

HB

187

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FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 187
(H) Publish Date: 3/31/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title: An Act extending the termination BRU: Spill Prevention and Response
date of the Board of Storage Tank Assistance Component: Contaminated Sites
Sponsor: House Rules by request of LBA
Requester: House Resources Component No.: 2386

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	11.2	11.2	11.2	11.2	11.2	0.0
Contractual	40.2	40.2	40.2	40.2	40.2	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	51.4	51.4	51.4	51.4	51.4	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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 Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1079 (Undergr. Stor. Tk. Revol. Loan Fund)	51.4	51.4	51.4	51.4	51.4	0.0
TOTAL	51.4	51.4	51.4	51.4	51.4	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 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)

This bill would extend the termination date of the Board of Storage Tank Assistance (BOSTA) for four years. Currently the Department expends \$51,400 per year in contractual money for BOSTA-related expenses and travel. It is assumed this level of annual funding would continue through the extension period which expires June 30, 2008.

Prepared by: Larry Dietrick, Director Phone 465-5250
Division: Spill Prevention and Response Date/Time 3/24/03 3:30 PM
Approved by: Kurt Frednksson - Deputy Commissioner Date 3/24/2003
Agency: Dept. of Environmental Conservation

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Travel	11.2	11.2	11.2	11.2	11.2	0.0
Contractual	40.2	40.2	40.2	40.2	40.2	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	51.4	51.4	51.4	51.4	51.4	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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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 Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1079 (Undergr. Stor. Tk. Revol. Loan Fund)	51.4	51.4	51.4	51.4	51.4	0.0
TOTAL	51.4	51.4	51.4	51.4	51.4	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 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)

This bill would extend the termination date of the Board of Storage Tank Assistance (BOSTA) for four years. Currently the Department expends \$51,400 per year in contractual money for BOSTA-related expenses and travel. It is assumed this level of annual funding would continue through the extension period which expires June 30, 2008.

Prepared by: Larry Dietrick, Director Phone 465-5250
Division: Spill Prevention and Response Date/Time 3/24/03 3:30 PM
Approved by: Kurt Fredriksson - Deputy Commissioner Date 3/24/2003
Agency: Dept. of Environmental Conservation



Legislative Budget & Audit Committee

Representative Ralph Samuels, Chair

Sponsor Statement for House Bill 187 Extend Board of Storage Tank Assistance

Under AS 46.03.010(18), the Board of Storage Tank Assistance will sunset on June 30, 2003 unless the Legislature acts to extend the board. House Bill 187 would extend the board to June 30, 2007.

The board (BSTA) was created in 1990 to help the owners and operators of underground storage tanks (UST's) comply with state and federal regulations enacted in response to nationwide concern over possible contamination of drinking water from leaking tanks. These new regulations covered areas including the design, construction and installation of new tanks, and tightened standards for the retrofitting of existing tanks.

Board members have extensive UST knowledge and experience, allowing the board to act as a valuable liaison between the Department of Environmental Conservation and UST owner/operators. BSTA helped the DEC draft reasonable regulations and has helped owner/operators interpret and comply with regulations, saving the State the cost of seizing and cleaning up contaminated sites caused by non-compliance.

The DEC provides financial assistance to UST owner/operators, previously through grant programs, and now through a revolving loan fund, the Storage Tank Assistance Loan Fund. BSTA has been instrumental in mediating disputes between DEC and UST owner/operators over financial assistance determinations and allowable costs, helping avoid the need for formal appeals in some cases.

The Board of Storage Tank Assistance has a proven value, and it is in the best interest of UST owner/operators, the State and the general public to extend the board's sunset date for four years.

THE
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Audit Report



DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
BOARD OF STORAGE TANK ASSISTANCE
SUNSET REVIEW

October 15, 2002



Audit Control Number:

18-20020-02

Division of Legislative Audit

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

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The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

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ALASKA STATE LEGISLATURE

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October 15, 2002

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

October 15, 2002

Audit Control Number

18-20020-02

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, 2003. The board would be allowed one year in which to conclude its administrative operations. We recommend that the legislature extend the board until June 30, 2007.

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 the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

A handwritten signature in cursive script that reads "Pat Davidson".

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, 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, 2003, and will have one year from that date to conclude its administrative operations.

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 since our last review two years ago. We reviewed the board's activities to determine whether they have been in the public 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 section of Alaska's statutes and regulations.
- Budget documents, session laws and other legislative information relating to the board operations.
- Transcribed minutes of board meetings.
- Internal reports and documents prepared by the board and the Department of Environmental Conservation (DEC).
- Grant and loan files of recipients of financial assistance.
- Financial information on the State's accounting system.
- Office of the Ombudsman closed case files.

- Prior audits.

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 June 27, 2002, 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 1990 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 and DEC are involved in the making of regulations pertaining to USTs. DEC is responsible for UST program administration, including the financial assistance subprogram.

The financial assistance program offers grants and loans to owners and operators to clean up their facilities. The Storage Tank Assistance Fund (STAF)¹ was established to fund the program. Appropriations are made to STAF from the Oil and Hazardous Substance Release Prevention and Response Fund (Prevention Account), tank registration receipts, and from the principle and interest of loan repayments.

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 assign 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 set 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.

¹ Chapter 41, SLA 2002 changed the Storage Tank Assistance Fund to the Underground Storage Tank Revolving Loan Fund (USTRLF).

6. Issue non-binding recommendations in disputes that might arise when DEC does not issue a "non further action letter"² 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 in installing, upgrading, repairing, or closing USTs.
- A general contractor, who is knowledgeable in 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 No further action letter 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 financing or to sell their property.

Board of Storage Tank Assistance (as of July 31, 2002)	
Judy Chadwick , Chair	Representative of insurance industry
Larry Dietrick	Designee of the commissioner of DEC
Robert Haines	Tank Contractor
Steve Johnson	Registered Engineer
Roger Starr	Tank Owner
Jim Weymiller	Tank Owner
Vacant	Public Member
John Barnett	Executive Director

2. Priority rank applicants using a scoring system developed by the board.
3. Distribute and monitor grant and loan awards. Loans will also involve approval and servicing by the Department of Community and Economic Development's Division of Investments.
4. Manage the Underground Storage Tank Revolving Loan Fund³.

³ Prior to Chapter 41, SLA 2002 this fund was referred to as the Storage Tank Assistance Fund (STAF).

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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 (USTs). 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 stored substances to seep into the surrounding soil. This leakage can contaminate the groundwater, which in turn could contaminate a drinking water source and create 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 by December 22, 1998.

Additionally, 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.

Recent legislation has significantly changed the UST loan and grant programs

In 2002 the legislature made significant changes to the remaining loan and grant programs (Exhibit 1, page 10 Summary of UST Financial Assistance Programs). Chapter 41 SLA 2002 (Senate Bill 153) repealed the upgrade and closure grant program effective June 30, 2002, however no applicants remained on the ranking list when the program was closed. This legislation also repealed the cleanup grant program effective June 30, 2004. According to testimony from DEC and the board, all remaining cleanup grantees that apply for a grant are projected to be funded by the 2004 repeal date.

One of the largest changes brought on by Chapter 41 SLA 2002 was the conversion of the Storage Tank Assistance Fund into a revolving loan fund, and thereby the cleanup loan program (created in 1999) into a revolving loan program. Additionally, a net-worth based eligibility requirement was placed on the cleanup loan program which effectively limits the loan program to medium to small "Mom and Pop" operations. To be eligible, an owner or operator can not have been eligible for self-insurance (per federal regulations⁴) at any time on or after July 1, 2002.

⁴ Code of Federal Regulations 40 CFR 280.95.

Demand for cleanup loan program still unknown

Approximately fifty-seven owners/operators have expressed interest in the cleanup loan program. A few cleanup loan packets have been provided to owners/operators, but no loan packets have been completed and returned as of yet. There have been a few no-interest⁵ loans issued in relation to the cleanup grant program.

While the demand for the cleanup loan program is still unknown, some board members and staff believe that once the cleanup grant program is repealed on June 30, 2004, there will be an increased interest in the cleanup loan program. This increased interest is expected because owners/operators will be either at their grant cap of \$250,000, not applied for a cleanup grant, and/or have not been able to complete cleanup before the cleanup grant program was repealed. For these individuals, the only remaining assistance option for site cleanup is a loan through the cleanup loan program.

Tank owners/operators and board members have indicated that banks will not loan money for the cleanup of contaminated sites, mainly because a loan default would result in the bank owning the contaminated site and being responsible for completing the cleanup.

The board's continued role in the UST program

Since creation (Chapter 96 SLA 1990), the board has been active in the drafting of regulations, developing financial assistance, grantee ranking requirements, and hearing appeals related to the UST financial assistance program. However, with the pending repeal of the cleanup grant program in 2004, and the current minimal demand for the cleanup loan program, the board's workload has decreased in recent years. This is evidenced by the decrease in the number of yearly board meetings.

Although the workload for the board has decreased in recent years, the board continues to be active in the writing of regulations due to legislative changes to the financial assistance program. The board also continues to review UST cleanup regulations written by DEC to assure the regulations are reasonable, and not more stringent than federal UST regulations.

If the loan program experiences the expected influx of applicants after the grant program is repealed, the board will be involved in resolving eligible cost issues and fine-tuning cleanup loan regulations. This will most likely involve hearing appeals related to eligible cleanup loan costs, and possibly even cleanup loan ranking issues if the loan applications exceed the available funds in the Underground Storage Tank Revolving Loan Fund (USTRLF).

The board, through its make up, has extensive UST knowledge and experience. Over the years this resource has not only been used by tank owners and operators in the understanding

⁵ Chapter 70, SLA 1999 limited cleanup grants to \$250,000 and required owners/operators to pay 10% of cleanup costs out of pocket, up to a limit of \$25,000. However, an owner/operator could get a no-interest loan for their out-of-pocket portion.

of UST regulations, but also by DEC in the writing and editing of UST regulations. The board uses its knowledge of USTs to make sure regulations are reasonable and fit within the intent of state statutes and EPA regulations.

Over the life of the board, a relationship of trust and respect has formed between tank owners, the board and DEC. This trust has been built on the board's professionalism and ability to handle disputes effectively and efficiently.

Funding for the board comes from the Underground Storage Tank Revolving Loan Fund

The funding for the board comes from the Underground Storage Tank Revolving Loan Fund (USTRLF), which consists of legislative appropriations of funds from three sources:

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 also funds other programs besides the USTRLF.
2. Tank Registration fees In FY 02 the State collected approximately \$61,000 in tank registration fees from UST owners and operators.
3. Cleanup loans These monies consist of the principal and interest from cleanup loan repayments in addition to income earned on money in the fund.

The board's budget and tank fees have remained fairly constant during FY 01 and FY 02

The board substantially reduced its costs from approximately \$100,000 in FY 00, to a budget of just under \$52,000 in FY 01 and FY 02. This is largely due to the privatization of the board's executive director position in FY 00, and the overall reduction in workload for the board. A breakdown of the STAF revenues and expenditures for FY 02 is included in Appendix A.

Tank owners/operators consider the board funded with their tank registration fees

The Alaska Underground Tank Owners and Operators (AUTOO) association believe their annual tank fees (\$61,000 in FY 02) pay for the board and therefore, so long as they continue paying tank fees, the board should also continue to be in existence. However, given potential future reductions in the board's workload, they may need to meet less often.

The Alaska Constitution prohibits dedicating revenues; therefore, annual tank fees can not be restricted to funding the board. As noted above, there are three main funding sources for the Storage Tank Assistance Fund. No one particular funding source can be identified as strictly funding board activities.

Exhibit 1

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 July 1, 1999	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 July 1, 1999 By Ch.70 SLA99
Reimbursement Program	Repealed Effective July 1, 1999	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 July 1, 1999 By Ch. 70 SLA99
Tank Upgrade & Closure Grant Program	Repealed Effective July 1, 2002	Provided 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 were limited to \$250,000 each. Grant payments under this program could 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.	Repealed Effective July 1, 2002 By Ch. 41 SLA02
Tank Cleanup Grant Program	Program active Application period sunset June 30, 1994. Funds currently allocated to the program through FY 03 Repeal of Program set for July 1, 2004 By Ch. 41 SLA 02	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 03	Provides funds directly to the owner/operator from a revolving loan fund, specifically to cover costs of risk assessment, containment, corrective action, and cleanup.	The owner can not have been eligible for self insurance under 40CFR280.95 any time on or after July 1, 2002. 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.	An owner/operator may borrow up to \$500,000 for cleanup at a rate equal to the 12th Federal Reserve District Discount rate as of Jan. 1 of the year in which the loan is approved plus one-half percentage point.

REPORT CONCLUSIONS

In our opinion, the Board of Storage Tank Assistance (BSTA) should be reestablished. The board plays a significant role in promoting compliance throughout the State with regulations and specifications for underground storage tanks (USTs). 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 caused by leaking USTs owned and operated by private sector interests.

As an independent board, BSTA has been instrumental in mediating disputes between the Department of Environmental Conservation (DEC) and UST owners/operators. The board appeal procedures are currently more streamlined and efficient than DEC's procedures for hearing appeals, and consequently, less expensive for the State as well as for tank owners/operators. In addition, the board has been afforded the ability to be more creative and flexible in resolving issues based on the intent of the law, rather than strict adherence to regulation. This has allowed the board to apply "common sense" to appeal rulings in instances where DEC felt they were bound by the letter of the law.

During FY 01 and FY 02, the board heard two official appeals which were related to eligible cleanup grant costs. In one appeal, the board upheld DEC's denial of some disputed cleanup costs and overturned DEC's denial of others. In the second appeal, the board upheld DEC's denial of the disputed cleanup costs, but identified and corrected DEC's misinterpretation of the cleanup grant cap ceiling.

The board's executive director and chair person have been on the board since its creation in the early 1990s. Additionally, the engineer, contractor, and large tank owner seats have been held by the same individuals since the early to mid 1990s. Through the member's tenure and professional knowledge, they provide a valuable resource to not only tank owners and operators, but also to DEC at little cost to the State.

As a trusted intermediary with tank owners and operators, the board has been able to facilitate the cooperation of tank owners and operators with DEC regulations. This has been accomplished in part through the resolving of disputes and concerns on an informal basis, before they are elevated to appeal status. Facilitating compliance with DEC regulations assists in achieving the overall public policy objective, bringing UST owners/operators into compliance with regulations.

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 financial assistance program. The board reviews all DEC regulation proposals related to USTs. The board also acts as an information conduit to tank owners/operators, providing regulation explanations in terms understandable to the particular owner/operator. Without the board, these questions would fall on DEC, resulting in an increased workload for DEC employees and possibly higher costs for the State.

The board has extensive support from the UST tank owner and operator community. AUTOO has, and continues to express a fervent need to maintain BSTA.

Overall, BSTA has enhanced cooperation between tank owners/operators and DEC. The board continues to promote compliance with underground storage tank regulations and (ultimately) a safer environment through:

- Its role in hearing appeals.
- Writing financial assistance regulations.
- Reviewing and approving UST regulations.
- Being a trusted intermediary and information conduit between DEC and tank owners/operators.

In addition, the board's contribution to tank owners/operators compliance with regulations and the financial assistance program, have prevented the State from having to take over UST sites. As a result, the State has been saved from the costs of cleaning up contaminated sites.

BSTA can facilitate a smooth transition between the repeal of the cleanup grant program on June 30, 2004, and the fine-tuning of cleanup loan regulations and procedures. After these events, the only board roles left will be the hearing of disputes related to "no further action" letters, and UST regulation review and approval. At such time the continued justification for the board would be questionable.

The board is currently experiencing a downturn in activity. However, the termination of the cleanup grant program, coupled with the implementation of the new loan program, should result in an increase in activity in future years. Given the expectation of future activity, and the institutional knowledge of the board, we recommend the legislature extend the board's termination date until June 30, 2007.

ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 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.

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

Board Resolves Disputes

One of the board's statutory duties is to hear appeals from owners and operators who disagree with DEC's financial assistance determinations. The board had 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 a decision to be issued within ten days.

The board is in compliance with regulations. The board heard two appeals in the last two years. Both of these were related to eligibility of cleanup costs. In one appeal, the board ruling provided satisfaction to both DEC and the appellant by allowing some of the costs, and upholding the disallowance of other disputed costs.

In the second appeal, the board upheld DEC's disallowance of the disputed costs. Through the appeal process, the board was made aware of an issue which effected many grantees. DEC was considering the cleanup grant cap to effectively be \$225,000 (\$250,000 less \$25,000 out-of-pocket costs). The board disagreed, and stated that the statute indicated that \$250,000 in grant funds should be available. While the board disallowed the costs being disputed, they made available additional grant funds for other allowable cleanup costs of the appellant.

According to the board, it has worked with multiple 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. The executive director estimates that approximately four to five potential appeals were averted in the prior year.

Information provided to interested parties

The board utilizes several mediums to ensure that owners and operators are informed of federal and state regulations.

- The board, when applicable, contributes articles to DEC's newsletter *Alaska Tank News*. Articles address 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 provides public notices of all its meetings, and invites the public to participate and comment on any aspect of the UST program. Public attendance at board meetings is intermittent, but when the public (tank owners/operators) do come to the meetings, they are given priority, and the meeting agenda is adjusted to best facilitate any comments they wish to make. In the past two years there have been instances where tank owners/operators or engineering consultants have attended meetings to voice concerns about various aspects of the UST program. In each case, the board took action to address the concerns raised by the public.
- The board's executive director has made himself available to take questions or listen to complaints. According to the board's executive director, the majority of questions concern UST regulations or UST financial assistance programs.

Board Attendance

We reviewed board attendance records for the current board members. With the exception of one member who has not attended a meeting in the last two years, we found that board meetings are generally well attended. The board is currently working on having this member replaced.

Review of DEC UST Regulations

One of the board's statutory responsibilities is to approve regulations specifying allowable technologies for testing, containment and cleanup, or corrective action prior to being adopted by DEC. The board has the additional responsibility of reviewing regulations proposed by DEC that set a standard for the level of contamination that is allowed to remain in soil or groundwater after cleanup of a release from, or associated with a UST.

In the last two years the board has participated in the review of proposed changes to UST regulations written by DEC. The new regulations are currently undergoing review at the Department of Law, and will be reviewed again by the board and approved before they can be adopted by DEC.

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 Underground Storage Tank Revolving Loan Fund (USTRLF) to provide assistance to owners and operators of USTs. Although the DEC manages the fund, the board is responsible for allocating funds to the financial assistance programs.

Each year in its June 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. Because of the current lack of activity in the cleanup loan program, the only program with ranked projects is the

cleanup grant program. However, the board has reserved money in the USTRLF to fund cleanup loans with the anticipation that a number of cleanup loans will be requested once the cleanup grant program is repealed in 2004.

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 two 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.

Chapter 41, SLA 2002:

- repealed the upgrade and closure grant program,
- set a repeal date of June 30, 2004 for the cleanup grant program,
- converted the Storage Tank Assistance Fund into the Underground Storage Tank Revolving Loan Fund (loans can only be issued for cleanup activities), and
- placed a financial based eligibility requirement on the cleanup loan program, which stated that if an owner/operator was eligible for self insurance under Federal Regulations, they were not eligible for a cleanup loan.

Chapter 106, SLA 2002 extended the board's sunset date from June 30, 2001, to June 30, 2003.

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.

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

During the last two years the board has not made any changes to its regulations. However, given the changes to the financial assistance programs by Chapter 41, SLA 2002, the board will need to rewrite its UST financial assistance regulations over the next year. If the changes

are substantial, this may require the holding of public hearings to gather public comment on the proposed changes to the UST financial assistance regulations.

Determine the efficiency with which public inquires 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.

Seeking appointments for vacant and chronically absent board seats

The public member's seat on the board has been vacant for over a year. It is not in the board's power to appoint a new public member, however they should continue to seek an appointment from the governor's office for this seat.

Additionally, one board member has not attended a board meeting in the last two years. The board has begun the process of seeking this member's resignation so a new member can be appointed.

We agree with the board's actions concerning these board seats and recommend they continue.

Appendix A
Schedule of Revenues and Expenditures
(unaudited)

FY02 Storage Tank Assistance Fund

Fund Balance, July 1, 2001	\$ 5,271,500
Revenues	
Transfer from Oil and Hazardous Substance Release Prevention and Response Fund, Prevention Account	\$ 2,181,700
Federal Grants in Aid	577,000
Interagency Receipts	246,400
FY01 UST Tank Fees Transferred to STAF in FY02	69,000
FY02 UST Tank Fees	42,700 ¹
Other	<u>9,200</u>
Total Revenues	\$ <u>3,126,000</u>
Expenditures	
DEC Expenditures	1,745,000
Financial Assistance Grants	1,297,700
Board Costs:	
Executive Director Contract	40,200 ²
Travel	1,800 ³
Travel-Related Per Diem	<u>400 ⁴</u>
Total Expenditures	\$ <u>3,085,100</u>
Fund Balance, June 30, 2002	\$ 5,312,400

¹ As of June 30, 2002 approximately \$18,000 in FY 02 UST tank fees had not been transferred to the fund.

² Executive director is responsible for paying for his own travel, the public noticing of meetings, etc.

³ Includes only travel-related costs for non-state employee board members.

⁴ Includes only travel-related per diem for non-state employee board members.

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION DIVISION OF SPILL PREVENTION AND RESPONSE

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5275
FAX: (907) 465-5244
<http://www.state.ak.us/dec/home.htm>

December 2, 2002

RECEIVED

DEC 04 2002

LEGISLATIVE AUDIT

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

Dear Ms. Davidson:

Thank you for the opportunity to review the preliminary audit report for the Board of Storage Tank Assistance.

We have reviewed the draft transmitted by your November 14, 2002 letter and have no further comments. Your consideration of our earlier comments is appreciated.

Please let me know if you need any other information or if we can provide any assistance.

Sincerely,



Larry Dietrick
Director

cc: Kurt Fredriksson, DEC, Acting Commissioner
Steve Bainbridge, Contaminated Sites Program Manager
John Barnett, Board of Storage Tank Assistance
Laura Beason, DEC, Finance Officer

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Board of Storage Tank Assistance

c/o Capital Resolve
P.O. Box 240651, Douglas, AK 99824
(907) 364-2514 (Support Office)
(907) 364-2518 (Facsimile)
cresolve@gci.net

RECEIVED

DEC 04 2002

LEGISLATIVE AUDIT

December 3, 2002

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

Subject: Preliminary Audit Report, Board of Storage Tank Assistance. Sunset Review

Greetings,

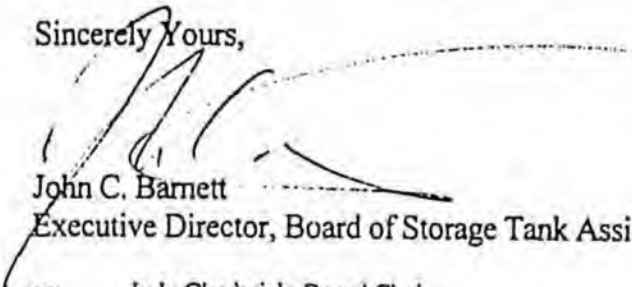
On behalf of the Board of Storage Tank Assistance, I would like to thank you for allowing us to respond to your findings and recommendations expressed in the Preliminary Audit Report, Board of Storage Tank Assistance, Sunset Review, dated October 15, 2002.

The Board concurs with all findings and recommendations and fully supports extending the Board termination date until June 30, 2007. The regulated community will not feel the changes resulting from the passage of SB 128 in 1999 and SB 153 in 2002 until the termination of the grant program in 2004 when the loan program becomes the sole source for cleanup funds. It will be important to tank owners and operators that the Board be available to mediate disputes and to "fine-tune" the regulations.

It is also extremely important that the Board remain in place to provide oversight to proposed DEC regulations that historically have initially not considered the economic impact to Alaska businesses and their employees. With the Board's private sector composition, the Board has the skill and ability to insure that the financial burdens resulting from new DEC regulations are manageable while still protecting the public safety, health and the environment.

If you should require additional information, please do not hesitate to contact me at (907) 364-2514. You may also contact the Board Chair, Judy Chadwick, at (907) 276-5617.

Sincerely Yours,


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

cc: Judy Chadwick, Board Chair

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