

**SEB**

**115**

SFIN

FILE

**SENATE FINANCE COMMITTEE REPORT**

DATE: 4/24/01

REPORTED OUT  
  
FEB 06 2002  
  
SENATE FINANCE  
COMMITTEE

FURTHER:

DATE TURNED IN TO OFFICE: 02/06/02

Finance Committee considered **SENATE BILL NO. 115**

"An Act extending the termination date of the Board of Storage Tank Assistance."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DEC	11/30/02	51.4		

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Alan Gustafson</i>	✓			
<i>Thomas Hoffmann</i>	✓			
<i>Bill Brown</i>	✓			
<i>James Hill</i>	✓			
<i>Loren J. Hansen</i>	✓			
<i>John Wald</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>Pete Kelly</i>	✓			

# FISCAL NOTE

REPORTED OUT

STATE OF ALASKA  
2002 LEGISLATIVE SESSION FEB 06 2002

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 115  
( ) Publish Date: \_\_\_\_\_

SENATE FINANCE  
COMMITTEE

Revision Date/Time (Note if correction): \_\_\_\_\_  
Title An Act extending the Termination date  
of the Board of Storage Tank Assistance  
Sponsor Senate Rules Committee  
Requester Senate Finance Committee

Dept. Affected: Environmental Conservation  
BRU Spill Prevention and Response  
Component Contaminated Sites  
Component No. 2386

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel	11.2	11.2				
Contractual	40.2	40.2				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>51.4</b>	<b>51.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 OHSRPR Prevention Account	51.4	51.4				
<b>TOTAL</b>	<b>51.4</b>	<b>51.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**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)  
Board Travel and Contractual Administrative Costs - Funding is provided through FY 02 for Board administrative costs. These costs have been continued into FY 03 and FY 04 as a result of the Board extension and wind down year.

Prepared by: Larry Dietrick  
Division: Spill Prevention and Response  
Approved by: Kurt Fredriksson  
Agency: Department of Environmental Conservation

Phone: 465-5250  
Date/Time: 1/30/02 1:26 PM  
Date: 1/30/02

# Alaska State Legislature

SENATOR  
GENE THERRIAULT  
Chair



SESSION ADDRESS  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4797  
Fax: (907) 465-3884

## Legislative Budget and Audit Committee

Senate Bill 115                      "An Act extending the termination date of the Board of Storage Tank Assistance."

Sponsor:                              Senate Rules Committee at the Request of the Legislative Budget and Audit Committee

### Sponsor Statement

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Under AS 46.03.360 the State Board of Storage Tank Assistance plays an integral role in promoting compliance throughout the State of Alaska with state and federal regulations related to installation and operation specifications for underground storage tanks as well as during the cleanup process when leaks and spills occur. By doing so, the Board is instrumental in safeguarding underground drinking water supplier from pollution and therefore protecting the public's health.

The Board membership is prescribed by statute and seats seven members. This particular board is charged with: (1) adopting regulations used by the Department of Environmental Conservation in determining which costs are eligible for financial assistance, (2) adopting regulations to be used by the Department to prioritize applications for financial assistance, (3) approving regulations specifying allowable technologies for testing, containment and cleanup, or corrective action prior to being adopted by the department, and (4) reviewing regulations proposed by the department that set a standard for the level of containment that is allowed to remain in soil or groundwater after cleanup of a release from or associated with an underground storage tank. The board has authority to settle disputes for financial assistance and may issue decisions that are binding on the owner, operator, and Department of Environmental Conservation. The board is also tasked with mediating disputes between owners, operators and the Department in regard to cleanup plans. In addition, the board may also hear disputes and grievances relating to delays or requirements associated with cleanup decisions (no further action letters) issued by the Department of Environmental Conservation.

The State Board of Storage Tank Assistance is set to expire June 30, 2001 under AS 44.66.010(18), Legislative Oversight. If the Legislature does not act to extend the Board, it would have one year, until June 30, 2002 to administratively conclude its affairs. Senate Bill 115 will extend the Board for two years to June 30, 2003.

### INTERIM ADDRESS

119 N. Cushman Suite 101, Fairbanks, Alaska 99701 • (907) 488-0857 • Fax: (907) 488-4271



## Board of Storage Tank Assistance

clo *Capitol Resolve*  
P.O. Box 240651, Douglas, AK 99824  
(907) 364-2514 (Support Office)  
(907) 364-2518 (Facsimile)  
cresolve@gcl.net

February 27, 2001

Honorable Gene Therriault  
Chair, Legislative Budget and Audit Committee  
State Capitol, Room 121  
Juneau, Alaska 99801-1182

**Subject: Support Letter for Senate Bill 115 "An Act extending the termination date of the Board of Storage Tank Assistance."**

Dear Senator Terriault,

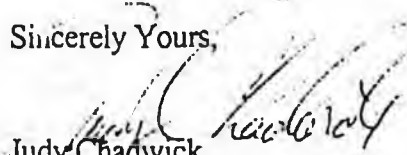
On behalf of the Board of Storage Tank Assistance, I would like to thank you and your fellow members of the Legislative Budget and Audit Committee for introducing Senate Bill 115 and allowing us to submit this letter of support.

The Board concurs with the findings and recommendations made by the Division of Legislative Audit in their Sunset Review of the Board of Storage Tank Assistance completed September 27, 2000 and fully supports extending the Board sunset date until June 30, 2003.

The changes resulting from the passage of SB 128 in 1999 have just recently been implemented and it is imperative that the Board be available to "fine-tune" the new regulations and most especially the new cleanup loan program. Our initial cleanup loans should be issued during this upcoming 2001 construction season with more loans expected during 2002 and 2003. The loans are not one-time loans to complete all necessary work, but are in fact phased loans issued over several years to underground storage tank owners and operators based on cleanup progress and remediation successes. We expect a number of misunderstandings and disputes to arise once the loans are issued. It will be important to tank owners and operators that the Board be available to assist in mediating those disputes over the next 3 years.

If you should require additional information, please do not hesitate to contact me at (907) 276-5617, or the Board's Executive Director, John Barnett, at (907) 364-2514.

Sincerely Yours,

  
Judy Chadwick  
Chair, Board of Storage Tank Assistance



## Board of Storage Tank Assistance

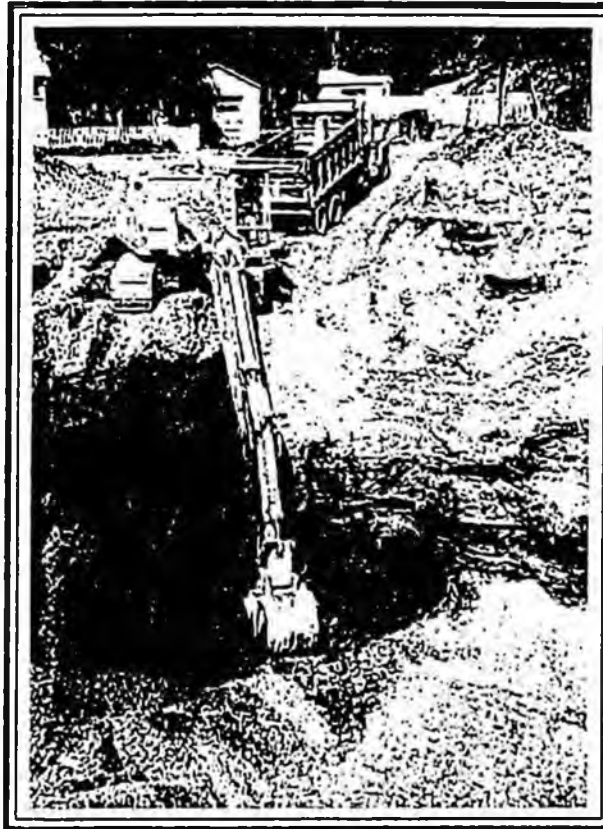
### About the Board

- The Board is a seven-member board comprised of one Commissioner's designee and six citizens from the private sector.
- Board members serve without compensation and have one contracted employee.
- The Board is an 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.
- The Board mediates disputes regarding eligibility for financial assistance, eligible costs, priority ranking positions and cleanup plans for sites with contamination resulting from leaking underground petroleum storage tanks.
- The Board also mediates cleanup decisions ("no further action" letters). Owners or operator may apply to the board to review cleanup decision disputes and the board may issue recommendations to the department, which may include suggested time limits for completing appropriate cleanup activities or reaching a cleanup decision.
- The Board provides technical and educational assistance to petroleum storage tank owners and operators throughout Alaska
- Limited annual funding requires applications for financial assistance grants and loans to be priority ranked annually using a Board scoring system that emphasizes imminent threats to public health. Additional criteria include proximity to alternate fuel, rural or urban location and other factors determined relevant by the Board.
- Only those owners and operators that have relatively small operations are eligible for financial assistance grants. Cleanup loans are currently available to all size operations.

# The Storage Tank Assistance Fund

and the  
Alaska Storage Tank Program

## Questions and Answers



*Cleanup activities at an Anchorage gas station.*

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



## The Problem

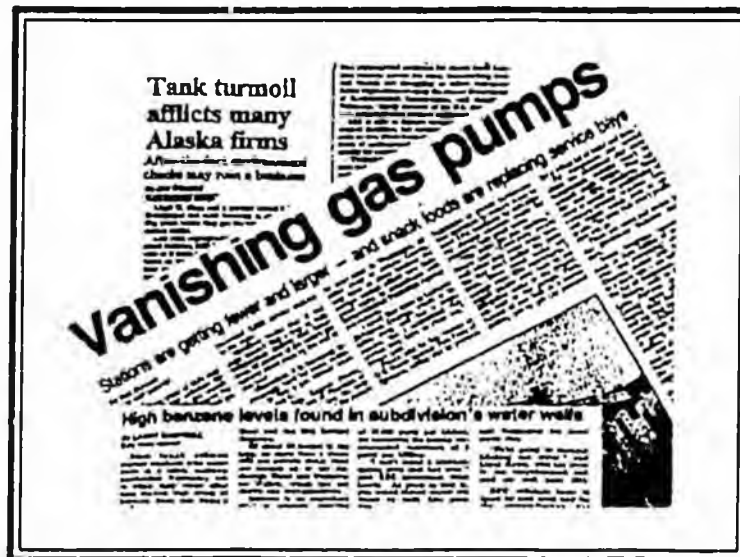
*Headlines are commonplace throughout the state concerning underground storage tank owner problems and pollution resulting from leaking underground storage tanks. Many tank owners are reducing their liability and cutting back on services while others have simply gone out of business altogether.*

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



*The goals of the program were simple:*

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



# Questions and Answers

## **WHAT IS A REGULATED UNDERGROUND STORAGE TANK?**

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

## **WHO REGULATES UNDERGROUND STORAGE TANKS?**

- \* EPA regulates tanks under 40 CFR 280 and 40 CFR 281.
- \* State of Alaska regulates tanks under Title 46 and 18 AAC 78 and 18 AAC 75.
- \* Local governments may regulate tanks under the Uniform Fire Code and the National Fire Protection Association.

## **WHO IS ELIGIBLE FOR FINANCIAL ASSISTANCE?**

- \* Any commercial or private owner or operator of underground storage tanks regulated by the Underground Storage Tank Regulations, 18 AAC 78, is eligible for some form of financial assistance. Essentially, if a tank owner pays into the program, through a registration fee, then the tank is eligible for assistance. Only certain owners and operators qualify for grants, while all owners and operators can qualify for loans.
- \* Village, City, Borough or municipally owned tanks are NOT eligible, although specific appropriations can be legislatively granted to these entities from the Fund.
- \* State and Federal owned tanks are NOT eligible.

## **WHAT KIND OF TANKS ARE ELIGIBLE?**

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

## WHAT KIND OF ASSISTANCE IS AVAILABLE?

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

## WHAT TYPE OF FINANCIAL ASSISTANCE DOES THE PROGRAM PROVIDE?

- \* The Storage Tank Assistance Fund provides **grants** for upgrading or closing up to 60% of the eligible costs with a maximum combined grant of \$60,000 per facility for owners or operators that can demonstrate total assets of \$250,000 after deducting the estimated cost to upgrade and cleanup their tanks.
- \* **Grants** for cleanup of petroleum contamination are provided for a maximum of \$250,000 for owners or operators that can demonstrate total assets of \$1,000,000 after deducting the estimated cost to upgrade and cleanup their tanks. The owner is responsible for 10% of the cost up to a maximum of \$25,000.
- \* **Loans** are available for the 10% not covered by the cleanup grant up to a maximum of \$25,000. Owners receiving loans must pay back the loan to the state over five years.
- \* For owners and operators that cannot qualify for a cleanup grant, a **loan** may be obtained to a maximum of \$500,000. Owners and operators that exceed the cleanup grant cap may also apply for loans. The total allowable combined grant and loan cannot exceed \$500,000.

## DOES THE PROGRAM ENCOURAGE PRIVATE PARTICIPATION?

- \* Most upgrades involve multiple tanks and costs usually range from \$120,000 to well over \$200,000. Typically a grant from the Storage Tank Assistance Fund actually covers only 30% to 40% of the owners cost. The owner must pay the majority of costs involved.
- \* The balance of the upgrading cost is provided by banks in the form of direct loans to the tank owner or operator. Many banks require that an owner or operator be eligible to receive funds from the Storage Tank Assistance Fund and that a letter be provided from the Department stating that the owner will be receiving financial assistance. The banks are then assured that the work will be conducted according to standard practice and in compliance with applicable laws and regulations.

\* The tank owner or operator actually receives the funds and is directly responsible for supervising the funded activity and for insuring that the work is conducted in accordance with applicable laws and regulations. The Department of Environmental Conservation only provides guidance and oversight to insure all work is completed properly and consistent with customary practice and costs. Private sector consulting firms that are approved by the Department or contractors certified by the State conduct work for the owners and operators. The owner or operator contracts directly with the contractors and consultants.

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

\* No. Since the program was changed in 1999, only small companies are eligible for grants from the program. Larger companies with assets exceeding \$1,000,000 are only eligible for cleanup loans. Upgrade grants are only issued to those owners and operators that can demonstrate total assets under \$250,000. 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 nearest alternative fuel source and whether the facility is in a rural location. Several other criteria are used to rank applications with an emphasis on small rural tank owners that pose an imminent public health threat and have acted in good faith to undertake as much of the work as possible on their own. This usually means that unless an imminent public health threat exists, larger companies tend to rank lower on priority ranking lists.

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

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

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

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

## WHY DO TANK OWNERS HAVE TO UPGRADE THEIR TANKS?

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

\* 7,258 underground petroleum storage tanks have been identified in the State of Alaska. Of that total, 1,112 tanks are currently in use. Other tanks probably exist which have not been reported. Most of these tanks are not protected from leaks and spills. These tanks may be unknowingly damaging the State's drinking water supplies. Since groundwater provides drinking supplies for nearly 70% of the population in Alaska, any contamination that reaches groundwater could cause a serious public health threat. Additionally, the vapors from leaks may seep into basements of homes and buildings and may cause other safety and health hazards.

## WHY DO WE HAVE CONTAMINATION FROM TANKS?

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

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

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



*Sterling facility undergoing cleanup activities.*

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

## AREN'T THESE PROBLEMS THE TANK OWNERS FAULT?

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

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



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

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

## WHY DID THE STATE GET INVOLVED?

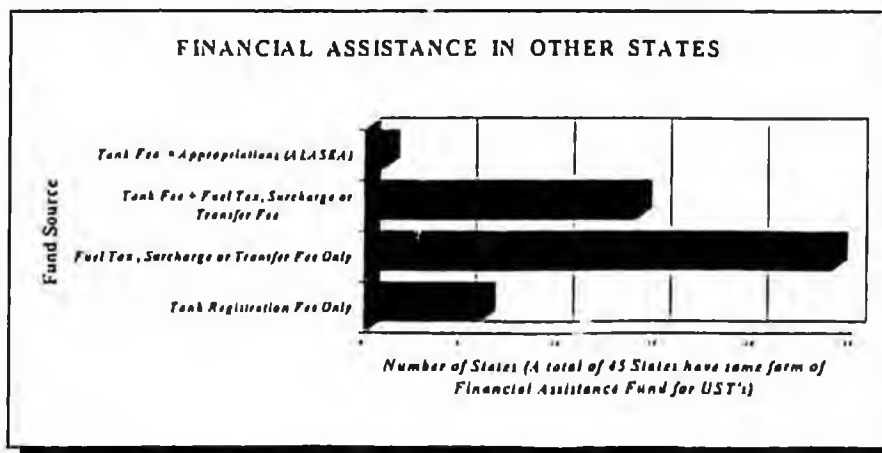
\* During the years 1986 through 1990, increased federal regulations and aggressive EPA enforcement action forced numerous Alaska tank owners out of business. Many of these tank owners could not afford the high cost of cleanup of contamination from their leaking tanks. If an owner cannot pay the cost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

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

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

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

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



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

\* Just because a facility is named "Alaska Chevron" does not mean it is owned by Chevron. The name usually signifies the brand of product sold. Most businesses covered by the EPA's underground storage tank regulations are small, "Mom-and-Pop" businesses. DEC estimates that of the 7,258 tanks that have been identified in Alaska, there are 1,112 presently in use of which most are privately owned. It is estimated that over two-thirds of the privately owned tanks in Alaska are owned by small, independent companies.

## **IS THERE MUCH DEMAND FOR FINANCIAL ASSISTANCE?**

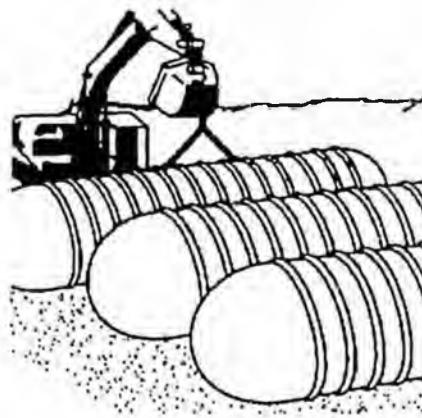
\* Presently, there are 51 requests for financial assistance grants and 57 financial assistance loan requests for cleanup activities in the State of Alaska.

\* Over \$29 million has been expended, encumbered or obligated through fiscal year 01.

## **HOW MUCH MONEY HAS THE PROGRAM RECEIVED SO FAR?**

\* The Storage Tank Assistance Fund received an initial capitalization of \$6 million in fiscal year 1991. In fiscal year 1992, no new monies were appropriated to the Fund. For fiscal year 1993, the Alaska Legislature appropriated \$5 million to the Storage Tank Assistance Fund. The Alaska Legislature appropriated \$4.5 million to the UST Financial Assistance Program for fiscal year 1994 and \$2.9 million for fiscal year 1995. For fiscal years 1996 & 1997 the Program received \$1.9 million each year and in Fiscal Year 1998 the Fund received \$ 5 million. In FY 99, the program received \$5 Million and a statutory change directing the department and the Board to establish a Cleanup Loan program as well as new standards for eligibility for grants.

\* 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 cleanup Loan 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 UST's that present the greatest threat or potential threat to human health.



## WHAT AGENCY ADMINISTERS THE STORAGE TANK ASSISTANCE FUND?

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

\* The Department of Environmental Conservation has a staff of three Environmental Specialists in Anchorage to process the actual grant applications. A Grants Administrator and a Clerk Typist provide additional support for the program.

\* The 1990 Legislature established the seven-member Board of Storage Tank Assistance with one government member and six public members. Members are appointed by the Governor and serve without compensation other than per diem and expenses when traveling. They have an Executive Director, contracted from the private sector, who is their sole employee. The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks. Before adopting a regulation 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 underground petroleum storage tank, the department shall consult with the board. Before the department may adopt a regulation specifying allowable technologies for testing, containment and cleanup, or corrective action, the regulation must be approved by the board.

\* The Board is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over eligibility, priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. On a cleanup decision, the owner or operator may apply to the board to review the dispute and the board may issue a recommendation to the department which may include a suggested time limit for completing appropriate cleanup activities or reaching a cleanup decision.

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



*For Further Information Contact the Board of Storage Tank Assistance at (907)364-2514 or the Department of Environmental Conservation, Storage Tank Program, at (907) 465-5203.*

### Key Factors in the Development of the Storage Tank Assistance Fund

- Federal Mandates from Congress / EPA
- Significant Environmental Impact
- Specific Deadlines for Upgrading to New Tank Standards
- High Visibility Enforcement by EPA on Small Business Owners
- Major Leaks from UST's in Anchorage and Fairbanks
- Response Fund Actions on UST Owners Forcing Owners Out of Business
- Essential Services Threatened
- Major Economic Impact on Small Companies
- Strong Private Sector Voice (Alaska Underground Tank Owners & Operators Assoc.)



*Cleanups from leaking tanks can be traumatic on Alaska's small businesses, such as this "mom and pop" facility on the Kenai Peninsula.*

### Key Factors in the Success of the Storage Tank Assistance Fund

- State Regulatory and Enforcement Program
- State UST Registration Program
- Program Linked to State & Federal UST/LUST Programs through DEC
- Emphasis and Priorities on Environmental Concerns
- Strong Public Outreach Program - Bulletins, Quarterly Newsletter, Workshops
- Cost Controls & Detailed Project Oversight and Auditing Practices
- Active Board to Mediate Disputes and Provide Oversight to the Program
- UST Worker Certification Program
- Consulting Firm Approval Program (QAPP)
- Joint Public & Private Sector Technical Working Groups
- Strong Private Sector Voice (Alaska Underground Tank Owners & Operators Assoc.)

# THE STORAGE TANK ASSISTANCE PROGRAM

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

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

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

\* A POLLUTION PREVENTION PROGRAM FOR UNDERGROUND PETROLEUM STORAGE TANKS.

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

\* AN ALASKAN BUSINESS ASSISTANCE PROGRAM.

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



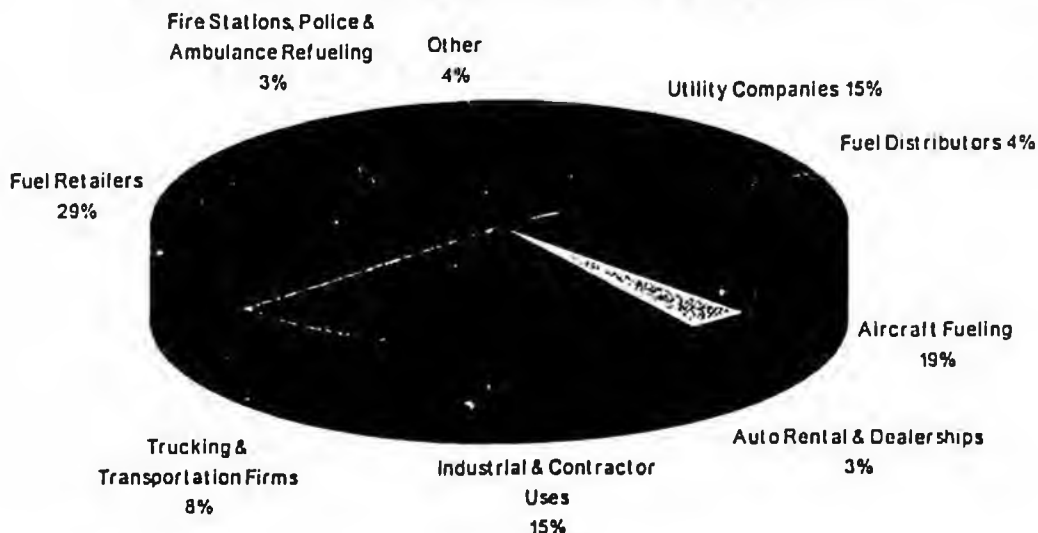
## Since Program Inception in 1991

\* Over \$27 Million has been expended, encumbered or obligated for financial assistance grants and loans through Fiscal Year 00.

\* Over 1000 financial assistance requests for tank tightness testing, site assessments, soil or groundwater cleanup or to upgrade tanks to new EPA standards and prevent future leaks have been funded or encumbered.

\* Over 2000 Financial Assistance Requests have been received to-date.

**Tank Uses for USTs Eligible for Financial Assistance**



## How the *Storage Tank Assistance Fund* affects environmental cleanups in Alaska

---

\* Because there is an Assistance Program -



Public Health Threats from petroleum contamination are addressed through not only a Priority Ranking System that is based primarily upon the Alaska Hazard Ranking Model but also through a unique Emergency Grant system that provides for emergency cleanup assistance almost immediately after an imminent public health threat is identified.

\* Because there is an Assistance Program -



UST owners and operators do not fear legal action and have stepped forward to cooperate with DEC to undertake soil and groundwater cleanup.

\* Because there is an Assistance Program -

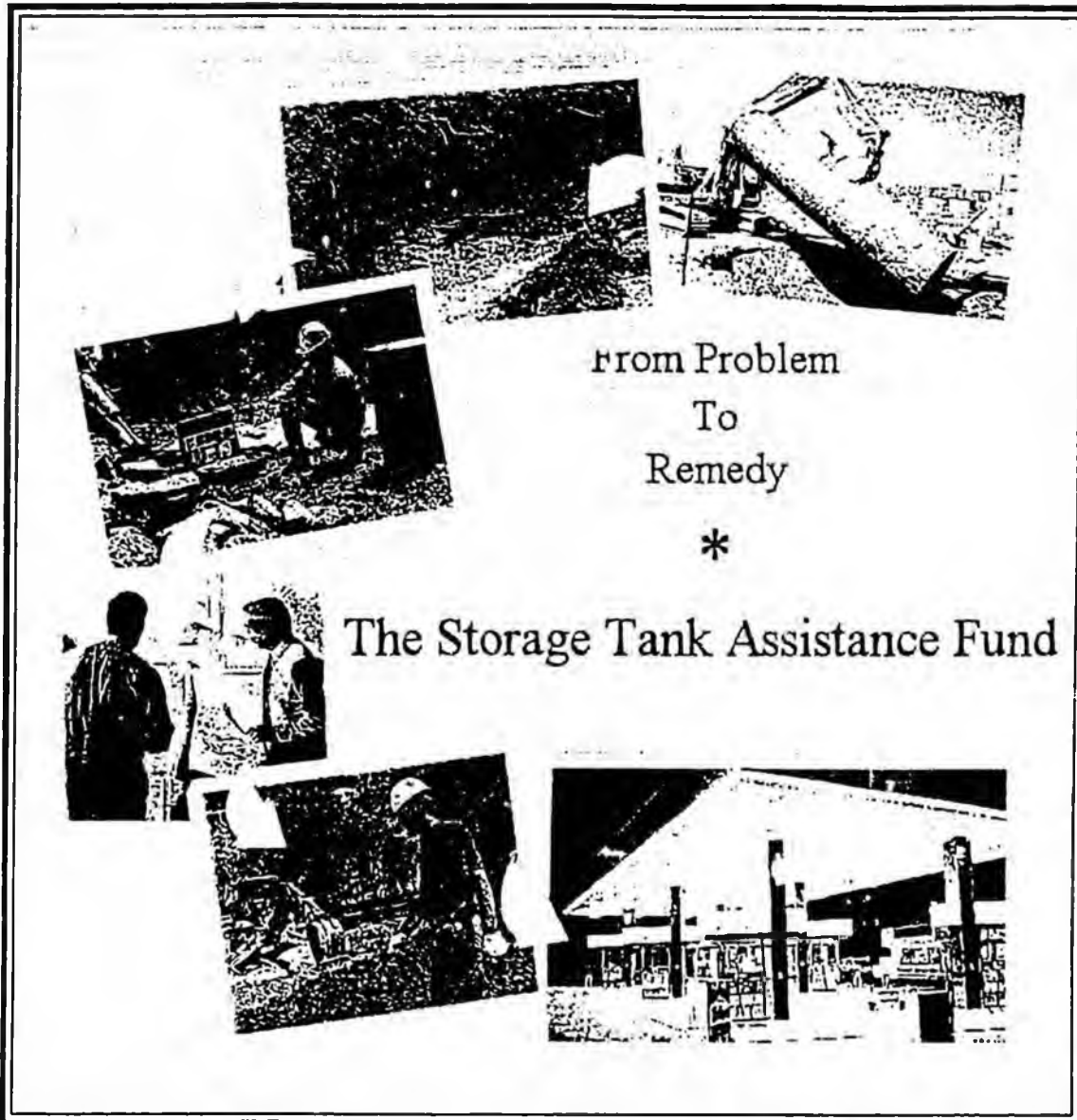


Litigation has been avoided thereby saving the State of Alaska millions of dollars in legal costs.

\* Because there is an Assistance Program -



Cleanup activities directly involve the owner or operator and reduce the need for State lead actions and oversight. This approach further reduces both higher cost State contractors as well as the number of State staff required to oversee the cleanup activities.



From Problem  
To  
Remedy



The Storage Tank Assistance Fund

## The Storage Tank Assistance Fund

*Board of Storage Tank Assistance  
410 Willoughby Ave.  
Juneau, Alaska 99801  
Phone (907) 364-2514  
Fax (907) 364-2518  
cresolve@gci.net*

Web: [http://www.state.ak.us/dec/dspar/stp\\_home.htm](http://www.state.ak.us/dec/dspar/stp_home.htm)

September 27, 2000

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  
SUNSET REVIEW

September 27, 2000

Audit Control Number

18-20007-00

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, 2001. The board would be allowed one year in which to conclude its affairs. We recommend that the legislature extend the board until June 30, 2003.

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.

Pat Davidson, 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) requires that the board will terminate on June 30, 2001, 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 scope of our review included all activities of the board for FY 98 through FY 00. We reviewed the board's activities to determine whether they have been in the public's interest 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).
- Grant files of recipients of financial assistance.
- Financial information on the State's accounting system.
- Office of the Ombudsman closed case files.

- Prior audits and other reports related to various DEC operations.

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 May 18, 2000 meeting of the board. We observed the proceedings and the interaction of the board with the public.

## ORGANIZATION AND FUNCTION

In 1990, the legislature 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 related to various structural specifications of their tanks. 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. DEC is responsible for UST program administration, including the financial assistance subprogram.

The program offers grants and loans to owners and operators to 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 Oil and Hazardous Substance Release Prevention and Response Fund (Prevention Account) 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, determine 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 containment that is allowed to remain in soil or groundwater after cleanup of a release from, or associated with, a UST.
6. Issue non-binding recommendations in disputes that might arise when DEC does not issue a "no further action" letter for sites that have completed cleanup actions.

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 commissioner of DEC or their designee, and six individuals selected to represent various groups concerned about, and affected by, UST regulation and oversight. The other six include:

- 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 a UST, at least one of whom does not own or operate more than 10 USTs.
- A member of the insurance industry.
- A public member who does not have a financial interest in replacing, upgrading, closing, testing, or cleaning up releases from USTs.

All members are appointed by the governor to serve staggered four-year terms. Board members serve without compensation, but are entitled to per diem and travel expenses.

### DEC 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 and loan awards.
4. Manage the Storage Tank Assistance Fund.

#### **Board of Storage Tank Assistance (as of July 31, 2000)**

**Judy Chadwick, Chair**  
(representative of the insurance industry)  
**Larry Dietrick**  
Designee of the commissioner of DEC  
**Robert Haines**  
Tank Contractor  
**Steve Johnson**  
Registered Engineer  
**Holly Robertson Hill**  
Public Interest Representative  
**Jim Weymiller**  
Tank Owner  
**Roger Starr**  
Tank Owner  
**John Barnett**  
Executive Director

## BACKGROUND INFORMATION

In 1990, the legislature created a program to provide both financial and technical advisory assistance to the owners 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. These regulatory requirements address numerous design and operational aspects of USTs.

Underground tanks are typically used to store petroleum and other potentially hazardous substances. As tanks "age" leaks invariably develop which allow substances stored to leak into the surrounding soil. This leakage can contaminate the groundwater, which in turn could contaminate a drinking water source - creating a hazard to public health.

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 were required to be upgraded to provide for leak detection, corrosion prevention, and spill and overflow protection.

In addition, UST owners were 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 \$1 million aggregate. Failure to meet the requirements may result in large fines.

### Alaska UST owners and operators began paying tank registration fees based on type of tank

The state legislation providing for educational, technical, and financial assistance for UST owners and operators required owners and operators to register their tanks and pay a registration fee based on whether the tank was upgraded to federal standards and the size of their tank (see Exhibit 1). The storage tank assistance fund (STAF) was established to provide financial assistance to owners and operators.

STAF consists of legislative appropriations of funds from two sources:

Exhibit 1	
Annual Tank Fees	
Upgraded Tank	
Regardless of Size	\$50
Non-Upgraded Tank	
<1,000 gal	\$150
1,000 - 5,000 gal	\$300
>5,000 gal	\$500

1. Oil and Hazardous Substance Release Prevention and Response Fund (Prevention Account) These are monies collected from a three cents per barrel oil tax. This account is used to fund other programs besides the STAF.

Exhibit 2

Summary of UST Financial Assistance Programs				
Program	Description	Eligible Costs	Net Worth/Payment Limitations as of 7/1/99	Assistance Provided
Tank tightness testing & site assessment incentive program	Repealed Effective 7/1/99	Provided funds directly to the owner/operator specifically to reimburse costs for tank tightness test or site assessments to determine if there had been a release of petroleum.	Not Applicable	Repealed effective 7/1/99 By SB 128
Reimbursement program	Repealed Effective 7/1/99	Provided reimbursement of the costs of risk assessment, containment, cleanup, corrective action, upgrade or closure activities on or after December 22, 1988 and before September 5, 1990.	Not Applicable	Repealed effective 7/1/99 By SB 128
Tank upgrade & closure grant program	Program active. Application period sunset December 30, 1994. Funds currently allocated to the program through FY 01.	Provides funds directly to the owner/operator specifically to cover costs of removal, upgrade, or replacement of UST system.	The tangible net worth of both owner and operator limited to \$250,000 each. Grant payments under this program can not exceed a total of \$250,000 for the same owner or operator. When combined with tank cleanup or tank upgrade/closure grants and loans to same owner/operator, payments cannot exceed \$500,000.	Grants for upgrade, replacement or closure of UST comprising up to 60% of the total eligible costs up to \$60,000.
Tank cleanup grant program	Program active. Application period sunset June 30, 1994. Funds currently allocated to the program through FY 01.	Provides funds directly to the owner/operator specifically to cover costs of risk assessment, containment, corrective action, and cleanup.	The tangible net worth of both owner and operator limited to \$1 million or less each. Grant payments under this program may not exceed \$250,000 less then 10% for owner/operator's deductible (not to exceed \$25,000). When combined with a grant payment under the tank upgrade and closure program, payment may not exceed \$250,000. When combined with tank cleanup or tank upgrade/closure grants to same owner or operator, payments cannot exceed \$500,000.	Up to \$250,000 and owner/operator is responsible for 10% of total cleanup costs (not to exceed \$25,000) which is excluded from the grant. A tank cleanup loan for no interest is available for this deduction.
Tank cleanup loan program	Program active. Application period sunset June 30, 1994 Funds currently allocated to the program through FY 01.	Provides funds directly to the owner/operator specifically to cover costs of risk assessment, containment, corrective action, and cleanup.	Loans when combined with grants to same owner or operator may not exceed \$500,000. When combined with tank cleanup or tank upgrade/closure grants and loans to same owner/operator, payments cannot exceed \$500,000.	Newly established in FY 00. An owner/operator may borrow up to \$500,000 for cleanup at a rate equal to the 12 <sup>th</sup> Federal Reserve District Discount rate as of Jan. 1 of the year in which the loan is approved plus one-half percentage point.

2. Tank registration fees. In FY 00 the State collected from UST owners and operators over \$61,000 in tank registration fees.

Besides funding the various financial assistance programs that have been made available to UST owners and operators, appropriations from STAF support the cost of operations of the Board of Storage Tank Assistance (BSTA).

Recent legislation has shifted much of the UST financial assistance from grants to loans

Exhibit 2 on the opposite page outlines both the history and current status of various financial assistance programs available to assist UST owners and operators. These programs have been at the center of the State's effort to assist private sector UST owners and operators to come into compliance with new federal tank regulations.

In 1999, the legislature made major changes to these UST programs. Besides eliminating two dormant programs<sup>1</sup> the legislation (Senate Bill 128 or SB 128) established a more restrictive "means test" (see Exhibit 3) eligibility requirement for applicants seeking financial assistance.

Senate Bill 128 also established a loan program for owners and operators who could not meet the net worth means test eligibility requirement for the UST grant program.

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<sup>1</sup> Senate Bill 128 eliminated financial assistance related to tank tightness testing and assessing sites for leakage and associated cleanup costs. No funding had been allocated for these programs by BSTA since FY 92. Senate Bill 128 also eliminated what was termed the reimbursement program. This program was designed to provide funding to UST owners and operators who went ahead and paid for various costs of cleaning up sites out-of-pocket, between December 22, 1988 and September 5, 1990, and who then could apply to the State for reimbursement. This program was considered a low priority by BSTA, and accordingly, the board never allocated any funding to it, even though 158 owners and operators had applied for \$3.3 million.

Exhibit 3

**Senate Bill 128 established tangible net worth standard as basis for receiving UST assistance**

When revamping the UST financial assistance programs the legislature developed a "means test" which restricted participation of owners and operators in various programs depending on their "tangible net worth."

"Tangible net worth" is defined in the statutes as:

*the total value of tangible assets, including existing assets and probable future economic benefits that will be obtained or controlled by the entity as a result of past transactions, minus liabilities associated with bringing underground petroleum storage tank systems into compliance with state and federal laws and liabilities associated with releases of petroleum from underground petroleum storage tank systems; notwithstanding other provisions of this paragraph, "tangible net worth" does not include the value of goodwill.*

When this definition of tangible net worth was adopted by the legislature there was some discussion concerning the legal defensibility of this definition. The board reported that it has made it very clear to owners and operators that the "tangible net worth" definition set forth as a result of SB 128 was not to be confused with the traditional and customary definition used by the banking and finance industry. This clarification is important to prevent owners and operators from inadvertently deducting typical liabilities, such as a mortgage, thereby emphasizing the fact that only environmental liabilities associated with tank cleanup could be deducted from their total assets.

The legislature developed the net worth concept to better target financial assistance, especially grants, to owners and operators least able to afford remediation and upgrade costs. Better capitalized owners and operators could still receive assistance, but it would now be in the form of state loans rather than grants.

Remaining applicants for upgrade and closure grants received FY 01 funding to finish projects

SB 128 established new eligibility requirements for the upgrade and closure program. Prior to SB 128 there were over 100 ranked applicants awaiting funding under this program.

Under the new eligibility requirements, only five applicants remained. After BSTA allocated FY 01 funding, these remaining closure and upgrade applicants have been fully funded. Effectively, the means testing requirement of SB 128 resulted in the phasing out of the upgrade and closure grant program.

Some cleanup grant funding provided to all remaining eligible applicants in FY 01

SB 128 means testing requirements also shortened the list of eligible applicants for cleanup grant funding. Accordingly, for FY 01 each remaining ranked cleanup grant applicant will receive at least partial funding for his or her cleanup project. The funding will allow some projects to initiate cleanup, others to continue ongoing cleanup efforts, while in other cases serving to reimburse cleanup costs previously incurred. Even though all the eligible sites that ranked on the cleanup grant-ranking list<sup>2</sup> will receive some funding in FY 01; additional cleanup costs are expected to be incurred by owners/operators in the future, since cleanup projects typically take three to five years to complete.

SB 128 also lowered the ceiling on the total amount a site could receive under the cleanup grant program. Previous to the 1999 legislation, each site was limited to \$1 million in state grant assistance. Now, each site is limited to \$250,000 in grant funds, but an owner/operator can apply for a loan under the cleanup loan program for additional funding, however, the combination of grants and loans cannot exceed \$500,000.

Costs to complete remaining cleanup projects are difficult to estimate at this time

At this time it is not possible to accurately estimate the future financial need for the cleanup grant program for the following reasons:

1. Lack of cost projections. Funding is now being provided to applicants near the bottom of the original cleanup grant, priority-ranking list. Many of the sites currently slated for funding have been on the list since the inception of the program and do not have current work plans. The owner/operator or their hired engineer submits work plans. These work plans list the type and level of cleanup actions to be taken, and provide a basis to estimate the costs associated with a given cleanup.

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<sup>2</sup> The FY 01 cleanup grant priority ranking list has 51 projects listed as ranked and eligible, 91 as not eligible, 10 as withdrawn, and 95 as having insufficient information to be ranked (unranked).

2. Inherent uncertainties associated with cost projections. Even with a work plan in place the estimated costs of a cleanup can be somewhat of an educated guess. The actual costs of the cleanup can be much higher or lower given the level of contamination uncovered once cleanup work begins.

Legislature established a loan program to provide financial assistance for cleanup

SB 128 created a cleanup loan program. UST owners and operator applicants that previously qualified for grants, but now had too high a level of "tangible net worth" (see Exhibit 2 on page 6) could still receive assistance by obtaining a state loan at subsidized interest rates. Additionally, UST owners and operators who had received the newly established lower maximum of \$250,000 per site in grant funding could apply for loan funding, if necessary, to complete the remediation project.

The board has only recently completed the creation of the loan packets necessary for the cleanup loan program. The board is still developing the priority ranking criteria and allowable cost guidelines for the loan program.

In order to gauge the potential demand for the cleanup loan program, a survey of all UST owners/operators that had previously submitted an eligible cleanup grant application was conducted. As of late September 2000, 53 surveys were returned expressing an interest in the cleanup loan program, 34 expressed a current interest and 19 expressed a future interest in the cleanup loan program.

Board costs have been substantially reduced in recent years

In FY 00 BSTA's sole staff member, the executive director, resigned as a Department of Environmental Conservation (DEC) employee and established a private consulting business. With the departure of this individual, BSTA saw an opportunity to reduce its operating costs by contracting for the services of an executive director, on more of a part-time basis.

On behalf of the board, DEC published a solicitation of interest notice in order to determine if there was any private sector interest in providing administrative services to the board. The former state employee that had served as executive director was among the three whom responded to the solicitation. The board chose the former executive director.

For FY 00 actual board operational costs were approximately \$100,000. In FY 01 the board adopted a budget of just under \$52,000. With a reduced budget, compensation for the executive director was similarly reduced to just over \$40,000. DEC did solicit proposals for the contract, but the existing contractor was selected as the only respondent to the solicitation.

Tank owner registration fees have also been declining the last few years, as more owners come into compliance with EPA regulations and thus pay lower fees. Actual registration fees collected in FY 00 totaled \$61,170.

## REPORT CONCLUSIONS

In our opinion, the Board of Storage Tank Assistance (BSTA) should be reestablished. The board plays an integral role in promoting compliance throughout the state with federal regulations related to specifications for underground storage tanks (UST). Ostensibly, such compliance is important in promoting public health in that it protects underground drinking water supplies from pollution and provides funding necessary to remediate pollution brought on by leaking USTs owned and operated by private sector interests.

Creation of BSTA grew out of palpable mistrust between many of the private sector UST tank owners/operators and state regulators. As an independent board, BSTA has been instrumental in mediating disputes between the Department of Environment Conservation (DEC) and UST owners/operators. BSTA has enhanced cooperation, which promotes compliance with governmental regulations related to underground tanks.

Since FY 98 the board has conducted eight formal hearings involving appeals of DEC actions. On numerous other occasions, board members or staff have been able to resolve disputes and concerns on an informal basis, which again assists in achieving the overarching public policy objective, bringing UST owners/operators into compliance with current federal tank regulations.

The board actively participates in the making of statutes and regulations pertain to USTs. The board is statutorily required to adopt regulations to be used by DEC to administer the UST financial assistance program. The board also reviews all DEC regulation proposals related to USTs. If it is fair to assume a significant number of UST owners and operators will be interested in participating, with DEC and BSTA in the development of procedures for the new loan program created by SB 128.

Although the December 22, 1998 federal deadline for tank compliance has passed, there are still tanks in Alaska that are out of compliance. Tank owners and operators continue to express a need and desire to maintain BSTA. The board has, and continues to, work with tank owners and operators to help them come into compliance with Environmental Protection Agency (EPA) regulations.

Currently, there is an informal agreement between EPA and DEC, stating that EPA will not assess fines for out of compliance tanks as long as the owner/operator signs a compliance order by consent (COBC) agreement. These agreements state that the tank owner is seeking funding from the State in order to come into compliance and that regardless of receiving that funding they will come into compliance. The ongoing presence and activity of BSTA in promoting statewide compliance, has been an important part of EPA's willingness to accept COBC agreements.

BSTA is needed to continue its role until procedures for the loan program have been established. The creation of the loan program and changes to the grant programs brought on by SB 128 has and continues to require a great deal of the board's time. As regulations and

procedures are established for the cleanup loan program, the board should consider including language in the regulations that would provide a process for tank owners and operators to follow if they wish to appeal a certain action or decision of DEC.

We recommend the legislature extend the board's termination date until June 30, 2003. Given the substantial changes to the UST program brought about by SB 128, and the timetable involved in establishing the regulations and procedures for the loan program, there is still a role, albeit perhaps a reduced one, for BSTA to play.

## ANALYSIS OF PUBLIC NEED

The following analysis of board activities relate to the "public need factors" set out in the "sunset" review law, AS 44.66.050. The italicized, shaded, and bold face phrases are taken from AS 44.66.050 (c) (1) - (9). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

*Determine the extent to which the board, commissions, 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 DEC to rank requests for assistance. 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. This insures that the most critical projects are funded first.

Emergency funds are also available for an owner or operator of a UST if a leak, overfill or other regulated substance release from a UST poses an imminent public health threat and the owner or operator does not have the funds to begin emergency cleanup action. No emergency cleanup funds have been issued in the last three years.

### Board Resolves Disputes

Based on the board's guidelines DEC is responsible for ranking applicants for the remaining three UST financial assistance programs (upgrade and closure grants, cleanup grants, and cleanup loans). Once a project receives funding, documentation of expenditures 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 had adopted regulation 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 ten days.

The board is in compliance with regulations. The board heard nine appeals in the last three years; of those nine, three involved ranking disputes, three involved grant ineligibility, two involved eligibility of costs, and one was resolved prior to the hearing. The board ruled to some degree in favor of the appellant in seven out of nine appeals, with one appeal being withdrawn, and one appeal reaching a settlement.

According to the board, it has 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 informed of federal and state regulations. After the passage of SB 128 the board conducted hearings and workshops in Anchorage, Fairbanks, Soldotna, and Juneau to explain and facilitate public comment on the regulation changes brought on by SB 128. These meetings were noticed in the State's three largest newspapers and on the State's online public noticing system well in advance of the meeting dates.

The board contributes articles to DEC's newsletter *Alaska Tank News*. Articles are about board activities or changes in regulations or policies. This newsletter is distributed to tank owners and operators, and is available on DEC's website.

The board prepares an annual 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.

### Board Attendance

We reviewed board attendance records for the current board members and found that board meetings are generally well attended.

*Determine the extent to which the operations 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.*

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 in its July meeting, the board discusses funding. DEC informs the board of the final number of ranked projects for each financial assistance program. The board then allocates funding between the different financial assistance programs.

The continuing financial need for the cleanup grant and cleanup loan programs over the next few years is still uncertain. Once all work plans are submitted and approved by DEC an estimate of future financial need can be calculated.

*Determine 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 the past three years there have been two major pieces of legislation affecting the UST assistance program and the

board. In both cases the board, through its executive director, was present to provide input and testimony regarding these bills.

In 1999 SB 128 was passed. It had a major impact on the program:

- The bill eliminated the reimbursement program and the tank tightness testing and site assessment incentive program;
- The bill set owner/operator net worth ceilings for grant eligibility;
- The bill established a new cleanup loan program; and
- The bill moved the sunset date to June 30, 1999.

In 2000 House Bill 432 was passed:

- The bill moved the board's sunset date to June 30, 2001; and
- It gave the board review authority over no further action letters.<sup>3</sup> The board can only review individual cases and make recommendations to the department for streamlining the decision process. The board is not granted any binding authority for these type of cases, only a review authority.

*Determine 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 services, economy of service, and availability of services 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 announcement also states that "the public is invited to attend and comment on any portion of the underground storage tank program." The board welcomes and encourages public participation in its meetings.

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<sup>3</sup> No further action letters is a term referring to a formal determination by DEC that a contaminated site has been successfully remediated and accordingly no further action is necessary. Such determinations are often vital for an owner/operator to obtain bank financing or to sell their property.

*Determine the extent to which the board has encouraged public participation in the making of its regulations and decisions.*

In October 1999 the board held workshops and public comment periods in Fairbanks, Anchorage, Soldotna, and Juneau for the regulatory changes brought about by SB 128. These meetings were noticed in the three major newspapers of the State, as well as on the State's online public noticing system.

The board has taken the policy that prior to adoption, all regulations must be open to public comment. In addition, as stated above, the public is invited to attend and comment on any portion of the UST program at any board meeting.

*Determine 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 discussions with DEC and board staff, and a review of the ombudsman's closed case files, we determined that no complaints have been filed against any activities of the board.

*Determine the extent to which the board regulates entry into an occupation or profession and whether it has presented 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.

*Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board 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.

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

We have no recommendations.

November 13, 2000

Pat Davidson, Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

Subject: Sunset Review of the Board of Storage Tank Assistance - Preliminary Audit Report

Greetings,

On behalf -of the Board of Storage Tank Assistance, I would like to thank you for, allowing us to respond to your findings and conclusions expressed in the September 27, 2000 Preliminary Audit Report, Audit Control Number 18-20007-00, submitted to us on October 27, 2000.

The Board concurs with the findings and recommendations and fully supports extending the Board termination date, until June 30, 2003. The changes resulting from the passage of SB 128 in 1999 have yet to be fully implemented but will be shortly. It is imperative that the Board be available to "fine-tune" the new regulations related to the UST loan program, that will most likely be operational during the 2001 field season. We expect a number of misunderstandings and disputes to arise once the first loans are issued. It will be important to tank owners and operators that the Board be available to assist in mediating those disputes.

We appreciate the opportunity to comment on the Preliminary Audit Report. If you should require additional information, please do not hesitate to contact me at (907) 276-5617, or the Board's Executive Director, John Barnett at (907) 364-2514.

Sincerely Yours,

Judy Chadwick  
Chair, Board of Storage Tank Assistance

cc: John Barnett

November 20, 2000

Mr. Pat Davidson, CPA  
Legislative Auditor  
Alaska State Legislature  
P.O. Box 113300  
Juneau, Alaska 99801-3300

Dear Mr. Davidson:

Thank you for the copy of the preliminary audit report concerning the Board of Storage Tank Assistance Sunset Review. We have reviewed the report and Commissioner Brown has asked me to convey the department's comments.

We agree with the report's findings that the Board's primary functions are related to prioritizing financial assistance applications and determining eligible costs for financial assistance. However, as noted in our specific comments below, the report's conclusions tend to understate the important role the Board has played in resolving financial assistance disputes by overstating the Board's regulatory compliance role. We have no objection to the recommended action of extending the Board's sunset date to June 30, 2003, although we have no plans to submit legislation to do this.

Comments to the narrative of the report are as follows:

1. On page 11, paragraph 2, it should further be clarified that the Board's primary role in resolving disputes had been related to questions over what activities are eligible for financial assistance.
2. On page 11, paragraph 3, please change the number "nine" to "eight". It should be further explained in this paragraph that the number of appeals have diminished over the last few years and with passage of SB 128, that trend will likely continue with the conversion to a loan program.
3. On page 11, paragraphs 5 and 6, please note that the 1998 deadline requiring COBC's to close or upgrade tanks is no longer an issue. Compliance with that deadline has been achieved and the department is now working with certified private inspectors to ensure current and future compliance with operational requirements of the upgraded tanks. Examples of operational compliance include proper use of leak detection and corrosion control in the already upgraded systems.
4. On page 11, paragraph 7, it should be noted that regulations to implement the new grant and loan program have been completed.
5. Other specific word and number changes are as follows:

Page 7, footnote. Insert "between December 22, 1988 and September 5, 1990, the effective date of HB 220" after the phrase "out-of-pocket". Page 8, third line. Change the word "almost" to "over". Page 9, fourth paragraph. Change the number "47" to "53", and the number "13" to "19". Page 11, fourth paragraph. Insert "financial assistance" after the phrase "administer the UST". Insert "with DEC and BSTA in the development of procedures for the new loan program created

by SB 128." after the word "participating". Strike the incomplete sentence "the 1999 legislative changes in the State's UST financial assistance program will require BSTA to once again develop regulations and procedures necessary for implementation".

Thank you for the opportunity to comment. As requested, I have also submitted an electronic copy of this response.

Sincerely,

Kurt Fredriksson  
Deputy Commissioner

cc: Jim Hayden, Storage Tank Program, SPAR  
Board of Storage Tank Assistance

November 27, 2000

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the responses from the Department of Environmental Conservation and appreciate their input. We made changes to our report, based on the department's response where appropriate with out significant modification to the report.

Pat Davidson, CPA  
Legislative Auditor



# Report of the Local Boundary Commission to the Second Session of the Twenty-Second Alaska State Legislature

Sheila Peterson  
Staff  
Senator Gary Wilken  
Alaska State Legislature

January 23, 2002

## Areas Addressed in this Report



Kevin Waring, Chairperson  
Vacant, 1st Judicial District  
Vacant, 2nd Judicial District  
Allan Tesche, 3rd Judicial District  
Ardith Lynch, 4th Judicial District



Local Boundary Commission  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510  
Phone: 907-269-4560  
Fax: 907-269-4539

Provided by Gary Wilken

## Small Community Housing Mortgage Loan Program Adversely Impacts Certain Municipal Boundary Proposals

Historically, provisions in State law concerning AHFC's Small Communities Housing Assistance program (AS 18.56.400 - 18.56.600) have affected the outcome of certain important municipal boundary proposals. For example, in 1998, opponents of the proposal for consolidation of the City of Haines and the Haines Borough published advertisements stating, in part:

... all Borough residents inside and outside the City will lose their eligibility for rural financing if we consolidate, because our combined population will

exceed 1600. This means paying up to 1% more in interest on housing loans after consolidation.

Because of these and many more reasons please vote no on consolidation November 3rd.

The 1998 proposition for consolidation of local governments in Haines was defeated by just three votes. Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is reasonable to conclude that the Haines consolidation

would have been approved if the impacts on the housing loan program had been neutralized.

Last year, the AHFC Board of Directors adopted regulations that resolved the concerns of the Local Boundary Commission relating to merger and consolidation. However, concerns regarding annexation and incorporation were not addressed.

A means of resolving the remaining concerns of the Local Boundary Commission in a manner that maintains the Small Communities Housing Assistance program but eliminates the unintended adverse impacts on legitimate municipal boundary changes without a fiscal impact on the State of Alaska appears to be elusive. ■

## Promotion of Maximum Common Interests within Boroughs

As it has done previously, the Commission brings to the attention of the Legislature that the unorganized borough is configured in a manner that does not conform to the requirements of Alaska's constitution. Article X, Section 3 of the Constitution provides that:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible

In an effort to facilitate implementation of that constitutional mandate, the Local Boundary Commission recommended to the 1960 legislature that the Commission be given a mandate by resolution, directing the Commission to divide the whole of Alaska into boroughs, organized or unorganized, and that such recommendation(s) be presented to the next Legislature. However, that recom-

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/22/01

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/23/01

Resources Committee considered      SENATE BILL NO. 115

"An Act extending the termination date of the Board of Storage Tank Assistance."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Environmental Gas	4/19/01	✓		1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian Taylor</i>	✓			
<i>Rick Halford</i>			✓	
<i>James A. ...</i>			✓	
<i>T. O. ...</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 115 - EXTEND BD. OF STORAGE TANK ASSISTANCE

NAME: JEANNER BRAYES Subject/Bill No: SB 115  
Co./Dept./Title: LBAC Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: PAT Davidson Subject/Bill No: SB 115  
Co./Dept./Title: Leg Audit Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

SB 115-EXTEND BD. OF STORAGE TANK ASSISTANCE  
SENATE FINANCE COMMITTEE

SIGN-IN

NAME: Mary Suroky Subject/Bill No: SB115  
Co./Dept./Title: DEC Phone: 465-5352  
Address: 410 Wilbyway Zip: 90807  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: JOHN BARNETT Subject/Bill No: 115  
Co./Dept./Title: BOARD OF STORAGE TANKS Phone: 364-2514  
Address: DOUGLAS Zip: 99824  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Pat Davidson Subject/Bill No: SB115  
Co./Dept./Title: Leg Audit Phone: 465-3830  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

SB 115-EXTEND BD. OF STORAGE TANK ASSISTANCE  
SENATE FINANCE COMMITTEE

SIGN-IN

NAME: Clarence Beavis Subject/Bill No: SB 115  
Co./Dept./Title: Senator Jhousault's Phone: 6590  
Office  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: JOHN BARNETT Subject/Bill No: 115  
Co./Dept./Title: BOARD OF STORAGE TANKS Phone: 364-2514  
Address: P.O. Box 240651 DOUGLAS Zip: 99824  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: LARRY Dietrich Subject/Bill No: 115  
Co./Dept./Title: ADEC Director Phone: 465 5255  
Spill Prevention & Response  
Address: 410 Willoughby Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Pat Davidson Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: Leg. Audit Phone: 465-3830  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions