

SB

90



SENATOR LOREN LEMAN

Northwest Anchorage

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

SPONSOR STATEMENT

SB90: "An Act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance."

PROPOSAL

SB90 clarifies the governor's authority to declare a disaster emergency involving a catastrophic oil discharge and the response by the departments of environmental conservation and military and veterans' affairs.

It also would allow either the commissioner of environmental conservation or the commissioner of military and veterans' affairs to ask the governor to find that an actual or imminent catastrophic oil discharge constitutes an emergency under AS 26.23.

This bill is introduced at the request of the Department of Military and Veterans Affairs in cooperation with the Department of Environmental Conservation.

HISTORY

Many statute changes were made as a result of the Exxon Valdez oil spill. AS 26.23.020 and AS 46.04.080(a) were amended by the legislature in 1990. These amendments created a conflict with respect to whose authority it is to act under AS 46.04.080(a). The departments entered into a Memorandum of Agreement on January 8, 1992, as a method of complying with the statutes. This bill will complete the necessary changes.

MEMORANDUM OF AGREEMENT
BETWEEN THE

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SPILL PREVENTION AND RESPONSE

AND THE

STATE OF ALASKA
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
DIVISION OF EMERGENCY SERVICES

This agreement is effective the latest date of approving signature, by and between the Department of Environmental Conservation, Division of Spill Prevention and Response, hereinafter referred to as the "DEC/DSPAR" and the Department of Military and Veterans Affairs, Division of Emergency Services, hereinafter referred to as the "DMVA/DES."

RECITALS

- A. Pursuant to AS 46.03.020, the DEC/DSPAR, acting by and through its Commissioner, may enter into agreements.
- B. Pursuant to AS 26.23.040(e)(9) & (11), the DMVA/DES, acting by and through its Commissioner, may enter into agreements.
- C. The DMVA/DES has statutory responsibility for disaster emergency planning and management [AS 26.23.040].
- D. The DEC/DSPAR has statutory responsibility for response planning and management for releases of hazardous substances, including oil [AS 46.03, 46.04, 46.08, 46.09, 46.13].
- E. To the extent that an actual or imminent release of oil or a hazardous substance constitutes a real or potential disaster emergency, the DEC/DSPAR and the DMVA/DES shall coordinate their statutory responsibilities [AS 26.23.195, 26.23.215, 46.04.080 & 46.09.030].

Therefore, in consideration of this mutual interest to provide integrated response to real or potential disaster emergency situations, both parties agree to the following:

AN OPERATIONAL STATEMENT

I. Background and Objectives

Actual or imminent releases of hazardous substances, to include both crude and non-crude oil, (hereinafter referred to as "releases"), have the potential for causing significant damage, hardship suffering, and/or loss of life. Releases may be catastrophic in their effect on natural

resources or the environment, without being considered a disaster emergency, as defined in Alaska Statute 26.23.900(2). However, it is envisioned that from time to time releases will occur which constitute a disaster emergency. The Commissioners of the DEC and the DMVA will coordinate to determine that a release constitutes a disaster emergency under AS 26.23 and may request the governor to declare a disaster emergency. If a disaster emergency is declared, the Governor will appoint a State Coordinating Officer (SCO) to coordinate all State disaster assistance activities.

The DMVA/DES is the agency designated and authorized by the Governor's promulgation of the State Disaster Emergency Operations Plan (hereinafter referred to as the State EOP), to coordinate statewide disaster activities, determine the severity and magnitude of pending destruction by catastrophic events, and institute a gubernatorial declaration of disaster emergency.

The DEC/DSPAR is the agency designated in the State Master Oil and Hazardous Substance Discharge Prevention and Contingency Annex (hereinafter referred to as the State Master Plan) to the State EOP, to provide the State On Scene Coordinator (SOSC), who is responsible for ensuring responses to releases are adequate. The SOSC commands the State's release incident command system (ICS) and is responsible for coordinating the State's response activities to releases according to the State Master Plan.

During a response to release incidents that pose imminent threat to life and/or private property, DEC/DSPAR and DMVA/DES agree to augment local efforts essential to: accommodate assessment of potential damage; preparation planning for evacuation of the threatened public; management of disaster emergency expenses; and tasking, as necessary, to other State departments and agencies to provide assistance as stipulated in the State EOP.

Additionally, pursuant to the State Master Plan, the DMVA/DES serves to augment the State On Scene Coordinator (SOSC).

In that the DMVA/DES can provide substantial assistance to DEC/DSPAR during non-disaster emergency releases, and DEC/DSPAR can likewise assist DMVA/DES in non-release disaster emergencies, arrangements to formalize mutual support is essential.

DEC/DSPAR and DMVA/DES will jointly propose statutory changes as required, to clarify the relationships established pursuant to this agreement.

<u>II. Responsible Officers</u>	<u>DEC/DSPAR</u>	<u>DMVA/DES</u>
Signatory Authority	Commissioner	Commissioner
Authorized agency representatives: Cooperative relationships and program responsibility	Director	Director
Agency functional representatives: Statewide Coordination	Spill Prevention & Planning Manager	Emergency Services Manager
	Chief, Spill Response Office	Chief of Logistics

The above personnel will designate alternates in their absence and inform their counterparts in the other agency as to the alternate's name, position, and office and home phones.

III. General Provisions

Either agency may request assistance from the other provided administrative arrangements are set forth for proper reimbursement of incurred expenditures by the requesting agency. The services provided will be based on each agency's existing capabilities and limitations at the time of the request, to include those obtainable under formal contract and/or through a continuing reimbursable services agreement.

A. DMVA/DES Participation and Support To Non-Disaster Emergency Release Actions

1. Upon notification and request for a DMVA/DES representative at a release scene, travel and per diem will be provided by DEC/DSPAR in a manner typically provided their work force.
2. Primarily, the DMVA/DES representative will coordinate with the DEC/DSPAR Incident Commander in matters of logistics support, evacuation plan development, and interface between other State public safety agencies and support groups for assistance to the general public.
3. If a non-disaster emergency release poses an imminent threat of widespread or severe damage, injury or loss of life or property, the Commissioners of the DEC and the DMVA will coordinate to determine if the release constitutes a disaster emergency and may request the Governor to declare a disaster emergency.

B. DEC/DSPAR and DMVA/DES Relationship During a Declared Release Disaster Emergency

1. The SCO appointed by the Governor will serve as the incident commander for the disaster emergency.
2. The SOSC designated by DEC/DSPAR will be the incident commander for release response and regulatory activities.
3. The SOSC will coordinate response activities with the SCO pursuant to the basic plan.

C. DEC/DSPAR Participation and Support to Non-Release Disaster Emergencies

1. Upon notification and request for DEC/DSPAR support to non-release disaster emergencies, DEC/DSPAR capability will be provided to the extent practical and within its qualifications to perform services.
2. Contingency stocks of equipment and supplies will be made available, to the extent that they do not interfere with actual release operations being conducted at the time of the request.

D. Special Provisions

1. Refurbishment of equipment used during emergency response actions is reimbursable.
2. Warehousing of equipment obtained during emergency activities will be made available by the borrowing agency, to the extent possible.
3. DEC/DSPAR will collocate selected personnel with DMVA/DES to facilitate emergency response planning and coordination pursuant to this agreement.

IV. Term of Agreement

This mutual support agreement may be rewritten by mutual consent, at any time, to amend or modify its provisions. It shall remain in force until such time as either agency requests termination.

Nothing in this agreement shall obligate any party to the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

William Cox

Commissioner
Department of Military and
Veterans Affairs

8 Jan 92

Date

David A. Linder

Commissioner
Department of Environmental
Conservation

8 Jan '92

Date

Charles E. Cole

Charles E. Cole
Attorney General

January 8, 1992

Date

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 53-72

Revision Date: _____ Dept. Affected: DMVA
 Title: An act clarifying powers and duties of state officials in relation to disaster emergency BRU: Disaster Planning & Control
 Component: Disaster Planning & Control
 Sponsor: Sen. Lehman
 Requestor: Sen. Lehman COMPONENT SERIAL NO. 1808

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services
 Approved by Commissioner: Morrison for Hugh L. Cox III
 Agency: DMVA

Phone: 465-4730
 Date: 5 Feb 93
 Date: 2/5/93

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DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
POSITION PAPER

For: An act clarifying powers and duties of state officials in relation to a disaster emergency caused by a catastrophic oil discharge or the release of a hazardous substance.

The purpose of this legislation is to clarify an ambiguity within existing statutes regarding disaster emergencies emanating from catastrophic oil releases. There is an apparent conflict between two titles of Alaska Statutes, AS 26, and AS 46.

The Department of Military and Veterans Affairs is charged with responding to disaster emergencies declared by the governor, receiving their authority from AS 26. The Department of Environmental Conservation is charged with responding to catastrophic oil releases, receiving their authority from AS 46. When a catastrophic oil release results in a disaster emergency which threatens life or property, the statutes appear to conflict.

AS 26.23.020 establishes gubernatorial responsibility for meeting the dangers presented by all disasters, including those caused by catastrophic oil releases which endanger life and property. It requires that the governor declare a condition of disaster emergency by proclamation to activate appropriate response and recovery efforts. The disaster declaration constitutes the authority for the deployment and use of state resources to cope with the disaster.

AS 46.04.080(a) states, however, that the "actual of imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23." In this case, the executive decision making process is subverted, the authority of the governor to take action under AS 26.23 is unclear, and the responsibilities of the Departments of Military and Veterans Affairs and Environmental Conservation are confused.

Both departments experienced problems implementing the statute as written into their respective emergency plans. The commissioners of the two departments resolved this issue by Memorandum of Agreement dated January 8, 1992 (copy attached). The language proposed for statutory change would seek to remove the apparent inconsistency between AS 26 and AS 46 by changing AS 46.04.080(a).

Hazardous substance releases are far more life threatening than are oil discharges. The current language of AS 46.09.030 addresses the situation in which hazardous substance releases constitute disaster emergencies. This language presents no conflicts with AS 26.23, and is used as a model for the language offered as a replacement for AS 46.04.080(a). Section 1 of the bill addresses this clarification.

Section 2 of the bill addresses a minor housekeeping issue in the statutes. The current language of AS 46.09.030 reads that the director of the division of emergency services may request the governor to declare a disaster, rather than the Commissioner of the Department of Military and Veterans Affairs. Section 2 changes the law to replace the director of emergency services with the commissioner of military and veterans affairs. The language on lines 14-18 on page 2 of the bill are technical changes suggested by the bill drafter to conform to current drafting style

J. W. ...
for Hugh L. Cox III, Commissioner

Date: 2/5/93

[File: Leman2]

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 90

Revision Date: _____
Title: Oil and Hazardous Substance
Disaster Emergencies
Sponsor: Senator Leman
Requestor: Senate Oil & Gas

Department Affected: Environmental
Conservation
BRU: Spill Prevention & Response
Component: Spill Response Office

COMPONENT SERIAL NO. 1429

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

1002 FEDERAL RECEIPTS	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF MATCH	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECPT	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTLA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS: NONE

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

Estimate of current year (FY93) impact: 5 NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Division: Commissioner's Office

Phone: 465-5010
Date: 2/9/93

Approved by Commissioner: *Janice Adair*
Agency: Department of Environmental Conservation

Date: 2/10/93

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Department of Environmental Conservation

Position Paper

Bill No: Senate Bill 90

Approved: *John A. Sandor*

Name: John A. Sandor

Title: Commissioner

Bill Title: Disaster Emergencies

Date: February 10, 1993

Senate Bill 90 clarifies how a release or imminent release of oil or a hazardous substance would be declared a disaster emergency by the Governor, and thus deploying the state's resources to cope with the situation. It would codify a Memorandum of Agreement dated January 8, 1992 entered into by the Commissioners of DEC and the Department of Military and Veteran's Affairs.

The Department of Environmental Conservation supports the legislation.

For further information contact: *Janice Adair*
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