ Delete provision for the fund to pay for the ferry

◆ clarify equipment purchase for depots and corps as authorized use of the fund (sec. 30)

☑ Include this provision

☑ Include a definition elsewhere in statute to make certain these equipment purchases are included as a use of the fund

◆ deletes the following reporting requirements: PCNs, contracts > 20.0, purchases > 10.0 (sec. 36)

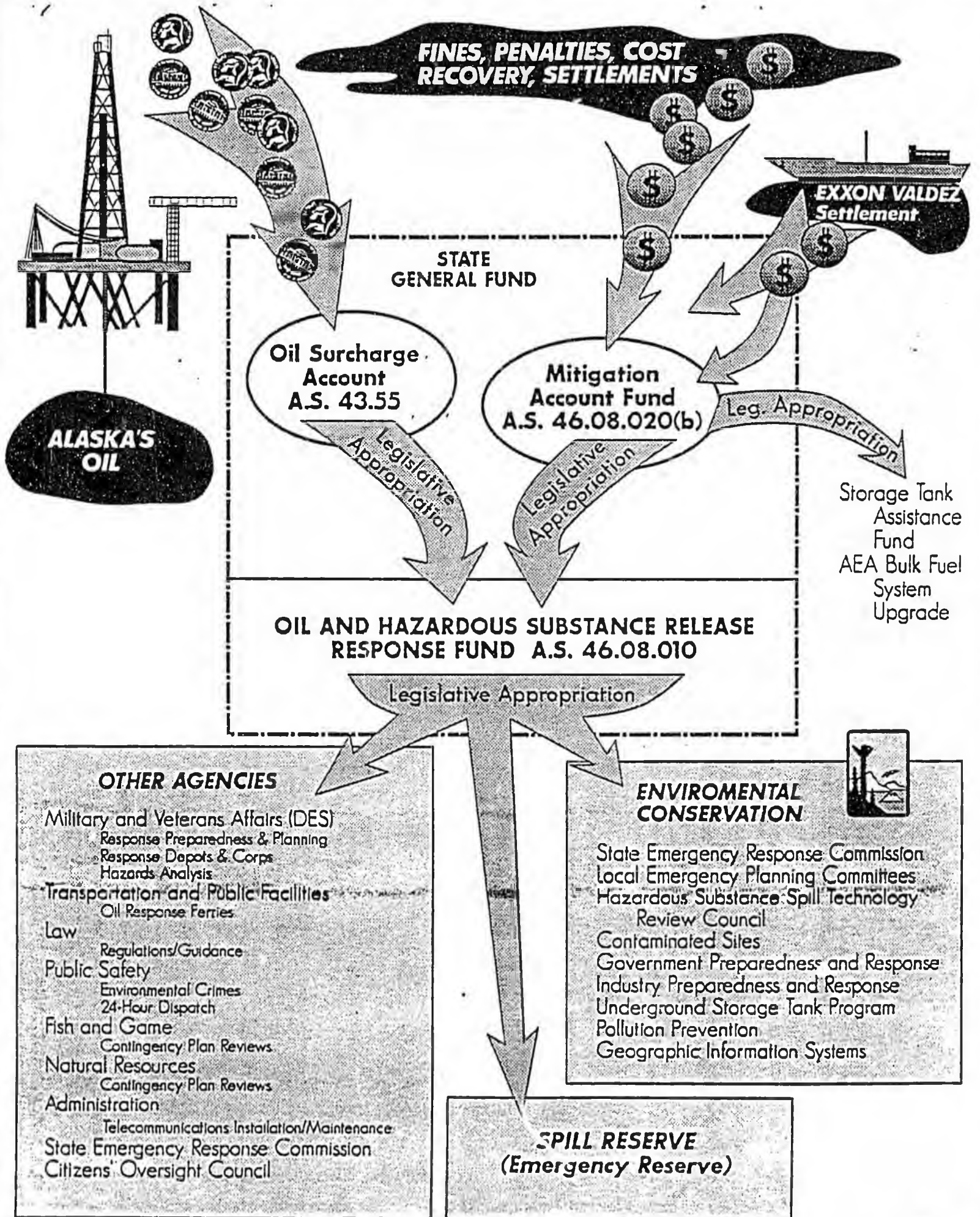
☑ Include deletion of PCN reporting requirement

◆ amend definition of "threatened release" to require a determination by the commissioner if it is not impending (sec. 44, 46)

☑ Leave current definition which defines "threatened release" to mean there is an imminent danger that a release will occur

◆ move SERO to DMVA (sec. 47)

☑ Leave current status





Date NOV 19 1993

Anchorage Daily News

Client No. 337

# Adding to spill fund just part of oil business overhead

*Those who cannot remember the past are condemned to repeat it.*

— George Santayana

By STAN STANLEY

In a blatant attempt to increase oil-industry profits, the Alaska Oil and Gas Association has lobbed the first salvo in its renewed attempt to get out of contributing to state oil-spill prevention programs. The salvo came in the form of a newspaper insert purporting to prove that Alaskans agree with industry thinking on several oil-related issues, including the use of the so-called 470 Fund. AOGA's propaganda piece is a blatant distortion of facts and shameless manipulation of the truth.

The message AOGA sends through this campaign is distressing: Notwithstanding expensive TV ads extolling its concerns for the environment, the oil industry has learned little since the Exxon Valdez.

They'll spend millions improving their image in glossy media campaigns, but as soon as the political heat cools, they're at it again, chipping away at the very programs that lower the risk of oil spills and reduce the damage if a spill does occur. It's time we Alaskans let the oil industry, our legislators



and the Hickel administration know that we haven't forgotten 1989, even if they have.

Since the Exxon Valdez oil spill, oil producers have paid a nickel-per-barrel conservation surcharge into a pool called the 470 Fund. By law, the purpose of the surcharge is to ensure a long-term funding source for spill-prevention programs and to respond to future spills.

When the fund balance reaches \$50 million, the surcharge is suspended until the fund drops below that level. Because the fund is used to pay for ongoing programs, such as review of industry contingency plans and evaluation of spill drills, it takes longer to reach the cap than if the money simply stayed there.

AOGA and its members want to limit how the fund can be used so they don't have to keep paying the surcharge. If the 470 Fund were strictly a response reserve, to be used only if a spill occurs, the \$50 million

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balance would be reached quickly and stay there, unless and until there was a big oil spill. In the meantime, industry would not have to pay the nickel per barrel.

Their strategy is to rewrite legislative history by claiming that a response reserve is the only valid use of the 470 Fund. It simply isn't true and a glance at the law proves it.

We agree that there have been some abuses of the 470 Fund and we wholeheartedly support clear-cut guidelines to stop questionable uses of the fund in the future. We, too, want assurances that the fund is spent well and wisely and for the purposes it was established to serve.

Most Alaskans believe oil has been good for our state. But oil development and oil transportation carry significant risk, as we learned all too vividly in 1989.

It's only right that a hugely profitable industry help pay for state programs to reduce the risk created by that industry's activities. It ought to be part of the cost of doing business. But apparently the oil companies that comprise AOGA don't want to pay it anymore and they're distorting the truth to try to get their way.

AOGA claims its survey shows that Alas-

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*It's time we Alaskans let the oil industry, our legislators and the Hickel administration know that we haven't forgotten 1989, even if they have.*

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kans don't want money from the 470 Fund used except as a spill reserve. Anybody familiar with this type of survey knows it's easy to get answers that serve your purpose if you know how to phrase the question. The AOGA survey manipulated responses by providing only part of the picture.

Last year, oil industry lobbyists tried but failed to push through legislation to limit how the 470 Fund can be used. AOGA's survey is a clear and unmistakable offensive ploy to get a bill passed early in the coming legislative session.

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Stan Stanley is executive director of Prince William Sound Regional Citizens' Advisory Council.

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## FORUM / LETTERS

# AOGA supports bill to fix the oil-spill-response fund

By ARDIE GRAY

In a recent Compass piece, Stan Stanley, executive director of the Prince William Sound Regional Citizens' Advisory Council, accused the Alaska Oil and Gas Association (AOGA) of distorting facts and manipulating the truth when AOGA released results of its recent statewide public opinion survey. Mr. Stanley may not agree with the findings of our recent survey, but the facts are that:

- Seventy-nine percent of Alaskans surveyed feel that money placed in the oil and hazardous substance release response fund ("470" fund) should stay there until it builds up to \$50 million; and
- Eighty-six percent of Alaskans surveyed support the goal of building the "470" fund up so that \$50 million would be available to respond to future spills if necessary.

After reading Mr. Stanley's article, it appears that, at the bottom-line level, we actually agree on some major points:

1. An oil spill response capability is very important to Alaska;
2. There have been abuses to the oil spill fund since it was established in 1989;
3. The abuses should be stopped; and
4. The "470" fund should be



used for the purpose intended.

What was intended?

After the 1989 spill, the legislature established a nickel-per-barrel surcharge on oil production to be paid into the "470" fund. The original intent of this tax was that it provide the state with an independent spill containment and cleanup capability in the event of future spills. Oil companies would continue to pay a nickel per barrel until the fund reached \$50 million. Once the fund reached \$50 million, the tax would be temporarily suspended.

But an odd thing happened between 1989 and now — the industry has paid more than \$110 million into the fund; however, due to a combination of spending and accounting problems created by the statute, the Department of Administration reports the fund balance at minus \$13 million. This means that even with no further expenditures, the industry would have to pay an additional \$63 million in taxes before the \$50 million cap could be reached.

*Money from the "470" fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil spill emergencies.*

While it is certainly true that a portion of the "470" surcharge should be used to support spill prevention efforts, there are public policy questions as to how money from the fund is being spent.

The original fiscal notes from the 1989 and 1990 sessions projected annual expenditures from the "470" fund on the order of \$5 million per year. Expenditures have grown to levels significantly higher than that. In fact, the "470" fund is currently being used to fund one-third of the Department of Environmental Conservation's operating budget for ongoing programs. The Governor's Organizational Efficiency Task Force Summary Report stated in June 1992,

"the liberal use of the fund appears to be driving up total state spending with little concern for efficiency."

Money from the "470" fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil spill emergencies.

The Alaska Oil and Gas Association supports funding for appropriate spill prevention and preparedness efforts. In fact, the petroleum industry has invested more than \$225 million in oil spill prevention and response programs and equip-

ment in Prince William Sound alone.

AOGA also supports a nickel-per-barrel surcharge for oil spill prevention and response. But because of the abuses of the past, we believe the nickel-per-barrel surcharge should be split: 2 cents to the Dept. of Environmental Conservation to provide a permanent and secure source of funding for oil spill prevention programs so long as oil is being produced in Alaska and 3 cents per barrel that would be paid into the "catastrophic oil discharge reserve" account to provide for the \$50 million emergency fund originally envisioned in 1989.

Legislation was introduced last session which would provide this kind of security to both DEC and to the public to guarantee a \$50 million oil spill emergency fund. AOGA supports this legislation.

We, like Mr. Stanley, want assurances that the fund is spent well and wisely and for the purpose it was established to serve. Unfortunately, this has not been the case. The "470" fund is broken and it should be fixed.

□ Ardie Gray is the public affairs manager of the Alaska Oil and Gas Association.