

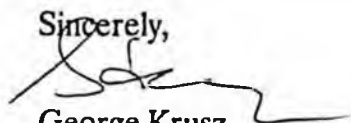
LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

HB 409 cont. HB 418 520

to the point of vindictiveness. We reached this conclusion in light of the provisions in paragraph (h) of section 4, describing the additional liabilities that could be incurred by a defendant.

The Alaska State Chamber wishes to thank you for the opportunity to present these thoughts on CSHB 409 and are willing to assist, if requested, in the development of suitable amendments and changes.

Sincerely,



George Krusz
President

cc: Ernie Polley

GK:EP:cks/CSHB409

An Appeal for Significant Improvement in the Enforcement of
Alaska's Environmental Laws

Recommended Legislative Remedies

submitted by: Sue Libenson, Executive Director
Alaska Center for the Environment

Mike Wenig, Staff Attorney
Trustees for Alaska

Introduction

In the wake of the Exxon Valdez oil spill, Alaska's greatest environmental tragedy, it is anticipated that the legislature will consider numerous approaches to improving public policy with the intent of preventing future spills. Many of these changes will focus on improvements within the Alaska Department of Environmental Conservation (DEC) which has the bulk of the State's responsibility with regards to oil spill prevention and response.

For any of the legislature's potential actions to succeed, however, they must be backed by one underlying factor - improved enforcement. While there are undoubtedly needs for change in spill prevention and response, the Commission must recognize that the current failure of existing regulatory safeguards is largely due to the inability of agencies, including DEC, to properly enforce the law and thereby create an atmosphere which encourages compliance by potential polluters.

The following outlines a package of legislative recommendations for improving the enforcement of Alaska's environmental laws and regulations. The implementation of these measures will ultimately be improved compliance, the ultimate tool in preventing future pollution catastrophes.

Recommendations

- I. Authorize DEC to assess administrative penalties.
- II. Strengthen criminal penalties for violations of pollution laws.
- III. Authorize DEC to make reasonable inspections without first obtaining a warrant.
- IV. Eliminate administrative and judicial "pre-enforcement review" of compliance orders.
- V. Provide for citizen suits to enforce environmental statutes and regulations.
- VI. Provide adequate funding for DEC to fulfill its regulatory

mandate.

Discussion of Recommendations

I. DEC SHOULD HAVE THE STATUTORY AUTHORITY TO ASSESS ADMINISTRATIVE PENALTIES

Among the tools that are necessary for DEC to have a credible, forceful, and efficient enforcement program is the authority to assess administrative penalties for violations of the State's environmental laws.

Penalties, generally, are an important enforcement tool because they greatly reduce the economic incentives to violate the State's environmental laws. However, DEC currently has the authority only to issue a compliance order requiring corrective action or to commence a judicial enforcement action for civil or criminal penalties.¹ Like most litigation, however, judicial enforcement actions require the State to commit substantial resources and time and, thus, are used only for the most extreme violators. By themselves, judicial enforcement actions cannot provide a sufficient enforcement threat.

A civil penalty program is thus a necessary tool for a credible enforcement arsenal. Administrative penalties could be assessed through a fair yet far less resource intensive administrative hearing procedure than court proceedings. Decisions by administrative hearing officers would be judicially reviewable on the record, rather than through a cumbersome trial

¹ Two of these three tools, themselves, need to be strengthened, as explained below in sections IV and VI.

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procedure.

Administrative penalties would greatly strengthen DEC's enforcement presence and capability by providing the agency with a relatively quick and efficient means of imposing penalties. The authority to assess administrative penalties is particularly important for the relatively numerous yet small violators, for whom DEC's commencement of lengthy judicial enforcement proceedings is simply not worthwhile. By greatly reducing the resources necessary to levy penalties, an administrative penalty program would provide an enforcement threat that is otherwise not present at all for these small violators.

Administrative penalties are an integral component of the federal environmental enforcement program.² Numerous state agencies also have the authority to assess penalties for violations of state environmental laws.³ Administrative penalties should become an essential component of DEC's enforcement arsenal as well.

Of course, merely having the legal authority to assess penalties is not enough. DEC must also be given the corresponding budgetary resources to hire sufficient technical

² See, e.g., section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a); section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 1361(a); section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a); and section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609.

³ For example, see Washington, RCW 90.48.144.

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staff and permanent hearing officers to make the administrative penalty process work.

II. CRIMINAL PENALTIES FOR VIOLATIONS OF STATE ENVIRONMENTAL LAWS SHOULD BE STRENGTHENED

Stiff criminal sanctions are another essential component of the kind of enforcement program that is necessary to achieve full compliance with the State's environmental laws. The current liability for criminal violations of Alaska's environmental laws is inadequate.

With a few exceptions, negligent and knowing violations of the State's environmental laws are currently only class B and A misdemeanors, respectively. AS 46.03.790(a), (b). Class B misdemeanors are punishable by a fine of not more than \$1000 and by imprisonment for no longer than 90 days; Class A misdemeanors are punishable by a fine of not more than \$5000 and by a maximum of imprisonment for one year. AS 12.55.035(b)(3), (4); 12.55.135(a), (b).

These liabilities stand in stark contrast with criminal liabilities for violations of federal environmental laws. For example, under section 309(c) of the federal Clean Water Act, negligent violations are punishable by either or both maximum fines of \$25,000 per violation and/or one year imprisonment; knowing violations are punishable by either maximum fines of \$50,000 per violation or by three years imprisonment. 33 U.S.C.

§ 1319(c).⁴

Alaska's criminal liabilities should be strengthened by making negligent violations Class A misdemeanors and knowing violations Class C felonies, which are punishable by a maximum fine of \$50,000 per violation and five years' imprisonment. AS 12.55.035((b)(2); 12.55.125(e). In addition, the definition in AS 46.03.900(17) of "persons" who are subject to criminal sanctions should be amended to include "any responsible corporate officer." See Clean Water Act section 309(c)(6), 33 U.S.C. § 1319(c)(6).

The last legislature increased civil penalties for oil polluters (see SB 271) and considered tougher criminal sanctions in the oil pollution context. The legislature should now complete its mission and stiffen criminal sanctions for violations of all State environmental laws.

As to criminal liability for oil spills, in particular, two bills sponsored by the Governor and introduced in the last legislative session should become law. Among other things, HB 315 classifies as Class C felonies, oil spills of 10,000 barrels or more involving a failure to comply with an oil discharge contingency plan or a failure to adequately clean up a discharge of oil. HB 316 expands the penalties that can be levied against a defendant that is an organization by including fines equal to twice the damage or loss caused by the defendant.

⁴ See also, e.g., section 3008(d) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); section 113(c) of the Clean Air Act, 42 U.S.C. § 7413(c).

III. DEC SHOULD HAVE THE AUTHORITY TO MAKE REASONABLE INSPECTIONS WITHOUT FIRST OBTAINING A WARRANT

The ability to make inspections to determine whether violations of the State's environmental laws are occurring is still another necessary element of a credible enforcement program. Currently, AS 46.03.860 appears to require DEC to obtain a search warrant before it can investigate possible violations. Federal environmental laws, in contrast, contain no such warrant requirement. For example, section 308(a)(B) of the Clean Water Act expressly provides the EPA with a "right of entry" and with authority "at reasonable times" to make inspections and copy relevant records. 33 U.S.C. § 1318(a)(B).⁵

Consistent with federal environmental law, AS 46.03.860 should be amended to remove the warrant requirement and thereby improve the DEC's ability to investigate potential violations of the State's environmental laws.

IV. THERE SHOULD BE NO "PRE-ENFORCEMENT REVIEW" OF DEC'S COMPLIANCE ORDERS IN EITHER AN ADMINISTRATIVE ADJUDICATORY HEARING OR JUDICIAL PROCEEDING

A sixth tool that is necessary for a sound, effective State environmental enforcement program is the ability of the enforcing agency to issue compliance orders without cumbersome procedural constraints. DEC does not presently have this ability.

Current State law (AS 46.03.850) provides DEC with the authority to issue compliance orders for known or suspected

⁵ See also, e.g., section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927; and section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).

violations of the State's environmental laws, but the required procedures for issuing such orders are so cumbersome as to render the compliance order an infrequently used and thus ineffective enforcement tool.

State law appears to require that, before DEC can issue an order requiring a polluter to comply with an applicable State environmental law, the agency must first notify the polluter of its finding that the polluter is or may be in violation and give the polluter an opportunity to respond to the finding. AS 46.03.850(a), (b).⁶

In addition, although compliance orders become effective upon receipt (AS 46.03.850(c)), it appears that recipients can subsequently contest the order in an adjudicatory hearing that is required to include the extensive procedural steps set out in the Administrative Procedure Act. See AS 44.62. Recipients of a compliance order can also challenge an adverse ruling by a hearing officer in court. AS 44.62.560.

By requiring DEC to defend an order at administrative and, subsequently, judicial hearings, Alaska law imposes substantial resource constraints on the use of the compliance order as an enforcement tool by DEC (and its legal representatives in the Department of Law). These constraints effectively discourage DEC

⁶ AS 46.03.865 allows DEC to sidestep this pre-notification procedure, but only in the extremely narrow circumstances, where DEC has found that there is an "actual or imminent" discharge of either oil, a hazardous substance, or a low level radioactive material.

from invoking this tool, except in extremely rare circumstances.⁷ As a result, the tool has not been used to fulfill its obvious role, as an efficient, relatively quick means for DEC to command compliance with the State's environmental laws and to compel the cleanup of unlawful discharges of harmful pollutants.

As with several of the other enforcement tools discussed above, State law regarding the procedures for issuing compliance orders does not compare with EPA's legal authority to issue orders to compel compliance with federal laws. Federal environmental law generally adheres to the sound policy of not allowing "pre-enforcement review" of EPA's compliance orders. This means that compliance orders which do not also require the recipient to pay an administrative penalty generally can not be challenged in any administrative or judicial proceeding, until and unless EPA commences a judicial proceeding to enforce the order and seeks penalties for violations of the order. At that time, the validity of the order can be questioned by the

⁷ In fact, the right of a recipient to challenge an order in an administrative adjudicatory hearing, by itself, appears sufficient to effectively discourage DEC from issuing compliance orders. DEC's budget does not include sufficient funds for a permanent in-house staff of hearing officers. Thus, when an adjudicatory hearing is requested, DEC must hire hearing officers on a contract basis. The substantial expense of such outside contracting, alone, strongly discourages DEC from issuing compliance orders.

recipient as a defense to EPA's enforcement suit.⁸

As the Second Circuit Court of Appeals recognized, in upholding the principle of no pre-enforcement review of compliance orders issued under the federal Clean Air Act:

To introduce the delay of court review of administrative action taken to ameliorate a potential public health hazard would conflict with Congress' aim to 'accelerate . . . the prevention and control of pollution.' . . . In short, immediate pre-enforcement review of compliance orders . . . would 'serve neither efficiency nor enforcement' of the Clean Air Act.

Asbestec Const. Services, Inc. v. EPA, 849 F.2d 765, 769 (2d Cir. 1988).

Not until DEC's ability to issue compliance orders is as procedurally unencumbered as that of the EPA, will the compliance order become an effective tool in the State's environmental enforcement arsenal.

V. PRIVATE CITIZENS SHOULD HAVE THE AUTHORITY TO ENFORCE THE STATE'S ENVIRONMENTAL LAWS

The final, necessary, and, perhaps, most critical component of a viable, credible State enforcement program is the ability of citizens to act as "private attorneys general" by bringing suits to enforce the State's environmental laws. This ability is nonexistent under current law.

AS 46.03.760 and 46.03.765 provide State courts with authority to compel the payment of civil penalties and to grant

⁸ For example, section 113(h) of CERCLA, 42 U.S.C. § 9613(h) expressly prohibits federal courts from reviewing challenges to compliance orders, except under limited circumstances, including a suit brought by EPA to seek penalties for a violation of the order.

injunctive relief for violations of the State's environmental laws. But AS 46.03.870 provides that the bases for the enforcement actions listed above "inure solely to and are for the benefit of the state. . . ." Similarly, AS 46.03.890 provides that only State officials are authorized to enforce the State's environmental laws.

The ability of private citizens to enforce environmental laws is a critical supplement to government enforcement because resource constraints inevitably prevent governments from taking all the enforcement measures that would otherwise be warranted. Given the DEC's severely limited enforcement resources (even if a separate enforcement unit like the one recommended above were available), citizen suits are necessary to present to the regulated community a forceful and credible message that violations of the State's environmental laws will not be tolerated.

Congress has wisely recognized the value of citizen suits as supplements to governmental enforcement and thus provided citizens with ample authority to enforce the federal environmental laws.⁹ The record of citizens suits to enforce these laws is a strong one. Citizens enforcement actions have proven not to be unreasonable avenues for harassment of industry

⁹ See, e.g., section 505 of the Clean Water Act, 33 U.S.C. § 1365; section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, section 304 of the Clean Air Act, 42 U.S.C. § 7604; and section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659.

or the EPA, but to be valuable means for stopping major violators whom the EPA had not been able to reach.

Full enforcement and, in turn, compliance with the State's environmental laws will simply not be achieved without the ability of citizens as well as the government to enforce those laws.

VI. THE LEGISLATURE SHOULD PROVIDE ADEQUATE FUNDING FOR DEC TO FULFILL ITS LEGAL MANDATE OF PROTECTING THE ENVIRONMENT

A State such as Alaska which relies on a healthy environment for many of its economic mainstays such as tourism and fisheries and yet persistently scrimps on environmental protection will continue to run the risk of environmental and associated economic degradation. Current funding levels for DEC not only preclude effective enforcement, they also result in delayed and inadequately researched permits as well as narrow interpretation of regulations intended to protect the environment. Future funding should provide for sufficient personnel, including attorneys, to provide DEC the ability to more effectively enforce Alaska's environmental laws. A commitment to increased funding would more realistically reflect the immense mandate of environmental protection assumed by DEC and the importance of DEC's success in assuring that there will be a viable environment for Alaska's long term needs. We will be working shortly towards providing the legislature with some recommendations for DEC budget needs.



Alaska State Legislature

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To: All Members
House Finance Committee

From: Rep. Mike Davis *Mike*

Re: HB 409

Date: March 29, 1990

The CS for HB 409 passed out of the Judiciary Committee addresses the critical need for a stronger regulatory presence when it comes to pollution violations. In recent years the state has been plagued by hundreds of oil, chemical and hazardous waste spills, many of which the state has been forced to clean up at its own expense. During my visits to cleanup sites on the North Slope, in the Interior and at Prince William Sound, it became clear to me that tougher rules are desperately needed if we are going to keep industry to its obligation to clean up pollution.

HB 409 follows Recommendation #13 of the Alaska Oil Spill Commission report which calls for greater state oversight. If enacted Hb 409 would accomplish the following:

1) Allow the DEC access to inspect regulated facilities without consent of the operator. DEC officials have expressed frustration at being barred or delayed from entering sites in order to make routine and specific investigations. This provision allows immediate entry at all reasonable times.

2) Allow the Commissioner of Environmental Conservation to levy administration penalties of up to \$25,000 per day for pollution violations and provide for an appeal process. Administrative penalties will provide for an economical, efficient and consistent system to deal with pollution matters. This is similar to federal law and may soon be required by the EPA. Judicial review is also provided under the section.

3) Eliminate "pre-enforcement review" of compliance orders. Today, industry is allowed to challenge the orders before they go into effect, tying the hands of regulators and delaying timely solution of pollution problems. Under this change, stopping the pollution will get top priority. Challenges to the orders would still be allowed judicial review, after correction has begun.

March 29, 1990
Page Two

4) Allow the Commissioner to require environmental audits, so that the state and industry can "Trouble shoot" pollution problems before they become unmanageable. Environmental audits are used on both a state and federal level with considerable success. hundred of corporations have voluntarily adopted environmental audit program.

Section #1.

This section revises the DEC's present general access authority to include the right to copy records. This section also clarifies the present access provisions' scope. Note that it continues the requirement that the DEC obtain consent for access from the owner of occupier of the premises.

Section #2.

Allows the DEC access to "pervasively regulated facilities" to investigate suspected sources of pollution without the owners consent. Although access to facilities is required under most permits issued by the state, agencies have wound up in court over the particulars of when and where officials can investigate. These court delays have had the effect of limiting the states ability to enforce pollution laws. Constitutional law provides that a lessened expectation of privacy exists for pervasively regulated facilities and activities. A "pervasively regulated facility" is defined as a facility where the operations affect a significant public interest and are comprehensively regulated by the DEC.

Section #3.

Are housekeeping measures.

Section #4.

Establishes a new section creating an administrative penalties procedure for violation of DEC's statutes, regulations, orders or permits. The amount may not exceed \$25,000 per day for each violation. Current procedures for addressing violators are long, cumbersome and expensive, hampering the state's ability to deal quickly with pollution problems. This section establishes an administrative review process that streamlines the process of adjudicating these claims. Many states already have administrative penalties procedures. The EPA may soon require states to have a similar process in place. Section #4 also provides for an administrative hearing and judicial review of the penalties ordered.

Section #5.

Allows for a compliance order to become effective immediately to start cleanup up of a contaminated site or to stop an ongoing pollution incident. Presently, industry can challenge compliance orders before implementation, causing substantial delays, to the detriment of the environment and public health. This section also provides for an administrative hearing and for judicial review of the hearing decision.

Section #6.

Allows the Commissioner to require environmental audits conducted by in independent contractor. An environmental audit is an objective and systematic analysis of a facility's operations to insure compliance with state environmental laws and to spot pollution problems before they become unmanageable. The EPA uses a similar process that has been very successful.

Sections #7 & 8.

Amends the Civil Procedure Rule 82 to allow the full recovery of reasonable attorney's fees and costs if a person fails to pay and administrative fine (Section 4). This provision requires a two thirds vote of the Legislature.

Sections #9 & 10.

Amends the Civil Procedure Rule 82 to allow the full recovery of reasonable attorney's fees and costs for enforcement to maintain the Compliance Order (section 5). This provision requires a two thirds vote of the Legislature.

EXXON COMPANY, U.S.A

**Comments on CSHB 409
House Finance Committee
March 29, 1990**

The procedures proposed in this bill would deny all Alaska's citizens, not just oil companies, the most basic due process protections. The bill seeks to impose arbitrary and unilateral procedures in non-emergency situations. The DEC already has more than ample statutory authority to issue appropriate immediate orders in an emergency. This bill would allow the exercise of intrusive regulatory power, justifiable only in an emergency, when there is no emergency.

The current compliance order statute sets forth a three stage procedure for non-emergency situations. First, the DEC gives the citizen notice of the alleged environmental violations. The citizen then has an opportunity to meet with the department and to attempt to cure any problem. Finally, if the problem cannot be satisfactorily resolved on an informal basis, an administrative hearing is held to determine what action would be appropriate.

This existing procedure is the appropriate way to deal with non-emergency situations. In prior testimony in support of this bill, its proponents have asserted that the proposed amendments are necessary to conform Alaska's compliance order procedures to federal law. As a general rule, that is simply not correct.

As you are aware, the federal government has a very wide and

complex range of environmental statutes and regulations, many of which provide some type of compliance order authority. Most federal compliance order procedures, however, incorporate a three step notice and hearing procedure similar to Alaska's current compliance order statute. The compliance order procedures employed in Part 24 of the EPA regulations on hearings are a good example.

The EPA's three stage process protects citizens' due process rights to reasonable notice and opportunity to be heard before the government takes final action against them. It also reflects common sense. Most alleged environmental violations can be resolved without resort to formal judicial enforcement actions. The procedure proposed in HB 409 threatens Alaskans with an impossible dilemma: either immediately comply with what may be an arbitrary compliance order, or refuse to obey the DEC order at the risk of immediate penalties and force the Department of Law to file a judicial enforcement action. The current statutory procedures are far preferable to this type of confrontation. For these reasons Exxon strongly recommends that the compliance order procedures not be amended.

This bill also contains an entirely new section on nonconsensual searches of "pervasively regulated facilities." This new section is unnecessary and unreasonable. In 1977, the Alaska Supreme Court held that a similar rule which allowed OSHA inspectors to enter workplaces without a search warrant violated

the Alaska Constitution. In 1978, the U.S. Supreme Court held that an OSHA regulation allowing a warrantless search violated the federal constitution.

The language in this bill would allow the DEC to enter and search "pervasively regulated facilities," without a warrant. In the absence of an emergency, there is no legal justification for this type of search in the enforcement of environmental laws. The United States Supreme Court has held that certain types of highly regulated industries, not highly regulated facilities, may be searched without a warrant, but the businesses to which they have applied this rule have been limited to enterprises in highly regulated industries like those involving liquor and firearms. The warrantless search provisions in this bill are unconstitutional and should be taken out of the bill.

Finally, we have strong concerns regarding the administrative penalty provisions of the proposed bill. No one has presented any reasonable justification to show that administrative penalties are needed. Section 760 of the present statute provides more than ample judicial penalties.

If administrative penalties are adopted, they should at the least include the procedural safeguards contained in similar federal statutes. The bill proposes a scheme that provides for an

assessment notice that becomes final in 30 days. A hearing may be requested, but there is no indication of when or whether such a hearing will take place. The safeguards of the Administrative Procedure Act are expressly denied.

Those major federal environmental laws which do provide for administrative penalties also provide for notice and a right to a hearing before any penalty can be imposed. (The Clean Air Act, Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Solid Waste Disposal Act, the Toxic Substances Control Act, the Clean Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).)

Under both the Alaskan and federal Constitutions, citizens who deal with the Alaska Department of Environmental Conservation should be afforded the same due process protections by DEC as they are by the federal agencies. These rights include the right to a notice of the assessment, a clear right to a hearing, comprehensive rules that describe the hearing process, and the requirement that the administrative agency make and prove its case before the citizen is required to bear the burden of suffering any penalty.

In closing, we would like to emphasize that this bill, if adopted, would seriously impact all Alaskan citizens and businesses. Alaskans, like all Americans, are entitled to basic due process protections when dealing with administrative agencies

of the state and their staff. The proposals included in CSHB 409 would significantly undermine those protections. We continue to believe that the existing statutes fairly address both emergency and non-emergency situations, and therefore we recommend that this bill not be enacted into law.

Thank you.

exxn409.com

1-23-90 Testimony of Daniel Lawn
Before the House Resources Committee

Mr. Chairman

In 1973 I received a Bachelor of Science degree in environmental resources engineering from the University of California at Humboldt.

In the fall of 1973, I joined Fluor Engineers and Constructors, the prime design and engineering management contractor for the Valdez Marine Terminal. After spending a year in the civil design and project engineering section in the LA area, I was one of the 1st two people Fluor sent to Valdez as their construction start up team.

From May 4, 1974 to March 1977, I was a field engineer/civil supervisor for Fluor at the Valdez Marine Terminal. My primary responsibilities included oversight of construction activities of the prime Earth work contractor.

I joined the Department of Environmental Conservation as an Environmental Engineer III in August of 1977, shortly after oil began flowing through the Trans-Alaska Pipeline System.

As requested; I am prepared to give you my impression from a field perspective of the Valdez Office's role in the oversight of

the Alyeska Marine Terminal. Our basic experience has been that the harder we worked, the more we found, the more difficult access to the terminal became. But let me first give you some background.

In the early days, my chief duties were the development and implementation of the field activities as they related to the Tanker Inspection Program at Valdez. In addition, I responded to most of the oil spills at the Valdez Marine Terminal, where I observed Alyeska's Contingency plan in action. I documented, analyzed and reported on the adequacy of their response.

At that time, the Prince William Sound District Office was a regional office with as many as 5 field positions and 1 clerical position.

As I recall, two positions were sole Alyeska oversight with reimbursable funding. Two other positions covered other Departmental programs and the regional supervisor's position which primarily interfaced with Alyeska Management, the several community leaders in Prince William Sound area, and other department oil program development, management and administrative functions.

In 1979 with the demise of Alaska's tanker safety program some planned positions for Valdez never became a reality. The Prince

William Sound Regional Office was downgraded to a District Office and one position was transferred to Anchorage; and the other was never filled.

Since that time, the Valdez District Office has had 3 field and one clerical position.

In addition, funding sources changed and all the positions started working in all program areas (DW, WW, AQ, SAN, OIL, etc). There was no position dedicated solely to Alyeska oversight, so oversight of Alyeska suffered and became almost non-existent or cursory at best.

In 1981 I was appointed the District Engineer/District Supervisor which was an additional work load.

In 1982 during an Alyeska Contingency Plan review, field staff used the first 5 years of oil spill response and clean up observations to say Alyeska's cleanup response was inadequate and their skimmer capacity highly overrated.

In 1984, I wrote two memos which described in some detail a general "disemboweling" of the Alyeska trained cleanup team and documented broken down clean up equipment.

From 1977 up to this period, 1984, Valdez field staff had

relative easy access to the Terminal although not enough time or energy to spend much time there.

In 1985 the Department began responding to allegations that there were serious problems at the Valdez Marine Terminal.

A good portion of the Valdez Field staff's workload was reassigned and increased so that we had an increased presence at the Terminal. I became the Department's principal investigator in Valdez.

This investigation has taken place over several years and covered many topics. One of which was a monumental undertaking of reviewing thousands of pages of reports and documents concerning the ballast treatment plant. The Valdez field office staff's knowledge and understanding of the system allowed us to evaluate some of these reports. Our work helped the Department set new discharge limits in the NPDES permit.

Also during this time the Department undertook another review of the Alyeska Contingency Plan. This review was hampered by the resistance of Alyeska to make changes in their plan and to drastically improve implementation of the plan. This delaying and resistance turned a few week process into an 18 month exercise.

Since 1985 when the Department began to investigate these several allegations, it seemed to all the Valdez field staff that the harder we worked, the more we found, the more we found, the more difficult access to the terminal became. The restricted access delayed entry onto the terminal to a point that on some occasions field staff were unable to carry out inspections.

I can give you some examples:

In 1986, Valdez field staff documented access problems over a 16 day period. During that time the staff made over 70 phone calls to Alyeska to schedule the 28 trips to the terminal. About 1/3 of the trips were for unannounced compliance sampling, 1/3 for spill response, and 1/3 related to oversight of the Ballast Water Treatment Tank cleaning sludge removal process.

Department staff lost almost two man days trying to contact Alyeska to schedule visits. After the visits were scheduled, we lost 1/2 day waiting at the gate. We lost another 1 1/2 days being taken or directed to go somewhere other than where we needed to go.

In addition, on several occasions we were prevented from inspecting certain activities for several hours (2-4) and in one case that delay was over 20 hours. On more than one occasion the delay actually prevented the inspection due to other commitments.



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***** NEWS RELEASE *****

March 9, 1989
Release: Immediately

Contact: Rex Blazer
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HAZARDOUS AND TOXIC WASTES DUMPED, INJECTED INTO PIPELINE.

Environmentalists learned this week that the U.S. Environmental Protection Agency has determined that the MAPCO refinery near North pole, Alaska illegally dumped toxic and hazardous waste into the Alaska pipeline as well as the air, ground, and water of this suburban Fairbanks community.

"While it is legal to re-inject things like dirty fuel and oil into the pipeline, it most definitely is not to inject things like aniline, sodium hydroxide, and hydrogen peroxide" said Carl Reller, hazardous waste coordinator for the Northern Alaska Environmental Center. "These wastes ultimately end up at the Valdez terminal where the water soluble substances go directly into Valdez harbor, while the oil soluble wastes could damage refinery techniques and equipment."

The Alaska Department of Environmental Conservation has found more than a quarter of a million gallons of fuel in the ground under MAPCO thus far.

* MORE *

Only this week did environmentalists learn that on January 6 EPA quietly ordered MAPCO to begin an extensive and costly clean-up that will take nearly three years and require monitoring the ground water for decades. Over 10,000 people live within a three mile radius of the contaminated area, which is on land leased from the state by MAPCO.

Environmentalists called on the state Department of Environmental Conservation and EPA to establish an advisory group as provided for under the Resource Conservation and Recovery Act. "The drinking water wells for North Pole are less than a half mile from the contaminated zone and in the path of the toxic plume, yet the public has had no opportunity to become involved," Reller said. "MAPCO claimed that the public can't even be told the location of their monitoring wells. We feel the people of North Pole have the right to be involved in this critical process."

"The situation at MAPCO is extremely disturbing in light of other serious compliance problems stemming from North Slope oil development." said Rex Blazer, Executive Director of the Northern Alaska Environmental Center, who cited hazardous waste problems at Tesoro's Kenai refinery and a recently leaked EPA report which documented serious environmental damage resulting from improper and careless management of chemical and oil wastes on Alaska's North Slope. "If this

sort of thing is going on right next to our major population centers and indeed within a few miles of regulatory agency offices, how can we trust the oil industry to operate in compliance with environmental laws in the distant and more sensitive lands of the Arctic National Wildlife Refuge?"

* END *

MAPCO Oil Refinery
Compliance Chronology

July 13, 1984

DEC conducts a Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present which if spilled or discarded would be hazardous waste.

August 1986

DEC conducts a second Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present and MAPCO employees explained that when old or used they are dumped into the pipeline.

March 5, 1987

EPA headquarters requests DEC to conduct an official hazardous waste inspection of MAPCO. DEC reports that the injection of hazardous waste into the pipeline is not "disposal". DEC notes that north slope oil production facilities dump waste into the pipeline as do pump stations along the way. DEC verbally asks for a copy of a log book which contained the record of what was injected into the pipeline. MAPCO denies DEC the logbook. DEC labels their conclusions as a "training enforcement exercise".

May 15, 1987

The federal Government Accounting Office (GAO) opened an investigation into allegations that DEC compromised their enforcement at MAPCO.

MAY 15, 1987

EPA orders MAPCO to provide information concerning their hazardous waste management activities.

May 16, 1987

MAPCO states: "One, we do not handle toxic waste at the North Pole refinery. Two, We have not injected toxic waste into the Trans Alaska Pipeline. Three, we have not pumped hazardous waste into the pipeline." DEC denies enforcement of MAPCO was compromised

June 24, 1987

DEC agrees with the Ombudsman's findings that "DEC has not fulfilled the spirit and letter of the law."

July 9, 1987

A special investigator from the GAO office meets with DEC employees.

July 15, 1987

The DEC Commissioner meets with the EPA Administrator in Washington D.C.

MAPCO Oil Refinery
Compliance Chronology

September 2, 1987

The Alaska Ombudsman reviews DEC's comments and restates the problems of lax enforcement and closes the case.

February 23, 1988

EPA and MAPCO agree to resolve hazardous waste violations through an Administrative Order.

April 7, 1988

The GAO with holds the MAPCO/DEC report as "confidential". The DEC Commissioner states, "I can only assume we handled the matter properly."

June 16

August 1 and

September 7, 1988

EPA and MAPCO negotiate the Compliance Order.

July 20, 1988

EPA conducts an intensive hazardous waste investigation of the MAPCO refinery using an independent contractor.

October 23, 1988

EPA and MAPCO complete a draft Compliance Order.

December 1988

EPA determines MAPCO dumped hazardous and toxic waste into the pipeline, into surface waters, and on the ground. MAPCO is declared as having a "RCRA surface impoundment", the most difficult kind of hazardous waste dump to clean up (EPA Docket 1087-12-01-3008a).

January 1989

120 Oil Refinery
Compliance Chronology
Tesoro Oil Refinery
Compliance Chronology

Tesoro spills 120,000 pounds of hazardous waste
August 12, 1980 ~~120,000 pounds of hazardous waste~~
August 12, 1980 ~~120,000 pounds of hazardous waste~~

Tesoro notifies EPA of hazardous waste activities.
January 3, 1982

September 1980 information from Tesoro concerning spill and
DEC inspects Tesoro hazardous waste pits and issues a

Compliance Order requiring Tesoro to stop violating Alaska
May 2 law, no record of compliance was found. ~~120,000 pounds of hazardous waste~~
EPA inspects Tesoro

October 8, 1980 Tesoro claims records are ~~inadequate~~
Tesoro requests DEC to allow hazardous waste disposal pits
be permitted as normal solid waste landfills, application is
seriously deficient, DEC denies permit. hazardous waste
Tesoro was ~~inadequate~~

November 11, 1980 ~~will investigate - no record of records~~
Tesoro files a RCRA part A application for hazardous waste
activity, application is incomplete.

July 24, 1981
November 14, 1980 Tesoro ~~information regarding spill~~ of

Tesoro receives a report from their consultant identifying
pits containing over one million pounds of hazardous waste.

1981-1982 informs Tesoro that it does not have an OIT spill

Tesoro claims DEC provided verbal approvals for hazardous
waste activities, no written records were kept.

January 1982 conducts an inspection of Tesoro ~~finds spill~~

EPA acknowledges Tesoro's claim that the refinery is
designed to manage up to 30,000,000 pounds of hazardous
waste each day (three types of RCRA waste). ~~action to Tesoro.~~

April 14, 1983 ~~multiple hazardous waste violations.~~

Tesoro attempts to use hazardous waste for berm material to
"protect" the hazardous waste pits, request is denied by
EPA.

September 10, 1983
Closure costs are estimated to be \$1,500,000.

November 10, 1983 ~~most \$10,000 for violations found on~~

Tesoro proposes to dump hazardous waste into Cook Inlet via
a ballast water treatment plant, EPA initially denies then
later approves Tesoro's request. ~~ground water is severely~~

July 5, 1984 ~~area.~~

EPA meets with Tesoro and informs them of nine hazardous
waste violations.

July 6, 1984 ~~action presents a substantial threat to human health~~
DEC inspects Tesoro and finds unpermitted hazardous waste
activities.

Tesoro Oil Refinery
Compliance Chronology

2

August 8, 1984

Tesoro spills ~~over~~ 120,000 pounds of hazardous waste, DEC approves a ~~grossly~~ inadequate clean up.

January 3, 1985

EPA requests information from Tesoro concerning spills and disposals of hazardous waste.

May 28, 1985

EPA inspects Tesoro and finds multiple hazardous waste violations. Tesoro claims records are kept in Texas but when pressed by inspector, Tesoro admits required hazardous waste records do not exist. Oily tar sludges (which appear identical to hazardous waste) are seen in a road side ditch. Tesoro was apparently illegally dumping hazardous waste, DEC promise EPA it will investigate - no follow up records were found.

July 24, 1985

EPA requests Tesoro for information regarding spillage of hazardous waste.

November 18, 1985

DEC informs Tesoro that it does not have an Oil Spill Contingency plan.

February 6, 1986

EPA conducts an inspection of Tesoro and finds numerous violations.

April 1, 1986

DEC recommends EPA issue a Notice of Violation to Tesoro because of multiple hazardous waste violations.

September 12, 1986

EPA issues a Complaint and Compliance Order because Tesoro ignored the July request for information, Tesoro is fined \$38,750.

January 23, 1987

EPA fines Tesoro \$19,000 for violations found on February 1986.

June 2, 1987

Tesoro informs EPA that the ground water is severely contaminated.

August 24, 1987

EPA issues a Consent Order to Tesoro because ground water contamination presents a substantial threat to human health

FDNM 3/11/89

Mapco to pay fine, changes procedures

By BRIAN O'DONOGHUE
Staff Writer

Mapco Alaska Petroleum has agreed to institute new test procedures and pay an \$80,000 fine to conclude a 2-year-old investigation into past waste disposal violations at its North Pole oil refinery.

"The whole thing was largely a matter of administrative issues," said Mapco Vice President Buki Wright Jr. "We did agree to pay the fine. Certain administrative procedures have been changed and corrected. But no criminal charges were even considered."

The settlement was publicized this week by the Northern Alaska Environmental Center, a Fairbanks-based environmental group that wants a citizens advisory group created to monitor ongoing clean-up efforts at the refinery.

"It would work to everyone's benefit, because the public would gain more confidence in the methods they're using," said Carl Reller,

the center's hazardous waste expert.

Both the testing requirements and the fine arose as a result of inspections by representatives of the U.S. Environmental Protection Agency in March 1987. During those inspections, conducted by the state Department of Environmental Conservation, a number of drums containing hazardous cleaning solvents and refinery by-products were found improperly stored. The company's internal record-keeping and disposal program for hazardous materials were also determined to violate federal guidelines.

According to Wright, the majority of the problems addressed in the consent orders concerned technical violations of the EPA's complex waste monitoring regulations. He denied the environmental center's assertion that EPA determined Mapco has injected waste products into the trans-Alaska pipeline.

"The (EPA consent) order in no way concluded or implied that Mapco has dumped toxic or hazardous waste into the pipeline," Wright said. "We did not put anything into the pipeline—period."

While the consent orders make no reference to the practice, Reller said EPA's file on the oil refinery contains four separate reports, by environmental officials and independent consultants, referring to the possibility such waste injection occurred. The most recent report, produced last September by California consultant A.T. Kearney, states: "Tank 112 stores recovered oil from Tank 192 as well as distillation residues and other process wastes. Material in this tank is piped to TAPS. According to facility personnel, this tank has never been cleaned out."

"Certainly we have to get the return oil back into the pipeline," Wright said when informed of the
(See MAPCO, Back Page)

MAPCO

(Continued from Page 1)

EPA reports. "But nothing collected from the sumps is injected into the pipeline. Those consent orders found we did not put anything hazardous into the pipeline."

Reller praised the new protections and testing requirements specified in the consent orders. But he and center Executive Director Rex Blazer cite the refinery's past problems as grounds for opposing development of the Arctic National Wildlife Reserve.

"The situation at Mapco is extremely disturbing in light of other serious compliance problems stemming from North Slope oil de-

velopment," Blazer said. "If this sort of thing is going on right next to our major population centers and indeed, within a few miles of regulatory agency offices, how can we trust the oil industry to operate in compliance with environmental laws in the distant and more sensitive lands of the Arctic National Wildlife Reserve?"

Wright believes the center's interest in Mapco's clean-up plans is rooted in the controversy over opening the refuge to development.

"There's nothing new about this," he said. "This whole thing is just a ploy to discredit ANWR. It has very little to do with Mapco."

Alyeska gets tough with state

3-12

Pipeline company demands DEC inspections by the rules

AIR POLLUTION REVIEW: Alyeska wants to do its own, rather than have the state or federal government do inspections. E-6

By **PATTI EPLER**
Daily News reporter

Alyeska Pipeline Service Co. has told the state it will exercise tighter control of environmental inspectors who regularly visit the Valdez oil shipping terminal.

The pipeline company on Friday said it would no longer allow regulatory officials to bring photographic equipment on routine inspection visits unless they get prior approval from the terminal superintendent.

Moreover, Alyeska told the state Department of Environmental Conservation, the company will now enforce rules governing DEC's visits that have been largely ignored by both sides for the past few years. The rules require that the state tell Alyeska when it wants to visit the terminal, that DEC officials be accompanied at all times by Alyeska personnel and that DEC officials ride in Alyeska vehicles. Former DEC commissioner Bill Ross agreed to those rules in 1986.

Friday's directive, addressed to Dan Lawn, DEC's Valdez supervisor, comes as a dispute between DEC and Alyeska over air pollution problems is moving closer to court.

State lawyers and company counsel have recently been writing each other letters arguing over whether Alyeska has to apply for a new permit governing the release of tons of toxic hydrocarbons into the air at the terminal.

Alyeska insists the air pollution dispute, as well as a three-year investigation into water pollution allegations, has no bearing on Friday's missive to DEC.

Instead, the company asserts, DEC's Lawn has recently taken to harassing employees and interfering with the company's work.

"He's become kind of a jerk," said Tom Brennan, an Alyeska spokesman. "He's basically just a troublemaker."

Brennan said Lawn has sometimes asked Alyeska to shut down operations so he could inspect them or take pictures, and that he has created hazardous situations for himself and employees.

Recently, Brennan said, Lawn showed up with a video camera and filmed operations at

See Back Page, **ALYESKA**

ALYESKA: Pipeline company wants state inspections by the book

Continued from Page A-1

the company's wastewater treatment plant. Brennan said Lawn was "sticking the camera in employees' faces and interviewing them on a spot basis."

"We're not trying to interfere with him doing his job," Brennan said. "As a matter of fact the law allows for inspections on short notice."

"But what we have here is harassment by a regulatory official ... and that's interfering with work we're doing to benefit the environment," he added.

Lawn, who has been inspecting the Alyeska terminal for 10 years, was miffed by the allegations of harassment and safety viola-

tions. He considers himself a professional who knows better than to use a flash around volatile gases, and he denies sticking a camera in anyone's face.

But he said he wasn't particularly surprised that he's been singled out by the company.

"I'm one of the only people who looks at them on a regular basis," Lawn said. "When you get one inspector going back 10 years, you finally figure out that what they say sometimes doesn't make sense."

Lawn and Lawn's boss, Bill Lamoreaux, suggested Alyeska may be trying to discredit Lawn because Lawn recently wrote a highly critical review of an Alyeska scientific study that's central to an argument over water pollution.

Lamoreaux said he's never gotten any complaints about Lawn from Alyeska. "They have not brought anything to my attention so I'd have to assume they're just fabricating these things," he said.

Generally, Lamoreaux said, it appears Alyeska "wants to circumvent our ability to collect information ... to reduce the staff's ability to document violations."

One common method to record operations and violation has been to take pictures, Lamoreaux said.

Asking permission to bring a camera, as well as waiting for Alyeska personnel to escort officials around the facility, causes unnecessary delays that hinder inspections or investigations, he said.

Alyeska isn't the first oil company to try to control who goes where or does what. North Slope operators and state agencies routinely skirmish over access.

The lawyers usually are called in to sort it out, said Larry Dietrick, DEC's director of environmental quality. He acknowledged that some of the oil companies' concerns are legitimate and arise out of safety risks.

Earlier this summer, state officials responsible for overseeing North Slope operations reported oil companies wanted to accompany them on field inspections. When that request was turned down, company security guards followed inspectors around in company vehicles for a few days but then disappeared, said.

Attached #13

Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Michael Carey
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown



A DE C official collects volatile gases emitted by Alaska Pipeline Co.

Since 1985 when the Department began to investigate these several allegations, it seemed to all the Valdez field staff that the harder we worked, the more we found, the more we found, the more difficult access to the terminal became. The restricted access delayed entry onto the terminal to a point that on some occasions field staff were unable to carry out inspections.

I can give you some examples:

In 1986, Valdez field staff documented access problems over a 16 day period. During that time the staff made over 70 phone calls to Alyeska to schedule the 28 trips to the terminal. About 1/3 of the trips were for unannounced compliance sampling, 1/3 for spill response, and 1/3 related to oversight of the Ballast Water Treatment Tank cleaning sludge removal process.

Department staff lost almost two man days trying to contact Alyeska to schedule visits. After the visits were scheduled, we lost 1/4 day waiting at the gate. We lost another 1 1/4 days being taken or directed to go somewhere other than where we needed to go.

In addition, on several occasions we were prevented from inspecting certain activities for several hours (2-4) and in one case that delay was over 20 hours. On more than one occasion the delay actually prevented the inspection due to other commitments.

Attached # 11

Thurs

Business

Records verify pipeline en

Pollution control flawed for years

By Bob Ortega
Times Writer

Over the last eight years, the air pollution control system at the trans-Alaska pipeline's Valdez terminal has been shut down an average of more than one day in five, according to operating logs, allowing uncontrolled emissions of toxic hydrocarbons into the air.

The system has been fully operational fewer than two days a month, being run at partial capacity the rest of the time, also according to logs kept by the Alyeska Pipeline Service Co., which operates the pipeline.

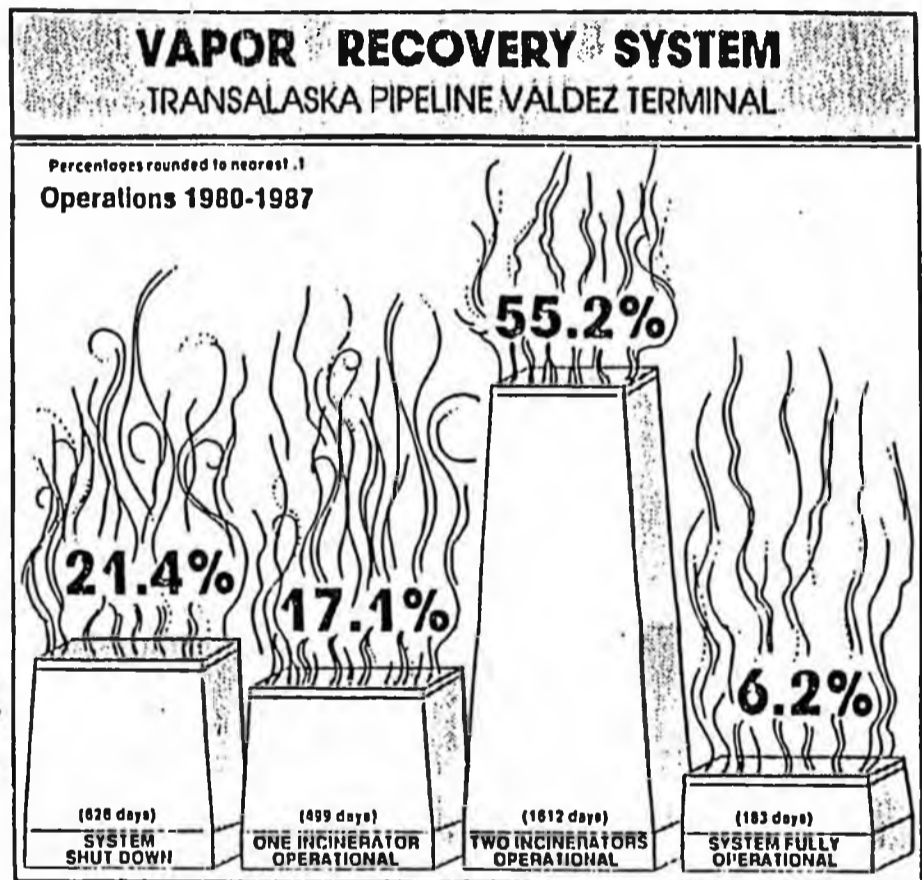
Air pollution at the Valdez terminal has been under investigation by state and federal environmental officials since last fall. Now, records turned over by Alyeska to Alaska's Department of Environmental Conservation confirm that thousands of tons a year of toxic hydrocarbons have been allowed to escape into the air.

Several months ago, based on limited data, the DEC estimated 40 tons of hydrocarbons an hour were being emitted last year whenever the system was down — 10 weeks in all.

Now Alyeska estimates that since December 1986, the terminal has produced roughly four tons of hydrocarbon vapors an hour when ships are loading and slightly more than nine tons an hour the rest of the time — figures that still would indicate more than 9,000 tons of emissions in those 10 weeks. And there are more questions about possible emissions when the system is operating at partial capacity.

According to Alyeska's records, problems with the air pollution control system date back to at least 1980. The system was down for two months that year, for nine months in a row starting in May 1981, and for considerable periods of time in 1982, 1985 and 1986. Last year, it was down for 74 days.

Alyeska environmental advisor Dick Mikkelsen blamed the shut-downs on unexpected corrosion to the system's pipes and pumps, and on



Source: Alyeska Pipeline Service Co.

posed to burn up waste gases. He said all three incinerators and the rest of the system are now fully operational.

But officials at the Environmental Protection Agency said Alyeska should not have to shut the system

down so frequently for repairs.

"Because of the extended periods of downtime we don't feel that these are acceptable maintenance proce-

See Pollution, page E-3

DEC orders air pollution tests

The state Department of Environmental Conservation says the operators of the trans-Alaska pipeline have violated state law by failing to report the nature and extent of air pollution caused by operations at the pipeline's Valdez terminal.

A formal notice of violation issued by the DEC orders Alyeska Pipeline Service Company to conduct tests by the end of this month to provide accurate data about the sulfur content and the total emissions from a pollution control system at the terminal.

Last fall, state environmental officials estimated that operations at the terminal were emitting thousands of tons of air pollutants

been trying to get hard facts on how much and what kind of pollutants are getting into the atmosphere. The March 18 notice says that Alyeska has failed to provide state investigators "accurate and true information."

"As acknowledged by your staff on March 7, 1988, laboratory and sampling technology for (reports on the nature and amount of emissions) has neither been appropriate nor valid," wrote DEC regional supervisor Bill Lamoreaux in a hand-delivered letter to Alyeska.

Alyeska spokesman John Ratterman says the company will conduct

E

missions Shortages limit agency monitoring

By Bob Ortega
Times Writer

State and federal environmental officials say they learned only recently that air pollution control equipment at the trans-Alaska pipeline's Valdez terminal has been shut down for extended periods over the last eight years.

Critics say that raises serious questions about the lack of oversight by Alaska's Department of Environmental Conservation and by the federal Environmental Protection Agency.

"The agencies, because they're understaffed and underbudgeted, have relied on Alyeska to monitor itself," said Dr. Riki Ott, a toxicologist representing a Cordova fishing union, "and we can see now it has not worked."

DEC Regional Supervisor Bill Lamoreaux said Alyeska — as well as Alaska's oil industry in general — has been allowed to police itself because neither the EPA nor the DEC "has ever been staffed to do all the checks necessary for compliance."

While Alyeska often let the EPA know about imminent shutdowns, it usually didn't provide follow-up notices saying how long each shutdown lasted. By way of explanation, Alyeska spokesman John Ratterman pointed to a 1983 letter from the EPA saying the agency felt it lacked authority to enforce the standards that required the pollution control system in Valdez.

But Lamoreaux said Alyeska still should have kept the state informed.

"They have an air permit from us, regardless of anything the EPA does or doesn't require," he said.

Both Lamoreaux and EPA environmental protection specialist Ruy Nye said that until recently the agencies had not understood the extent of the problem.

Ott is calling for establishing an independent review board, funded by Alyeska, to monitor the company's compliance with pollution permits.

Pollution: Flaws mar control system

Continued from page E-1

dures." EPA spokesman Ray Nye said.

The original design of the "vapor recovery system" called for four incinerators. But Alyeska determined that fewer would suffice, so three were constructed.

From 1980 through 1986, there were a total of 23 days when all three incinerators and the rest of the system were up.

Most of the time, Alyeska operated on two incinerators — enough to handle the vapors, the company said. Roughly one day in six, only one incinerator was on. One day in five, all were shut down.

Environmental officials, who received the logs last week, still don't know what that means in

terms of how much pollution was produced. What's at issue — beyond the quality of the air in Valdez — is whether all the shutdowns constitute a violation of Alyeska's air permit and whether the company should pay substantial fines.

Investigators are also focusing specifically on the company's operations last year.

In December 1986, oil producers on the North Slope began adding 50,000 barrels a day of natural gas liquids, or NGLs, to the oil being pumped down the line. Because NGLs vaporize far more readily than crude oil, officials say emissions may have increased dramatically since then.

Mikkelsen says recent tests by an Alyeska contractor, with all three incinerators running, show the system can handle all the va-

pors being generated.

But there are questions about Alyeska's data. In a March 16 memo sent to the DEC, the company said the system's capacity to handle hydrocarbon vapors was more than adequate when three incinerators are operating at 1,400 degrees.

But operating graphs obtained by KIMO-TV several months ago show that for at least three months last year the incinerators were operated at temperatures between 700 and 1,100 degrees. And an Alyeska memo leaked along with the graphs indicates the incinerators have been run at

those lower temperatures for at least seven months.

Mikkelsen referred questions about the operating temperatures to Alyeska's engineering manager, Ivan Henman, who was out of town. But Mikkelsen said the "set-points" might have been lowered because of problems with the brick refractories.

"Obviously if the temperatures are lower, they're burning less," said Lamoreaux. "That's one of the things we're looking at," he said, to determine whether "the system even has a chance to keep up with the volume of pollutants."

ity/State

B



ASSOCIATED PRESS

Minnesota, holds a young bald eagle being

System snafu forces Valdez shutdown

Pipeline pollution system will need major overhaul

By BOB ORTEGA
Times Writer

Equipment problems at the trans-Alaska pipeline's Valdez terminal have forced the pipeline's operators to shut down parts of an ailing air pollution control system.

That system will operate at two-thirds capacity for several weeks, while the Alyeska Pipeline Service Co. carries out inspections and repairs, said Alyeska vice president Ivan Henman. It is not clear how much additional emissions will be released as a result, said Alaska Department of Environmental Conservation officials.

Alyeska and the DEC have been at an impasse for several months. Both sides agree that the air pollution control system badly needs a major overhaul. But the DEC won't give permission for a proposed 10-week shutdown to carry out repairs on the system unless Alyeska applies for a variance from its air control permit.

Alyeska officials — while making no provision to deal with thousands of tons of pollution that would be emitted into the air during the shutdown — insist that legally, they don't need a variance, and they say the company won't apply for one.

Meanwhile, the system continues to deteriorate, leading to

the current partial shutdown for temporary repairs.

Hydrocarbon vapors from the millions of barrels of oil that move through or are stored at the terminal each day are routed to three incinerators to be burned up. One of those incinerators has been shut down for the last eight days. Monday, under a low overcast, fishermen converging on the port for a pink salmon opening complained about pollution from the terminal.

"It just stunk," said Cordova seiner Tom Copeland. "As soon as we came around the corner at the narrows, the natural gas fumes were just tremendous, to the point where people were joking about not lighting any cigarettes. It pervaded the whole bay."

Another seiner, Ross Mullins, said there was a blue haze over most of the port.

"We were five miles away when I noticed it. It was like when you're driving on the New Jersey turnpike and you get near Bayonne. There was a definite hydrocarbon aroma."

Henman said the haze might have been due to smoke — "particulates" — from oil tankers. He said that at the distance the fishermen must have been from the terminal, he doubted there'd be any detectable smell either from

See Valdez, page B-2

Report calls for changes by Alyeska

Chemist says treatment of wastewater not the best

By PATTI EPLER
Daily News reporter

A process that removes toxic hydrocarbons from oily wastewater at the Valdez oil-shipping terminal is releasing uncontrolled amounts of cancer-causing substances into the air, according to a leading expert on treatment systems.

The so-called biological treatment process used by Alyeska Pipeline Service Co. and tentatively approved by the federal Environmental Protection Agency should be abandoned in favor of a system that not only removes hydrocarbons from the water but captures them in the air as well, California chemist Ihor Lysyj says in a report to the state.

Alyeska officials immediately criticized the concerns as misleading and exaggerated.

An EPA official said the agency had considered alternate treatment methods but liked the biological process the best. Tests of the air near the treatment facility showed hydrocarbon levels well within workplace standards, the EPA has said.

The report was released Wednesday by the Alaska Department of Environmental Conservation as part of its continuing review of a new environmental permit for Alyeska's wastewater treatment plant. The state wants even tighter controls on pollution than the

See Back Page, OIL TERMINAL

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PRICE

SPECIAL REPORT

Corrosion along the 800-mile
trans-Alaska pipeline could result
in a multibillion-dollar repair bill
costing the state millions in lost taxes

By **GEORGE FROST**
and **PATTI EPLER**

Daily News reporter
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The trans-Alaska pipeline, one of the biggest engineering feats of the petroleum age, is under fierce attack by an elemental force of nature.

The \$9 billion oil-delivery system is pitted with rust in hundreds of locations, and the repair bill could run into the billions of dollars.

Alyeska Pipeline Service Co., which runs the pipeline for the seven major oil companies that own it, vows the pipeline system is sound. Trouble spots are confined to isolated areas, Alyeska says. But the company stops short of assuring there is no chance of a rupture.

The danger of a disastrous oil spill is only one consequence of the pipeline's corrosion.

The state treasury also will be depleted. Pipeline owners are paying for repairs by raising their tariffs — or fees — for carrying the oil from Prudhoe Bay to Valdez. This higher fee lowers the value of North Slope crude and this year alone will cost the state an estimated \$21 million in taxes and royalties. In the next few years, the treasury could lose perhaps \$200 million due to corrosion repairs. And less oil revenue means the state will be sending Alaskans smaller permanent fund dividends each year.

Please see Page A-6, **PIPELINE**

Federal agencies caught off-guard by extent of corrosion

By **PATTI EPLER**
and **GEORGE FROST**

Daily News reporter
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In April 1988, Perry Francis gave the trans-Alaska oil pipeline his blessing. "I am convinced that corrosion is under control on (the pipeline) and the corrosion program is working effectively," wrote Francis, a federal Bureau of Land

Management engineer, in a memo.

Less than six months later, Alyeska Pipeline Service Co. was reporting an alarming amount of corrosion on the 800-mile pipeline; more than 200 spots were suspected of serious rust.

Last July, 15 months after Francis concluded corrosion was under control, Alyeska quadrupled its estimate of

trouble spots. Alyeska said it would have to spend hundreds of millions of dollars to save the pipeline.

BLM and the federal Department of Transportation, both of which regulated the pipeline, conceded they were caught off guard when substantial corrosion surfaced. Now DOT is investigating possible violations of federal law.

Both agencies are hiring more engineers and vow to scrutinize Alyeska more closely.

For the past 13 years, both agencies' oversight consisted largely of accepting whatever Alyeska told them about the pipeline and corrosion. They lacked expertise to interpret corrosion data supplied by the

Please see Page A-8, **REGULATORS**

The corrosion crisis has provoked an engineering and construction boom that could grow into the biggest Alaska project since the pipeline was built in the mid-1970s. Union hiring halls expect calls for hundreds of truckers, pipe fitters, carpenters and laborers in a corrosion fight that could continue as long as the pipeline moves oil.

Alyeska has assembled a team of hundreds of people to combat the corrosion.

The company has launched an accelerated repair program and last year welded new pipe over 31 spots where the main line was judged too weak to safely contain the crude.

Over the next three years, Alyeska says, it will spend as much as \$800 million on corrosion control. The state thinks the repair bill could top \$1.5 billion. No one knows the price tag for sure until Alyeska digs up more pipe and completes a thorough analysis, the company says.

The worst corrosion discovered so far has been confined largely to a 14-mile segment, 160 miles south of Prudhoe Bay, where the pipe is buried in a floodplain and its corrosion-protection coating is peeling off.

But throughout the 800 miles of pipeline Alyeska has found hundreds of problem spots.

The pipeline itself is not the only Alyeska facility under attack by rust. Other problems include:

- Interior corrosion at the eight northernmost of the pipeline's 12 pump stations has gotten bad enough to require \$50 million in repairs next year, with \$30 million going to rebuild Pump Station 3 just north of the Brooks Range.

- At the Valdez terminal, where 75 tankers call each month to haul crude oil to Lower 48 refineries, several key environmental protection systems have been riddled with corrosion for years, and storage tank bottoms are getting rusty. Repairs are costing at least \$125 million.

- Corrosion has attacked gas lines providing fuel to pump stations 1 through 4. No cost estimate for repairs is available.

- At North Slope oil fields, corrosion keeps dozens of technicians busy every day. Arco Alaska Inc. and BP Exploration (Alaska) Inc. will spend \$34 million this year to fight rust. For Arco, the Prudhoe Bay problem is so serious the company spends 20 percent of its field operating budget on corrosion.

Alyeska's corrosion problem has prompted an investigation by the federal pipeline safety office, according to Jack Overly, head of that agency's Denver office.

The company faces fines of hundreds of thousands of dollars if investigators find it broke safety rules building or maintaining the pipeline.

WHAT HAPPENED?

All metal is subject to decay. At its most elemental level, pipeline corrosion is simply the process of steel deteriorating into its original state. Energy used to turn iron ore into steel doesn't stick around forever; corrosion is the goodbye note.

The trans-Alaska pipeline is the nation's most important oil pipeline. Daily it moves 1.9 million barrels of hot petroleum — one-fourth of U.S. oil production — toward refineries that turn it into gasoline, jet fuel, heating oil, plastics and other petroleum products.

Almost half the pipeline is underground, an environment especially conducive to corrosion. The buried pipe is encased in a thick bulb of warm soil that has been thawed by the hot oil in the pipe. The melted soil conducts the electrical charges that cause corrosion far more readily than frozen permafrost.

"The warmer the earth from pipeline heat, the more active the corrosion," wrote A.W. Peabody, designer of Alyeska's corrosion system, in a 1979 technical journal.

Pipe buried in river drainages is particularly vulnerable because it's bathed in moisture.

The company says it always has done everything it could to stop corrosion. To do less, said spokesman George Jurkowich, would be to jeopardize "Goal 1," moving oil through the pipeline.

From before construction, oil executives promised the pipeline would be protected by the best means available. The steel was a special alloy, highly resistant to rust, they testified. The pipe was to be coated with a proven epoxy, and sealed with special insulating tape to keep out water and impurities that can cause rust.

Alyeska's corrosion plan in 1974 — the year construction began — promised to "insure the integrity of the pipeline from a corrosion standpoint over an operating life of 30 years."

Alyeska adapted familiar methods to fight corrosion in the harsh arctic environment, including visual and electronic inspections, and a buried "cathodic protection system" — miles of

zinc and magnesium strips designed to draw off natural electrical currents that flow through the pipe and cause corrosion, weakening the steel.

STEEL EXPOSED TO ELEMENTS

But those safeguards may have been undermined even before oil began surging through the line.

The highly touted Japanese steel used in the pipe was not particularly resistant to corrosion, according to Harry Brandt, an engineering professor at the University of California at Davis who warned in 1972 the oil industry had exaggerated the quality of its steel.

Even the best steel will rust if it is mistreated. This pipe was exposed to salt air and spray during shipment from Japanese steel plants in 1969 and 1970. Some of the 100,000 lengths of pipe sat outside, exposed to Fairbanks snow and ice fog, for more than a year.

In 1971, all the pipe at the three storage yards in Fairbanks, Prudhoe Bay and Valdez got a protective coating of Scotchkote, an epoxy resin made by the 3M Co.

But the resin worked poorly, according to Bill Howitt, Alyeska's engineering manager. Some coating flaked off the pipe, exposing the steel. Alyeska calls this disbonding. The coating also cracked when the pipe was bent during installation. Alyeska sued, charging that 3M had altered the coating's formula and used an "inferior substitute." Attorneys for 3M argued the bare pipe was already so contaminated the coating could not be blamed. The lawsuit was settled in 1981 for an undisclosed sum.

Rather than strip off the bad coating, Alyeska wrapped the pipe in tape, according to Howitt and others. Federal regulators approved the move during the last winter of construction as Alyeska pushed to finish the line. The first wrapping of tape didn't work, Howitt said, so the company rewrapped the pipe with a second layer.

In the Atigun floodplain, where the most extensive corrosion has been found, construction workers had serious problems wrapping the pipe. The pipe had to be heated to 200 degrees for the coating to bond, a difficult chore in minus 20- and minus 30-degree weather, Howitt said. The tape wrap was prepared and applied improperly, he said.

Today, most of the external corrosion appears to be caused by the pipe losing its seal of epoxy coating and protective tape, Howitt said. The pipe is getting exposed. This is an insidious problem that can't be prevented or detected before it causes corrosion save by digging up a lot of pipe, he said.

"Nothing protects against disbonding," he said. "Nothing."

A key question — so far unanswered — is whether the corrosion resulted from isolated defects, or a systemwide failure of the seals all along the buried sections of the pipeline.

WARNING SIGNALS

Alyeska has known for years Alaska's oil faucet was starting to rust.

The company found minor corrosion in the early 1980s when parts of the protective coating lost its seal, according to internal Alyeska reports. Throughout the mid-1980s it knew that its cathodic protection system was failing to protect miles of pipe, company reports show. And the company performed a major corrosion repair in 1988.

In 1983, Andy Smart, then Alyeska's

chief corrosion engineer, proposed a \$70 million, six-year program that included retaping substantial sections of the pipeline, according to a federal Bureau of Land Management memo. BLM is the primary government regulator of the pipeline.

Don Knight, then BLM's chief corrosion engineer and author of the memo, said Smart frequently tried to persuade Alyeska management to focus on corrosion, with little success until 1983.

Smart declined an interview about his work at Alyeska.

Jurkovich, the Alyeska spokesman, denied any such proposal was made.

Any substantial corrosion-control work that engineers may have recommended was derailed by an extensive analysis by Battelle Petroleum Technology Center for Alyeska. Based on that study, Alyeska concluded in 1984 the pipeline was in "excellent condition." There was no evidence the pipe wrap and cathodic protection system were "suffering from accelerated deterioration," according to Alyeska reports.

So Alyeska reduced its corrosion-monitoring program. It would dig up the line about 12 times a year looking for corrosion instead of about 200. The company canceled plans to develop in-house a more sensitive "pig" — a high-tech device that runs through the pipe to check its shape and thickness.

Alyeska looked to other companies to develop a smarter pig.

NKK Corp. of Japan and a Canadian firm were separately developing more sophisticated pigs.

Pigs look for "anomalies" — deviations in the standard thickness of the pipe. Not all anomalies represent dangerous corrosion.

Earlier pigs could "see" anomalies at least a quarter-inch deep, or half the thickness of the pipe. The Canadian pig could pick up anomalies one-seventh of an inch deep.

In 1987, the Canadian pig turned up 14 anomalies. The next year a second run of the same pig showed 241 anomalies when engineers used a new method to interpret the data.

Alyeska engineers were skeptical they would find significant corrosion in buried pipe, Howitt said. But of the first 98 checked, 81 were

corrosion-related. A dozen damaged spots were repaired with pipe sleeves.

Last spring, the new NKK pig went down the line. The Japanese company promised its pig could detect anomalies of only one-twentieth of an inch deep. Altogether the smart pigs found 827 anomalies. Alyeska realized it had a serious problem.

Alyeska spokeswoman Marnie Isaacs said engineers are studying readings from the pig more closely using a different method to re-evaluate the data. The company expects to have many new points — perhaps thousands more — to investigate, she said.

FRUSTRATING WORK

Alyeska hired more than 300 workers last summer to begin digging up and inspecting the pipe.

The work is expensive and frustrating.

At one location, workers carefully peeled away 29 feet of frozen earth to reveal the pipe. After sandblasting off the protective tape and coating, workers eyeballed the pipe for corrosion and scanned it with infrared instruments. This single inspection cost \$2 million. It found no corrosion.

But other crews doing similar work found plenty.

Corrosion has been discovered at 202 of the 215 sites dug up so far, said Jurkovich, the Alyeska spokesman.

The worst segment, in the Atigun floodplain about 160 miles south of Prudhoe Bay, is to be replaced next year. Replacing nine miles of pipe will require a two-day shutdown of the pipeline.

Engineers fear they might lose pressure in the Prudhoe Bay oil column in a longer shutdown. That means thousands of barrels of oil that otherwise could be pumped might never be recovered. But Alyeska promises to get the job done in time by building an entire replacement section alongside the damaged pipe, making quick cuts to attach the new line, Howitt said. —

THE STATE TAKES A LOOK

State officials say they were as startled as Alyeska says it was by the extent of the rust.

The state is concerned that repair costs are being added to the pipeline

tariff. That's a cost that gets deducted from the price of oil before taxes and royalties get paid.

Chuck Logsdon, the state's chief petroleum economist, estimates the state will lose \$200 million if the tariff rises to cover \$800 million in corrosion-related expenses.

Late last year, Attorney General Doug Baily assembled lawyers, accountants and corrosion consultants to investigate. After their initial work, the state opposed adding corrosion costs to the tariffs in a protest filed with the Federal Energy Regulatory Commission, which oversees tariffs on U.S. pipelines.

The state alleges protective safeguards were undermined by the frantic pace of construction. Damaged pipe, defective wrapping materials and inadequate testing all may have contributed to later problems, the state says.

"If it was foreseeable and they knew they had problems and could have avoided it, at some point they can't roll that cost into the tariff and they can eat those costs," Baily said.

Alyeska attorneys argue the state gave up its right to challenge tariff increases caused by defective design, construction and maintenance in 1985, when it signed an agreement to settle a dispute over pipeline tariffs.

The state has established a pipeline office and is planning to share office space and technical information with BLM.

"We are expecting the monitoring and corrosion to be an ongoing issue," said Jerry Brossia, who heads the new office.

Brossia said the state made a serious mistake by ceding authority and responsibility for pipeline monitoring to the federal government.

"It's foolish and certainly imprudent not to be actively looking at it," he said.

When the state opted out of oversight, scrutiny of the pipeline fell on BLM and the DOT's pipeline safety office, both of which concede they didn't have the expertise to analyze pig results or perform independent analyses of corrosion.

Both BLM and DOT are expanding their budgets to look closer at the pipeline problems.

Congress also is starting to pay attention.

U.S. Rep. George Miller, D-Calif., who chairs an Interior subcommittee challenging oil company practices in Alaska, links pipeline corrosion to opening the Arctic National Wildlife Refuge east of Prudhoe Bay to oil development.

The oil industry "wants us to extend the life of that system another 25 to 50 years by allowing new drilling onshore and offshore," Miller said. "They tell us everything is just fine . . . that it's state of the art. Well, I think there's some question as to whether or not that's true."

A section of the trans-Alaska pipeline south of Pump Station 4 is covered with plastic sheeting while repairs are made. The pipe is buried here as it cuts ac

REGULATORS: Agencies caught off-guard by the extent of corr

Continued from Page A-1

company and never hired consultants to help them out.

The April 1988 memo from Francis lauding Alyeska's corrosion effort is a case in point. Francis wrote it after only reviewing a 45-page company report and talking with a senior Alyeska engineer, according to his memo.

BLM is the main pipeline watchdog. DOT's pipeline safety office is in Denver, and officials there rely on BLM for information.

The state, pleading lack of money, shut down its oil pipeline monitoring office in 1979. Last fall, driven by the public outcry over the Exxon Valdez oil spill and the discovery of substantial corrosion, the state resurrected the office.

BLM said it's doing an effective job.

"I don't believe there's another pipeline in the United States . . . that gets the scrutiny the trans-Alaska pipeline gets," said John Santora, deputy director for minerals for BLM.

Francis said he spends half his time in the field, and when he's not there another BLM inspector

is. "I can't say we've seen all the corrosion that's been dug up," Francis said, but he thinks officials understand the problem and how Alyeska is working to solve it.

Alyeska is required to reimburse BLM for any expenses. Alyeska pays the salaries of BLM engineers and other staff. Pipeline inspectors fly on Alyeska helicopters, stay in Alyeska housing and drive Alyeska trucks. Alyeska knows when inspectors are coming and where they're going.

BLM officials say Alyeska does not dictate their budget. BLM sends Alyeska a bill and Alyeska has never quibbled over payments, they say.

Through the 1980s, that bill got smaller. BLM cut its budget every year from 1982 to last year, when corrosion became a significant problem, according to BLM reports. The budget fell from \$1 million in 1982 to \$300,000 in 1987, before rising to \$500,000 last year. Staffing fell from 24 workers to six today.

Mike Menge, head of BLM's pipeline office for the past 20 months, said BLM cut spending due to a higher degree of confidence in the pipeline and

Alyeska. "Over time, an awful lot of the anxiety associated with the original construction went away," he said.

The relationship has caught the attention of U.S. Rep. George Miller, D-Calif., chairman of a subcommittee scrutinizing the Alaska oil industry. Miller prompted the General Accounting Office to investigate pipeline corrosion and whether BLM and DOT have shirked their duty to the public.

"I think what's happened over the life of this project is that everyone's gotten far too cozy," Miller said. "I think the policy makers have bought into the company line, which is, 'We know what we're doing.' I think that now has been discredited and if those relationships (between BLM and Alyeska) need to be changed, then so be it."

Menge said he trusts the integrity of his staff.

"The bottom line is you just have to do your job and not take anybody's word for anything," he said.

Yet BLM reports reflect mainly Alyeska's corrosion work and not independent checks by federal agencies.

BLM also appears to have assumed the role of a protective

big brother to Alyeska.

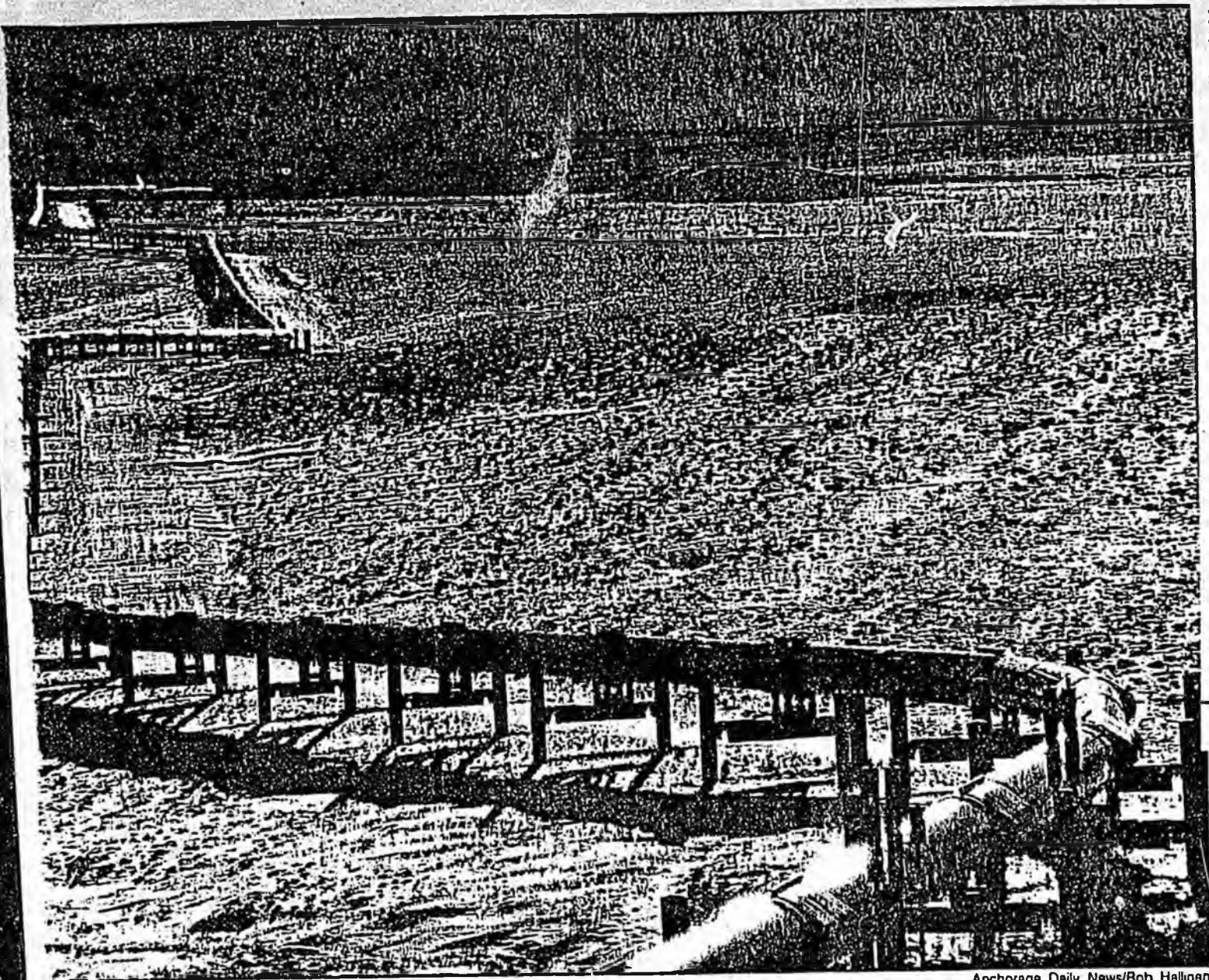
Last December, weeks after Alyeska had already briefed the press, legislators and other officials on the extent of corrosion, BLM's Santora refused to say how much corrosion had been found until getting clearance from Alyeska. When BLM called Alyeska, a secretary rushed in to interrupt George Jurkovich, a company official, from a meeting.

"I said, 'What are they asking us for? We've been telling everybody and his brother that (number) for months,'" Jurkovich said.

Since the corrosion issue arose, the DOT has started making annual visits to Alaska, said Jack Overly, head of DOT's Office of Pipeline Safety in Denver.

Mainly inspectors review Alyeska records, although they do accompany Alyeska and BLM officials on a tour of the pipeline, he said.

Last year inspectors also started coming to Alaska to check out safety problems, he said. Alyeska is required to notify DOT when corrosion reaches a certain depth in areas under high pressure and could pose a threat to the line. The company sent DOT a flurry of those reports last spring and they've continued



Anchorage Daily News/Bob Hallinan

ear Pump Station 4 In the Brooks Range



Overly couldn't say how much his office spends to oversee Alyeska. He said the office has a travel budget of about \$80,000 a year to visit dozens of pipelines in 12 states, including Alaska.

DOT has three engineers on staff and is proposing to hire two or three more in the next few years to deal with the Alaska pipeline, Overly said. —

One new DOT engineer may wind up being stationed in Alaska, working out of an office shared with the state and BLM. The three agencies hope to team up to finally get a regulatory grasp on the corrosion problem.

The state, facing the loss of hundreds of millions of dollars in taxes and royalties as corrosion repair bills climb, has hired a firm of corrosion experts from Ohio to conduct an independent investigation.

But BLM continues to look to an unprepared DOT for help in sorting through the reams of technical data and reports being produced by Alyeska.

BLM staffers lack expertise to understand Alyeska's data, Menge said. "We rely on DOT's experts for that," he said.

"We don't have that expertise," said Overly.

Other problems along the line

By PATTI EPLER

Daily News reporter

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The trans-Alaska pipeline is not the only piece of Alaska's oil machinery in need of major overhaul.

Here is a summary of the major problems from Prudhoe Bay to Valdez.

THE PUMP STATIONS

A significant portion of the piping at Pump Station 3 on the northern flank of the Brooks Range will be replaced within the next year. Corrosion caused by a bacteria has devastated the pipe.

The \$30 million repair job includes removing and replacing hundreds of feet of pipe within the pump station, and involves slowing the flow of oil through the main pipeline for perhaps a month.

Alyeska Pipeline Service Co. has budgeted \$50 million to deal with pump station corrosion this year, including work at Pump Station 1 at Prudhoe Bay, which will require a half-day shutdown of the pipeline.

The bacteria is in water that accompanies oil through the pipeline. The corrosion occurs in "deadlegs," pump-station pipe installed for a future connection but never hooked up, according to Bill Howitt, Alyeska engineering manager.

Alyeska discovered the bacteria and related corrosion in 1988. Since then the problem has crept south to infect eight of the 12 pump stations that keep oil moving along the 800-mile pipeline. More than 1,200 deadlegs are suspected of having bug-related corrosion. Alyeska has inspected 800 and found corrosion in more than 120 spots, but only seven have been serious enough to require immediate repair, Howitt said.

WET INSULATION

Pipe buried in the permafrost beneath many pump stations became wet after just a few years of pipeline operation, and the company began finding extensive pitting.

Howitt said Alyeska is about two-thirds through a multimillion-dollar, six-year program to repair and reinsulate buried pipe. Alyeska has put in a new corrosion-control system that is designed to work when insulation gets wet, Howitt said.

CHEAP PIPE

At the Valdez shipping terminal, Alyeska has patched and replaced miles of corroded pipes carrying oily ballast water from tankers to a treatment plant.

Rust has attacked two different sets of carbon steel pipelines. Such pipe is cheaper than stainless steel but more easily corroded.

It took \$30 million and two summers' work to reline with a fiberglass coating nearly five miles of pipe running from tanker berths to holding tanks at the treatment plant, said Chuck O'Donnell, terminal superintendent.

And this year the company plans to spend \$11 million replacing another 3,700 feet of above-ground pipe with stainless steel lines, he said.

AIR POLLUTION CONTROLS

Alyeska's air pollution control system in Valdez has deteriorated almost from the day it began operating, costing the company at least \$35 million in repairs.

Three giant incinerators that burn toxic oil vapors are being rebuilt at a cost of about \$22 million. A \$5.5 million machine to remove condensation that corrodes pipe is being installed. And repairs to the pipes themselves are running in the millions of dollars.

So far, Alyeska has replaced about a mile of pipe, in some cases using more rust-resistant stainless steel instead of the original carbon steel pipe, O'Donnell said.

OIL FIELD RUST

The battle against corrosion at aging North Slope oil fields has escalated dramatically in the last three years, as engineers fight off corrosive acids, microscopic bugs and the arctic weather.

North Slope operators have more than doubled their spending on corrosion-control programs in the last two years — from \$34 million in 1987 to \$71 million in 1989 at the Prudhoe Bay field alone.

"I'd say there's not a week that goes by" in which the engineering staff doesn't face a new corrosion problem, said Bill Patterson, an Arco Alaska Inc. corrosion engineer.

"Any place you've got water in contact with metal you've got a potential for a problem," said Don Scheve, Arco's Prudhoe operations engineering manager.

There's lots of metal and water on the North Slope. At Prudhoe Bay, the largest oil field in North America, each of the 800 producing oil wells has 20,000 feet of steel casing and tubing. About 900 miles of pipeline carry oil, water, gas and other liquids. The most troublesome water is the 42 million gallons daily pumped from oil reservoirs. This water production has doubled since 1987, said Doug Webb, BP Exploration (Alaska) Inc.'s operations vice president.

BP has replace more than two miles of pipe but never had a leak, Webb said.

Arco hasn't been as lucky. Two winters ago, leaks developed in an oil and gas line on Arco's half of Prudhoe Bay. The company replaced about three miles of pipe.

"That was the worst we'd seen at Prudhoe Bay," Scheve said.

Arco replaced a total of another seven miles of pipe in 1988 and 1989, Patterson said.

Trouble on the trans-Alaska pipeline

How corrosion is affecting the 800-mile pipeline

Corrosion is an electrochemical process that weakens metal by stripping away charged subatomic particles called ions. A corrosion circuit works much like a car battery with electricity flowing from an anode to another point called a cathode. The electricity flows through water, soil or acid.

How corrosion is affecting the buried sections of pipeline

The trans-Alaska pipeline is protected from corrosion by several safeguards. First it is coated with an epoxy that bonds to the steel. Next, the epoxy coat is wrapped in a special tape designed to keep out moisture. Finally, ribbons of zinc or bags of magnesium are attached to the pipe to divert electrical currents away from the pipe. Because they conduct electricity more easily than steel pipe, these sacrificial metals are supposed to corrode instead of the pipe. This is called a cathodic protection system.

1 External corrosion results from a failure of the epoxy coating and tape to keep water and acids away from the pipe.

Layer of protective tape

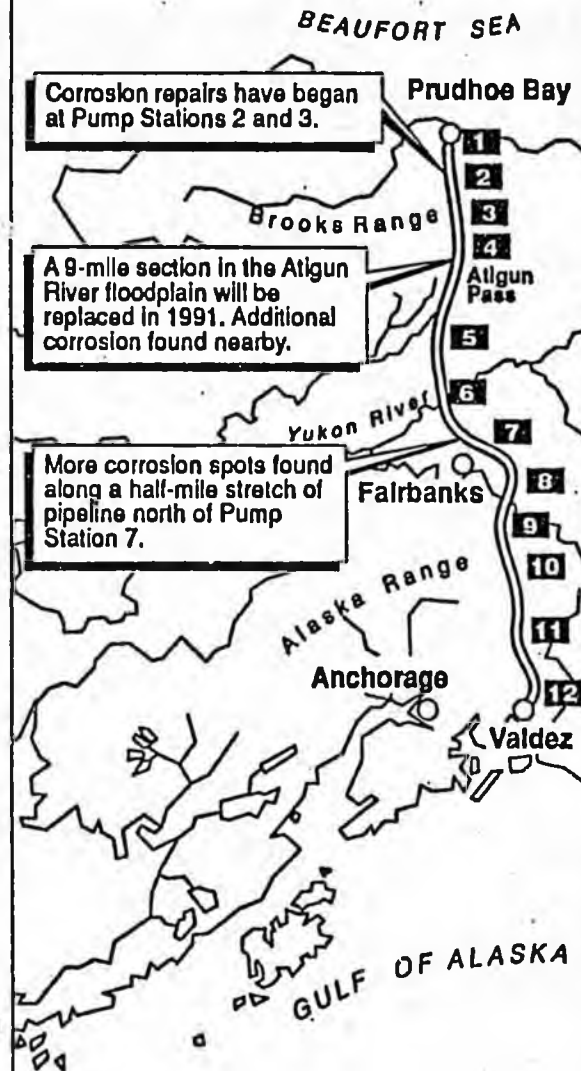
Epoxy paint

1/2-inch thick steel pipe

2 A failure of the cathodic protection system to divert electricity to the sacrificial anodes further enhances the possibility of corrosion.

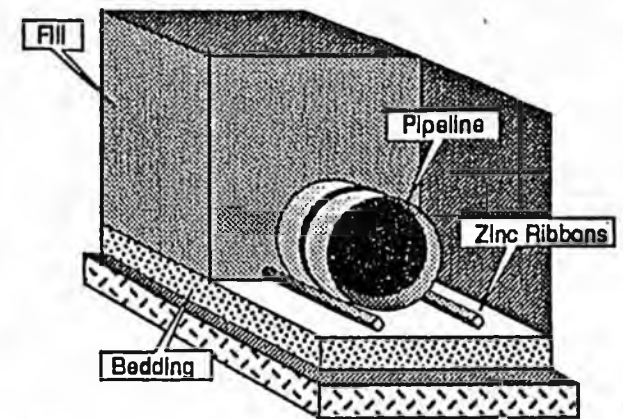
Zinc ribbon anodes

3 Water and acids begin to rust the steel pipe turning it to iron oxide.



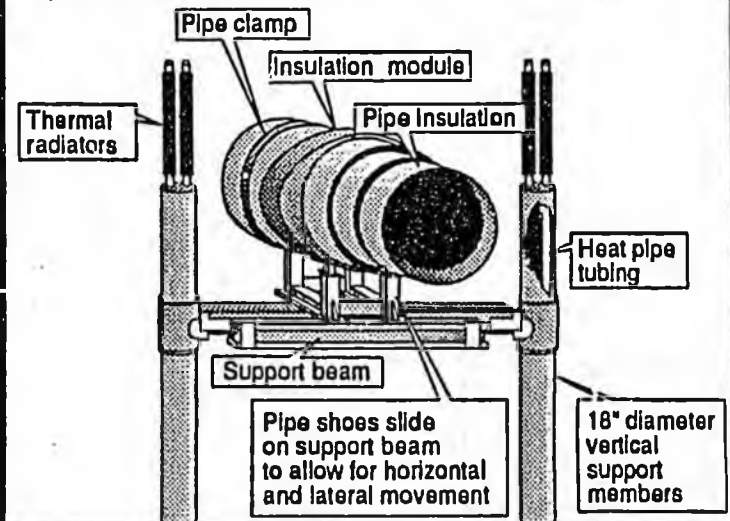
Cross section of buried pipeline

The Trans Alaska Pipeline is buried where stable soil and rock permit. A short section at Atigun Pass is buried in an insulated box atop a concrete slab.



Cross section of elevated pipeline

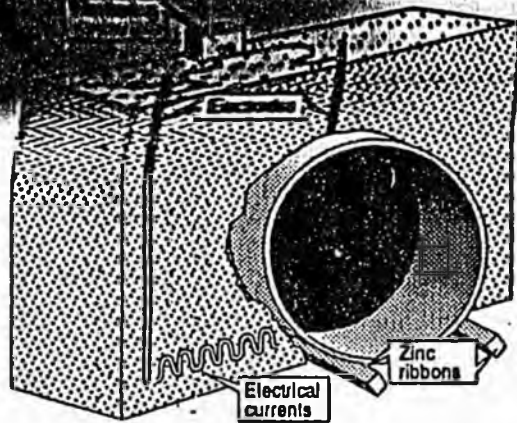
Above-ground supports, located every 60 feet allow for movement to accommodate expansion and contraction of the pipe or possible seismic disturbance.



How Alyeska monitors corrosion on the pipeline

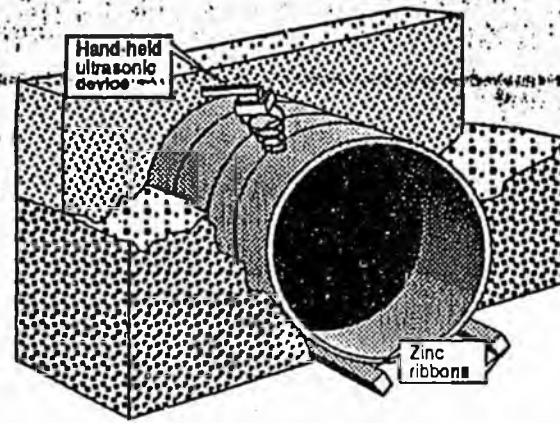
1 Annual surveys

Surveys are made of the pipe to measure the potential for electrical currents to flow from the pipe through the soil. Instruments measure whether the buried zinc strips are working. The zinc strips are part of the protection system designed to draw off electrochemical currents to the sacrificial metal.



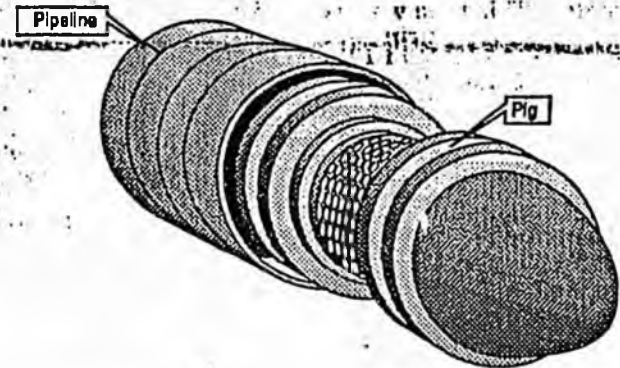
2 Digging up the pipe

The pipe is visually inspected for corrosion after stripping off the protective tape and epoxy coating. Hand-held ultrasonic instruments are also used to detect variations in the thickness of the pipe in areas where corrosion is suspected.



3 The corrosion pig

The pig is a self-contained tool equipped with 255 ultrasonic devices which measure the thickness of the pipeline wall by sending out sound waves and receiving the resulting echoes. It records readings for each square half-inch of the pipeline wall. The pig is 10 feet, 6 inches long, and 48 inches in diameter. It is made of titanium and weighs 6,600 pounds.



The Pipeline

Date oil was discovered: Nov. 20, 1968

Date construction began: 1974

Date oil was delivered: Aug. 2, 1977

Length: 800 miles

Pipe: Half-inch thick, 48-inches diameter

Construction cost: \$9 billion

Work force: 22,000

Length of pipeline buried: 400 miles

Number of vertical support members: 77,800

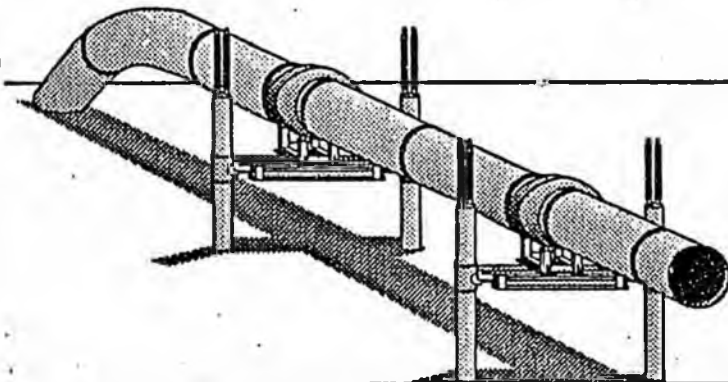
Highest elevation: 4,800 feet / Allgun Pass

Output: 80 million gallons of crude per day

Flow: 4.6 days to flow the length, at 7.35 mph

Temperature of oil: 140 degrees F

Capacity: 9 million barrels



Valdez: System deteriorates

Eagle

Continued from page B-1

vapors that escape while tankers are loaded with oil, or from other terminal operations.

DEC environmental engineer Dan Lawn said if the fishermen were operating downwind they might have smelled hydrocarbon vapors from tanker loading, although he cautioned that without taking measurements it would be hard to be certain.

Earlier this month, assistant state attorney general Mike Frank wrote Alyeska that the state plans to start regulating hydrocarbon emissions from tanker loading. Although reliable figures aren't available, DEC officials have estimated that up to 1,000 tons a week of hydrocarbon vapors are being emitted into the air during the loading.

According to the DEC, there's been a substantial increase in hydrocarbon vapors since early last year, when oil producers in Prudhoe Bay started injecting up to 50,000 barrels a day of natural gas liquids (NGLs) into the pipeline. NGLs vaporize more readily than crude oil.

Alyeska has said that when all three incinerators are running, the terminal's "vapor recovery system" can handle all the vapors from the pipes and storage tanks at Valdez. When tankers are loading, one or two incinerators can handle the load, Henman said. But vapors from the



Ivan Henman
... Alyeska vice president

loading process are not captured by the recovery system, and escape into the air, he conceded.

Henman said that it would probably take another week or so to repair the "B" incinerator. As soon as that incinerator is back on line, the "C" incinerator will be shut off for repairs as well, for one to two weeks. Then it will be the "A" incinerator's turn to be shut off, inspected, and if necessary repaired.

"We notified the DEC and EPA (Environmental Protection Agency) that the work was necessary," Henman said. The "B" incinerator had developed a hot spot where its refractory — a

brick lining inside the combustion chamber — had melted. And several oil burner tips had been badly burned and need to be replaced, he said.

When the incinerator was inspected several days ago, Alyeska officials seemed surprised at the extent of the damage, Lawn said.

The "C" incinerator was last repaired six months ago, and it's disconcerting that it's having problems already, said DEC Air Quality Specialist Bill MacClarence.

"The breakdowns are occurring on a pretty frequent basis," he said, adding, "it seems pretty questionable whether they can make it to next summer" without a major overhaul.

The vapor recovery system has a long history of frequent breakdowns. Last year it was down for 74 days, according to Alyeska operating logs. Between 1980 and 1987, the system was shut down an average of one day in five, the logs show.

The DEC says Alyeska has operated and maintained the system improperly, and has threatened to fine the company for what it says are violations of its air permit.

"In our legal opinion there have been no violations," Henman said two weeks ago.

The state and Alyeska have been negotiating over a variety of issues.

Continued from p

dance in Southeastern Alaska — combing ground for fish.

Bald eagles in every state but one, pollution and development.

Their recovery efforts in 1980 protecting young eagles.

Including the Alaska has contracts in New York, North Carolina and Tennessee. The U.S. Fish and Wildlife Service maintains a nationwide.

"The demand for supply can't meet the need for a great booby. Smith of the Fish and Wildlife Agency, which has been protecting eagles in that state.

The process is in the contractors' term. They are old enough to confuse humans and new territories to the top of poles, old enough to fly.

Once the eagles hope they'll return to cages when they are to five years.

Based on the scattered reports of biologists are coming, though they are a few years.

In the meantime

Obituaries

Wilhelm T. Boutillier

Wilhelm "Bill" T. Boutillier, 57, of Anchorage died July 28 while fishing off Anchor Point near Homer.

Mr. Boutillier was born Aug. 14, 1930, in Great Falls, Mont.

He moved to Alaska in December 1968, and owned and operated Aerotronics of Alaska until 1974 when he sold



Administration in its avionics department.

Survivors include his wife, Dolores, of Anchorage; four daughters, Gail Cooper, Lynette Campoamor and Kathy Campoamor, all of Anchorage, and Susan Sullivan, of San Jose, Calif.; two brothers: Dick of Great Falls, Ore., and Curt of North Bend, Ore.; one sister: Genevieve Fechner, of Duluth, Minn.; and five grandchildren.

Services will be held at 2 p.m. Monday at Evergreen Memorial Chapel, with the Rev. Morris Wall of South Anchorage Baptist

Operations and hospital rooms cost more than you think

Call one of your neighborhood State Farm agents for hospital-surgical insurance.



The corrosion crisis has provoked an engineering and construction boom that could grow into the biggest Alaska project since the pipeline was built in the mid-1970s. Union hiring halls expect calls for hundreds of truckers, pipe fitters, carpenters and laborers in a corrosion fight that could continue as long as the pipeline moves oil.

Alyeska has assembled a team of hundreds of people to combat the corrosion.

The company has launched an accelerated repair program and last year welded new pipe over 31 spots where the main line was judged too weak to safely contain the crude.

Over the next three years, Alyeska says, it will spend as much as \$800 million on corrosion control. The state thinks the repair bill could top \$1.5 billion. No one knows the price tag for sure until Alyeska digs up more pipe and completes a thorough analysis, the company says.

The worst corrosion discovered so far has been confined largely to a 14-mile segment, 160 miles south of Prudhoe Bay, where the pipe is buried in a floodplain and its corrosion-protection coating is peeling off.

But throughout the 800 miles of pipeline Alyeska has found hundreds of problem spots.

The pipeline itself is not the only Alyeska facility under attack by rust. Other problems include:

- Interior corrosion at the eight northernmost of the pipeline's 12 pump stations has gotten bad enough to require \$50 million in repairs next year, with \$30 million going to rebuild Pump Station 3 just north of the Brooks Range.

- At the Valdez terminal, where 75 tankers call each month to haul crude oil to Lower 48 refineries, several key environmental protection systems have been riddled with corrosion for years, and storage tank bottoms are getting rusty. Repairs are costing at least \$125 million.

- Corrosion has attacked gas lines providing fuel to pump stations 1 through 4. No cost estimate for repairs is available.

- At North Slope oil fields, corrosion keeps dozens of technicians busy every day. Arco Alaska Inc. and BP Exploration (Alaska) Inc. will spend \$34 million this year to fight rust. For Arco, the Prudhoe Bay problem is so serious the company spends 20 percent of its field operating budget on corrosion.

Alyeska's corrosion problem has prompted an investigation by the federal pipeline safety office, according to Jack Overly, head of that agency's Denver office.

The company faces fines of hundreds of thousands of dollars if investigators find it broke safety rules building or maintaining the pipeline.

WHAT HAPPENED?

All metal is subject to decay. At its most elemental level, pipeline corrosion is simply the process of steel deteriorating into its original state. Energy used to turn iron ore into steel doesn't stick around forever; corrosion is the goodbye note.

The trans-Alaska pipeline is the nation's most important oil pipeline. Daily it moves 1.9 million barrels of hot petroleum — one-fourth of U.S. oil production — toward refineries that turn it into gasoline, jet fuel, heating oil, plastics and other petroleum products.

Almost half the pipeline is underground, an environment especially conducive to corrosion. The buried pipe is encased in a thick bulb of warm soil that has been thawed by the hot oil in the pipe. The melted soil conducts the electrical charges that cause corrosion far more readily than frozen permafrost.

"The warmer the earth from pipeline heat, the more active the corrosion," wrote A.W. Peabody, designer of Alyeska's corrosion system, in a 1979 technical journal.

Pipe buried in river drainages is particularly vulnerable because it's bathed in moisture.

The company says it always has done everything it could to stop corrosion. To do less, said spokesman George Jurkovich, would be to jeopardize "Goal 1," moving oil through the pipeline.

From before construction, oil executives promised the pipeline would be protected by the best means available. The steel was a special alloy, highly resistant to rust, they testified. The pipe was to be coated with a proven epoxy, and sealed with special insulating tape to keep out water and impurities that can cause rust.

Alyeska's corrosion plan in 1974 — the year construction began — promised to "insure the integrity of the pipeline from a corrosion standpoint over an operating life of 30 years."

Alyeska adapted familiar methods to fight corrosion in the harsh arctic environment, including visual and electronic inspections, and a buried "cathodic protection system" — miles of

draw off natural electrical currents that flow through the pipe and cause corrosion, weakening the steel.

STEEL EXPOSED TO ELEMENTS

But those safeguards may have been undermined even before oil began surging through the line.

The highly touted Japanese steel used in the pipe was not particularly resistant to corrosion, according to Harry Brandt, an engineering professor at the University of California at Davis who warned in 1972 the oil industry had exaggerated the quality of its steel.

Even the best steel will rust if it is mistreated. This pipe was exposed to salt air and spray during shipment from Japanese steel plants in 1969 and 1970. Some of the 100,000 lengths of pipe sat outside, exposed to Fairbanks snow and ice fog, for more than a year.

In 1971, all the pipe at the three storage yards in Fairbanks, Prudhoe Bay and Valdez got a protective coating of Scotchkote, an epoxy resin made by the 3M Co.

But the resin worked poorly, according to Bill Howitt, Alyeska's engineering manager. Some coating flaked off the pipe, exposing the steel. Alyeska calls this disbonding. The coating also cracked when the pipe was bent during installation. Alyeska sued, charging that 3M had altered the coating's formula and used an "inferior substitute." Attorneys for 3M argued the bare pipe was already so contaminated the coating could not be blamed. The lawsuit was settled in 1981 for an undisclosed sum.

Rather than strip off the bad coating, Alyeska wrapped the pipe in tape, according to Howitt and others. Federal regulators approved the move during the last winter of construction as Alyeska pushed to finish the line. The first wrapping of tape didn't work, Howitt said, so the company rewrapped the pipe with a second layer.

In the Atigun floodplain, where the most extensive corrosion has been found, construction workers had serious problems wrapping the pipe. The pipe had to be heated to 200 degrees for the coating to bond, a difficult chore in minus 20- and minus 30-degree weather, Howitt said. The tape wrap was prepared and applied improperly, he said.

Today, most of the external corrosion appears to be caused by the pipe losing its seal of epoxy coating and protective tape, Howitt said. The pipe is getting exposed. This is an insidious problem that can't be prevented or detected before it causes corrosion save by digging up a lot of pipe, he said.

"Nothing protects against disbonding," he said. "Nothing."

A key question — so far unanswered — is whether the corrosion resulted from isolated defects, or a systemwide failure of the seals all along the buried sections of the pipeline.

OIL TERMINAL: Report calls for different method of wastewater treatment

Continued from Page A-1

EPA has proposed, and has said Alyeska might have to put in more treatment facilities in order to meet tougher standards.

That permit now is expected to be given to the state for final approval in October, EPA said Thursday.

Lysyj, described by state and federal officials as one of the foremost experts on wastewater treatment systems, was hired to give his opinion on a wide range of scientific and technical information the state is reviewing prior to certifying the new permit, said Dan Wilkerson of DEC.

"He's intimately familiar with the system," Wilkerson said, noting that Lysyj has done several studies of the Alyeska plant over the past 10 years.

Three years ago, Lysyj inspected the plant for EPA. His report resulted in EPA ordering Alyeska to make substantial changes in the treatment facility, changes that ultimately led to the biological process in use today.

The Alyeska plant cleans oily ballast water brought in on tankers from the Lower 48. The water is discharged into Port Valdez and must meet limits on pollutants such as hydrocarbons.

In 1986, under pressure from EPA and DEC, Alyeska started using a biological treatment process to help remove even more pollutants

from the ballast water. In that method, water is pushed slowly through two giant holding ponds filled with microorganisms that "eat" the hydrocarbons.

The treatment method is central to the new environmental permit EPA is writing; limits on hydrocarbons and other pollutants in the permit have been based on what the treatment method can accomplish.

But Lysyj contends that the process leads to "non-contained and uncontrolled releases" of carcinogenic substances into the air, "with possible harm to human life and the environment."

Other treatment methods well-suited for the Alaska environment are commercially available and are widely used elsewhere, he said.

Moreover, he cites oil company studies done for Alyeska that conclude biological treatment is less effective and less suitable than other methods.

Those studies, as well as the review of treatment methods by EPA, conclude water temperatures in Valdez are too cold for the microbes that consume the pollution, Lysyj said.

The irregular flow of water through the Alyeska plant, triggered by the arrival of tankers, also disrupts the biological process, Lysyj said.

He also noted that biological treatment

produces large quantities of sludge, a substance that Alyeska has no means of dealing with.

Lysyj said it appeared EPA had approved the biological method simply because it was cheaper than other, more efficient technologies.

Alyeska spent about \$2 million in capital costs and spends about \$500,000 a year to operate the biological process, according to the EPA. A system like the one suggested by Lysyj would cost about \$8.7 million to build and \$1.9 million a year to operate, the EPA said.

Ivan Henman, vice president of engineering and environment for Alyeska, acknowledged that cost was a factor. But, he said, the biological method is satisfactory. After two years of operation, it has reduced hydrocarbons in the wastewater by 85 percent, he said. "It's simply not true" that harmful amounts of hydrocarbons are going into the air, he said.

Henman disagreed that the treatment methods suggested by Lysyj that strip pollutants from the water and capture them in the air are widely used at other facilities.

In fact, he said, at least one refinery that tried the process found it didn't work well and discontinued it.

More importantly, Henman said, those technologies are "complex and unreliable" and

have not been proven in Alaska, nor have they been shown to be effective for the large amounts of ballast water processed by Alyeska — about 13 million gallons a day.

"The arguments are overwhelming in favor of the biological process," he said.

He said Lysyj misrepresented what the oil company studies say. Besides, he said, scientists have learned more about biological processes since the studies were done in 1980 and 1981.

"Probably the most important thing is if we had elected to go to one of the more sophisticated systems ... it would have been three to four, maybe as long as five years to have a working system," Henman said. "We had the biological system working in a matter of four months."

Janis Hastings, an EPA official in charge of drafting the new permit, said the Lysyj report didn't contain any new information. EPA has considered all the issues raised in the report, she said.

Lysyj also suggested that the state establish an independent technical review board to help DEC and EPA sort out environmental concerns at the Valdez terminal. He said Alyeska's past record of poor compliance with its permit is argument for such a board.

DEC and commercial fishermen have urged EPA to set up an advisory group, but the idea is strongly opposed by Alyeska.

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HOUSE COMMITTEE REPORT

(11)

Date Referred: February 16, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/8/90

The FINANCE Committee considered:

HB 418

HOUSE BILL NO. 418

QUALITY OF NURSING HOME CARE

"An Act related to quality of care in nursing facilities; establishing a nursing facility resident security fund; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) HSS 1/16/90
- [] zero fn/analysis _____

SIGNING DO PASS:

Ronald J. Larson Larson
Lay Brown BROWN
Wallis WALLIS

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Karlene Barnes</u> Barnes	<input checked="" type="checkbox"/>		
<u>Dick Shultz</u> Shultz	<input checked="" type="checkbox"/>		
<u>Steve Riegee</u> Riegee	<input checked="" type="checkbox"/>		

Ronald J. Larson Larson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to Quality Nursing Care
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Health & Social Services
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Will be ZERO For 1990

Prepared by: Kim Busch, Director *Kim Busch* Phone: 465-3355
 Division: Division of Medical Assistance Date: 1/15/90

Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 1/15/90
 Agency: Department of Health & Social Services

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Adopted

Letter
3/20/90/AS/2/1/90 HSS

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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IN THE HOUSE

HOUSE BILL NO. 418

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act related to quality of care in nursing facilities; establishing a nursing facility resident security fund; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.20.040 is amended to read:

Sec. 18.20.040. ISSUANCE AND RENEWAL OF LICENSE AND POSTING.

(a) Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant meets the requirements established under AS 18.20.060 - 18.20.080. If the applicant does not meet the requirements established under AS 18.20.060 - 18.20.080 but makes continued efforts to comply with them, the department may grant a temporary or provisional license for a reasonable period of time. Except as provided in (b) of this section, a [A] license[, UNLESS SUSPENDED OR REVOKED;] is renewable annually without charge upon filing by the licensee, and approval by the department of an annual report on the uniform date and containing the information in the form the department prescribes by regulation. Each license issued is for the premises and person or governmental unit named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) A license is not renewable if (1) it has been suspended or revoked under AS 18.20.050, or (2) regarding a nursing facility as defined in AS 18.20.390, the department has taken action under

1 AS 18.20.310(a)(5).

2 * Sec. 2. AS 18.20.050 is amended to read:

3 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

4 The department may deny, suspend, or revoke a license in a case in
5 which it finds that there has been a substantial failure to comply
6 with the requirements established under AS 08.64.336 or AS 18.20.060 -
7 18.20.080. The license of a nursing facility, as defined in
8 AS 18.20.390, also may be suspended or revoked by the department under
9 AS 18.20.310(a)(5).

10 * Sec. 3. AS 18.20 is amended by adding new sections to read:

11 ARTICLE 4. QUALITY OF CARE IN NURSING FACILITIES.

12 Sec. 18.20.300. STATE POLICY. It is the policy of the state to
13 ensure that the quality of care in nursing facilities in this state is
14 maintained at a high standard in accordance with applicable state and
15 federal law and regulations and to ensure the health, safety, and
16 quality of life of nursing facility residents in Alaska is maintained
17 or enhanced.

18 Sec. 18.20.305. NURSING FACILITY REGULATIONS. The department
19 shall adopt necessary regulations to implement AS 18.20.300 -
20 18.20.380 in accordance with the Administrative Procedure Act
21 (AS 44.62). The department shall, by regulation, specify criteria as
22 to when and how the sanctions specified in AS 18.20.310 will be ap-
23 plied. The criteria shall provide for the imposition of incrementally
24 more severe penalties for deficiencies that are uncorrected or perva-
25 sive, or that present a threat to the health, safety, or welfare of
26 nursing facility residents.

27 Sec. 18.20.310. SANCTIONS FOR NONCOMPLIANCE. (a) If the de-
28 partment finds that a nursing facility, or a partner, officer, direc-
29 tor, owner of five percent or more of the nursing facility's assets,

1 or managing employee of the nursing facility substantially failed or
2 refused to comply with AS 08.68.340 - 08.68.390, AS 08.70.010 -
3 08.70.190, AS 18.20.010 - 18.20.130, AS 47.07.010 - 47.07.900, or with
4 a regulation adopted under any of those statutes, or, for a nursing
5 facility that provides medicaid services under AS 47.07.010 - 47.07.-
6 900, failed or refused to comply with the medicaid requirements of 42
7 U.S.C. 1396r (Title XIX of the Social Security Act, as amended) or a
8 regulation adopted under that statute, the department may take the
9 following actions:

10 (1) ban the admission of new residents to the nursing facil-
11 ity;

12 (2) as provided in AS 18.20.320, deny payment under
13 AS 47.07.010 - 47.07.900 and AS 47.25.120 - 47.25.300 for any medicaid
14 or general relief-medical resident admitted to the nursing facility
15 after notice by the department of denial of payment; residents who are
16 eligible for medicaid or general relief-medical are not responsible
17 for payment when the department takes action under this paragraph;

18 (3) assess a civil fine in accordance with AS 18.20.340;

19 (4) suspend or terminate the nursing facility's participa-
20 tion in the medicaid program;

21 (5) suspend, revoke, or refuse to renew the nursing facili-
22 ty's license issued under AS 18.20;

23 (6) seek an appointment of temporary administration as
24 provided in AS 18.20.360 or of a receiver under AS 18.20.370;

25 (7) in case of an emergency, seek an order from the court
26 either to close the nursing facility or to transfer residents from
27 that facility, or both.

28 (b) An order of the department imposing a sanction described in
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(1) (a)(1), (4), or (5) of this section takes effect

1 immediately upon service of the order on the nursing facility;
2 however, if the facility can demonstrate to the department's
3 satisfaction that the deficiencies prompting the order do not
4 jeopardize the health or safety of facility residents or seriously
5 limit the nursing facility's capacity to provide adequate care, the
6 department's order takes effect 10 days after service;

7 (2) (a)(2) or (3) of this section takes effect 10 days
8 after service of the order on the nursing facility.

9 (c) A hearing may be requested under AS 18.20.330 regarding a
10 sanction imposed by the department under this section.

11 Sec. 18.20.320. DENIAL OF PAYMENT. The department shall deny
12 payment under AS 47.07.010 - 47.07.900 or AS 47.25.120 - 47.25.300 to
13 a nursing facility:

14 (1) that is not in compliance, and, for the preceding three
15 months, has not been in compliance, with the requirements of 42 U.S.C.
16 1396r (Title XIX of the Social Security Act, as amended), and regu-
17 lations adopted under that statute, until correction of the deficien-
18 cy; or

19 (2) if the department finds, on three consecutive reviews,
20 that the nursing facility provided substandard quality of care; the
21 department shall deny payment under this paragraph for new admissions
22 until the facility has demonstrated to the satisfaction of the depart-
23 ment that it is in compliance with the medicaid requirements of 42
24 U.S.C. 1396r, and that it will remain in compliance with the require-
25 ments.

26 Sec. 18.20.330. APPEAL; HEARING. (a) Notwithstanding
27 AS 44.62.330 - 44.62.630, the department, by regulation, shall estab-
28 lish a hearing procedure by which a nursing facility may present
29 evidence to refute a deficiency found by the department, and by which

1 it may appeal a sanction imposed by order of the department under
2 AS 18.20.310. A request for a hearing must be made in writing within
3 10 days after service of the department's order on the nursing
4 facility. Except for an order that takes effect immediately under
5 AS 18.20.310(b)(1), a request under this subsection has the effect of
6 staying the department's order until the hearing is concluded and the
7 department makes a final determination.

8 (b) An appeal, or request for stay, regarding a sanction imposed
9 by the court under AS 18.20.310(6) or (7), 18.20.360, or 18.20.370,
10 must be filed with the court in accordance with the Rules of Civil
11 Procedure.

12 Sec. 18.20.340. CIVIL FINES. In accordance with regulations
13 adopted by the department under AS 44.62.010 - 44.62.300, the depart-
14 ment may assess and collect, with interest, a civil fine of up to
15 \$10,000 a day for each day a nursing facility is or was out of compli-
16 ance with any of the federal or state statutes or regulations listed
17 in AS 18.20.310. The department shall annually increase the maximum
18 amount of the civil fine authorized in this section by a percentage
19 equal to the percentage of increase in all items of the consumer price
20 index for all urban consumers for Anchorage, Alaska. Each day upon
21 which the same or a substantially similar noncompliance occurs is a
22 separate violation subject to the assessment of a separate civil fine.
23 A civil fine assessed under this section is not reimbursable under
24 AS 47.07.010 - 47.07.900 or AS 47.25.120 - 47.25.300. The department
25 shall deduct the amount of a civil fine from reimbursement due or to
26 be due the nursing facility under AS 47.07.010 - 47.07.900 or
27 AS 47.25.120 - 47.25.300. The department may also use any remedy
28 available under law to pursue collection of an unpaid fine.

29 Sec. 18.20.350. NURSING FACILITY RESIDENT SECURITY FUND. (a)

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There is established in the department, as a fund separate from other public money of the state, the nursing facility resident security fund. This fund consists of all civil fines collected under AS 18.20.310(a)(3) and 18.20.340 related to noncompliance with 42 U.S.C. 1396r(b), (c), or (d), and all interest earned on money in the fund.

(b) The nursing facility resident security fund shall be administered by the department. Money in the fund may only be used for the protection of the health or property of residents of nursing facilities found to be out of compliance with 42 U.S.C. 1396r(b), (c), or (d), or a regulation adopted under those statutes, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement to a resident for personal money lost.

Sec. 18.20.360. TEMPORARY MANAGEMENT. (a) If the department determines that the health or safety of the residents of a nursing facility is immediately jeopardized as the result of the nursing facility's failure or refusal to comply with a state statute or regulation, or failure or refusal to comply with the medicaid requirements in 42 U.S.C. 1396r (Title XIX of the Social Security Act) or a regulation adopted under that statute, the department shall immediately petition the superior court for an order for appointment of temporary administration to

(1) oversee the operation of the facility; and

(2) ensure the health and safety of the facility's residents while orderly closure of the facility occurs or the deficiencies necessitating temporary administration are corrected.

(b) The court shall grant the petition if it finds by a preponderance of the evidence that the conditions in (a) of this section

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exist.

Sec. 18.20.370. RECEIVERSHIP. (a) The department may petition the superior court for establishment of a receivership for a nursing facility if the department finds that one of the following conditions exists and the current operator has demonstrated an inability or unwillingness to take action necessary to immediately correct the conditions alleged:

(1) the facility is operating without a license;

(2) the health, safety, or welfare of facility's residents is immediately jeopardized;

(3) the facility demonstrates a pattern and practice of violating state or federal statutes or regulations in such a way that minimum resident care is jeopardized.

(b) The court shall grant the petition if it finds by a preponderance of the evidence that one or more of the conditions in (a) of this section exist and the current operator is unable or unwilling to take action necessary to correct the condition.

Sec. 18.20.390. DEFINITIONS. In AS 18.20.300 - 18.20.390, unless the context requires otherwise,

(1) "department" means the Department of Health and Social Services;

(2) "general relief-medical" means the medical assistance program authorized in AS 47.25.120 - 47.25.300;

(3) "nursing facility" means an institution, or a distinct part of an institution, as defined in 42 U.S.C. 1396r;

(4) "medicaid" means the medical assistance program authorized in AS 47.07.010 - 47.07.100.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

February 20, 1990

The Honorable Ron Larson
Alaska State House of Representative
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Larson:

HB 418 has recently been referred from the House HESS committee to the House Finance committee. This legislation makes changes in Alaska law which are required for continued State compliance with federal law. To not adopt these changes will put Alaska's Medicaid program in jeopardy of loss of federal funds.

HB 418 provides the Department with additional sanctions that can be used to bring nursing homes into compliance with health and safety requirements. Currently, the only remedy available to the State is decertification, which means that the facility will be ineligible for medicaid funds. This is a very serious sanction as nursing homes in this state are heavily dependent on state medicaid funds.

HB 418 contains additional sanctions which the state can impose on nursing homes for non-compliance with health and safety regulations. These sanctions offer the Department a range of responses which allow the department the opportunity to impose a sanction commensurate with the violation; thus eliminating the need to move toward decertification for every health and safety violation.

Although this legislation is required for continued federal participation in the Medicaid program, the Department also believes that HB 418 offers a positive change regarding the way in which the Department monitors the quality of nursing home care in Alaska.

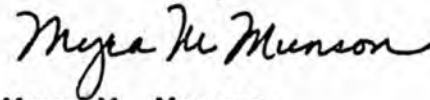
Representative Ron Larson

-2-

February 20, 1990

Therefore, I request that HB 418 be scheduled for a hearing in the House Finance committee as soon as possible. I know that the committee has many bills that have been referred to it and I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Myra M. Munson".

Myra M. Munson
Commissioner

1. Statement of Deficiencies report from a LTC facility. This report is required to be posted "in a place readily accessible to resident". This report was lengthy because termination action was initiated against this facility.

HRS 418

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

02-A005

(X2) MULTIPLE CONSTRUCTION

A. BUILDING _____

B. WING _____

(X3) DATE SURVEY COMPLETED

September 12-15, 1989

NAME OF PROVIDER OR SURVEYOR

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS- REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
F61	<p><u>405.1121 Governing Body (Condition Met)</u></p> <p><u>(k) Resident Rights (Standard Met)</u></p> <p>In 11 of 13 records reviewed, documentation was not found to indicate that residents or resident representatives had been given the opportunity to participate in their individual care planning and medical treatment.</p>	F61	<p>Notification of and invitation to participate in residents HCC will be given each resident and each residents guardian and documented on residents chart. Participation or lack of participation will be documented.</p> <p>Social Services Coordinator</p>	10-12-89
F69 F70	<p>Each resident had not been encouraged and assisted to exercise his/her rights as a resident of the facility to submit complaints and recommendations concerning the policies and services of the facility. For example, surveyors requested documentation of resident's complaints or grievances for the past 6 months. Facility staff reported that there was no mechanism or need for a resident complaint procedure because all complaints were channelled through the Resident Council. Review of Resident Council minutes for 6 months revealed 1 resident complaint. However, surveyor interviews with residents revealed the following:</p>	F69 F70	<p>Each resident will be encouraged and assisted to voice their feelings/complaints/requests. These comments will be documented as will the follow-up action by facility to respond to their comments. Additionally, a complaint box will be provided for residents use in cases where resident may prefer confidentiality. The resident council meetings will also be utilized for this purpose with documentation provided.</p> <p>Activities Coordinator</p>	9-22-89

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Administrator

10-17-89

Any deficiency statement ending with an asterisk () denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are discloseable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

02-A005

(X2) MULTIPLE CONSTRUCTION

A. BUILDING _____

B. WING _____

(X3) DATE SURVEY COMPLETED

September 12-15, 1989

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS- REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X4) COMPLETION DATE
F76	<p>1. Interview with 1 resident on 9/13/89 revealed resident's complaint of too few community outings.</p> <p>2. Interview with another resident on 9/14/89 revealed resident's complaints of dry food and having to sit with residents who smoke as she is allergic to smoke.</p> <p>The facility had not insured an adequate system of accounting for personal possessions. For example:</p> <p>1. Updated records were not signed by the responsible employee, the resident or resident representative.</p> <p>2. Personal property inventories were found in two locations. Initial inventories were located in the individual medical record and updates were found in a separate folder.</p> <p>3. The facility did not provide a system to protect residents' property and valuables.</p>	F76	<p>A new system of resident personal property inventory has been implemented. This system will insure accuracy, date, signatures, etc. and will be located on the residents chart.</p> <p>Nursing & Activities</p>	10-03-89

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X4) DATE

Any deficiency statement ending with an asterisk () denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

02-A005

(X2) MULTIPLE CONSTRUCTION

A. BUILDING _____
B. WING _____

(X3) DATE SURVEY COMPLETED

September 12-15, 1989

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

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F80	<p>Restraints had been used without physician orders which stated conditions or provision for use, type of restraint to be used, specified period of time for use, and instruction for release. For example:</p> <ol style="list-style-type: none"> Six of 6 records reviewed where restraints were being used indicated physician orders as "may restrain for self protection." Please refer to F237 for examples of inappropriate use of restraints. 	F30	<p>The use of restraints will be initiated on physician orders which will include stated conditions or provision for use, type of restraint to be used, specific period of time for use, and instruction for release. Physician and Nursing</p>	10-30-89
F93	<p>Please refer to F242 and F244 regarding residents' participation in activities.</p>	F93	<p>Refer to responses to F242 and F244</p>	
F94	<p>Please refer to F76 regarding residents' retention and use of personal possessions and clothing.</p> <p>(h) Staff Development (Standard Met)</p>	F94	<p>Refer to response to F76</p>	
F100	<p>Please refer to F749 and F761 regarding facility staff's level of knowledge about the problems and needs of the aged, ill, and disabled.</p>	F100	<p>Refer to response to F747 and F761. Additionally, the facility is currently developing a facility wide continuing education/in-service program (with documentation of inservices attended & presented). Administrator</p>	1030-89

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

02-A005

(X2) MULTIPLE CONSTRUCTION

A. BUILDING _____
B. WING _____

(X3) DATE SURVEY COMPLETED

September 12-15, 1989

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

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F101	Please refer to F126, F181, and F237 regarding facility staff not practicing proper techniques in providing care to the aged, ill, and disabled.	F101	Refer to response to F126, F181 and F237	
F102	<p>The facility staff did not display proper training and awareness in the following areas:</p> <ol style="list-style-type: none"> 1. Prevention and control of infections. For example: <ol style="list-style-type: none"> a. Proper handwashing between residents during the medication pass did not occur including the administration to a resident on isolation precautions. b. Ten of 10 employee records reviewed failed to indicate knowledge/training in infection control. 2. Fire safety. For example: <ol style="list-style-type: none"> a. Four of 10 employee records reviewed lacked documentation that employee had received fire safety training. b. Fire drills had not been performed as required on each of 3 shifts quarterly. Only 4 fire drills of the minimum of 12 had been done. 	F102	<p>In-service/instruction will be provided to insure knowledge and conformance to Infection Control and sanitation requirements. DNS</p> <p>The annual staff-wide Fire inservice was scheduled for October. Documentation of attendance will be available for review. Documentation will also be noted in personnel records. Administration (Fire Inservice was held Oct 12, 1989)</p> <p>Documentation on fire drills will be available for review. A copy of the fire drills will be sent to Administrator, DNS, & Fire</p>	<p>10-30-89</p> <p>10-30-89</p> <p>9-19-889</p>

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FEB 13 '90 15:45 TOC HUBB

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F126	<p>c. Fire drill records were fragmented. The maintenance department responsible for conducting the fire drill exercises had records of only two drills. Records of the other two drills were found in the policy and procedure manual by the surveyor. See also F358 and F359.</p> <p>3. Proper use of restraints for safety and protection. Please refer to F237.</p> <p><u>405.1124 Nursing Services (Condition Met)</u></p> <p>Each resident had not received his/her diet as prescribed. In addition, deviations had not been reported with appropriate action taken. For example, resident #14 was observed at evening meals on 9/13 and 9/14/89 with the following noted:</p> <p>1. Physician's orders were "2 gm. Na and lactose free diet chopped, double portions with Ensure BID."</p> <p>Resident was served single portion, pureed for both meals. Interview with meal preparer on both evenings revealed no difference in meals served between</p>	F126	<p>Continued:</p> <p>Marshall (in-house), and maintenance. The staff has been instructed as to the importance of fire drills and documentation of the drills. Administration</p> <p>Inservice and specific instruction has been provided to Dietary Service personnel regarding adherence to prescribed diet orders. All meals served are without added salt. Nursing & Food Service Sup.</p> <p>A mechanism has been initiated to identify, monitor and insure that weight information and tracking is exchanged/shared between nursing and dietary to provide immediate weight gain intervention for persons experiencing weight loss. Nursing & Food Service Supervisor</p>	<p>10-2-89</p> <p>10-2-89</p>

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	<p>residents receiving regular diets versus 2 gm. Na diets.</p> <p>2. Review of dietary assessment dated 5/8/89 revealed IBW of 150-160 lbs. Review of resident's record revealed the following weights:</p> <table border="1" data-bbox="327 666 764 1007"> <thead> <tr> <th>Date</th> <th>Weight (lbs)</th> </tr> </thead> <tbody> <tr><td>1/89</td><td>137</td></tr> <tr><td>2/89</td><td>132</td></tr> <tr><td>3/89</td><td>124</td></tr> <tr><td>4/89</td><td>129½</td></tr> <tr><td>5/89</td><td>121</td></tr> <tr><td>6/89</td><td>114</td></tr> <tr><td>7/89</td><td>118</td></tr> <tr><td>8/89</td><td>123½</td></tr> <tr><td>9/89</td><td>110</td></tr> </tbody> </table> <p>Hence, the resident has experienced a significant weight loss of 20% over the past nine months. Resident is currently at 71% of his average IBW. The facility had not responded to this resident's weight loss.</p> <p>3. Observation of resident during evening meal on 9/13/89 revealed resident in geri-chair at 4:45 pm. Meals were delivered to dining area at</p>	Date	Weight (lbs)	1/89	137	2/89	132	3/89	124	4/89	129½	5/89	121	6/89	114	7/89	118	8/89	123½	9/89	110		<p>Continued:</p> <p>Residents experiencing weight loss will be served first. Dietary</p>	10-2-89
Date	Weight (lbs)																							
1/89	137																							
2/89	132																							
3/89	124																							
4/89	129½																							
5/89	121																							
6/89	114																							
7/89	118																							
8/89	123½																							
9/89	110																							

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	5:10 pm. Resident was not assisted with meal until 1 hour, 10 minutes later.			
	4. Review of medication sheet revealed resident to receive Ensure at 9:00 am and 7:00 pm. Observation of resident on 9/13 and 9/14/89 revealed resident did not receive 7:00 pm Ensure.			
<u>F128</u>	Please refer to <u>F126</u> regarding care necessary to prevent skin breakdown. (c) 24-Hour Nursing Services (Standard Met)	<u>F128</u>	Refer to response to <u>F126</u>	
<u>F130</u>	Please cross reference to <u>F80</u> regarding justification of and provisions for use of restraints.	<u>F130</u>	Please refer to <u>F80</u> response	
<u>F134</u>	Infection control techniques were not always carried out in the provision of care for each resident. Please refer to <u>F102</u> regarding proper handwashing technique.	<u>F134</u>	Please refer to response to <u>F102</u>	
<u>F135</u>	Proper nursing procedures and techniques were not always used when medications were given to residents. For example: 1. Liquid Maldol mixed with wine was left with the resident to finish. The nurse	<u>F135</u>	The nurses will remain with the resident until the resident takes / finishes taking entire dose of medication. Nursing	9-30-89

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asked the nursing assistant to observe the resident while finishing the medication.

2. Medication for one resident was mixed into liquid prepared for bottle feeding and left with the nursing assistant to administer to the resident.

3. See also F134 and F102 regarding proper hand washing techniques.

F167

(d) Patient Care Management
(STANDARD NOT MET)

F167

Refer to responses to F134 & F102

F169
F170

Each resident's needs were not addressed in a written plan of care which demonstrates that the plans of all services are integrated, consonant with the physician's plan of care, and implemented shortly after admission. Needs were not identified for all services, goals developed, plans recorded, and progress notes did not indicate evaluations of interventions in relation to established goals. For example:

F169
F170

Care Plans have been reviewed, re-evaluated and re-written to identify current nursing needs of each resident. The plans will be consistent with the physician's plan of care.

Progress notes will relate to goals. All disciplines will chart on interdisciplinary notes to provide an easily identifiable flow of progress/care.

Nursing

10-30-89

1. Thirteen of 13 records reviewed did not contain assessments of nursing needs to validate appropriateness of goals found

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F173	<p>In the care plan. In addition, progress notes did not relate to goals.</p> <p>2. Please cross reference to <u>F233</u>, <u>F236</u>, and <u>F237</u>, regarding lack of social services assessments, goals, plans interventions and progress notes.</p> <p>3. Please cross reference to <u>F239</u>, <u>F240</u>, <u>F242</u>, and, <u>F244</u> regarding lack of activities assessments, individualized goals, appropriate plans and goals related progress notes.</p> <p><u>(e) Rehabilitative Nursing Care</u> <u>(Standard Met)</u></p> <p>Each resident had not received rehabilitative nursing care to maximize physical functioning and to prevent deformity, immobility, and contractures. Please cross reference to <u>F237</u>. For example:</p> <p>1. Resident #8 had an RPT plan to be exercised five times a week but the restorative aide record for July, 1989 indicated that exercise occurred only 8 of 22 possible times.</p>	F173	<p>Continued:</p> <p>Please refer to responses to: F233, F236, F237, F239, F240, F242 and F244</p> <p>Each resident will receive rehabilitative Nursing Care as identified in their individualized plan of care. Also, please refer to response to F237.</p> <p>An additional Restorative Aide has been added to the staff. Nursing Assistants will be instructed through in-service as to their participation in aiding this function. In-service will be provided by our Physical Therapist and Occupational Therapist. Nursing, OT & PT</p>	10-15-89
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCIAL ADMINISTRATION

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F178	<p>2. Observation of resident #4 who manifested contractures of all major joints had a record of having had exercise 8 times in May, 11 times in June, and 11 times in July. Standards of practice indicate that range of motion should be done 5-7 times a week to prevent contractures and deformity.</p>	F178	Please refer to responses to F169 and F170	
	<p><u>(f) Supervision of Resident Nutrition (Standard Met)</u></p>			
F180	Please cross reference to F126 regarding conformance to physician dietary orders.	F180	Please refer to response to F126	10-2-89
F181	<p>Each resident needing assistance in eating or drinking had not been provided prompt assistance. Specific self-help devices were not provided where necessary to promote resident dignity and independence. For example:</p> <p>1. Observation of the evening meal on 9/13/89, indicated that 11 residents were present. Three were self-feeders</p>	F181	<p>Staffing has been rescheduled to accommodate meal feeding times to assist with feeding residents who are unable to feed themselves.</p> <p>Nursing Additional self-help devices will be provided. Dietary</p>	10-20-89

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F191	<p>and 8 required assistance. Two facility staff were available to assist residents. Approximately 40 minutes passed before the 2 staff moved from the first resident they were assisting to the next. Hence, 6 other residents needing assistance sat without food for forty minutes.</p> <p>2. During the same meal, it was noted that 2 of the residents who were self-feeders would have benefited from special devices due to severe tremors and motor function deficits. The two residents ate two bites of their dinners each.</p> <p><u>(h) Conformance With Physician Drug Orders (Standard Met)</u></p> <p>Drugs were not always administered in accordance with written orders of the attending physician. For example, liquid Haldol mixed with wine was observed given to one resident. Neither the physician orders or the pharmacy review had addressed the appropriateness of mixing psychotropic medication with alcohol.</p>	F191	<p>Drugs will be given with juice or water, not with alcohol. Drugs will be given consistent with physicians order.</p> <p>Nursing & Physician</p>	10-26-89

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	405.1125 Dietetic Services (Condition Met)			
	(b) Menus and Nutritional Adequacy (Standard Met)			
196	Please refer to <u>F126</u> regarding menus planned to meet nutritional needs, in accordance with physician's orders.	F196	Please refer to response to <u>F126</u>	
	(c) Therapeutic Diets (Standard Met)			
F199	Please refer to <u>F126</u> regarding therapeutic menus served as ordered with supervision from the dietician.	F199	Please refer to response to <u>F126</u> . Also, this area will be specifically reviewed by Dietician with inservice to staff. Dietician & Administration	10-20-89
	(e) Preparation (Standard Met)			
F207	Where residents refused food served, appropriate substitutes of similar nutritive value were not offered. For example: 1. During the dinner meal served on 9/13/89, it was observed that the meal served differed from the planned menu for that evening. Two residents complained to staff that they didn't like or want what was served. Neither resident was offered a substitute. Each ate two bites of their meal only.	F207	Substitutes will be offered and residents informed of their availability. Administration, Nursing & Dietary	10-05-89

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F218	<p>2. During the dinner meal served on 9/14/89, it was observed that the meal served differed from the planned menu. Two residents complained to staff that they "didn't want" what was served. Neither resident was offered a substitute. Surveyor asked residents if they knew a substitute could be requested. Both reported they had not been informed. Residents requested substitutes. Soup was provided.</p> <p>3. Interview with dietary staff on 9/13/89 revealed substitutes for main entree were consistently limited to soup or sandwiches. These substitutes do not provide the resident with food items of similar nutritive value.</p> <p><u>405.1126 Specialized Rehabilitative Services (Condition Met)</u></p> <p><u>(b) Plan of Care (Standard Met)</u></p> <p>Please refer to F237 regarding therapy provided in accordance with accepted professional practices.</p>	F218	Please refer to response to F237	

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	<u>405.1127 Pharmaceutical Services</u> <u>(Condition Met)</u>			
	<u>(a) Supervision of Services (Standard Met)</u>			
F224	The pharmacist had not always reported irregularities to the physician and administrator. Please refer to <u>F191</u> .	F224	Pharmacist will routinely perform drug reviews and report irregularities to the physician, Head Nurse, DNS & Administrator. DNS & Administrator	10-30-89
F233	<u>405.1130 Social Services</u> <u>(CONDITION NOT MET)</u>	F233	Please note responses as follows:	
F234	<u>(a) Social Service Functions</u> <u>(STANDARD NOT MET)</u>	F234	Conformance will be assured by Social Services Coordinator	10-30-89
F236 F237	The medically related social and emotional needs and problems of residents were not identified. Services to meet the social and emotional needs of residents were not provided by the facility nor were referrals to an appropriate agency consistently made. The scope and severity of subsequent outcomes was found to limit the facility's capacity to provide adequate care and services to the residents. For example: 1. Nine of 13 records reviewed revealed an absence of Social Service assessments identifying residents' needs.	F236 F237	Social service assessments will be kept on the charts. Social and emotional needs and behavioral problems will be addressed and documented. Documentation of referrals will be maintained in chart. Referrals for medication review have been made or requested on all residents on psycho-tropic medications. Referrals to local mental health agencies for assistance in developing and delineating behavior mgmt. programs have been made. Behavior management programs will be reviewed by Social Services in conjunction with Nursing Service and Physicians to minimize the need for and use of physical and / or chemical restraints.	10-30-89

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TITLE

(X6) DATE

Any deficiency statement ending with an asterisk () denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER: **02-A005**

(X2) MULTIPLE CONSTRUCTION:
A. BUILDING _____
B. WING _____

(X3) DATE SURVEY COMPLETED: **September 12-15, 1989**

NAME OF PROVIDER OR SUPPLIER: _____
STREET ADDRESS, CITY, STATE, ZIP CODE: _____

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
	<p>2. Ten of 13 records reviewed revealed an absence of Social Services identification of residents' goals or approaches in interdisciplinary plans of care.</p> <p>3. Eleven of 13 records reviewed revealed the absence of current progress notes to reflect ongoing assessments of residents' needs, problems, evaluations of goals or interventions.</p> <p>4. Three of 13 residents were selected for an in-depth review of Social Services identification and response to residents' medically related social and emotional needs and problems. The following was noted:</p> <p>a. Resident #13:</p> <p>1. Review of resident's record revealed physician's order dated 9/87 for "behavior modification to correct disruptive behavior." Examples of unwanted behavior located in record included: "uncooperative and biting at staff"; "abusive verbally using foul language and obscene</p>		<p>Continued</p> <p>Nursing service and physicians have addressed the use of physical and chemical restraints.</p> <p>Social service goals and approaches as specified in the assessments and notes will be included in the plan of care.</p> <p>Social service notes have been moved from social service office to social service section in residents chart.</p> <p>Social service notes will reflect ongoing assessment of needs, problems, evaluations, and interventions including referrals for services and reviews of current programs.</p>	

PROVIDER REPRESENTATIVE'S SIGNATURE: _____ TITLE: _____ (X6) DATE: _____

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