

HB

456

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 21, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/12/96

The FINANCE Committee considered:

HB 456

HOUSE BILL NO. 456

BOARD OF STORAGE TANK ASSISTANCE

"An Act relating to the Board of Storage Tank Assistance; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 456 (L+C) [X] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ [X] zero fiscal note(s) DEC 2/21/96

Table with columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures and names: Richard Foster, Hanley, Mulder, Martin, Gussendorf, Kohring, Therriault, Brown, Darnell, Kelly, Mike Spence.

CHAIR'S SIGNATURE: Mike Hanley, Richard Foster

FISCAL NOTE

1
 Bill Version: CSHB 456(L&C)
 (H) Publish Date: 2/21/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 30-Jan-96
 Title: Board of Storage Tank Assistance
 Sponsor: Labor and Commerce
 Requestor: House Labor and Commerce

Department Affected: Environmental Conservation
 BRU: Spill Prevention and Response
 Component: Storage Tanks

COMPONENT SERIAL NO. 2063

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND&STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS.CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE

| | | | | | | |
|-------------------------|-----|-----|-----|-----|-----|-----|
| 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 Receipt | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Lynn J. Tomich Kent
 Division: Spill Prevention and Response

Phone: 465-5390
 Date: 2/9/96

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

Date: 2/9/96

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COMMITTEE COPY

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

SPONSOR STATEMENT CS HB 456 (L&C)

The Board of Storage Tank Assistance is scheduled to sunset on June 30, 1996 unless it is statutorily extended. This board, as stated by a recent Legislative Audit Report:

"... works in conjunction with the State's Department of Environmental Conservation (DEC) to carry out the various requirements of the UST (underground storage tank) statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program. "

CS HB 456(L&C), as sponsored by the House Labor and Commerce Committee, would extend the Board of Storage Tank Assistance to June 30, 2000, as recommended by the Legislative Audit Report. In addition, also as recommended by the auditors, CS HB 456 (L&C) would add a public member to the Board who has no financial or commercial interest in retrofitting or replacing underground storage tanks. Finally, to prevent an even-numbered Board, the Commissioner of the Department of Transportation and Public Facilities is removed.

I urge your support.

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

CS HB 456 L&C) SECTIONAL ANALYSIS

Section 1 extends the Board of Storage Tank Assistance to June 30, 2000.

Section 2 removes the Commissioner of Transportation and Public Facilities from the Board and adds a public member to the Board.

Section 3 creates an effective date of July 1, 1996.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

February 6, 1996

SUBJECT: Sectional Summary of HB 456. (An Act relating to the Board of Storage Tank Assistance)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

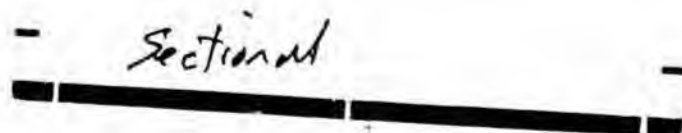
Section 1. Extends the life of the board to June 30, 2000.

Section 2. Adds a member of the public to the board.

Section 3. Provides a July 1, 1996, effective date.

TML:klb
96-070.klb

- Sectional -



Board of Storage Tank Assistance



- 1 The Board is a seven member board comprised of two Commissioners and five citizens from the private sector.
- 2 Board members serve without compensation and have one employee.
- 3 The Board is a judicial appeal board that resolves disputes between the regulated community and the Department of Environmental Conservation thereby saving the state thousands of dollars in potential legal costs.
- 4 The Board mediates disputes regarding eligibility for financial assistance, eligible costs, priority ranking positions and contaminated site cleanup plans.
- 5 The Board provides technical and educational assistance to petroleum storage tank owners and operators throughout Alaska
- 6 There are over 800 unfunded requests for assistance currently on file. The total amount requested is presently over \$50 million. Limited annual funding requires applications to be priority ranked annually using a Board scoring system that emphasizes imminent threats to public health. Additional criteria including size of business, proximity to alternate fuel, rural or urban location and other factors determined relevant to the Board.

- Background -

Board of Storage Tank Assistance

The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. The commissioners of the Departments of Environmental Conservation and Transportation and Public Facilities are the government members. Each of the five public members are required to have special knowledge pertaining to underground storage tanks. A registered engineer familiar with tank cleanups, a general contractor familiar with tank installations and closures, a person from the insurance industry that is knowledgeable about pollution liability insurance for underground storage tanks, a owner of more than 10 tanks, and an owner of 10 or less tanks. Former Governor Cowper appointed the original seven board members on September 5, 1990. Members serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee.

The Board of Storage Tank Assistance is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over eligibility, priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations. In addition, the Board works directly with the legislature on funding issues and determines the program distribution of the annual legislative appropriations.

The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

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

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

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HOUSE COMMITTEE REPORT

2/21/96
Finance

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 2-19-96

The LABOR AND COMMERCE Committee considered:

HB 456

HOUSE BILL NO. 456

BOARD OF STORAGE TANK ASSISTANCE

"An Act relating to the Board of Storage Tank Assistance; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 456 (L&C) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DEC

zero fiscal note(s) _____

| SIGNING WITH RECOMMENDATIONS | | DP | DNP | NR | AM |
|------------------------------|----------|-----|-----|-----|----|
| <i>[Signature]</i> | Rokeberg | ✓ | | | |
| <i>[Signature]</i> | Elton | ✓ | | | |
| <i>[Signature]</i> | Porter | ✓ | | | |
| <i>[Signature]</i> | Masek | | | ✓ | |
| <i>[Signature]</i> | Sanders | | | ✓ | |
| <i>[Signature]</i> | Kott | ✓ | | | |
| | | (4) | | (2) | |
| | | | | | |
| | | | | | |

CHAIR'S SIGNATURE

[Signature]
Kott

Audit Report

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION BOARD OF STORAGE
TANK ASSISTANCE

September 19, 1995



Audit Control Number:

18-1432-96

Division of Legislative Audit

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

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Division of Legislative Audit



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

September 19, 1995

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION BOARD OF STORAGE TANK ASSISTANCE

September 19, 1995

Audit Control Number

18-1432-96

This audit was conducted under the requirements of Alaska Statutes 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Storage Tank Assistance utilizing the criteria set out in AS 44.66.050(c). This statutory criteria is intended to be used to assess whether the activities of a given board, commission, council, agency, or program is effectively meeting a demonstrated public need. Currently under AS 44.66.010(18), the board is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs. We recommend that the legislature extend the board until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing standards and the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in the course of developing this report are discussed in the Objectives, Scope, and Methodology section of this report.

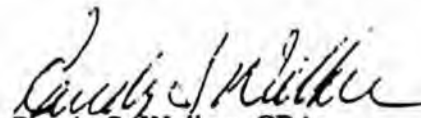

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Storage Tank Assistance. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 44.66.010(18) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

The board was created in September 1990. Our scope included all activities of the board since its inception. We reviewed the board's activities to determine whether they have been in the interest of the public and whether they have been in compliance with Alaska statutes and regulations.

In order to address our audit objectives, we reviewed the following:

- Applicable sections of Alaska's statutes and regulations.
- Budget documents, session laws and other legislative information relating to the board's operations.
- Transcribed minutes and audio tapes of board meetings.
- Internal reports and documents prepared by the board and the Department of Environmental Conservation (DEC).
- Reading files of the board's executive director.
- Grant files of recipients of financial assistance.
- Financial information on the State's accounting system.

- Office of the Ombudsman closed case file.
- Office of the Governor, Boards & Commissions files.
- Prior year audit workpapers and audit reports related to various DEC operations.

Also, we conducted interviews with the following:

- Board members and the board's executive director.
- DEC staff.
- Owners and operators of underground petroleum storage tanks.

In addition, we attended the July 20, 1995 meeting of the board. We observed the proceedings and the interaction of the board with the public.

ORGANIZATION AND FUNCTION

In 1990, the legislature (Chapter 96, SLA 1990) established a process to provide both technical and financial assistance to owners and operators of underground storage tanks (USTs). It was determined that such assistance was necessary for UST owners to comply with both current and prospective federal and state requirements. The 1990 legislature also provided for the cleanup of existing leaks and prevention of future leaks associated with USTs in order to protect the public from contamination of drinking water and to protect the environment.

The comprehensive legislation established the Board of Storage Tank Assistance. The board works in conjunction with the State's Department of Environmental Conservation (DEC) to carry out the various requirements of the UST statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program. This includes the administration of the financial assistance program.

The program offers grants and loans to owners and operators to test, clean up, upgrade, or close their facilities. The Storage Tank Assistance Fund (STAF) was established to fund the program. Appropriations are made to STAF from the mitigation account fund and from tank registration receipts.

Board Responsibilities

The board's primary statutory functions are to:

1. Adopt regulations to be used by DEC in determining which costs are eligible for financial assistance.
2. Adopt regulations to be used by DEC to rank (prioritize) applications for financial assistance.
3. Resolve disputes that might arise when DEC determines that a UST owner or operator is not eligible for assistance, determines that costs are ineligible, or assigns a rank with which an owner or operator does not agree.
4. Approve regulations specifying allowable technologies for testing, containment and cleanup, or corrective action prior to being adopted by DEC.
5. Review regulations proposed by DEC that sets a standard for the level of a contaminant that is allowed to remain in soil or groundwater after cleanup of a release from, or associated with, an UST.

Additional responsibilities are assigned to the board under 18 AAC 78. The board allocates funds appropriated to the STAF for the financial assistance program. Also, the board is responsible for the establishment of a point system to rank eligible applicants.

Board Membership

Under the requirements of AS 46.03.360, the seven member board consists of the commissioners of DEC and the Department of Transportation and Public Facilities (DOTPF), or their designees, and the following persons appointed by the governor to serve staggered four-year terms:

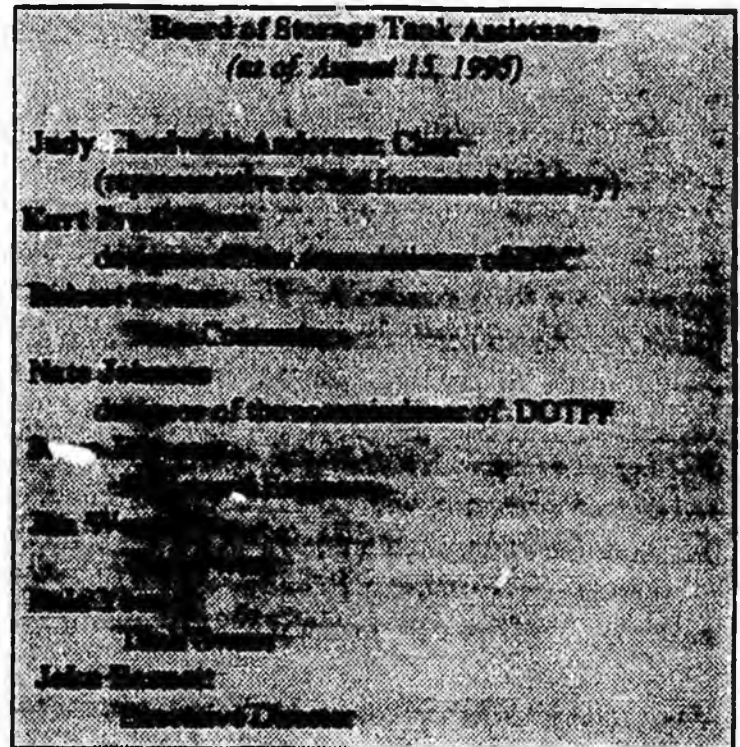
- A registered engineer, who is knowledgeable about installing, upgrading, repairing, or closing USTs.
- A general contractor, who is knowledgeable about installing, upgrading, repairing, or closing USTs.
- Two owners or operators of an UST, at least one of whom does not own or operate more than 10 USTs.
- A member of the insurance industry.

Members serve without compensation, but are entitled to per diem and travel expenses. Since 1991, the board has employed a full-time executive director.

DEC's Responsibilities

DEC's Division of Spill Prevention and Response administers the financial assistance program. Statutes and regulations require DEC to:

1. Receive, review, and approve applications and other required documentation for financial assistance.
2. Priority rank applicants using a scoring system developed by the board.
3. Distribute and monitor grant awards.
4. Manage the Storage Tank Assistance Fund.



BACKGROUND INFORMATION

In 1990, the legislature created a program to provide both financial and technical advisory assistance to the owner and operators of underground petroleum storage tanks (UST). The assistance was to help UST owners and operators comply with current and prospective state and federal regulations (see inset at right). These regulatory requirements address numerous design and operational aspects of USTs.

Underground tanks are typically used to store petroleum and other potentially hazardous substances. These tanks invariably develop leaks which allow the substances stored in them to leak into the surrounding soil, contaminating the groundwater, which in turn could contaminate a drinking water source.

The U.S. Congress directed the Environmental Protection Agency to develop regulations for the design, construction, and installation of new tanks. Additionally, new, stricter standards were established for the retrofitting of existing tanks. Such tanks will be required to be upgraded to provide for leak detection, corrosion prevention, and spill and overflow protection.

In addition, UST owners are required to demonstrate they are capable of assuming financial responsibility for the costs involved in taking corrective action and cleaning up releases from their tanks.

Such financial responsibility extends to covering third party loss and bodily injury. Most UST owners are required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to meet the requirements may result in fines of up to \$10,000 per day.

Federal Law Imposes Strict Requirements on USTs

Congress passed the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act. These amendments, in part, require the U.S. Environmental Protection Agency (EPA) to regulate USTs containing petroleum and hazardous substances. According to EPA estimates, nationwide there are several million USTs that contain petroleum or hazardous substances—most of thousands of which, together with their associated piping, are leaking and contaminating groundwater, a major source of drinking water for a large portion of the country.

Congress directed the EPA to develop regulations for the design, construction, and installation of new tanks as well as the addition of leak detection, corrosion prevention, and spill and overflow protection to existing tanks. The EPA regulations went into effect on December 22, 1988 and USTs installed after this date are considered "existing tanks," while those tanks installed prior to that date are considered "new installations." New installations are to meet the performance standards set out in the regulations at the time of tank installation. Existing tanks are allowed to phase in these standards over a period of 10 years.

Congress also mandated that all UST owners, state and federally owned or operated tanks, be held to demonstrate specific levels of financial responsibility for corrective action and cleanup associated with releases from their USTs that cause third party loss and bodily injury. The financial responsibility requirements were phased in according to the type of owner and the number of tanks owned. The final date for all tank owners to meet the requirements was December 31, 1993. Most tank owners are required to demonstrate \$1 million of financial responsibility per occurrence and \$2 million aggregate. Failure to meet the requirements may result in fines of up to \$10,000 per day.

Source: DEC's FF 94 ERAP Report

Because most Alaska businesses using USTs were unable to meet the financial responsibility requirements and unable to pay the possible fines, state legislation was introduced to provide assistance to assume "financial responsibility." The prime sponsor of the original 1990 legislation stated that it is "*the responsibility of the legislature to assist the small tank owners to comply with the new federal regulations.*"

The enacted legislation addressed educational, technical, and financial assistance for UST owners and operators. It required owners and operators to register their tanks and pay a registration fee based on the size of their tank. In addition, the storage tank assistance fund (STAF) was established to provide financial assistance to owners and operators.

Financial Assistance Programs

Appropriations are made to STAF to fund the financial assistance programs. The programs provide grants and loans to owners and operators of regulated USTs. Assistance is provided under four different programs. As shown below, each program has different eligibility requirements, application dates, and grant reimbursement percentages.

| Summary of UST Financial Assistance Programs | | | | |
|---|--|---------------------------------|---|--|
| PROGRAM | STATUTE (AS) REGULATION (AAC) SESSION LAW (SLA) | APPLICATION DUE DATE | ELIGIBLE COSTS | TYPE OF ASSISTANCE |
| Tank Tightness Testing & Site Assessment Incentive Program | AS 46.03.415 18 AAC 78.510 (Subsequently repealed) | March 5, 1992 | Tank tightness tests or site assessments to determine if there had been a release of petroleum. | 50% of actual costs. Not to exceed (a) \$300 per tank for tank tightness tests up to a maximum of \$1,200 per facility; and, (b) \$800 per tank for site assessments up to \$3,200 per facility. |
| Tank Cleanup Grant & Loan Program | AS 46.03.420 18 AAC 78.515 | June 30, 1994 | Risk assessment, containment, corrective action, and cleanup. | Up to \$1 million per occurrence. Owner/operator is responsible for 10% of total cleanup costs (not to exceed \$25,000). Loans are available for owner's share. |
| Tank Upgrade & Closure Grant Program | AS 46.03.430 18 AAC 78.520 | December 31, 1994 | Removal, upgrade or replacement of UST that was installed before December 22, 1988. | 60% of actual cost. Not to exceed \$60,000. |
| Reimbursement Program | SLA 1990, Ch 96, Sec 7 18 AAC 78.525 | March 5, 1991 | Risk assessment, containment, cleanup, corrective action, upgrading or closure activities on or after December 22, 1988 and before September 5, 1990. | 90% of containment, cleanup, corrective action and risk assessment. 60% of upgrade or closure. Not to exceed \$200,000 per owner/operator. |

Financial assistance is no longer provided under the tank tightness testing and site assessment incentive program. Eligible applicants that applied before the due date for the other three programs are still on the active list awaiting funds. Applications for the tank cleanup grant and loan program are still accepted from applicants who applied before the due date for the tank upgrade and closure grant program if they discover and report contamination before July 1, 1996. Eligible applicants that applied before the due date for the other three programs are still on the active list awaiting funds

Funding Issues

Like all state operations, funding for the STAF must be appropriated by the legislature. Since the beginning of the financial assistance program, demand for assistance has been much more than the annual appropriations. Eligible applicants that are not funded in one year remain active until funds are available.

At the inception of the program, \$6 million was appropriated for the grant and loan program. That amount has decreased each year with \$1.9 million appropriated to fund FY 96 grants. DEC has estimated that over \$54 million is needed to fund all eligible applicants. It will take approximately 19 years to fund existing projects at that level of funding.

Reimbursement Program

Original legislation assigned a low priority to this program. Payment is to be made if there is sufficient funding. Since inception, no projects have been funded. DEC has 158 applications for reimbursement. They estimate that it will require over \$3 million to fund all projects.

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REPORT CONCLUSIONS

In our opinion, the Board of Storage Tank Assistance should be reestablished. The board plays an integral role in the State's underground storage tank (UST) program. The board acts as a mediator, sets regulations, and acts as a sounding board to owners and operators of USTs.

The board acts as an independent body in settling disputes between DEC and owners and operators of USTs. Since the board's inception, they have mediated over eleven formal appeal cases. The board has been involved in numerous cases on an informal basis. Owners and operators call the board to informally discuss the applicability of state statutes and regulations to their specific situation; thereby averting the need for formal appeals.

The board actively participates in the making of statutes and regulations pertaining to USTs. The board is statutorily required to adopt regulations to be used by DEC to administer the UST program. Regulations originally adopted have been amended and are currently in the process of being revised. The board also reviews all regulations pertaining to USTs that are proposed by DEC.

We believe the board should continue until June 30, 2000. The intent of legislation establishing the board was to assist owners and operators of USTs to comply with federal and state laws and regulations. U.S. Environmental Protection Agency (EPA) regulations require USTs to meet new, stricter federal standards by December 22, 1998. The "need" or demand for funding to bring operating USTs into compliance have far outstripped the appropriations made to date. Prospectively, it is unlikely that the amount of the appropriations will substantially increase over the next few fiscal years.¹

Currently, it is unclear what enforcement actions EPA will take in Alaska against UST owners that are not in compliance with the new regulations. Given these circumstances, we foresee there may be an ongoing public policy role for the board beyond the EPA implementation deadline. By extending the board to June 30, 2000, a reevaluation of its activities can be made in the summer of 1999. Evaluation at this time would be made in the context of EPA's enforcement action regarding UST requirements.

Many owners and operators need assistance from the financial assistance program before undertaking the necessary action to comply with federal and state laws and regulations. With the existing level of funding (See Background Information) for the program, some eligible applicants will not receive funding until after the federal deadline.

¹ As discussed in the Background Information section, it is estimated that it will cost more than \$54 million to bring operating USTs into compliance with the prospective federal requirements. This estimate is based only on the funding that has been applied for to date under the State's assistance program. Representatives of the Alaska Underground Tank Owners and Operators organization reported to us that they felt there were many owners and operators, who face being in non-compliance, that have not come forward and even applied for any of the available funding.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider changing the statute to require the appointment of one public member to the Board of Storage Tank Assistance with no commercial or financial interest in the replacement and retrofitting of underground storage tanks.

Alaska Statute (AS 46.03.360) requires seven members to be appointed to the Board of Storage Tank Assistance. Membership includes two government members — the commissioners of the Department of Environmental Conservation and the Department of Transportation and Public Facilities — and five “public members.” Four of the public members must have specific knowledge of underground storage tanks. The fifth public member must be a member of the insurance industry. While not required by statute, this position has been filled by individuals involved in UST pollution liability insurance.

Typically, the legislature has provided for the appointment of what is termed “a public member” to the State’s various professional licensing boards. The intent behind such a requirement is to give the general public access to the decision-making and actions that such a board might take. The public member acts as a disinterested representative on these boards, that unlike other board members, has no professional nor financial interest in board proceedings. While the five public members on the Board of Storage Tank Assistance are from the private sector, they are involved, to varying degrees, with the commercial aspects surrounding USTs.

Because environmental concerns are shared equally by the general public as well as those with a specialized knowledge of UST issues and concerns, we suggest that the board and the public may benefit from the appointment of a board member with no ties to USTs. Such an appointee should have no commercial or financial interest in the replacement and retrofitting of USTs. Appointment of such a member would serve to “open up” the board proceedings in this admittedly very esoteric subject area. Since the board is instrumental in developing priorities and criteria by which funding decisions are made, such a perspective may provide a viewpoint that is independent from any operational, regulatory, or commercial interest. The presence of such a member would increase, albeit perhaps very incrementally, awareness of the objectives and goals of the board, to the public at large while providing a “reality check” on the actions and goals of the board.

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A ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of board activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

Projects with the greatest health and environmental threats receive priority

In accordance with its statutory responsibility, the board has adopted regulations to be used by the Department of Environmental Conservation (DEC) to rank requests for assistance. Regulations specify the criteria to be used for ranking applications for cleanup, upgrade, and closure. Although not in regulation, the board has established a point system to prioritize each type of project. The point system is designed to give the highest points to leaking underground petroleum storage tanks (USTs) that pose the greatest threat to public health and the environment, thus ensuring projects requiring prompt corrective action are funded first.

Projects with imminent public health threats receive emergency funds

An owner or operator of a UST is eligible for emergency financial assistance if a leak or overfill of their tank poses an imminent public health threat and the owner or operator does not have the funds to begin clean up action. This type of release is usually evidenced by groundwater that has a high potential for contamination with a distinct probability that drinking water is or will be threatened.

After determining eligibility for an emergency grant, DEC must consult the board. At a public meeting the board reviews the severity of the situation, the need for financial assistance, and the applicant's compliance with federal and state laws. Also, the board reviews the preliminary scope of work. The board determines whether the amount of requested funds is appropriate for the proposed scope of work.

Since the board's inception, they have approved seven projects in which almost \$700,000 has been expended on emergency projects.

Board resolves disputes

DEC receives and processes applications for financial assistance. If determined eligible, an applicant's project receives a score (or rank). Once the project receives funding, documentation of expenses is submitted to DEC for reimbursement.

One of the board's statutory duties is to hear appeals from owners and operators who disagree with DEC's determinations. The board has adopted regulations on the appeal process. Once an appeal is requested, regulations require a hearing to be held at the next scheduled board meeting and the board is required to issue a decision within 10 days. According to the board, the hearing date and time is scheduled at the convenience of the appellant. If the location of the next board meeting is inconvenient, a teleconference is held.

Our testing revealed that the board is in compliance with regulations. The files we reviewed showed that appeal hearings were heard within 30 days after a written request was made. Decisions were issued at the end of each hearing.

Since 1991, the board has heard eleven appeals. The majority were related to rank and the remainder related to the eligibility of costs. Appeals over eligibility for the financial assistance program have never been brought before the board. The board has ruled in favor of the appellant in 6 of the eleven appeals (55%), with the remainder in favor of DEC.

According to the board, they have worked with numerous UST owners and operators who have disagreed with DEC's actions but, due to the board's intervention, did not request an appeal. Often, an explanation or clarification of procedures by the board's executive director has eliminated the need for a formal appeal.

Information provided to interested parties

The board utilizes several mediums to ensure that owners and operators are kept abreast of federal and state regulations. After the new storage tank statutes and regulations were adopted, the board, in conjunction with DEC, conducted workshops in seven different areas of the State to introduce individuals to the UST program. The workshops were attended by owners and operators of USTs and individuals from private companies; city, borough, and state agencies.

Currently, the board contributes one or two articles to DEC's newsletter, "Alaska Underground," which is published approximately three times a year. Articles are about board activities or changes in regulations or policies. In addition to owners and operators, the newsletter is distributed to consultants, certified workers, legislators, state agencies and interested persons.

In between publication dates, the board prepares information bulletins that are distributed to tank owners and operators. The bulletins are one to two page reports on issues of interest.

The board has prepared a booklet of "Questions and Answers" about the UST program. It is designed to introduce people to the program and provide answers to questions most frequently asked of the board. It is updated annually and distributed to tank owners and operators, legislators, DEC staff, and federal Environmental Protection Agency staff.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board's establishing legislation also provided financial assistance programs to assist the owners and operators of USTs to comply with federal and state requirements. Appropriations are made to the storage tank assistance fund to provide assistance to owners and operators of UST. Although DEC manages the fund, the board is responsible for allocating funds to the financial assistance programs.

Each year, at its July meeting, the board discusses funding. DEC informs the board of the number of applications received and the amount requested. They also suggest various methods to allocate the funds. The board then decides which projects to fund.

When the fund was first established in 1991 more than \$6 million was allocated to storage tank grants. Since then, funding has decreased. While funds have decreased, requests for financial assistance have increased. DEC estimates that over \$54 million is needed to fund all projects on file.

The FY 96 appropriation to financial assistance grants and loans was \$1.9 million. If funding continues at the this level it will take approximately 19 years to fund all projects.

Due to insufficient funding, no funds have been paid to eligible applicants of the reimbursement program. Original legislation allowed tank owners and operators to apply for reimbursement for a part of their eligible costs for UST upgrade activities if such activities took place prior to the law's effective date. Applicants had to apply by March 5, 1991 to be considered for funding. Legislation required that payments under this program would only be made after other requests for financial assistance had been satisfied. Since there remains outstanding funding requests under the various other programs, the board has not allocated any funding for this purpose.

DEC's records indicate that approximately \$3 million is needed to reimburse the 158 eligible applicants on file.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board has actively participated in statutory changes regarding USTs. In 1994, three changes were made to the statutes:

1. Original legislation required the board to hear appeals when disputes arose on eligibility of costs and priority ranking. Statutes were amended to allow the board to also hear appeals on program eligibility.

2. The due date for applications for financial assistance for the tank closure and upgrade and closure program was set for December 31, 1994.
3. The application due date for the tank cleanup grant and loan program (cleanup program) was June 30, 1994. Statutes were amended to extend the due date for two years for eligible applicants of the upgrade and closure program if they discover and report contamination before July 1, 1996.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

Activities of the board are discussed at meetings that are open to the public. All meetings are announced in newspapers in the three largest cities in the State. The announcement includes a brief summary of the major issues that will be discussed.

The meeting agenda provides for public comment at the beginning and end of each meeting. Also, the board chair solicits public comments throughout the meeting.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The board has encouraged public participation in the making of its regulations. Prior to adoption, regulations are discussed at board meetings which are advertised and open to the public.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

From a review of the ombudsman closed case files we determined that no complaints have been filed against any activities of the board.

The extent to which the board or commission which regulates entry into an occupation or profession has processed qualified applicants to serve the public.

Since the board does not regulate any occupation or profession, this criterion is not applicable to the activities of the board.

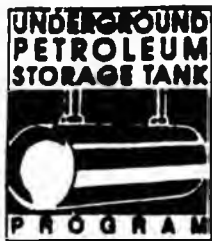
The extent to which state personnel practices, including affirmative action requirements have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

Nothing has come to our attention to indicate that the board has not complied with state personnel practices.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

See Recommendation No. 1.

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Board of Storage Tank Assistance

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Tony Knowles, Governor

December 22, 1995

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

RECEIVED
DEC 27 1995

LEGISLATIVE AUDIT

Attention: Jim Griffin

RE: Preliminary Report Sunset Review of the Board of Storage Tank Assistance
Audit Control Number: 18-1432-95

Dear Mr. Griffin,

This letter is in response to the Preliminary Report pertaining to the Sunset Review of the Board of Storage Tank Assistance.

Several errors were noted as follows:

Page 7, paragraph 3. Actual number is \$1.9 million, not \$2.9 million.

Page 15, paragraph 5. Actual number is \$1.9 million, not \$2.9 million.

Page 16, Items 2 & 3. References to "closure program" should read "upgrade and closure program"

The Board of Storage Tank Assistance discussed at length the findings and recommendation outlined in the Preliminary Report, specifically Recommendation No 1, "*The legislature should consider amending Board statutes to provide for the appointment of a public member with no specialized knowledge of, or commercial interest in, underground storage tanks.*"

The Board fully supports modifying existing statutes to allow for additional appointments. With nearly 50 million dollars in financial assistance requests currently on file, the Board welcomes any additional input and insight that might be brought forward by citizens concerned with protecting Alaska's public health and environment. The Board of Storage Tank Assistance has been extremely successful in protecting and restoring Alaska's fragile environment from petroleum contamination resulting from leaking underground storage tanks and has done so without jeopardizing Alaskan jobs or Alaska's transportation dependant economy. The program is under funded at this time and needs to develop an alternative funding source to address current and future needs. The appointment of a concerned representative from outside the tank industry will help the Board evaluate future needs, scope and funding alternatives to insure the continued future success of the Storage Tank Assistance program.

The Board is committed to constantly refining and improving the Storage Tank Assistance Fund consistent with the program's original assistance-oriented intent. Tank owners and operators are a hard working and indispensable segment of Alaska's economy and deserve a hard working, conscientious and diversified Board of Storage Tank Assistance.

As you are aware, funds appropriated by the Alaska State Legislature to the Storage Tank Assistance Fund are allocated annually by the Board of Storage Tank Assistance to different financial assistance programs, the tank cleanup program, the tank upgrading program and the tank closure program.

The Board of Storage Tank Assistance makes the annual allocations after taking into consideration the amount of money in the Fund, the money required to meet the needs for each program, as supported by approved applications and the requirement that the greatest priority be given to funding projects that present the greatest threat or potential threat to public health. Although all regulated tank owners and operators are eligible, all applicants are priority ranked for funding according to regulations and criteria established by the Board of Storage Tank Assistance. The ranking system emphasizes public health threat foremost followed by numerous other considerations such as size of business, number of tanks owned, whether the company is too small to be self-insurable, nearest alternative fuel source and whether the facility is in a rural location. Several other criteria are used to rank applications with an emphasis on small rural tank owners that pose an imminent public health threat and have acted in good faith to undertake as much of the work as possible on their own.

Although the Board has addressed public health threats associated with leaking underground petroleum storage tanks to a considerable extent, the problem is not yet resolved and will take many years to resolve statewide. Again, the Board fully supports the recommendation outlined in the Preliminary Report.

Please feel free to contact me at 465-5219 at your convenience if you have any questions or wish to discuss this matter further.

Sincerely Yours,



John C. Barnett
Executive Director, Board of Storage Tank Assistance

cc: Judy Chadwick-Anderson, Board Chairperson

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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December 29, 1995

Members of the Legislative
Budget and Audit Committee:

We have reviewed the response of the Board of Storage Tank Assistance to our audit report. We have made the suggested editing changes noted in the letter regarding a dollar amount used in the report and the description of one of the State's underground storage tank programs.

A handwritten signature in cursive script, appearing to read "Randy S. Welker".

Randy S. Welker
Legislative Auditor