

LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

SB 501 cont.; SB 503 695

286

1 in a series were sold at face value, less the prizes to be awarded for
2 that series;

3 (36) "permittee" means a municipality or a qualified orga-
4 nization that holds a valid permit under AS 05.15.100;

5 (37) "vendor" means a business whose primary activity is not
6 regulated by this chapter but that is engaged in the sale of pull-tabs
7 on behalf of a permittee or operator, holds a business license under
8 AS 43.70, and is

9 (A) a retail establishment;

10 (B) an eating establishment; or

11 (C) a establishment licensed under AS 04.11.

12 * Sec. 16. Sections 11 and 12 of this Act take effect on the effective
13 date of an Act establishing a charitable gaming surety fund that is enacted
14 by the Sixteenth Alaska State Legislature.

15 * Sec. 17. Except for secs. 11 and 12, this Act takes effect immediate-
16 ly under AS 01.10.070(c).

Original sponsor(s): Finance Committee

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 501 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act licensing and regulating pull-tab vendors;
7 prohibiting certain conduct by charitable gaming
8 licensees and permittees and their agents; relating
9 to charitable gaming awards, contracts between opera-
10 tors and permittees, and to the enforcement of chari-
11 table gaming laws; and providing for an effective
12 date."

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

14 * Section 1. AS 05.15.060 is amended to read:

15 Sec. 05.15.060. REGULATIONS. The department shall adopt regula-
16 tions under the Administrative Procedure Act (AS 44.62) necessary to
17 carry out this chapter covering, but not limited to,

18 (1) the issuance, renewal, and revocation of permits, [AND]
19 licenses, and vendor registrations;

20 (2) a method of ascertaining net proceeds, the determina-
21 tion of items of expense that may be incurred or paid, and the limita-
22 tion of the amount of the items of expense to prevent the proceeds
23 from the activity permitted from being diverted to noncharitable,
24 noneducational, nonreligious, or profit-making organizations, individ-
25 uals, or groups;

26 (3) the immediate revocation of permits, [AND] licenses,
27 and vendor registrations authorized under this chapter if this chapter
28 or regulations adopted under it are violated;

29 (4) the requiring of detailed, sworn, financial reports of
S

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22 tion of the amount of the items of expense to prevent the proceeds
23 from the activity permitted from being diverted to noncharitable,
24 noneducational, nonreligious, or profit-making organizations, individ-
25 uals, or groups;

26 (3) the immediate revocation of permits, [AND] licenses,
27 and vendor registrations authorized under this chapter if this chapter
28 or regulations adopted under it are violated;

29 (4) the requiring of detailed, sworn, financial reports of

1 operations from permittees and licensees including detailed statements
2 of receipts and payments;

3 (5) the investigation of permittees, licensees, registered
4 vendors, and their employees, including the fingerprinting of those
5 permittees, licensees, registered vendors, and employees whom the
6 commissioner considers it advisable to fingerprint;

7 (6) exclusion from participation as a permittee, licensee,
8 registered vendor, or employee of a permittee [OR] licensee, or regis-
9 tered vendor, of a person convicted of, in prison for, or on parole
10 for a felony within the preceding five years, or convicted of a crime
11 involving theft or dishonesty or of a violation of a municipal, state,
12 or federal gambling law;

13 (7) the method and manner of conducting authorized activ-
14 ities and awarding of prizes or awards, and the equipment that may be
15 used;

16 (8) the number of activities that may be held, operated, or
17 conducted under a permit during a specified period; however, the
18 department may not allow more than 14 bingo sessions a month and 35
19 bingo games a session to be conducted under a permit;

20 (9) a method of accounting for receipts and disbursements
21 by operators, including the keeping of records and requirements for
22 the deposit of all receipts in a bank;

23 (10) the disposition of funds in possession of a permittee,
24 [OR] a person, municipality, or qualified organization that possesses
25 an operator's license, or a registered vendor at the time a permit,
26 [OR] a license, or a vendor registration is surrendered, revoked, or
27 invalidated;

28 (11) restrictions on the participation by employees of the
29 Department of Fish and Game in salmon classics;

1 (12) other matters the commissioner considers necessary to
2 carry out this chapter or protect the best interest of the public.

3 * Sec. 2. AS 05.15.070 is amended to read:

4 Sec. 05.15.070. EXAMINATION OF BOOKS AND RECORDS. The commis-
5 sioner may examine or have examined the books and records of a per-
6 mittee, an operator, a registered vendor, or a person licensed to
7 manufacture or to distribute pull-tab games in the state. The commis-
8 sioner may issue subpoenas for the attendance of witnesses and the
9 production of books, records, and other documents.

10 * Sec. 3. AS 05.15.115(b) is amended to read:

11 (b) The contract between an authorizing permittee and an opera-
12 tor must include the amount and form of compensation to be paid to the
13 operator, the term of the contract, the activities to be conducted by
14 the operator on behalf of the permittee, the location where the activ-
15 ities are to be conducted, the name and address of the member in
16 charge, and other provisions the department may require. The contract
17 must provide that an operator conducting pull-tab games on behalf of a
18 permittee shall return at least 40 percent of the ideal net to the
19 permittee.

20 * Sec. 4. AS 05.15.124 is amended to read:

21 Sec. 05.15.124. MUNICIPAL REGULATION OF OPERATORS. A munici-
22 pality may by ordinance prohibit an operator or a vendor from conduct-
23 ing activities under this chapter within the municipality.

24 * Sec. 5. AS 05.15.128(a) is amended to read:

25 (a) The department shall revoke the license of an operator who
26 does not

27 (1) report an adjusted gross income of at least 15 percent
28 of gross income for two consecutive quarters based on the total opera-
29 tion of the operator; [OR]

1 (2) pay to each authorizing permittee for two consecutive
2 quarters at least 15 percent of the adjusted gross income, as de-
3 termined under (1) of this subsection, received from activities other
4 than pull-tab games conducted on behalf of the authorizing permittee,
5 or

6 (3) pay to each authorizing permittee for two consecutive
7 quarters at least 40 percent of the ideal net received from pull-tab
8 games conducted on behalf of the authorizing permittee.

9 * Sec. 6. AS 05.15.170 is repealed and reenacted to read:

10 Sec. 05.15.170. SUSPENSION OR REVOCATION OF PERMIT, LICENSE, OR
11 VENDOR REGISTRATION. (a) The commission may suspend or revoke a
12 permit, license, or vendor registration, after giving notice to and an
13 opportunity to be heard by the permittee, licensee, or vendor, if the
14 permittee, licensee, or vendor

15 (1) violates or fails to comply with a requirement of this
16 chapter or of a regulation adopted under this chapter;

17 (2) breaches a contractual agreement with a permittee,
18 licensee, or registered vendor;

19 (3) is convicted of a felony, of a crime involving theft or
20 dishonesty, or of a violation of a municipal, state, or federal gam-
21 bling law; for the purposes of this paragraph, a permittee, licensee,
22 or registered vendor that is not a natural person is considered con-
23 victed if an owner or manager of the permittee, licensee, or vendor is
24 convicted; or

25 (4) knowingly submits false information to the department
26 or, in the case of a registered vendor, to a permittee or operator
27 when the vendor knows that the false information will be submitted to
28 the department as part of an application for registration.

29 (b) If the department revokes a permit, license, or vendor

1 registration under this section, it may prohibit the permittee, li-
2 censee, or vendor from reapplying for a permit, license, or vendor
3 registration for a period of up to five years.

4 * Sec. 7. AS 05.15.180(g) is amended to read:

5 (g) A permittee [MUNICIPALITY OR A QUALIFIED ORGANIZATION] may
6 award a maximum of \$1,000,000 in prizes each year in activities au-
7 thorized under this chapter; [HOWEVER, IF A MUNICIPALITY OR A QUALI-
8 FIED ORGANIZATION CONTRACTS WITH AN OPERATOR TO CONDUCT ON ITS BEHALF
9 ACTIVITIES AUTHORIZED UNDER THIS CHAPTER, THE MUNICIPALITY OR QUALI-
10 FIED ORGANIZATION MAY AWARD A MAXIMUM OF \$500,000 IN PRIZES EACH
11 YEAR]. In this subsection, "activities authorized under this chapter"
12 means all activities subject to this chapter other than bingo.

13 * Sec. 8. AS 05.15.183 is amended by adding a new subsection to read:

14 (e) A distributor may not

15 (1) take an order for the purchase of a pull-tab series
16 from a vendor;

17 (2) sell a pull-tab series to a vendor; or

18 (3) deliver a pull-tab series to a vendor location.

19 * Sec. 9. AS 05.15.187 is amended by adding a new subsection to read:

20 (h) An owner, manager, or employee of a person holding a permit
21 or license under this chapter, or registered under this chapter as a
22 vendor, may not purchase a pull-tab from any pull-tab series manu-
23 factured, distributed, or sold by the permittee, licensee, or regis-
24 tered vendor.

25 * Sec. 19. AS 05.15 is amended by adding a new section to article 2 to
26 read:

27 Sec. 05.15.188. PULL-TAB SALES BY VENDORS ON BEHALF OF PERMIT-
28 TEES AND OPERATORS; VENDOR REGISTRATION. (a) A permittee or operator
29 may contract with a vendor to sell pull-tabs on behalf of the

1 permittee or operator, if the permittee or operator first registers
2 the vendor with the department by applying for registration on a form
3 prescribed by the department and by submitting the registration fee of
4 \$50 for each location at which the vendor will sell pull-tabs. If a
5 vendor location is within the boundaries of a municipality, the per-
6 mittee or operator shall, concurrently with applying for registration
7 with the department, submit a copy of the application form to the
8 governing body of the municipality.

9 (b) The department shall approve or disapprove an initial vendor
10 registration request within 10 working days of receipt of the regis-
11 tration form from a permittee or operator.

12 (c) Upon approval of the vendor registration, the department
13 shall issue an endorsement to the permittee's permit or the operator's
14 license that authorizes the conduct of pull-tab sales at that vendor
15 location.

16 (d) The endorsement issued under (c) of this section is an
17 extension of the permittee's or operator's privilege under AS 05.15.-
18 100 to conduct pull-tab sales in this state. A vendor may not sell a
19 pull-tab series until the permit or license containing the endorsement
20 for the new vendor location has been posted by the permittee or opera-
21 tor in the registered vendor establishment. The endorsed permit or
22 license must be clearly visible to the gaming public.

23 (e) A separate endorsement shall be issued for each vendor
24 location. The permittee or operator shall inform the department when
25 a vendor with whom the permittee or operator is contracting changes
26 the physical location at which pull-tabs are sold, and shall return to
27 the department the endorsed permit or license of a vendor that is no
28 longer selling pull-tabs on behalf of the permittee or operator.
29 Failure to inform the department of a change in vendor location, or to

1 return the endorsed permit or license to the department after a vendor
2 change, may constitute grounds for the suspension or revocation of a
3 permittee's permit or an operator's license.

4 (f) At the time that a permittee or operator annually renews its
5 permit or license, it shall also renew the registration of all loca-
6 tions where a vendor is selling pull-tabs on the permittee's or opera-
7 tor's behalf and shall pay a registration fee of \$50 for each vendor
8 location.

9 (g) A permittee or operator that uses a vendor to sell pull-tabs
10 on its behalf shall enter into a written contract with that vendor.
11 The department may inspect this contract. If the contract contains
12 provisions that violate this chapter or the regulations adopted under
13 it, the department may declare the contract void, and may suspend or
14 revoke the registration of the vendor and the license of the operator
15 or the permit of the permittee.

16 (h) A person, other than a permittee's member-in-charge or an
17 operator, may not directly supply a pull-tab series to a registered
18 vendor for sale by that vendor on behalf of the permittee or operator.
19 A vendor may not acquire a series from a licensed distributor.

20 (i) If a permittee contracts with a vendor under (a) of this
21 section, the contract must provide that the permittee shall receive no
22 less than 70 percent of the ideal net.

23 (j) An amount equal to the ideal net less the compensation paid
24 to the vendor shall be paid by the vendor within 30 days of the date
25 that the member in charge or operator delivers a pull-tab series to
26 the vendor for sale. The amount required to be paid by the vendor
27 under this subsection must be paid by check and shall be deposited by
28 the permittee or operator directly into its gaming checking account.

29 (k) A vendor may not enter into a contract with a permittee to

1 sell pull-tabs for compensation if

2 (1) the permittee is a qualified organization, and the
3 owner or manager of the vendor is a member of the governing body of
4 the organization, or is the organization's designated member in charge
5 under AS 05.15.112; or

6 (2) the permittee is a municipality, and the owner or
7 manager of the vendor is an elected official of the municipality or is
8 employed by the municipality in a managerial position.

9 * Sec. 11. AS 05.15.188(g) is repealed and reenacted to read:

10 (g) At the time that a permittee or operator annually renews its
11 permit or license, it shall also renew the registration of all loca-
12 tions where a vendor is selling pull-tabs on the permittee's or opera-
13 tor's behalf and shall pay a registration fee of \$50 for each vendor
14 location. The permittee or operator shall also forward, with each
15 vendor registration renewal, that vendor's annual payment of the
16 assessment to the charitable gaming surety fund.

17 * Sec. 12. AS 05.15.188 is amended by adding a new subsection to read:

18 (m) The vendor registration required by (a) of this section
19 shall be accompanied by payment of the vendor's assessment to the
20 charitable gaming surety fund under AS 05.15.230. The assessment
21 amount shall be set by the department by regulation and may not exceed
22 \$100. The payment shall be drawn on the checking account of the
23 vendor and may not be paid by the permittee or operator on the ven-
24 dor's behalf.

25 * Sec. 13. AS 05.15 is amended by adding a new section to read:

26 Sec. 05.15.195. ORDER PROHIBITING ACTION IN VIOLATION OF CHAP-
27 TER. (a) If the commissioner determines that a person has engaged in
28 an act or practice in violation of this chapter or a regulation adopt-
29 ed under this chapter, the commissioner may, after giving reasonable

1 notice to the person and an opportunity for the person to be heard,
2 issue an order prohibiting the violation by the person. The order
3 remains in effect until the person has submitted evidence acceptable
4 to the commissioner showing that the violation has been corrected.

5 (b) If the public interest requires, the commissioner may issue
6 an emergency order prohibiting an act or practice in violation of this
7 chapter or a regulation adopted under this chapter without notice to
8 or an opportunity to be heard by the person affected by the order.
9 The commissioner shall immediately serve the person with a copy of the
10 emergency order. An emergency order expires 60 days after the date it
11 is issued, if the person affected by the order requests a hearing
12 within 15 days of receipt of the order. If the person does not re-
13 quest a hearing within 15 days of receipt of the emergency order, the
14 order becomes permanent. Following a hearing, the commissioner may
15 rescind, modify, or make permanent the emergency order.

16 * Sec. 14. AS 05.15.200(b) is amended to read:

17 (b) A person who, with the intent to mislead a public servant in
18 the performance of the public servant's duty, submits a false state-
19 ment in an application for a permit, license, or vendor registration
20 under this chapter [,] is guilty of unsworn falsification.

21 * Sec. 15. AS 05.15.210 is amended by adding new paragraphs to read:

22 (35) "ideal net" means an amount equal to the total amount
23 of receipts that would be received if every individual pull-tab ticket
24 in a series were sold at face value, less the prizes to be awarded for
25 that series;

26 (36) "permittee" means a municipality or a qualified orga-
27 nization that holds a valid permit under AS 05.15.100;

28 (37) "vendor" means a business whose primary activity is not
29 regulated by this chapter but that is engaged in the sale of pull-tabs

1 on behalf of a permittee or operator, holds a business license under
2 AS 43.70, and is

3 (A) a retail establishment;

4 (B) an eating establishment; or

5 (C) an establishment licensed under AS 04.11.

6 * Sec. 16. Sections 11 and 12 of this Act take effect on the effective
7 date of an Act establishing a charitable gaming surety fund that is enacted
8 by the Sixteenth Alaska State Legislature.

9 * Sec. 17. Except for secs. 11 and 12, this Act takes effect immediate-
10 ly under AS 01.10.070(c).

BY THE FINANCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 501

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the retail sale of pull-tabs,
7 tickets, and cards for charitable gaming activities."

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

9 * Section 1. AS 05.15 is amended by adding a new section to article 2
10 to read:

11 Sec. 05.15.188. SALES BY PERSONS OTHER THAN PERMITTEES OR OPERA-
12 TORS. A person other than a permittee or an operator may sell pull-
13 tabs, tickets, and cards that are necessary to conduct activities
14 authorized by AS 05.15.100(a) if the person is authorized to make
15 sales by a written contract with a permittee or operator. The permit-
16 tee or operator shall notify the department within five days of the
17 commencement of sales by a person under this section.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards.
Sponsor: Senate Finance
Requestor: Senate L&C

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	50.3	50.3	50.3	50.3	50.3	50.3
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	9.9					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.2	62.3	62.3	62.3	62.3	62.3
CAPITAL	0	0	0	0	0	0
REVENUE	100.0	100.0	100.0	100.0	100.0	100.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER *	72.2	62.3	62.3	62.3	62.3	62.3
TOTAL	72.2	62.3	62.3	62.3	62.3	62.3

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(SEE ATTACHED)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/26/90

Approved by Commissioner: Larry Mercurieff Commissioner Date: 3/26/90
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

Changes in CS SB 501 (JUD):
have no fiscal impact. This
fiscal note is appropriate.
Projections of no fiscal impact
would continue through 1996.

* Funding Source is General Fund/Program Receipts

SB501FN/wfd/LGJOBS

CR page of 3

CONTINUATION OF FISCAL NOTE ANALYSIS
CSSB 501 (L&C)

The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.

Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.

The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.

The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.

The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.

With a vendor registration fee of \$50, we estimate that regulation of vendors will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors).

1.	POSITION TITLE INVESTIGATOR III				RANGE/STEP 18A	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIDRITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.</p> <p>Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.</p> <p>The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.</p> <p>The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.</p> <p>The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.</p> <p>With a vendor registration fee of \$50, we estimate that regulation of vendor will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors)</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		37.3							
6.	Benefits		13.0							
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	50.3							
10.	Travel	02	8.0							
11.	Contractual	03	3.0							
12.	Commodities	04	1.0							
13.	Equipment	05	9.9							
14.	Other									
15.	TOTAL COST		72.2							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004								
19.		I-A Receipts 1005								
20.		Program Receipts 1028		72.2						
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

REQUEST FOR NEW POSITION LGJOBS/SB501FN

AGENCY	Commerce and Economic Development
BRU	Occupational Licensing
COMPONENT	Investigations

FY 91

Page	3	of	3
Revised Date			

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SENATE FINANCE COMMITTEE REPORT

DATE: 3/30/90

FURTHER:

DATE TURNED INTO OFFICE: 4/4/90

The Finance Committee considered

SB 503

Oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services during oil spill-related declared disasters; establishing the AK State Emergency Response Commission; efd.

and recommended:

replace with _____ CS SB 503 (Fix)
 same title
 or adopt _____ CS _____
 new title
 attached amendment(s)
 technical title change (HB only)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) Dept/Date:
DEC 485.3 4/2/90
DMVA 2111.8 4/2/90

fiscal note(s) Dept/Date:

zero fiscal note(s) DO Law 4/2/90

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Do Not Pass
with DMVA as lead agency

Do Not Pass
with DMVA as lead agency

1. John B... Do Not Pass

2. Paul ...

Co-Chairs: Signatures and Recommendations

STATE OF ALASKA
1990 LEGISLATIVE SESSION

FISCAL NOTE

REVISED
BILL VERSION: CSSB 503 (Fin)
PUBLISH DATE: _____

REQUEST:

Revision Date: 4/4/90
Title: An act concerning Response
Fund expenditures/transferring authority to DES...
Sponsor: Rules/Governor
Requestor: S Finance

Agency Affected: Environ. Conservation
BRU: Environmental Quality
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	88.3	88.3	88.3	88.3	88.3	88.3
CONTRACTUAL	347.0	327.0	227.0	227.0	227.0	227.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	435.3	415.3	315.3	315.3	315.3	315.3
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	435.3	415.3	315.3	315.3	315.3	315.3
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	445.3	415.3	315.3	315.3	315.3	315.3

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Lynn Kent
Division: Environmental Quality

Phone: 465-2630
Date: 4/4/90

Approved by Commissioner: *A. D. Hylleberg*
Agency: Environmental Conservation

Date: 4/4/90

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Sections 1-22

These sections of the bill will not require any additional money for the Department.

Section 23

This section of the bill requires the Department to adopt regulations regarding oil and hazardous substance containment and cleanup technologies and products. There is contractual money included (\$20.0) in FY 91 for assistance in writing the regulations.

Section 24

This section will not require any additional money for the Department.

Section 25

This section establishes the State Emergency Response Commission (SERC) in statute. The scope of the SERC, currently established under administrative order, is broadened to include ultimate responsibility for regional and statewide contingency planning for oil spill response, as well as housing the Oil and Hazardous Substance Spill Technology Review Council.

While the SERC is established under the purview of the Division of Emergency Services, Department of Military and Veterans' Affairs, it is established within DEC statutes. Therefore, funding is included for travel expenses and per diem for commission members attending quarterly SERC meetings (6-8 persons) and quarterly subcommittee meetings (6-8 persons). There are currently four subcommittees. Based on an air fare of \$360 and one day per diem at \$80/day, travel and per diem amount to \$70.4.

This legislation will require the commission to establish LEPCs for each emergency planning district. Approximately 12 Local Emergency Planning Committees (LEPC) are in the process of being established at an estimated cost of \$20.0 to each community. Contractual services monies in the amount of \$120.0 (\$10.0 per LEPC) will be necessary to help insure that LEPCs are established, members receive appropriate training, and that the requirements of this proposed statute and SARA Title III are complied with. This cost will recur in subsequent fiscal years as additional LEPCs are established.

Based on the past year's expenditures, annual costs to advertise quarterly SERC meetings in newspapers will require approximately \$5.0. Annual cost to transcribe audio tapes of quarterly SEFC meetings is \$2.0.

The Hazardous Substance Spill Technology Review Council is also established under this section of the bill. This is established under the SERC, which is established under the purview of the Division of Emergency Services, Department of Military and Veterans' Affairs, but is established within DEC's statutes. Therefore funding is included for travel costs for seven commission members, based on four meetings per year, three days per meeting at \$80 per diem (\$6.7) and \$400 average per airfare (\$11.2). Funds (\$200.0) are included for technical assistance contracts which may include data collection, analysis of response technologies, and technical research. These funds are reduced to \$100.0 after the first two fiscal years.

Sections 26-30

These sections will not require any additional money for the Department.

FY 91 fiscal detail

<u>Position</u>	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Travel/per diem (SERC)		70.4				\$ 70.4
Contractual (SERC)			127.0			127.0
Contractual (Regs)			20.0			20.0
Council members		17.9				17.9
Contractual (Tech asst)			200.0			200.0
TOTALS		88.3	347.0			\$435.3

FISCAL NOTE

REQUEST:

Revision Date: April 2, 1990
 Title: Oil and hazardous substance response.
 Sponsor: Governor
 Requestor: Senate Oil and Gas Committee

Agency Affected: DMVA
 BRU: Disaster Planning & Control
 Components: Oil & Hazardous Substance Response Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	443.4	443.4	443.4	443.4	443.4	443.4
TRAVEL	115.4	115.4	115.4	115.4	115.4	115.4
CONTRACTUAL	1427.0	1327.0	1327.0	1327.0	1327.0	1327.0
SUPPLIES	59.0	59.0	59.0	59.0	59.0	59.0
EQUIPMENT	67.0	67.0	67.0	67.0	67.0	67.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2111.8	2011.8	2011.8	2011.8	2011.8	2011.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	2111.8	2011.8	2011.8	2011.8	2011.8	2011.8
TOTAL						

POSITIONS:

FULL-TIME	9	9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Jeff Morrison, Director Phone: 465-4600
 Division: Administrative & Support Services, DMVA Date: 4/2/90

Approved by Commissioner J. Morrison Date: 4/2/90
 Agency: Department of Military & Veterans Affairs

Distribution (by preparer):

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

Changes in CSSB 503 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 4/4/90

FISCAL NOTE FOR CSSB 503 (O&G)
Department of Military and Veterans Affairs

This bill does two things that have a fiscal impact: 1) it transfers the Oil and Hazardous Substance Response Office created by Ch 113, SLA 1989 from the Department of Environmental Conservation to the Department of Military and Veterans Affairs; and 2) it establishes the State Emergency Response Commission (SERC) in statute. Passage of the act would create a new component in the Disaster Planning and Control BRU: Oil and Hazardous Substance Response Office.

The fiscal note for DMVA for these two purposes is derived from the fiscal notes prepared by the Department of Environmental Conservation for SB264 (Ch 113, SLA 1989) [for the costs associated with the Oil and Hazardous Substance Response Office], and for the initial Governor's submission of SB 503 [for the costs associated with the SERC].

Due to the short response time to prepare this fiscal note, it may be necessary to revise it after consultation with the Department of Environmental Conservation. There was not ample time to work closely with DEC prior to the deadline for submission of the fiscal note.

TRANSFER OF OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE

The response office would consist of a full-time staff of nine agency personnel: a deputy director, six response specialists, one administrative assistant, and one clerk typist. The contractual line includes the following: 1) the second of two years of office set-up costs (\$100,000); 2) training contracts (\$200,000); 3) contracts with local governments (\$500,000); 4) wages and per diem for volunteer training (\$300,000); 5) contracts with private response specialist (\$100,000); and contracts for oil spill response research (\$100,000). These funds are currently budgeted in the Department of Environmental Conservation, in the Environmental Quality Projects component of the Environmental Quality BRU.

Funding for this office is from the Oil and Hazardous Substance Release Response Fund, established by A.S. 46.08.010. Including the personal services costs and contractual services costs specifically addressed above, the total costs of this portion of the fiscal note are:

Personal services	443.4
Travel	45.0
Contractual Services	1300.0
Supplies	59.0
Equipment	67.0
Total	1914.4

ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSION (SERC)

The staff of the Oil and Hazardous Substance Response Office will serve as staff to the SERC under terms of this bill, providing the following services: serve as technical support to the SERC, coordinate SERC meetings, coordinate establishment of the Local Emergency Planning Committees (LEPCs), provide technical information to LEPCs and other duties required by statute. This legislation will not require additional new positions. Costs of the SERC will consist chiefly of travel and per diem of SERC members, and costs of establishing Local Emergency Planning Committees (LEPCs).

Travel expenses and per diem for Commission members attending quarterly meetings (6-8 persons) and quarterly subcommittee meetings (6-8 persons) will be paid by the fiscal note to this bill. There are four subcommittees. Assuming air fare of \$360.00 and per diem of \$80.00 per member on an average, the total cost of travel and per diem are estimated to be \$70,400.

The legislation will require the SERC to establish LEPCs for each emergency planning district. Approximately 12 LEPCs are in the process of being established at an estimated cost of \$20,000 to each community. Contractual services monies in the amount of \$120,000 (\$10,000 per LEPC) will be necessary to help ensure that LEPCs are established, members receive appropriate training, and that the requirements of this proposed statute and SARA Title III are complied with. This cost will recur in subsequent fiscal years as additional LEPCs are established.

Based on past experience, annual costs to advertise quarterly SERC meetings in newspapers will require approximately \$5,000. Annual cost to transcribe audio tapes of quarterly SERC meetings is \$2,000.

Including the travel and contractual services costs specifically addressed above, the total costs of this portion of the fiscal note are:

Personal services	0.0
Travel	70.4
Contractual Services	127.0
Supplies	0.0
Equipment	0.0
Total	197.4

The combined annual cost of the fiscal note is \$2,111,800. This drops by \$100,000, to \$2,011,800, in the second year due to the end of office start-up costs. Since this fiscal note was prepared rather hastily, we welcome the critical review of the legislative finance committees.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "...transferring the oil and hazardous substance
response office to the Dept. of Military & Veterans' BRU: Legal Services
Affairs
 Sponsor: Senate Oil and Gas Components: Operations
 Requestor: Senate Oil and Gas

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 2, 1990
 Approved by Commissioner: Richard K. Pegues (FOR)
Douglas B. Raily, Attorney General Date: April 2, 1990
 Agency: Department of Law

Distribution (by preparer):

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

Changes in CSSB 503 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 4/4/90 RL

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 503 (Oil and Gas)

This bill amends various statutes to provide that when an actual or imminent oil or hazardous substance discharge develops in to a catastrophic oil discharge, or becomes a declared disaster emergency, the division of emergency services, Department of Military and Veterans' Affairs, shall exercise the authority of the Department of Environment Conservation and direct a person or persons to take action necessary to meet the emergency, and protect the public health, welfare and environment. The division would establish an oil and hazardous substance response office to perform related duties.

The bill would also provide that the attorney general shall immediately seek to recover money expended by the division of emergency services for containment and cleanup. Because the Department of Law already provides this service on behalf of DEC, there will not be a fiscal impact for the Department of Law if the division of emergency services is included in this provision. Law's costs for this purpose are normally reimbursable from the hazardous substance release response fund, as a necessary part of containment and cleanup.

Section 25 of the bill establishes an Alaska State Emergency Response Commission, within the Department of Military and Veterans' Affairs, to oversee state and regional plans for hazardous substance response, and to prepare, review, and revise the statewide and regional master oil and hazardous substance discharge and prevention contingency plans. The commission would be responsible for overseeing local planning committee activities.

A Hazardous Substance Spill Technology Review Council would also be established within the commission. The council would be responsible for reviewing and recommending oil and hazardous substance spill technology research topics to DEC; establishing testing protocols to be used by DEC to evaluate the effectiveness of hazardous substance spill technologies for use in the state; identifying sources of money that may be available for discharge related research; and making proposals to the governor and the commission to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances.

The council would serve as a central repository of hazardous substance discharge information and compile and maintain information relating to available containment and cleanup technology, including ways to improve hazardous substance spill response technology and procedures, steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substance, and the steps that should be taken to improve the ability of industry and government to respond to discharges of hazardous substances. The council would also compile and maintain information on the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharge and on hazardous substance spill technology research conducted by the Department of Environmental Conservation.

Finally, the council would be given investigative and hearing powers and would be able to issue subpoenas, administer oaths, and conduct investigations related to its duties. The council would be empowered to compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and could have the depositions of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when it is consistent with the duties assigned to the council. The failure,

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 503 (Oil and Gas)

refusal, or neglect to obey a subpoena would be punishable by law or court rule. The superior court would be able to compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

These latter powers are substantial and could require considerable attorney legal services if the council conducted extensive investigations. Unfortunately, there is no way to predict the extent to which investigations might be conducted. For instance, if the council's investigations are merely incidental, existing staff who normally assist the Department of Environmental Conservation would suffice. Conversely, if the council undertook an indepth investigation involving complex issues, substantial evidence, or numerous witnesses, additional attorney resources would be required before the work could be undertaken. Consequently, it is likely that an appropriation for legal services will be required at some point after the bill is implemented and the actual workload becomes known.

4/4/90 Conceptual Amendment

P. 8 + 9, Secs. 16-17

5:10pm. Approved by Janice in Sen. Binkley's office

4/5/90 Telephoned approval by both Kirsten + Judy
in Sen. Pearce's office, 8:10 am. AM

9005205J
Lauterbach
4/4/90

8002205J

Original sponsor(s): Rules/Governor

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 503 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; transferring the oil and hazardous substance response office to the Department of Military and Veterans' Affairs; relating to the duties of the Department of Environmental Conservation and the Department of Military and Veterans' Affairs in relation to oil, hazardous substances, and radioactive material; providing that the Department of Military and Veterans' Affairs has final state decision-making authority in responses to catastrophic oil discharges and emergency disasters declared by the governor that relate to oil or hazardous substances; establishing the Alaska State Emergency Response Commission and the Hazardous Substance Spill Technology Review Council; transferring the responsibility for the statewide and regional master oil and hazardous substance discharge and prevention contingency plans to the Alaska State Emergency Response Commission; and providing for an effective date."

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

* Section 1. AS 26.23.020(g) is amended by adding a new paragraph to read:

1 (11) use money from the oil and hazardous substance release
2 response fund, established by AS 46.08.010, to respond to a declared
3 disaster emergency related to an oil or hazardous substance discharge.

4 * Sec. 2. AS 26.23.040 is amended by adding a new subsection to read:

5 (f) The Alaska division of emergency services shall establish
6 the oil and hazardous substance response office and perform related
7 duties under AS 46.08.100 - 46.08.190.

8 * Sec. 3. AS 26.23.050(b) is amended to read:

9 (b) Whenever, and to the extent that, money is needed to cope
10 with a disaster, the first recourse shall be to funds regularly appro-
11 priated to state and local agencies. The second recourse shall be to
12 funds available in the disaster relief fund or, for oil or hazardous
13 substances discharges, the oil and hazardous substance release re-
14 sponse fund, as the governor determines appropriate. If money avail-
15 able from these sources is insufficient, and if the governor finds
16 that other sources of money to cope with the disaster are not avail-
17 able or are insufficient, the governor may, notwithstanding any limi-
18 tation imposed by AS 37.07.080(e), transfer and spend money appropri-
19 ated for other purposes or, in situations involving natural disasters,
20 borrow from the United States government or other public or private
21 sources for a term not to exceed two years.

22 * Sec. 4. AS 26.23 is amended by adding a new section to read:

23 Sec. 26.23.215. RELATIONSHIP TO OTHER PLANNING STATUTES. To the
24 extent that the state emergency plan, interjurisdictional plans, and
25 local plans prepared under this chapter relate to action required to
26 avert damage from a release of oil or a hazardous substance, the plans
27 must be substantially equivalent in relevant respects to the emergency
28 plans prepared or approved by the Alaska State Emergency Response
29 Commission under AS 46.04.200 - 46.04.210 and AS 46.13 and use the

same incident command system used in those plans.

* Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:
(50) Hazardous Substance Spill Technology Review Council
(AS 46.13.110).

* Sec. 6. AS 44.66.010(a) is amended by adding a new paragraph to read:
(17) Hazardous Substance Spill Technology Review Council
(AS 46.13.110) -- June 30, 1994.

* Sec. 7. AS 46.03.020 is amended by adding a new paragraph to read:
(14) enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private entities to conduct research into oil and hazardous substances spill technology; the department shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120.

* Sec. 8. AS 46.03.865(a) is amended to read:

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare [,] or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. The department may also exercise the authority granted to the oil and hazardous substance response office under AS 46.08.140. However, if the situation for which the department declares an emergency develops into a catastrophic oil discharge, as defined in AS 46.04.900, or becomes a declared disaster emergency under AS 26.23, the division of emergency services, Department of

Military and Veterans' Affairs, shall exercise the authority of the department under this subsection and the department's activities shall be subject to the approval of the division.

* Sec. 9. AS 46.03.865(c) is amended to read:

(c) During a period of emergency declared under (a) of this section, each state agency, including, when appropriate, the division of emergency services, Department of Military and Veterans' Affairs [UNDER THE AUTHORITY CONFERRED BY AS 26.20], shall take whatever action the department finds necessary to meet the emergency [,] and to protect the public health, welfare, or environment. However, if the situation for which the department declared an emergency develops into a catastrophic oil discharge, as defined in AS 46.04.900, or becomes a declared disaster under AS 26.23, each state agency, including the department, shall take whatever action the division of emergency services finds is necessary to meet the disaster and to protect the public health, welfare, or environment.

* Sec. 10. AS 46.04.080(a) is amended to read:

(a) The actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23.020. The [. HOWEVER, THE] department shall augment and support [PERFORM THE DUTIES OF] the Alaska division of emergency services, Department of Military and Veterans' Affairs, in the performance of the division's duties under AS 26.23.040 and AS 46.08.100 - 46.08.190 as they apply to catastrophic oil discharges. During a response to a catastrophic oil discharge, the [THE] department shall consult and coordinate its duties [UNDER THIS SECTION] with the Alaska division of emergency services and act under directives of the division.

* Sec. 11. AS 46.04.090(a) is amended to read:

(a) The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that [WHICH] may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that [WHICH], in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the oil and hazardous substance response office in the Department of Military and Veterans' Affairs to avoid duplication of efforts.

* Sec. 12. AS 46.04.200 is amended to read:

Sec. 46.04.200. STATE MASTER PLAN. (a) The Alaska State Emergency Response Commission [DEPARTMENT] shall prepare and annually review and revise a statewide master oil and hazardous substance discharge and prevention contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge contingency plan approved or submitted for approval by the Department of Environmental Conservation under AS 46.04.030;

(2) include an incident command system consistent with the requirements of AS 46.13.090(b) that clarifies and specifies [CLARIFY AND SPECIFY] the respective responsibilities of each of the following in the assessment, containment, and cleanup of a [CATASTROPHIC OIL DISCHARGE OR OF A SIGNIFICANT] discharge of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and

Veterans' Affairs, and other agencies of the state;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission [COMMISSIONER] as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include an incident command system consistent with the requirements of AS 46.17.090(b) that specifies [SPECIFY] the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.-080; and

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances.

(c) In preparing and annually reviewing the state master plan, the commission [COMMISSIONER] shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan; and

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge contingency plan approved

under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section.

* Sec. 13. AS 46.04.210(a) is amended to read:

(a) For any region of the state, the boundaries of which are determined by the commission [COMMISSIONER] by regulation, in which the department is required to review and approve an oil discharge contingency plan submitted by a person under AS 46.04.030, the commission [DEPARTMENT] shall prepare and annually review and revise a regional master oil and hazardous substance discharge and prevention contingency plan.

* Sec. 14. AS 46.04 is amended by adding a new section to article 2 to read:

Sec. 46.04.220. DEFINITION. In AS 46.04.200 - 46.04.210, "commission" means the Alaska State Emergency Response Commission established under AS 46.13.

* Sec. 15. AS 46.08.040 is amended by adding new subsections to read:

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) The adjutant general of the Department of Military and Veterans' Affairs may use money from the fund to pay costs incurred by the division of emergency services, Department of Military and Veterans' Affairs, to

(1) establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office; and

(2) contain, clean up, and take other necessary action to

address a release or threatened release of oil or a hazardous substance.

(d) The Alaska State Emergency Response Commission may use money from the fund to prepare, review, and revise the state and regional master oil and hazardous substance discharge and prevention contingency plans required under AS 46.04.200 - 46.04.210.

* Sec. 16. AS 46.08.060(a) is amended to read:

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended by the department under AS 46.08.040(a) [AS 46.08.040] during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020;

(3) a summary of municipal participation in the department's responses that were funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; and

(5) the projected cost to the department for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

* Sec. 17. AS 46.08.060 is amended by adding a new subsection to read:

(c) In addition to the department's report required under (a) of this section, the governor, the Department of Military and Veterans'

Affairs, and the Alaska State Emergency Response Commission shall each submit a report about their use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report by the Department of Military and Veterans' Affairs must include information about its activities that is the same as the information required under (a) of this section for activities of the Department of Environmental Conservation as well as a detailed explanation of its use of the fund for the oil and hazardous substance response office, corps, and depots under AS 46.08.040(c)(1). In the governor's report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b). The commission's report must include an explanation of its expenditures under the authority of AS 46.08.040(d).

* Sec. 18. AS 46.08.070(a) is amended to read:

(a) The commissioner and the adjutant general shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

* Sec. 19. AS 46.08.070(b) is amended to read:

(b) The attorney general, at the request of the commissioner or the adjutant general, shall immediately seek to recover money expended by the department or the division of emergency services under AS 46.-08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

* Sec. 20. AS 46.08.100 is amended to read:

Sec. 46.08.100. OFFICE ESTABLISHED. There is established in the

division of emergency services, Department of Military and Veterans' Affairs, [DEPARTMENT] the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances.

* Sec. 21. AS 46.08.110(c) is amended to read:

(c) Members of the corps are entitled to per diem and expenses as determined by the division [COMMISSIONER] for training and for days spent in service to the state in containment and cleanup actions.

* Sec. 22. AS 46.08.130(b) is amended to read:

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes a disaster [AN] emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.865;

(3) the governor declares the discharge an emergency under AS 26.23; or

(4) the division director or the commissioner of environmental conservation reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) - (3) of this subsection; or

(5) the office is requested by the commissioner of environmental conservation to assist the department because the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

* Sec. 23. AS 46.08.130 is amended by adding a new subsection to read:

(c) When the office responds to an oil or hazardous substance discharge under this section, its activities are governed by the incident command system applicable to the type of discharge to which it is responding, as required under AS 46.13.090(b).

* Sec. 24. AS 46.08.190 is amended by adding a new paragraph to read:

(4) "division" means the division of emergency services, Department of Military and Veterans' Affairs.

* Sec. 25. AS 46.08 is amended by adding new sections to read:

ARTICLE 3. RESPONSE TECHNOLOGIES.

Sec. 46.08.200. APPROVAL PROCESS FOR RESPONSE TECHNOLOGIES. (a)

The department shall, by regulation, adopt procedures and criteria it will use for approving or disapproving equipment, substances, and other technologies for use in containment and cleanup of a release of oil or a hazardous substance. The regulations must include the protocols developed by the Hazardous Substance Spill Technology Review Council under AS 46.13.120 and provide that the approval process will take no longer than six months after the date the department receives an application for approval.

(b) A person may apply to the department for approval of equipment, a substance, or other technology for use in containment or cleanup of a potential release of oil or a hazardous substance. An application under this subsection must be in written form and include information requested by the department.

Sec. 46.08.210. PROHIBITION. A person may not use equipment, a substance, or other technology for containment or cleanup of a release of oil or a hazardous substance unless the equipment, substance, or other technology has been approved by the department for that use.

* Sec. 26. AS 46.09.030 is amended to read:

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner of environmental conservation or the director of the division of emergency services, Department of Military and Veterans' Affairs, may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.-23, the commissioner shall [MAY] assist the division of emergency services, Department of Military and Veterans' Affairs, [ADJUTANT GENERAL] in the relief of the emergency.

* Sec. 27. AS 46 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

Sec. 46.13.010. ALASKA STATE EMERGENCY RESPONSE COMMISSION ESTABLISHED. (a) There is established in the Department of Military and Veterans' Affairs the Alaska State Emergency Response Commission.

(b) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the commission.

Sec. 46.13.020. COMPOSITION OF THE COMMISSION. The commission consists of the commissioners of community and regional affairs, environmental conservation, fish and game, health and social services, labor, natural resources, public safety, and transportation and public facilities, or the designees of the commissioners, the adjutant general of the Department of Military and Veterans' Affairs or a designee, and seven public members to be appointed by the governor. To the extent practicable, the commission must include members with expertise in the emergency response field.

Sec. 46.13.030. OFFICERS, TERMS, AND COMPENSATION. The adjutant general of the Department of Military and Veterans' Affairs, or the adjutant general's designee, shall chair the commission. The commissioner of environmental conservation, or the commissioner's designee,

shall serve as vice-chair. Members of the commission other than those from the designated state departments serve at the pleasure of the governor for staggered terms of three years. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

Sec. 46.13.040. POWERS AND DUTIES OF COMMISSION. The commission shall

(1) serve as the state emergency response commission required under 42 U.S.C. 11001 - 11005;

(2) designate, and revise as necessary, the boundaries of emergency planning districts, using the boundaries of political subdivisions if appropriate;

(3) review, oversee, and facilitate the preparation and implementation of emergency plans for hazardous substance response, including the statewide and local plans prepared under AS 26.23;

(4) prepare, review, and revise the statewide and regional master oil and hazardous substance discharge and prevention contingency plans required under AS 46.04.200 - 46.04.210;

(5) establish a local emergency planning committee for each emergency planning district, and appoint, and revise as necessary, the membership of each committee;

(6) supervise and coordinate the activities of local emergency planning committees;

(7) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(8) perform other coordinating, advisory, or planning tasks related to hazardous substance emergency planning and preparedness,

community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances;

(9) provide procedures and oversight to integrate, as appropriate, hazardous substance response planning under 42 U.S.C. 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous substance discharges, and state, regional, and local hazardous substance contingency planning under AS 26.23 and AS 46.04.200 - 46.04.210;

(10) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for state emergency response commissions under 42 U.S.C. 11001 - 11005; and

(11) adopt regulations necessary to carry out the purposes of this chapter and 42 U.S.C. 11001 - 11005.

Sec. 46.13.050. AGENCY COOPERATION. The commission may request data, reports, or other information from a state agency. To the extent feasible and not otherwise prohibited by laws making specific information confidential and nondisclosable, a state agency shall cooperate with the commission and furnish the commission with the information and assistance necessary to accomplish the purposes of 42 U.S.C. 11001 - 11005 and this chapter.

Sec. 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES. Boundaries for emergency planning districts are the regions designated by the division of emergency services, Department of Military and Veterans' Affairs unless otherwise designated by the commission.

Sec. 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES. The commission shall establish and appoint the members of a local emergency planning committee for each emergency planning district. Each committee must include, at a minimum, representatives from each of the following groups or organizations: elected state and local officials;

law enforcement; civil defense; fire fighting; first aid; health; local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of 42 U.S.C. 11001 - 11005.

Sec. 46.13.080. DUTIES OF LOCAL EMERGENCY PLANNING COMMITTEES. Each local emergency planning committee shall

(1) establish procedures for receiving and processing requests from the public for information under 42 U.S.C. 11044, including tier II information under 42 U.S.C. 11022;

(2) appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to the comments by the committee, distribution of the emergency plan, and designation of an official to serve as coordinator for information;

(3) prepare and periodically review an emergency plan in accordance with 42 U.S.C. 11003(a);

(4) evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing the additional resources;

(5) to the extent consistent with the constitution and law of the state, perform all other functions prescribed for emergency planning committees in 42 U.S.C. 11001 - 11005; and

(6) participate as a local advisory committee in the preparation of statewide regional contingency plans.

Sec. 46.13.090. EMERGENCY PLANS. (a) Each emergency plan must include

(1) identification of facilities subject to the

requirements of 42 U.S.C. 11001 - 11005 that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of 42 U.S.C. 11001 - 11005 such as hospitals or natural gas facilities;

(2) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of hazardous substances, and to a release of substances on the list of extremely hazardous substances referred to in 42 U.S.C. 302(a);

(3) designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the emergency plan;

(4) procedures providing reliable, effective, and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred, consistent with the emergency notification requirements of 42 U.S.C. 11004;

(5) methods for determining the occurrence of a release, and the area or population likely to be affected by that release;

(6) a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of 42 U.S.C. 11001 - 11005, and an identification of the persons responsible for the equipment and facilities;

(7) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) training programs, including schedules for training of

local emergency response and medical personnel; and

(9) methods and schedules for exercising the emergency plan.

(b) Each emergency plan must incorporate within it an incident command system. The incident command system must provide that final state decision-making authority in situations involving a response to a release of a hazardous substance lies with the Department of Environmental Conservation unless the release is a declared disaster emergency under AS 26.23 or a catastrophic oil discharge under AS 46.-04.080, in which case the incident command system must provide that final state decision-making authority lies with the division of emergency services, Department of Military and Veterans' Affairs.

Sec. 46.13.100. FINDINGS AND PURPOSE. The legislature

(1) finds and declares that there exists a lack of scientific knowledge concerning the availability, properties, and effectiveness of various hazardous substance containment and cleanup technologies; and

(2) concludes that it is in the best interest of the state and its citizens to establish a Hazardous Substance Spill Technology Review Council in the Alaska State Emergency Response Commission to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment.

Sec. 46.13.110. HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL. (a) There is established in the Alaska State Emergency Response Commission the Hazardous Substance Spill Technology Review Council.

(b) The council consists of the adjutant general of the

Department of Military and Veterans' Affairs, the commissioner of environmental conservation, a representative of the University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the Environmental Protection Agency may each appoint a federal employee to the council to represent their agencies as nonvoting members. Appointed state members of the council serve overlapping three-year terms.

(c) The council members shall elect from among themselves a chair and vice-chair.

(d) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the council.

(e) State and federal members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(f) The council shall meet regularly at the call of the commission or the chair of the council.

(g) State members of the council are subject to AS 39.50.

Sec. 46.13.120. DUTIES OF THE COUNCIL. The council shall

(1) review and recommend to the Department of Environmental Conservation research topics for it to pursue under its authority in AS 46.03.020(a)(14);

(2) establish testing protocols to be used by the Department of Environmental Conservation to evaluate the effectiveness of

hazardous substance spill technologies for use in the state;

(3) identify sources of money that may be available for discharge-related research;

(4) make proposals to the governor and commission to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances;

(5) compile and maintain information relating to

(A) containment and cleanup technology that is available in the event of a hazardous substance discharge, the extent to which current containment and cleanup technology is available and may be applied in the state, and ways to improve hazardous substance spill response technology and procedures;

(B) steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substances and to improve the statewide ability of industry and governmental agencies to respond to discharges of hazardous substances;

(C) the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharges;

(D) hazardous substances spill technology research conducted by the Department of Environmental Conservation; and

(6) perform other functions as may be requested by the commission.

Sec. 46.13.130. INVESTIGATIONS; HEARINGS. (a) The council may issue subpoenas, administer oaths, and conduct investigations related to its duties.

(b) The council may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and

testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the duties assigned to the council.

(c) On a majority vote of the council, subpoenas and subpoenas duces tecum may be issued and served in the manner prescribed by AS 44.62.430(b) and (c) and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(d) State agencies shall, to the extent permitted by law, cooperate with the council and provide it with information it requests for carrying out its duties.

Sec. 46.13.900. DEFINITIONS. In this chapter,

(1) "commission" means the Alaska State Emergency Response Commission;

(2) "council" means the Hazardous Substance Spill Technology Review Council;

(3) "hazardous substance" has the meaning given in AS 46.-03.826.

* Sec. 28. TRANSITIONAL PROVISION. The Alaska State Emergency Response Commission established under AS 46.13, enacted by sec. 27 of this Act, is a continuation of the Alaska State Emergency Response Commission established by Administrative Order No. 103. The terms of the public members of the commission who are serving terms on the effective date of this section continue until the date that was scheduled for their expiration before the effective date of this section.

* Sec. 29. TESTING PROCEDURES. (a) The Hazardous Substance Spill Technology Review Council shall establish the initial testing protocols
CSSB 503(Fin)

required under AS 46.13.120(2), enacted by sec. 27 of this Act, by January 1, 1991.

(b) The Department of Environmental Conservation shall adopt the initial regulations required under AS 46.08.200(a), enacted by sec. 25 of this Act, by July 1, 1991.

* Sec. 30. AS 46.08.040(2), 46.08.040(5), and 46.08.150(3) are repealed.

* Sec. 31. AS 46.08.210, enacted by sec. 25 of this Act, takes effect July 1, 1992.

* Sec. 32. Except as provided in sec. 31 of this Act, this Act takes effect July 1, 1990.

4/4/90

DP
Moved
Adoption
Adopted
#1
go0520sHb.
Lauterback

A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. PEARCE

TO: CSSB 503 (Oil & Gas)

Page 3, line 12:

Delete "give priority to"

Insert "include in the research topics for which it conducts or contracts for research, the"

This amendment would require DEC to conduct or contract for research on topics recommended to it by the Hazardous Substance Spill Technology Review Council, which is established in this CS. Current CS language only requires that DEC give priority to these recommended topics. Under the amendment, DEC would still be able to pursue topics in addition to those recommended by the council.

4/4/90
DP Moved go0520sHa
Lauterbach

2

Adopted

Sec. Amend. to
Amendment.
p. 2 (conceptual
Sen. Binkley)
BY SEN. PEARCE
Adopted.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 503 (Oil & Gas)

Amend. #2 Adopted
as amended.

Page 8, after line 5:

Insert new bill material to read:

"(e) The governor, the Department of Military and Veterans' Affairs, and the Alaska State Emergency Response Commission shall, by November 1 of each year, submit to the department sufficient information to enable the department to prepare the report required under AS 46.08.060(a) with respect to their expenditures from the fund and their activities in response actions for which fund money was used.

* Sec. 16. AS 46.08.060(a) is amended to read:

(a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year, with separate subtotals corresponding to the expenses incurred under each subsection and paragraph of AS 46.-08.040;

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.-08.020;

(3) a summary of municipal participation in responses

funded by the fund;

(4) a detailed summary of department activities and activities of the division of emergency services, Department of Military and Veterans' Affairs, in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; and

(5) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year."

Renumber the following bill sections accordingly.

Page 19, line 12:

Delete "25"

Insert "26"

Page 19, line 20:

Delete "25"

Insert "26"

Page 19, line 23:

Delete "23"

Insert "24"

Page 19, line 27:

Delete "23"

Sen. Binkley: (conceptual amend.)

Include provisions under AS 46.08.060 requiring that each dept. or entity with access to the 470 fund report individually to the legislature.

P. 2, Sec. 4

Require that each dept. provide a detailed summary of activity.

Insert "24"

Page 19, line 29:

Delete "29"

Insert "30"

This amendment reflects the fact that, under the CS, DEC is no longer the only agency making use of the response fund. The amendment keeps with DEC the responsibility for making a report to the legislature about uses of the fund, but requires the other spending agencies to give DEC the information it needs to make the report.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
707 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 29, 1990

SUBJECT: Summary of Major Changes
(CSSB 503(Oil & Gas))

TO: Senator Drue Pearce, Chair
Senate Special Committee on Oil & Gas

FROM: Terri Lauterbach *TLL*
Legislative Counsel

Enclosed in a new draft of CSSB 503(Oil & Gas).

The major changes in the CS, compared to the CS in front of the committee on Tuesday, March 27, are as follows:

- (1) CSSB 468(Oil & Gas), with changes, has been rolled into this CS;
- (2) Numerous sections of the CS have been changed, and new sections have been added, to clarify that DEC retains authority to handle "small" spills while DMVA is in charge of catastrophic oil discharges and disaster emergencies declared by the governor that involve releases of oil or a hazardous substance; under this CS, the oil & hazardous substance release response office in DMVA still retains the authority to respond to more than these two types of releases, but, depending on the type of release, the office may be operating under the directives of DEC; the incident command language crucial to this issue is found at AS 46.-13.090(b), which is referred to in other sections of the CS;
- (3) Authority for research into hazardous substance spill technology has been returned to DEC and removed from both DMVA and the Alaska State Emergency Response Commission; under the CS, DEC must give priority to research topics suggested by the Hazardous Substance Spill Technology Review Council;
- (4) Authority for the statewide and regional master oil and hazardous substance contingency plans has been transferred to the Alaska State Emergency Response Commission;

Senator Drue Pearce
Page 2
March 29, 1990

(5) DEC is directed to approve spill technologies under protocols developed by the Hazardous Substance Spill Technology Review Council; effective July 1, 1992, use of an unapproved technology is prohibited; however, the CS contains no penalty for violating this prohibition;

(6) Federal members have been added to the council as non-voting members.

Please let me know if I can be of further assistance.

TL:pl
WKP3/111

Enclosure

cc: David Rogers

**Testimony before the Alaska Senate
Special Committee on Oil and Gas
on SB 503 and SB 504**

**Walter B. Parker, Chairman
Alaska Oil Spill Commission**

1 March 1990

SB 503

In general, SB 503 reflects several of the major thrusts of recommendations by the Alaska Oil Spill Commission. Mainly, it brings oil spill response into the state's emergency response network and mandates strong cooperation between those state agencies concerned with emergency response to hazardous substances, including crude oil and refined petroleum products. Most important, it concentrates on establishing immediate response at the local level, something addressed by several of the commission's recommendations, most strongly Recommendations 27 and 49.

Section 1, 2 and 4

Recommendations 52 and 53 address the need for an immediately available oil or hazardous substance response fund. Broadening the use of the 470 fund and providing the governor with the flexibility to use those funds in addressing oil spills and other emergencies is directly consistent with the commission's intent in these recommendations.

Section 3

The problem the commission wrestled with in the relationships between the Department of Environmental Conservation and Division of Emergency Services was ultimately the determination of who would be in charge of a catastrophic spill response and at what level the response authority of DES would be implemented. Our recommendation on the use of the Incident Command System (Recommendation 48) is our major response to this problem. The key element is having an on-scene commander in each emergency response district that has the authority to bring the Incident Command System into operation.

The bill recognizes DES expertise in communications, logistics, equipment procurement, manpower and community liaison. This is supported by our Recommendations 50 and 51. DEC expertise in providing measurement and evaluations of environmental conditions is in the bill, but their role in directing initial response and later cleanup is not absolutely clear. The commission believed that use of the ICS would clarify the difference between oversight roles and management roles in a response mobilization at any level. It also would clarify federal and private participation in response, beyond the responsibilities outlined in the district contingency plan. In the best of worlds, each district will have a contingency plan that is absolutely clear on what role each party will play. We found that the Incident Command System does the best job of this.

Each district may have different structures that reflect the differences in state agency structure, federal agency structure, local government capabilities and private capabilities. We felt that maximizing the use of existing governmental and private capabilities through the ICS would be the most cost-effective and efficient way to achieve an oil spill response system that can meet the target of responding to a worst-case situation within 72 hours.

The commission did not address the formation of the State Emergency Response Commission. The SERC does carry out the intentions of Recommendations 27 and 49 on local involvement and Recommendations 45 and 50 on allocation of state response authority. Most importantly, it provides the structure for developing effective regional response plans. These plans are the most critical element of the entire response structure because it is in the region that the ability to respond quickly and effectively must be lodged.

SB 504

Section 1

Our Recommendation 55 should be considered. We feel that contingency plans should be based on the ability to respond to a "worst-case spill" within 72 hours. The language in the bill of a "realistic maximum" oil discharge and to remove that discharge "within the shortest possible time" does not provide a firm mandate for private contingency plans. It does not do enough to mitigate the risk oil shipment imposes on residents of adjacent coasts. It is not in line with our overall policy Recommendations 1, 2 and 3.

The requirement that contingency plans be properly implemented is a longstanding loophole that needs to be closed. If private plans are not implemented the government will have to take up the slack or we will have regional response plans whose effectiveness is as suspect as those that failed last March 24.

Section 2

The commission did not address in its report any amounts for financial responsibility. We did make the point in Recommendation 21 that the state should require the shipping industry to insure the state and its citizens against risk and this section carries out that idea.

Section 4

Providing DEC with the authority to inspect tankers, terminals, exploration and production facilities is, in many ways, the most important regulatory prevention measure that must be undertaken if the system is to truly improve. We address this in Recommendation 14, with other aspects addressed in Recommendations 11 and 13.

Recommendations not contained in SB 502, SB 503 or SB 504

Recommendation 9—Tank farm capacity at Valdez.

Recommendation 12—A citizens advisory council to oversee the safe transportation of oil, gas and other hazardous substances.

Recommendation 16—State licensing of private personnel involved in oil transportation.

Recommendation 25—Harbor Administration.

Recommendation 47—A system for emergency economic maintenance.

Recommendation 57—In-state research institute.

TESTIMONY TO THE
SENATE FINANCE
COMMITTEE

Walter B. Parker
Chairman
Alaska Oil Spill
Commission

4 April 1990

This testimony is in response to the request of the Alaska Senate Finance Committee to provide clarification on the intent of the Alaska Oil Spill Commission on various sections of CS SB503, most particularly in regard to the roles of the Departments of Military Affairs and of Environmental Conservation in response to various levels of oil spills. In arriving at the restatements of our previous positions contained in this statement I have consulted with the Alaskan Commissioners of the AOSC. I wish to emphasize that nothing in this statement should be construed as changing anything that is in the Commission's final report. The intent here is to simply clarify the relevant recommendations of the final report as they apply to CS SB503.

The Commission's basic guidelines in arriving at its final recommendations were that nothing in its recommendations on response should be construed as weakening its basic emphasis that prevention of future oil spills should be where the primary policy and budgetary emphasis of future actions of the State of Alaska should lie. Where budget priorities are necessary response should always be sacrificed to prevention. Thus, the most important element is the family of oil spill bills being considered in the legislature is not present in CS SB503, but is in SB504 as presented by the Governor which assigns the Department of Environmental Conservation a strong mandate and authority to inspect tankers and terminals to ensure compliance with a strict regime aimed at prevention of future spills.

Page Two

The fiscal aspect of this is funding those inspectors at Valdez, Nikiski and along the pipeline to ensure that this strong regulatory regime is carried out.

Because we wanted to spend the state money primarily on prevention, our recommendations for dealing with oil spill response were aimed at maximizing the efforts of existing state organizations in response rather than setting up a completely separate cadre that would wait for the next catastrophic spill. We felt that such an organization would eventually decay through disuse in the hopefully long period between major and catastrophic spills.

This led us to our major decision - that oil spill response should be incorporated into the state's overall emergency response system when it is necessary to bring state response organizations into play. Recommendation 50 spells out the relationship between ADEC and ADMVA.

"The State Department of Environmental Conservation should continue to insure spill response capability. For smaller spills this responsibility can be carried out or supported through private contract. In a major spill, where mobilization of private resources and multigovernmental agency response is required, the Department of Military and Veterans Affairs, with the advice of DEC, may determine that the spill be taken over by the state." This recommendation was based on the assumption that the responsibility for emergency response would remain in ADMVA. As shown in Recommendation 55 it is also clear that we intend that responsibility for approval of private contingency plans and their oversight would remain with DEC.

The AOSC identified five levels of response that must be covered in a catastrophic spill, namely:

- vessel salvage and recovery of the cargo remaining on board
- immediate recovery and containment of spilled oil
- protection of environmentally sensitive areas and pursuit of oil that has escaped immediate recovery
- beach cleanup
- mitigation of social and economic impacts on affected populations

The Commission also identified four major elements of an effective response:

- trained practiced teams with a single command to meet each of the major objectives detailed above
- a pre-determined course of action through known common regional contingency plans
- use of a common system of training as outlined in the Incident Command System
- continued research and systematic pre-approval of response methods to ensure use of the most effective means known

CS SB503 addresses some of our major elements:

- that a proven form of emergency response structure be adopted using the Incident Command System (R48)
- local response groups (R49)

In reviewing CS SB503 it seemed to us that parallel structures were being developed in that DEC continued its responsibilities for and response to spills which are not catastrophic and can use the oil and hazards response fund for that purpose and exercise ...

Page 4

the authority of the hazardous substance response office. But when a spill becomes a declared disaster emergency then DMVA exercises the powers of the response office and may make expenditures from the fund. It was the intent of the AOSC in its recommendations that emergency funds should be immediately available for an oil spill as they are for other emergencies. (R52)

The role assigned to the Alaska State Emergency Response Commission is overall planning for oil spills was not considered by the AOSC. We knew that the planning group already existed as an interagency group and we did not either recommend or foresee its expansion by addition of 7 public members. We wish to emphasize that this group does not take the place of the group which we recommended in R12 for a small public commission reporting to the Governor or the legislature to provide oversight on all aspects of oil and gas. HB578 embodies this recommendation of the Commission and we strongly support Senate consideration of the provisions of HB578 as a part of CS SB503.

The Commission believes that the DMVA would usually be the best agency to care for standby equipment in depots, maintain supply warehouses and conduct deployment and readiness exercises (R51). The DEC, on the other hand, should evaluate the readiness of emergency services personnel and the effectiveness of its training exercises in the same manner as it evaluates the effectiveness of private spill response training drills. DEC should continue its oversight role over government and private resources to ensure that the state and regional response plans will work. SB503 gives these oversight powers

Page 5

to the Response Commission which will be controlled by DMVA. It has been difficult for us to trace the effect this will have on the enforcement and oversight role we viewed as paramount to a successful long term prevention role for DEC. The same personnel will often be involved in prevention and in response oversight.

In reaching our decisions we examined the differences between those agencies whose responsibilities are primarily regulatory (DEC) and those with primarily operational goals (DMVA) DEC as a regulatory agency conducts environmental and operational audits to establish the first line of prevention. most of its employees are scientists or technicians trained in measurement, oversight and evaluation. They are oriented towards enforcement and the Commission's recommendations support strongly enhancement of that audit and enforcement role. (R13 & R14).

DMVA employees are experienced in command structures, emergency procurement procedures, equipment operation, logistics and personnel direction. DMVA experience in training is another key element that governs their role.

It is imperative to remember that most oil and hazardous substance response will be taken care of by the spiller unless the private contingency plan structure is a failure. DEC's enforcement capabilities is the assurance of quality of the private contingency plans. In a major spill where the regional response mechanism takes over, the quality of the constituent elements of that plan, private, state, local and federal will be a joint determination of DEC and either EPA or the Coast Guard. The operation of the response will be the responsibility of DMA on the

Page Six

state side with or without federal assistance, hopefully with substantial federal assistance. The Incident Command System will provide operational coordination, command and control.

Thus the ultimate problem becomes one of where are the personnel who do the state and regional planning to be located. What kind of personnel are best suited to this level of planning? What are their ancillary duties? The Commission did not get into this level of detail in its recommendations and there was no real way that it could...

Since DEC is still responsible ^{for} the elements of the oil discharge contingency plan under AS 46.04.030, we assume that the employees presently engaged in that process must remain in the DEC. We do not have enough information to determine whether extra personnel must be added in DMA to undertake its role as leader of the Response Commission.

In summation, the AOSC hoped that its recommendations would lead to a response organization that could effectively carry out its role without adding substantial numbers of new positions. If new positions are to be funded dealing with oil transportation we prefer that they be focussed on prevention.

4/3/90
Harrald

Alaska Emergency Response Efforts
A Comparison of Organizational Strengths and Weaknesses

Dennis M. Dooley
December, 1989

There has been considerable discussion regarding the relative merits of different organizational frameworks and how to best structure an organization to respond to an emergency event. The purpose of this monograph is to examine traits of different organizations to determine if there exists a general model for developing an organizational framework for rapidly deploying an effective field organization to deal with widespread emergencies.

Some attention was given by the Alaska Oil Spill Commission (AOSC) in discussing the framework of developing high reliability organizations. The major points were made by Dr. Todd LaPorte, University of California, in his presentation to the Alaska Oil Spill Commission. Dr. LaPorte's report dealt primarily with technologies and corresponding organizations to prevent a major failure. Additional work performed for the National Science Foundation by Harrald, Marcus and Wallace, The Management of a Maritime Crisis: The integration of Planning, Prevention, and Response, October, 1989 (Harrald) extended still further, considerations of the Commission in its review of organizational capabilities.

NOTE: The following comments are taken almost verbatim from the National Academy Report. Suffice it to say that countless hours of testimony from individuals and communities to the AOSC confirmed the central thesis of the report pertaining to organizational performance.

The Harrald paper described the evolution of society's response to marine casualties--from the days when rescue and salvage organizations first evolved in a professional manner and the development of casualty costs being absorbed by a complex series of underwriters and indemnity clubs. The turning point in history is identified to be March 18, 1967 when the 117,000 DWT super tanker TORREY CANYON stranded. The inability of existing maritime response organizations to deal with the 100,000 tons of escaped crude oil was readily evident. Thus, society realized it must somehow protect itself and the environment from cargo released during a maritime casualty.

The report goes on to indicate that progress in dealing with the problem was slow at best. The National Research Council of the National Academy of Sciences stated that, "little attention has been paid to how government and industry would respond to a major maritime casualty involving hazardous cargo...". In a 1984 Management Science article, the authors stated that "the problem of providing an immediate response (to an oil spill) in areas where major environmental damage may be done in less than 6-12 hours has not been solved or extensively studied. The environmental damage caused by oil spill could be massive and the public interest would be intense. In these areas, the national strategy fails."

The authors of the National Academy study found that decision making in the early hours of the EXXON VALDEZ response effort was constrained by inadequate planning in several ways:

i) the most obvious symptom of inadequate planning was the lack of immediately available response resources;

ii) equally serious was the failure to anticipate the decisions and actions which a major incident would require;

iii) the failure to develop information and decision aids which would support the actions above, and,

iv) decision makers did not have a clear and consistent set of goals.

The report goes on to state that federal, state and corporate organizations which evolved ... did not conform to any organizational structures anticipated in the contingency planning process with the concomitant result of hampering spill response and inter-organizational cooperation. No one anticipated that the affected company would actually direct the pollution response. No one anticipated that the federal on-scene coordinator and the state organization would not become a stable, smoothly functioning organization(s) until well after the opportunity to deal with the free oil had elapsed. No one took seriously the threat of "federalization". Decision making during the incident was reactive rather than proactive -- e.g. mobilization of beach cleaning forces after the oil was ashore.

The nature of the state/federal relationships during a spill has never been resolved by the National Contingency Plan. The tenuous relationships between the federal, state and intra-state stakeholders was acerbated in the EXXON VALDEZ incident. The state response organization did not work smoothly with the federal OSC until well into spill response. Thus, for a variety of reasons, the management Troika of Exxon, Alaska Department of Environmental Conservation and the U.S. Coast Guard were not able to focus their

respective resources in a coordinated approach to solving their main problem -- getting oil out of the water.

The report concludes,

Catastrophic spills have occurred very infrequently, and have historically been geographically distributed throughout the world. Effective risk reduction actions will reduce the probability of their occurrence even further. Government and industry must be ready to deliver hundreds of millions of dollars worth of clean-up services anywhere in the world within hours of an incident. THIS MEANS MORE THAN FLOODING THE AFFECTED AREA WITH PEOPLE AND EQUIPMENT. (emphasis added) It means creating functional organizations, capable of making and implementing decisions and operating according to doctrine.

There were several success stories regarding different aspects and features of the oil spill despite the Troika's inability to focus on immediate goals in the early days. Among these successes were:

1. Exxon's use of its worldwide directory to marshal resources from around the world.
2. The emerging sense of international community response as illustrated by the arrival of a Russian oil skimmer.
3. The arrival and successful utilization of the US Corps of Engineers dredges in retrieving oil from the surface of the Sound.
4. The organizational abilities of the Cordova Fishermen, the Seldovia community, and other local groups, to organize and implement deployment of booms and other devices to protect fish hatcheries and other areas of high local concern independently of the Troika.
5. The telling efforts of the Alaska Incident Command Team in taking a major role in organizing and coordinating the response of state, federal, borough and city agencies from the city of Seward in advance of the oil spill, relying almost exclusively upon local assets and expertise.
6. The Division of Emergency Services responding to housing, communications and logistic needs in advance of the Troika's acknowledgment that such commodities needed attention.

7. The recognition by VECO, the Exxon labor contractor, for the need to provide orientation and training for laborers prior to dispatching them to beach cleanups.

8. The attempt by Exxon to quickly reimburse those individuals most adversely impacted economically -- although this effort suffered from some flaws in administration and guidelines. The company was generally recognized for endeavoring to promptly remedy a wide variety of claims without the benefit of any prevailing governmental guidelines.

9. The lightering and salvage success in preventing an additional 40,000,000 gallons of oil from escaping.

The AOSC examined the activities of the various agencies and their respective goals, concerns, successes and failures. One striking feature was everyone believed their respective area of concern should be first priority for implementation. Such priority concerns included salvage of the ship and the remaining amount of cargo, containment and pollution abatement of the oil at sea, protection of habitat and/or investments in renewable resources, and whose beach should receive treatment and to what degree ("treatment" became the operative term instead of "clean-up")?

While reviewing the adequacy of the tools and techniques for oil spill cleanup, the Commission came to the conclusion there was more than just a trace element of truth to everyone's priority concerns. In order to be successful, salvage operations, pollution abatement and resource protection ALL REQUIRE IMMEDIATE AND INDEPENDENT RESPONSES. Further, the response mechanisms and organizations can, and probably should, be considered independent of one another in developing a regional response plan. It is entirely conceivable given the size, location, weather conditions and proximity of critical habitats, that a conscious decision be made to concentrate primarily upon protection of high value resource areas rather than to pursue pollution abatement at sea.

For instance, the USCG, Exxon and the salvors were able to effect a successful salvage operation with little or no appreciable contribution being made by state or local expertise. On the other hand, local expertise was ignored in many instances by the USCG, Exxon and others with respect to impacts local tides, currents and winds would have upon oil flows and boom strategies. Contests of will, determining equipment utilization for the sole purpose of salvaging the vessel or, to deliver a modicum of resource protection at particular beach sites were a chronic problem in the early days. Problems such as these coupled with a pronounced lack of perception by the Troika that the pollution abatement problem was a dynamic situation requiring a mindset to think and organize resources three days to a week (or more) in advance, contributed

in sending to stakeholders and the public at large the clear message, "We don't know what we are doing, but trust us anyway!"

Once the task was defined -- salvage, pollution abatement or habitat protection -- it was necessary to examine the range of successes and failures various organizations had in coping with their respective missions. Many times there were mixed reviews - the success in salvaging the Exxon Valdez may have been due in large part to the linear preoccupation of the Coast Guard and Exxon before attempting to realistically deal with pollution abatement at sea. And, pollution abatement activities may have precluded adequate preparation(s) for resource protection in advance of the spill.

Further considerations included:

- * What assets did the respective organizations bring to bear on these problems?
- * Did the organization bring a quality of institutional zeal coupled with real management skills for a tactical exercise?
- * Or, false bravado presented under a veneer of purported expertise?
- * Does the agency possess a real commitment in training personnel for emergency and/or catastrophic events?
- * To what degree, does the agency develop leadership expertise for tactical exercises?
- * Does the agency provide a proven and reliable history of communicating with a variety of stakeholders?
- * What is the agency's past and probable future ability to deal with unscheduled events which will require the marshalling and allocation of myriad resources from a wide variety of public and private agencies?
- * Is the agency involved in an adequate number of unscheduled events to provide the real-life crucible for development of "team management expertise"?

These are a few of the substantive questions to which answers may determine the appropriate designation and allocation of resources to particular agencies.

Seldom is an analysis in the world of preparing a report such as

this, allowed to proceed as a rigorous academic exercise in reviewing organizational approaches. This effort was no exception.

The AOSC, through its public hearing process, became comfortable with the notion(s) that local expertise, given proper goals, was best able to attain those goals. This was true of the fishing captain whose knowledge of local currents, riptides, etc. enabled him to better position himself in advance of the oil for containment and recovery. It was also true of local governments' whose knowledge of the respective strengths and weaknesses within themselves, avoided the problems inherent in stereotyping all communities into a collective group.

Simultaneously, the AOSC was being apprised of requirements for developing high-reliability response teams. Teams which possess a common knowledge of each member's foibles, collected over a history of repetitive shared experiences, are key to mounting effective response to an unscheduled event. How is management to be trained and given the repetitive exercises required to mold such management teams given the infrequency of catastrophic spills? Perhaps the answer lay in utilizing other emergency response systems. e.g. fire and police agencies, Division of Emergency Services.

Inquiries regarding the development of expertise in these groups showed a higher than normal willingness for intense training and incorporating into its responses the experience basis for its management teams. There exists within the organization(s) opportunity for career development while specializing in specific elements concerning emergency response. The individuals in charge know the line organizations under them -- their normal capacities, their unusual strengths and weaknesses. These same individuals know how to best incorporate these assets in a given situation not only because they are in charge, but also because for the most part they have been "through the chairs" in their individual development as leaders. Thus, the line organization through a working familiarity, also know the merits of its leadership.

What expertise is required in the development of a response to an oil spill which is unique from other emergencies? The answer was surprising -- there is nothing in oil spill expertise that distinguishes it from weather expertise, chemical expertise, or unusual architectural expertise when it comes to quickly incorporating such knowledge into a professionally trained and managed emergency corps. Such oil spill expertise cannot be ignored, but for the most part it is not the critical knowledge upon which effective response is built. Rather, it is the effectiveness of preparation and management in dealing with unscheduled events. Most agencies are evaluated upon how well routine events are dealt with a minimum of disturbance. Few

agencies (private or public) are measured for their effectiveness in successfully coping with unusual and/or unexpected occurrences. The cadre of public safety agencies are alone in this regard.

The AOSC then queried whether there existed a framework or discipline which para-response agencies utilized that took advantage of local expertise and/or assets. Did such a system deal with a sufficient number of incidents annually to develop the qualities inherent in team management?

There does appear to be such a system. It is called the Incident Command System (ICS). The ICS had its roots in a group of counties in California that needed a process by which they could augment each other's emergency efforts. The system spread -- ultimately the entire state of California incorporated it as the basis for multi-agency response to emergencies. It is now an integral feature of the Federal Emergency Management System and there is a federal requirement that fire departments receiving federal funds must also have training in the system.

There are at least three organizations in Alaska utilizing the ICS structure when responding to major incidents. The Bureau of Land Management and the Alaska Division of Forestry rely upon ICS as the primary organizational structure for their responsibilities in wildfire protection. The Department of Military Affairs, Division of Emergency Services utilize the ICS methodology as their organizational structure to respond to a wide variety of disaster incidents -- floods, earthquakes, mega-fires and hazardous material accidents. In addition, the ICS system is mimicked throughout the United States. Therefore, in the event an emergency requires additional management resources, teams can be quickly imported to the scene and readily assimilated into the structure without confusion about role definition(s) and/or mission.

ELEMENTS OF AN INCIDENT COMMAND SYSTEM (ICS)

There are three very important components in the ICS approach which allows all agencies to interchange forces and effect a positive managerial and operational control of line and support activities -- organization structure, training, and certification. This system in its various forms has vastly improved the effectiveness of emergency response organizations in a wide variety of activities. It is especially effective in offering a coherent management system to cope with delivering management expertise from diverse sources to immediately bear on solving issues in combating unscheduled calamities.

The standard ICS organizational structure identifies positions which are specific to various duties and identifies the job responsibilities each position will perform in the organization.

The structure utilizes an Incident Commander as the person in charge supported by a staff of section chiefs for Operations (actual line activities), Plans (information and planning), Service (all logistical support, Finance (cost accounting) and Safety (assures operations are safe). When there are large, diverse interests and stakeholders, the system readily incorporates a broad Management Advisory Committee (MAC) composed of representatives from public and private agencies whose primary mission is to provide the ICS team provisional guidance with regard to priorities for action.

The hallmark of the ICS system is the requirement for pre-qualification of individuals to perform specific jobs. The curriculum of courses blends experience with formal training. The basic criteria in each course is standard nationwide with adjustments made for special local area situations.

The training courses, experience, physical fitness and actual performance are evaluated by management. Once the qualifications are determined, each individual is issued a card indicating what jobs that person can perform, nationwide. The employees carry the cards as validation of their qualifications. During interagency mobilization of forces, the receiving agency uses this as valid confirmation of an individual's qualifications.

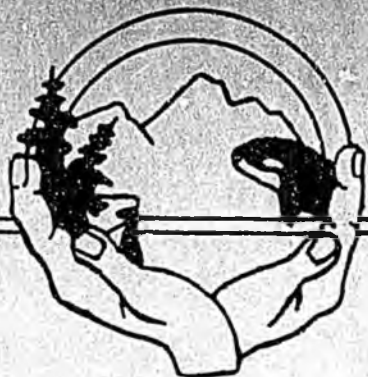
CONCLUSION

The AOSC determined it is not necessary to create a stand-alone oil spill response organization to effectively cope with major and catastrophic incidents. Rather, it is necessary to ensure that an existing system be augmented in training and development to deal effectively with such oil spill incidents along with responding to a wide variety of emergency incidents. The management talent of responding coherently to emergencies is not created overnight, or even over the span of a couple years. The concept of tactically deploying resources in advance of emerging problems is a skill that is created by individual commitment honed in repetitive group exercises over a long period of time.

The existing system which appears to have a proven capacity to blend local organizations into its responses and to call upon state and federal resources is the Department of Military and Veterans' Affairs through the Division of Emergency Services. The activity schedule appears to be hectic and varied enough to incorporate the frequency of occurrence required for management team development. The institutions are already in place for immediate funding to be warranted and required waivers of personnel and contracting procedures if necessary. It has a demonstrated success in preparing advance contractual support services from the private sector and if necessary can draw upon additional state and private

assets quickly and efficiently. Moreover, the Department of Military and Veterans' Affairs has a proven record of dealing effectively with federal command systems.

The Incident Command System allows for the expertise of the various resource agencies to be readily incorporated into a response effort. This allows all affected agencies to do what they do best: The Department of Fish and Game to provide knowledgeable advice from seasoned biologists in regards to the living resources; The Department of Natural Resources to provide guidance utilizing professional land managers regarding land and park resources; The Department of Environmental Conservation to audit environmental quality standards with professional environmental auditors; The Department of Military Affairs to respond to another emergency, in a wide ranging series of natural and technological calamities, with individuals who bring the zeal of professionalism to the effort - not the ardor of altruism and political expediency. This suggestion appears to minimize disrupting the State agency mantle without encouraging growth of long-standing but little utilized oil spill divisions in different departments of state government.



Oil Reform Alliance



SB503 TESTIMONY BEFORE SENATE FINANCE

April 3, 1990

My name is Riki Ott. I am a commercial fisherman from Cordova. My training is in marine pollution: I have a masters in oil pollution and a doctorate in sediment pollution. I am testifying today as President of the Oil Reform Alliance.

For the purposes of testifying on SB503, it is important to understand who the Oil Reform Alliance is. After the Exxon Valdez spill, citizens from spill-impacted communities throughout southcentral Alaska met in Cordova to discuss how we could share information and work to restore our communities and environment. We were fishermen, friends, neighbors, recreational users, environmentalists, tourism and business people. We became the Oil Reform Alliance.

Since June of last year, we have steadily grown in membership and shifted our focus to work on strengthening legislation such as SB503.

The Oil Reform Alliance is totally opposed to the committee substitute version of SB503 - which is to say that the CITIZENS from the spill-impacted communities are opposed to the Senate Oil & Gas committee substitute.

We support the original draft of this bill. We support maintaining DEC as the lead state agency in response to catastrophic oil spills and expanding the division of emergency services' role as logistics and backup to DEC as originally set forth in SB503.

We have a good reason for supporting this. Many of us were on the frontlines fighting this spill all last summer. We worked with DEC, with DES, with industry. We witnessed the early chaos. There is no need to repeat these same mistakes again as we strongly believe would occur under this committee substitute.

Let me explain why. DEC currently reviews and approves contingency plans, requests and reviews drills, and has trained staff in place to respond to the hundreds of small, medium, and large spills that occur each year. It makes

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absolutely no sense to then switch the lead response agency during catastrophic spills, the next size up from large spills, to a totally different agency.

It also makes no sense, as many of us witnessed during the Exxon Valdez spill, to burden DEC with logistical functions normally carried out by the division of emergency services. Just as DEC must carry out its duties during any and all spills of oil and hazardous substances, so must DES be empowered to carry out its duties as backup during these same spills.

This is how we interpret the Oil Spill Commission's recommendations that Sen. Halford just read. Also during personal communications with Walt Parker yesterday, Mr. Parker expressed disappointment with the committee substitute for SB503. Mr. Parker told me that the Oil & Gas Subcommittee totally misinterpreted the Commission's recommendations and he is currently writing a memo to this effect.

Let me draw another parallel with the Dept. of Natural Resources. During a forest fire, the State Forester is in charge with DES providing backup and logistics. During a catastrophic spill, the Commissioner of DEC should be in charge with DES providing backup and logistics - as originally proposed by the Administration and recommended by the Oil Spill Commission.

I spent 12 years of higher education conducting experiments with oil and other hazardous substances. I grew sick of working with toxins, mutagens, carcinogens, and genotoxins. I shudder to think what would happen to the public and the environment if an agency with no basic understanding of these deadly compounds is put in charge of spill response.

The expertise to fight a huge forest fire lies within DNR just as the expertise to minimize impact to the public and the environment from a catastrophic spill lies within DEC. There is more to both fighting a huge forest fire and a catastrophic spill than providing emergency housing, transportation and communication services.

The Senate Oil & Gas Subcommittee made several other rather drastic revisions to SB503, none of which are supported by the Oil Reform Alliance. It makes absolutely no sense to switch the Oil & Hazardous Response Office to DES when this is DEC's JOB to respond to and minimize impact from these types of spills. It makes no sense to put the 470 Response Fund under DES as this fund provides the money for DEC to carry out its JOB during a spill emergency.

It makes no sense to have DES as chairman of the Statewide Emergency Response Commission as this should be a function of the lead agency which we believe should remain DEC.

It makes no sense to have the Hazardous Substances Spill Technology Review Council within DES as this type of scientific expertise is a valuable resource to DEC during the prevention, planning, and response stages to all spills. It is pretty clear to me, speaking as a scientist, that as structured in the committee substitute, the Council will be of limited use even to DEC.

For example, on page 10, lines 7-8, the approval process for new protocol is limited to six months after application. This is an unrealistic requirement because many of the test organisms, such as pink salmon fry and other young life stages which are necessary to test new protocol, are only available at certain times of the year.

This is exactly what happened during the Exxon Valdez spill. Many compounds could not be approved for widescale use as the test organisms were not available in late May and early June when the scientists finally initiated laboratory tests of different compounds. Approval process for testing protocol needs to be at least one year.

In summary, the Oil Reform Alliance strongly supports the original version of SB503 and the attached fiscal note. The experience of many of our members this past summer has shown that involvement of local communities in response is of critical importance to the success of the total operation. We are strongly in favor of establishing and funding the local emergency planning committees as provided for in the attached fiscal note.

Bills such as SB503 are supposed to be designed to better prepare us for the next catastrophic spill. The people who were most intimately involved with the last catastrophic spill support the original version of SB503. A vote for the committee substitute is a vote against everything we learned last summer.

It is time for you to listen to us.

The Oil Reform Alliance strongly feels that public input during Senate hearings on this bill have been purposely minimized. We are extremely disappointed that this bill was not heard in Sen. Resources. We are extremely disappointed that it was not teleconferenced today.

I understand that testimony from two concerned members of the public who were ready to teleconference today has been entered into the record and I respectfully request that the testimony of two others, Annie McKenzie and Tim Robertson, are also read into the record.

~~XXXXXX~~
April 3 1990

Testimony by Annie McKenzie, P.O. Box 72, Seldovia AK 99663
Senate Bill 503

My name is Annie McKenzie and I have been a Seldovia resident for the past ten years. I witnessed the Exxon Valdez oil spill from the perspective of a private citizen in a coastal town in Alaska and observed the interactions of the many state, federal, and private organizations to the spill. In the response we in Seldovia made to the spill, we interacted with these agencies and could observe first hand the conflicts and interactions, as well as the problems within each one.

The department of Environmental Conservation was the agency, in my opinion, which was most responsive to the spill in a knowledgeable way. I have confidence in their ability to understand the needs of responsible environmental agencies reactions to a spill and their ability to meet those needs. They have the most experience in spills and clean-up, they understand them, and they should be in charge of cleaning them up without obstruction by other agencies and organizations.

Please support the original version of Senate bill 503; in which the department of environmental conservations took primary responsibility for spills. Please do not pass the bill as it was changed by the special senate subcommittee on Oil and Gas.

- Testimony -

- Before the Senate Finance Committee -

~~April 3, 1990~~ April 3, 1990

Thank You for the opportunity to testify
on SB 503. My name is Tim Robertson and
I live in Seldovia, Alaska.

I support the original version of SB503
as submitted by the Governor. I don't
like the Committee Substitute turned out
by the Senate Oil + Gas Committee.

The proper people to run an oil spill
are the people who work with the oil
industry on a day to day basis. The
Department of Environmental Conservation is
responsible for reviewing and modifying oil
spill contingency plans. They understand
the plans and how oil spills can be cleaned
up. The Division of Emergency Services doesn't

If a spill can be picked up quickly
then a major disaster can be avoided.

If a spill response does turn into
a major disaster then the Division
of Emergency Services can be called
upon to provide the type of logistic
support they are good at.

Please change this Bill to let
the people ^{in ADEL} with the knowledge about
oil spills + oil spill contingency
plans be in charge of managing
the spill response. Let the people
within the Division of Emergency Services
with the knowledge of mobilization
and logistics provide support. Thank
you for this opportunity to comment.

have the background to be in charge of this important technical process.

One thing that has become very clear in the wake of the EXXON VALDEZ oil spill is that the only ^{acceptable} way to respond to a spill is to get there as quickly as possible with as much organization and equipment as possible. Unless the

Division of Emergency Services is going to restructure and restaff in a major way, they are not capable of this type of response. ~~ADEC~~ ~~is~~ ~~not~~

~~capable~~ ADEC needs to be beefed up in order to accomplish this type of immediate response, but, they are clearly the people who have the working knowledge to ~~respond~~ ^{act} immediately with the appropriate response.



Laurie Ferguson Craig

April 3, 1990

TESTIMONY ON SENATE BILL 503

Thank you for the opportunity to testify.

I come to this table from a slightly different perspective. I am an average Alaskan, an unaffiliated member of the public who decided to do what the oil spill commission suggested: take a greater responsibility for what happens in my community and state. Recommendation #3 says "...citizens should be involved in oversight arrangements at every level of government."

Because Juneau is my home, it seemed that the appropriate point to enter was at the legislative level. I began attending hearings on January 16 and have continued to participate in an average of 6-8 hours' worth of hearings per week since then.

The reason I came to this building - for essentially the first time in the 21 years I have lived here - was to learn. It appeared that this would be an excellent forum to receive a well-balanced education in the workings of government as well as an opportunity to learn how to prevent another disaster like the Exxon Valdez. I came here to find out how this could occur in the first place and what was necessary to see that it never happen again.

The greatest shock was to learn that for all our governmental presence, we have very little legal ability to defend our

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natural resources. Much of the proposed legislation merely brings us up to a very minimal level of protection compared to other states. Alaska has the most to lose and yet some of the weakest regulations, primarily due to the loss of the Chevron vs. Hammond case in 1979.

In these hours of hearings, I have heard other Alaskans demand legislative action to protect their livelihoods, their homes, their areas of subsistence use and recreation, while industry representatives counter that they are unable or unwilling to fulfill the mandates of proposed legislation. In some cases, preventative measures have been implemented, and I commend Alyeska for taking recent steps to boom tankers during loading, provide escort vessels and have response equipment available. Yet, in the same breath, I deplore Alyeska for removing those protective steps in the first place several years ago which led them to be grossly unprepared for an accident that was virtually inevitable.

The apparent deadlock between environmental conservation and economic development prompted me to attend the recent Frontier Thinking Conference in Anchorage which set out to reconcile those two points of view. Environmentalists and developers seemed prepared to defend their opposing positions as the conference began, but three days later we all agreed that we must understand each other and work cooperatively to survive.

Speakers from around the world gathered on the eve of the anniversary of the wreck of the Exxon Valdez to chart a new course for the 1990s. Overwhelmingly they agreed that protection of air, water, soil and living things must become part of the cost of doing business. Representatives from the Middle East, Africa, Norway, England, Mexico and France shared their experiences with oil spills.

Jean-Baptiste Henry from the Brittany coast of France spoke to us about spending ^{the last} 12 years battling Amoco Oil in a Chicago court after the

Amoco Cadiz disaster sent six times more oil onto the beaches of his home region. That oil spill was caused by a defective steering mechanism, which the company had previous knowledge of, that allowed the ship to drift for 12 hours before hitting a reef in 1978. Scenes of their beaches resemble our own, but with ancient stone castles perched on the rocks.

Joan Bavaria, one of the formulators of The Valdez Principles, was another conference speaker. This set of 10 ethical guidelines - named after the Valdez oil spill - asks signatory companies to commit to conducting business in environmentally safe and responsible fashions. (I include a copy of The Valdez Principles with my testimony.)

On Saturday, March 24, I accompanied a group of the keynote speakers on a tour of Prince William Sound. En route from the Valdez airport to a tour of Alyeska's harbor facilities, another of the speakers - Manuel Guerra, an environmental activist from Mexico City - informed Joan Bavaria that the topic of his live morning radio broadcast that day from Anchorage was the Valdez Principles. To an audience of 21 million residents of Mexico City, at 4:30 AM on the anniversary of the oil spill, Señor Guerra translated the 10 principles into his native language to share with his countrymen. It was a very special moment, joined by a member of the World Bank, a Japanese journalist, a French geographer, a Norwegian news writer, and a British biotechnologist from a chemical company.

Earlier that week, Alaska's Permanent Fund Board of Trustees, at the request of Attorney General Doug Bailey, approved a resolution that the 607,000 Exxon shares held by the Permanent Fund be used in a proxy vote to recommend adoption of the Valdez Principles by Exxon Corporation at its annual meeting later this month.

The rest of the world is moving forward, but I question the direction

of Senate Bill 503. Its revised version appears to create more stumbling blocks to adequate response. Public testimony over the past weeks strongly recommends DEC as the agency in charge. DEC has been here in hearings consistently to answer questions and offer suggestions on spill prevention, response and recovery. This bill now gives the Department of Military and Veterans' Affairs sweeping powers to recreate its own equivalent in The Spill Response Commission. In Sect. 20, on page 9, The oil and hazardous substance response office is instructed to respond only in the case of a disaster emergency. It would be more prudent that the agency mandated to respond to a catastrophic event be the agency prepared by experience in responding to oil spills on a regular basis.

This bill further goes on to create a quasi-military institution which duplicates the duties of another agency currently engaged in those activities of oil spill response. As a member of the public, my experience has been that the military is not noted for its openness or receptiveness to public inquiry and participation. After reading through pages of new provisions for the commission, I almost expected to find it empowered to declare martial law.

I recognize the recommendations of the oil spill commission that DES play a greater role in spill response, ~~to~~ but I feel their abilities lie in managing logistics, not in managing hazardous materials. In the 2½ months of hearings, we have heard little, if anything, from the Department of Emergency ~~Services~~ Services. I would not like to think that that is a reflection of their interest in oil spill legislation. However, I am very concerned that it is indeed, the truth.

I urge you to reject this new version of SB 503. I am afraid this legislation does little to reinforce public trust in government. It brings to mind the bitter irony expressed by the Frenchman as he mused about the patron saint of his oiled region of Brittany who is also the patron saint of lawyers.



EARTH DAY 1990

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Valdez Principles Statement of Intent

With these Principles, The Coalition for Environmentally Responsible Economies, or CERES project of the Social Investment Forum, sets forth broad standards for evaluating activities by corporations that directly or indirectly impact the Earth's biosphere. The CERES Project has created the Valdez Principles to help investors make informed decisions around environmental issues. As representatives of the investment and environmental communities we are asking corporations to join with us by subscribing to these Principles.

Recognizing the complexity of the issues contained in these broad Principles, CERES has attempted to define the Principles as a long-term process rather than a static statement. CERES members hope that signatory companies will work with us on the elaboration of the specific requirements of the Principles. Our intent is to create a voluntary mechanism of corporate self-governance that will maintain business practices consistent with the goals of sustaining our fragile environment for future generations, within a culture that respects all life and honors its interdependence.

We ask for a long term commitment to the process of compliance with these Principles, and an additional commitment of assistance and cooperation in the further development of specific standards derived of these general principles.

Valdez Principles

Introduction

By adopting these principles, we publicly affirm our belief that corporations and their shareholders have a direct responsibility for the environment. We believe that corporations must conduct their business as responsible stewards of the environment and seek profits only in a manner that leaves the Earth healthy and safe. We believe that corporations must not compromise the ability of future generations to sustain their needs.

We recognize this to be a long term commitment to update our practices continually in light of advances in technology and new understandings in health and environmental science. We intend to make consistent, measurable progress in implementing these principles and to apply them wherever we operate throughout the world.

1. Protection of the Biosphere. We will minimize and strive to eliminate the release of any pollutant that may cause environmental damage to air, water, or earth or its inhabitants. We will safeguard habitats in rivers, lakes, wetlands, coastal zones and oceans and will minimize contributing to global warming, depletion of the ozone layer, acid rain or smog.

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2. Sustainable Use of Natural Resources. We will make sustainable use of renewable natural resources, such as water, soils and forests. We will conserve nonrenewable natural resources through efficient use and careful planning. We will protect wildlife habitat, open spaces and wilderness, while preserving biodiversity.

3. Reduction and Disposal of Waste. We will minimize the creation of waste, especially hazardous waste, and wherever possible recycle materials. We will dispose of all wastes through safe and responsible methods.

4. Wise Use of Energy. We will make every effort to use environmentally safe and sustainable energy sources to meet our needs. We will invest in improved energy efficiency and conservation in our operations. We will maximize the energy efficiency of products we produce or sell.

5. Risk Reduction. We will minimize the environmental, health and safety risks to our employees and the communities in which we operate by employing safe technologies and operating procedures and by being constantly prepared for emergencies.

6. Marketing of Safe Products and Services. We will sell products or services that minimize adverse environmental impacts and that are safe as consumers commonly use them. We will inform consumers of the environmental impacts of our products or services.

7. Damage Compensation. We will take responsibility for any harm we cause to the environment by making every effort to fully restore the environment and to compensate those persons who are adversely affected.

8. Disclosure. We will disclose to our employees and to the public incidents relating to our operations that cause environmental harm or pose health or safety hazards. We will disclose potential environmental, health or safety hazards posed by our operations, and we will not take any action against employees who report any condition that creates a danger to the environment or poses health and safety hazards.

9. Environmental Directors and Managers. At least one member of the Board of Directors will be a person qualified to represent environmental interests. We will commit management resources to implement these Principles, including the funding of an office of vice president for environmental affairs or an equivalent executive position, reporting directly to the CEO, to monitor and report upon our implementation efforts.

10. Assessment and Annual Audit. We will conduct and make public an annual self-evaluation of our progress in implementing these Principles and in complying with all applicable laws and regulations throughout our worldwide operations. We will work toward the timely creation of independent environmental audit procedures which we will complete annually and make available to the public.

4/3/90
Haltford

Report of the Alaska Oil Spill Commission
Executive Summary

SPILL

The Wreck of the Exxon Valdez
Implications for Safe Marine Transportation

January 1990

FOREWORD

On March 24, 1989, Alaskans awoke to the shock of disaster. Shortly after midnight, the 987-foot-long supertanker Exxon Valdez had run hard aground on Bligh Reef, spilling 10.8 million gallons of crude oil into the unspoiled waters of Prince William Sound. The worst case had occurred.

This was the threatened tanker catastrophe residents of Prince William Sound had dreaded — but many had come to discount — ever since the trans-Alaska pipeline system was proposed in the late 1960s. A few of those scrambling to cope with the disaster knew something more chilling still. Though nearly 11 million gallons of crude oil already had escaped the fully-loaded *Exxon Valdez*, another 40 million gallons remained on board — and the ship was in considerable danger of capsizing. The spill that became the environmental disaster of the decade easily could have been five times worse.

The system that carried 25 percent of America's domestic oil production had failed. So had the regulatory apparatus intended to make it safe. The promises that led Alaska to grant its rights-of-way and Congress to approve the Alaska pipeline in June 1973 had been betrayed. The safeguards that were set in place in the 1970s had been allowed to slide. The vigilance over tanker traffic that was established in the early days of pipeline flow had given way to complacency and neglect. In the months following the spill, more than 1,000 miles of Alaska's coastline would be sullied by North Slope crude.

Communities touched by the effects of the spill staggered under the damage to land and water upon which they lived or the impact of the massive cleanup mobilization after the spill. Alaskans from walks of life as diverse as the oil industry and subsistence communities struggled with the economic losses, sorrow and dislocations as well as, for some, the opportunities that came with the spill and cleanup. Attitudes toward oil development, the land, the industry and the future were examined and re-examined as Alaskans searched for answers to the question of how things went wrong.

The Alaska Legislature created the Alaska Oil Spill Commission to provide some of the answers. Two months after the spill, the governor appointed an independent panel to study the event and recommend public policy remedies. The commissioners came to their work with broad experience in government and public affairs. Their sole purpose was to learn the causes of this disaster and propose changes that would prevent a recurrence of similar disasters anywhere. The mission was clear: Our report must show a path for Alaska, the United States and the world to a vastly improved system for transporting oil and other hazardous substances in the marine environment.

This disaster could have been prevented — not by tanker captains and crews who are, in the end, only fallible human beings, but by an advanced oil transportation system designed to minimize human error. It could have been prevented if Alaskans, state and federal governments, the oil industry and the American public had insisted on stringent safeguards. It could have been prevented if the vigilance that accompanied construction of the pipeline in the 1970s had been continued in the 1980s.

In 1977, when tanker operations began from Valdez, we thought we had created a system that offered guarantees against most disasters. As chairman of Alaska's Oil Tanker Task Force, I pulled together a team that provided the first full-scale simulation of marine operations ever done for a North American port.

Our simulation model demonstrated to the masters and pilots the conditions that would put their ships on the rocks. Tanker lanes into Port Valdez were set to insure the maximum feasible level of safety in tanker operations. Restrictions were imposed to limit operations in high winds. Agreements between the state, the industry and the Coast Guard established that when ice was encountered, the ships would slow down and proceed at minimum speed in the tanker lanes, rather than proceeding outside the lanes at sea speed, as did the *Exxon Valdez*.

The historical record developed by the commission is clear: The original rules were consistently violated, primarily to ensure that tankers passing through Prince William Sound did not lose time by slowing down for ice or waiting for winds to abate. Concern for profits in the 1980s obliterated the concern for safe operations that existed in 1977.

This disaster could have been prevented by simple adherence to the original rules. Human beings do make errors. The precautions originally in place took cognizance of human frailty and built safeguards into the system to account for it. This state-led oversight and regulatory system worked for the first two years, until the state was preempted from enforcing the rules by legal action brought by the oil industry. After that, the shippers simply stopped following the rules, and the Coast Guard stopped enforcing them.

This past year the Alaska Oil Spill Commission traveled to the coastal towns and villages of Prince William Sound and Southcentral Alaska to hear from the people most affected by the spill. We found communities and individuals whose lives and trust had been destroyed, but who had rededicated themselves to protecting their livelihood on water and land. Walter Meganack, Sr., traditional village chief of the Alaska Native subsistence community of Port Graham offered these words at a conference of mayors from spill-affected communities:

It is too shocking to understand. Never in the millennium of our tradition have we thought it possible for the water to die. But it is true. ... what we see now is death. Death — not of each other, but of the

source of life, the water. We will need much help, much listening in order to live through the long barren season of dead water, a longer winter than before. ... We have never lived through this kind of death. But we have lived through lots of other kinds of death. We will learn from the past, we will learn from each other, and we will live.

Port Graham is about 250 miles, by water, from Bligh Reef. To get there, the oil had to travel the length of Prince William Sound, past Green, Stesy, Knight, Montague and LaTouche islands, out into the Gulf of Alaska and along the rocky headlands of Kenai Fjords National Park. It had to round the corner at the end of the Kenai Peninsula, plastering Elizabeth Island and heading into Cook Inlet and the outer reaches of Kachemak Bay. Moving beyond Port Graham and the surrounding area, the oil fouled beaches down the Alaska Peninsula — in Katmai National Park, along the Shelikof Strait, on Kodiak Island and beyond. As the oil spread so, belatedly, did the impact of cleanup and containment efforts, with an army of workers and a navy of boats to move and house them.

To trace on a map the tortured routes of the oil spilled from the *Exxon Valdez* is to appreciate the vulnerability of every coastline on earth as supertankers of 500,000 deadweight tons and more carry crude oil to market. When the Alaska pipeline was being planned and built, the largest tankers in the U.S. flag fleet were about half that size. The world's oil shipping companies, to the benefit of consumers and corporate shareholders, have created a megasystem that carries oil from wellheads in the far corners of the earth to refineries in its major industrial centers. But this megasystem is fragile. It requires careful scrutiny from outside the industry in design, construction and operation. When it fails, as it has in tanker disasters around the world, entire coastlines are at risk. Had a spill the extent of the *Exxon Valdez* disaster occurred off the United States East Coast, the devastation would have stretched from Cape Cod to Chesapeake Bay.

This is not a fictitious risk. Alaskans assume such risks daily as supertankers carry 2 million gallons of North Slope crude through Prince William Sound and out into the Gulf of Alaska. Other Americans on three coasts face just as ominous a threat as the world tanker fleet delivers 43 percent of all U.S. oil consumption daily from overseas.

What will limit these risks? Obviously, the present system, providing minimum penalties for creating massive environmental damage, has not deterred the industry from putting the coasts and oceans of the world at constant hazard. The system calls out for reform. The mission of this commission is to explain what must be done and why.

**Walter B. Parker, chairman
Alaska Oil Spill Commission
January 5, 1990**