

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

1185

Table 3.

**Estimated Alaska North Slope Production and Pipeline Profits
(Nominal and Inflation-Adjusted \$)**

| (1) | (2) | (3) | (4) | (5) |
|--|----------------|--------------|---|---|
| Year | Inflation Rate | Index Factor | N. Slope Production & Pipeline Profits (Nominal \$) | N. Slope Production & Pipeline Profits (1993\$) |
| 1977 | 6.5% | 2.4636 | \$260,000,000.00 | = \$640,533,059.05 |
| 1978 | 7.6% | 2.3132 | \$1,209,000,000.00 | = \$2,796,693,638.12 |
| 1979 | 11.3% | 2.1498 | \$4,048,000,000.00 | = \$8,702,555,990.47 |
| 1980 | 13.5% | 1.9316 | \$4,161,000,000.00 | = \$8,037,275,842.70 |
| 1981 | 10.3% | 1.7018 | \$4,490,000,000.00 | = \$7,641,201,239.06 |
| 1982 | 6.2% | 1.5429 | \$4,733,000,000.00 | = \$7,302,579,412.79 |
| 1983 | 3.2% | 1.4528 | \$5,483,000,000.00 | = \$7,965,875,475.50 |
| 1984 | 4.3% | 1.4078 | \$5,999,000,000.00 | = \$8,445,287,367.71 |
| 1985 | 3.6% | 1.3497 | \$4,854,000,000.00 | = \$6,551,655,202.82 |
| 1986 | 1.9% | 1.3028 | \$3,018,000,000.00 | = \$3,931,974,942.87 |
| 1987 | 3.6% | 1.2785 | \$3,215,000,000.00 | = \$4,110,534,516.59 |
| 1988 | 4.1% | 1.2341 | \$2,684,201,060.00 | = \$3,312,627,556.22 |
| 1989 | 4.8% | 1.1855 | \$3,403,006,200.00 | = \$4,034,312,887.15 |
| 1990 | 5.4% | 1.1312 | \$4,756,638,600.00 | = \$5,380,785,880.80 |
| 1991 | 4.2% | 1.0733 | \$3,171,429,900.00 | = \$3,403,768,854.47 |
| 1992 | 3.0% | 1.0300 | \$3,066,172,320.00 | = \$3,158,157,489.60 |
| 1993 | - | 1.0000 | | |
| Total Profits (ANS Production and Pipelines): | | | \$58,551,448,080.00 | = \$85,415,819,355.91 |
| | | | (or) | (or) |
| | | | \$58.6 billion nominal \$ | = \$85.4 billion 1993 \$ |

Notes

- (2) Consumer Price Index (CPI-U); annual % change from previous annual U.S. city average, all items (U.S. Department of Labor, CPI Detailed Report: Data for January 1993, p. 80).
- (3) = (Subsequent year index factor) * (current year inflation)
- (4) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Appendix E); 1988-92 profits calculated by the author from published sources.
- (5) = (Col. 3) * (Col. 4)

DISCUSSION

This analysis indicates that the disputed vapor recovery system could be purchased at a cost of approximately four percent of one year's after-tax profits. Tractor tugs could be purchased for less than one percent — approximately three days' profits. Put otherwise: Spread across the 6.8 billion barrels forecasted North Slope production between now and 2010,¹³ the combined expenditure for these environmental amenities would come to less than \$0.0225 (2-1/4 cents) per barrel.

How big is the 1986-93 average annual ANS production and pipelining profit of \$3.7 billion, anyway? To answer that question, it will be useful to look at the annual "Fortune 500" ranking of the nation's largest industrial corporations. If ANS production and pipelining profits were controlled by one firm instead of three, that company would have equalled the performance of the second most profitable company on the Fortune 500 in 1991 and would have ranked fourth in 1992.¹⁴

What about the thesis of Alyeska's Hermiller's that the pipeline operator must cut costs in order to "keep the pipeline a viable economic enterprise" because production is declining? First of all, since the TAPS line is wholly owned by the North Slope producers, its sole function is to transport ANS and there is no alternative means of transport, it is fatuous to consider TAPS on a stand-alone basis. The pipeline is an integral part of North Slope operations.¹⁵ Hermiller's warning, then, is properly analyzed in terms of production and pipeline profits together, as shown in the previous tables. To examine Hermiller's argument, ANS operations for the year 2000 can be analyzed in terms of Table 1, using the Alaska Department of Revenue's forecast assumptions for price and volume.¹⁶ The results are summarized in Table 4.

Table 4. Estimated ANS Production and Profits in 2000 A.D.
(1992 \$ per barrel)

Forecast Production 355.4 million barrels (971,000 barrels per day)

| | |
|--|---------------|
| Forecast Price | \$19.54 |
| Forecast TAPS, Feeder Line Tariffs | (\$2.80) |
| Forecast Tanker Costs | (\$1.44) |
| State Royalties, Production & Property Taxes | (\$3.87) |
| Production Costs | (\$4.45) |
| State, Federal Income Tax | (\$2.36) |
| Industry Production Profit | \$4.62 |
| Industry TAPS, Feeder Line Profit | <u>\$0.71</u> |
| Total Industry Profit per-barrel | \$5.34 |

Source: *North Slope Profits and Production Prospects*, p. 72 (using Alaska Dept. of Revenue Spring 1992 forecast assumptions for state fiscal year 2000).

In the year 2000, additional costs of \$0.0225 (2-1/4 cents) per barrel for hard-piping and tractor tugs would have a negligible effect on profits. Because these costs are effectively shared with state and federal governments, the loss to the producers would

amount to approximately one cent per barrel, compared to estimated tax-paid North Slope production and pipeline profits of \$5.34 per barrel. Over the course of that year, those expenditures would result in a reduction of less than \$4 million to estimated net profits totalling \$1.9 billion. In making long-term production decisions, a two to three cent per-barrel change in costs is apt to be lost in the noise of the much larger uncertainty about prices. Long-range planning forecasts often consider price changes in \$5-per-barrel increments. Finally, these data indicate that in terms of net income, at the end of the century profits from North Slope operations would still be on a par with the seventh most profitable corporation in the nation in 1991.

In the absence of information the industry treats as proprietary, it is difficult to make useful internal rate of return calculations. However, it is interesting to note that Deakin's accountancy study estimated the internal rate of return through 1987 at 43.7% if 75 percent of the total investment were financed with debt. Assuming 100% equity financing, Deakin estimated an after-tax rate of return on cash flow of 29.7%.¹⁷ These data indicate that Hermiller's thesis, although logically correct, is practically useless. Due to the extraordinary profit from ANS operations, the environmental costs against which Alyeska officials habitually rail are virtually irrelevant to long-term planning.

Many pieces of the oil market price puzzle are not reported publicly. Even those that are published are often subject to dispute. These results should therefore be regarded as estimates rather than precise statements of North Slope profits. After reviewing the effects of changing key factors, Deakin estimated that with better public information, his estimate might range downward by 4% or upward by 10%.¹⁸ Similar revisions to the 1988-92 numbers are possible, although upward revision in industry profits seems much more likely than downward. In sum, while the North Slope producers have consistently declined to make profit figures public, it is believed that the data used in this analysis produce an estimate of profits that is quite conservative.

This analysis considers only the profits earned from North Slope production, feeder line shipments to Prudhoe Bay and TAPS shipments to Valdez. These figures do not include the profits North Slope producers derive from transportation from Valdez to the Lower 48, or from refining and marketing of ANS. One reason for excluding these downstream profit sources is that even without ANS, the producers arguably could realize similar profits using non-ANS crude oil sources to run equivalent transportation and essentially identical refining and marketing operations.

Two other values of ANS have been identified. One is the value of a stable supply of crude oil that North Slope development provides the owner companies. Without ANS, the companies would have to rely for their oil supply on the shifting sources of the open market. Ownership of ANS production enables the major North Slope producers to plan and design their refineries with an assured supply. Quantification of this advantage, however, would require the introduction of assumptions whose bases would be difficult to validate.

The second additional benefit of North Slope operations resides in the collection by TAPS owners, through the TAPS tariff, of funds for the eventual dismantling and removal and restoration (DR&R) of the 800-mile pipeline corridor. This is the item cited by Alyeska's Williams as the kind of environmental cost that could cause

Alaska's golden goose to cackle its last. In fact, DR&R has turned into a hidden or off-book cash cow for the North Slope producers of uncelebrated but astonishing proportions. Instead of requiring that the funds collected against this vague legal obligation be held in an identifiable reserve account or placed in escrow to ensure their availability for future use, the 1985 TAPS tariff settlement¹⁹ allows the TAPS owners to co-mingle this money with internal accounts, re-invest it for profit or distribute it to shareholders. According to the terms of the 1985 settlement, the money collected for DR&R was supposed to equal the amount required to restore the pipeline corridor to its previous condition. Due to changes in calculating factors such as inflation, tax rates and estimated corporate earnings on internally-held funds over the 35-year estimated life of the pipeline, it has been estimated that if dismantling actually takes place in the second decade of the next century, TAPS DR&R collections will exceed requirements by \$11.7 to \$22.1 billion in 1992 dollars.²⁰ This projected gain to the TAPS owners from TAPS DR&R is in excess of — over and above — the annual after-tax profits calculated in this report. Many industry observers believe the pipeline will be in operation for a much longer period, further increasing the value of the precollected DR&R payments to the owner companies.

One of the surprising facets of North Slope economics is that its extraordinary profitability is so dimly understood by the public. In a lengthy front-page report in May 1993, the Anchorage Daily News explained ARCO's presence and prospects in Alaska this way:

ARCO is here, [CEO Lodwick] Cook and analysts said, because it has to be: because it understands Alaska and Alaskans, because it owns so many oil leases in the state and because its enormously profitable refining and retailing system is geared for North Slope crude.²¹

All of this may be true, but the article omitted all reference to North Slope profits, which are roughly twice that of the company's "enormously profitable refining and retailing system."

CONCLUSIONS

Alaska is the frequent scene of intense debates in which environmental and economic values are pitted against each other. In those debates, crucial facts about energy and the environment are frequently obscured. The public, groping blindly in the absence of meaningful data, looks to its elected officials and bureaucrats for leadership and information. Public officials, in turn, seem perpetually impaled on the horns of the environment v. development dilemma. Even development spokesmen sometimes seem to be confused about key facts that underlie the central issues.

A straight-forward approach to North Slope profitability cuts through rhetoric to produce estimates of the extraordinary per-barrel net profitability of Alaska's North Slope operation. These data indicate that the North Slope producers have ample room to make additional environmental expenditures, if warranted, despite public pronouncements to the contrary by industry officials.

Decisions involving energy and the environment inevitably involve a balancing of economic and ecological factors. In view of the statements of Alyeska Pipeline Service Co. officials on Alaska North Slope economics, it is to be hoped that industry's environmental assessments are better than its public economic analyses.

NOTES

1. Seven major oil companies own the 800-mile TAPS pipeline, which transports Alaska North Slope crude oil from Prudhoe Bay to Valdez, where the oil is loaded on tankers for the Lower 48 states. Three companies — ARCO, BP and Exxon — own approximately 91.5% of TAPS and 93% of ANS production (the latter figure is net of royalty). For specific field and TAPS ownership percentages, see British Petroleum, Prudhoe Bay and Beyond (7th Edition; n.d.), p. 2.
2. Damage from the Exxon Valdez spill is the subject of debates among oil spill specialists. See, for example, "Information on Valdez Oil Spill — Scientific Studies Sponsored by Exxon" (Exxon press packet summarizing materials presented at the Symposium on Environmental Toxicology and Risk Assessment, sponsored by the American Society for Testing and Materials), April 26-29, 1993 and "NOAA Response to Exxon Challenge to Exxon Valdez Natural Resource Damage Assessment Database" (National Oceanic and Atmospheric Administration), April 27, 1993.
3. In 1971, British Petroleum's head of Environmental Studies promised "[f]or any oil spill . . . prompt and effective containment. . . . The best equipment, materials and expense . . . will make operations and Port Valdez and in Prince William Sound the safest in the world." In subsequent years industry officials frequently made similar promises. However, by 1989 Exxon had entrusted the newest and largest ship in its Alaska fleet to a Captain who had been barred from driving in two states for drunk driving. The Captain, in turn, left the supertanker in control of an inexperienced and overworked Third Mate with a helmsman at the wheel who was felt by colleagues to be incapable of painting a wall without close supervision. When the spill occurred, the Valdez-based response barge, which was supposed to have been ready to go on immediate notice, was out of the water for repairs. Key response equipment, such as pumps and containment boom, were either unavailable or buried under several feet of snow. (For promises: Alyeska Pipeline Service Co., Hearing Testimony [at U.S. Department of Interior hearings, Anchorage, February 1971], pp. 32-33. For spill and botched response, see: National Transportation Safety Board, Hearings May 1989 and Marine Accident Report—Grounding of the U.S. Tanker EXXON VALDEZ on Bligh Reef, Prince William Sound, near Valdez Alaska, March 24, 1989, esp. Findings and Probable Cause, pp. 166-170 [Report No. NTSB/MAR-90/04] and Alaska Oil Spill Commission, Final Report [State of Alaska, Feb. 1990], pp. 5-59.)
4. See: Regional Citizens Advisory Council, Resolution 92-2, Sept. 28, 1992; and letter from J.B. Hermiller, President, Alyeska Pipeline Service Co., to Scott Sterling, President, Regional Citizens Advisory Council, Nov. 16, 1992.
5. See: Analysis of Tanker Escort Services for San Francisco Bay, July 1992 (prepared for Harbor Safety Committee of the San Francisco Bay Region by Robert Allan Ltd.); Foss/ARCO Tanker Escort Study (Puget Sound), Sept. 1991; Crowley Maritime Corporation, "Crowley Marine Services to Purchase Eight New 9,000 h.p. Tractor Tugs," Feb. 9, 1993 (press release).
6. M.F.G. Williams, "Economic Regulations and Development" (Conference on Energy Issues for the 1990s [University of Alaska Anchorage School of Business and Organization of Petroleum Exporting Countries conference], Anchorage, July 23-24, 1992), p. 2. Mr. Williams omitted mention of the fact that TAPS owners have already collected a sizable fortune for this purpose through the liberal terms of the 1985 TAPS tariff settlement (see "Discussion," below).
7. Anchorage Times, Jan. 12, 1992 (speech reprinted in its entirety by Alyeska Pipeline Service Co.)
8. For a more detailed discussion of the sources and factors employed in this spreadsheet, see the author's North Slope Profits and Production Prospects (report to the Alaska State Senate Finance Committee, Nov. 11, 1992), pp. 30-41. The approach used in this analysis is similar to the model of per-barrel profitability laid out by Charles Logsdon, Ph. D., Alaska Dept. of Revenue Chief Economist, in a July 1992 paper. ("Alaska's Relationship with the Major Oil Producers," Conference on Energy Issues for the 1990s [University of Alaska School of Business and OPEC; Anchorage, July 23-24, 1992], p. 6.) However, Dr. Logsdon's table delineates production revenue and therefore omits pipeline profits.

9. A 1984 study found the North Slope's three major producers paid an average of 23.25% in federal taxes from 1981 to 1983. In a 1988 update, ARCO and BP were not reported but Exxon paid approximately 23% from 1981 through 1987. (Robert S. McIntyre and Robert Folen, Corporate Income Taxes in the Reagan Years: A Study of Three Years of Legalized Tax Avoidance [Citizens for Tax Justice, 1984], pp. 32-33, 36; Robert S. McIntyre, Johathan M. Crystal and David C. Wilhelm, The Corporate Tax Comeback [Citizens for Tax Justice and the Institute on Taxation and Economic Policy, 1988], p. 43.
10. TAPS profits include both the after-tax margin and the recovery of deferred return (lines 5e and 5f, Table 1).
11. Edward B. Deakin, Oil Industry Profitability in Alaska, 1969 through 1987 (Alaska Dept. of Revenue, March 15, 1989). For a comparison of the results produced by the two models, see North Slope Profits and Production Prospects, p. 60.
12. The 1991 data in Table 1 were produced from separate calculations for each of the five major North Slope producing fields, each of which has its own operating, capital and pipelining costs, as well as its own market value (based on the quality of the oil produced). A simplified version of the model was developed, using estimating factors to produce average North Slope profit figures for 1988 through 1990, and for 1992. Results from the 1992 field model closely matched those of the simplified version.
13. Alaska Department of Revenue, Spring 1993 Revenue Source Book, mid-scenario simulated oil production, p. 47.
14. According to the Fortune 500, the five most profitable companies in the United States in 1991 and 1992 (followed by their net after-tax income, in millions of dollars) were: 1992: (1) Phillip Morris, \$4,939.0; (2) Exxon, \$4,770.0; (3) General Electric, \$4,725.0; (4) Merck, \$1,984.2; (5) Bristol Meyers-Squibb, \$1,962.0. 1991: (1) Exxon, \$5,600.0; (2) Phillip Morris, \$3,006.0; (3) General Electric, \$2,636.0; (4) Merck, \$2,121.7; (5) Bristol Meyers-Squibb \$2,056.0.
15. In fact, it is conceivable that TAPS profits, which are guaranteed in the tariff agreement, could enable the owners to continue producing profitably despite short-term production revenue losses due to relatively low oil prices. Whether Alyeska officials actually misperceive TAPS as a stand-alone economic entity, as their public pronouncements indicate, is beyond the scope of this paper.
16. The price and production assumptions used in this analysis, from the Alaska Department of Revenue's Spring 1992 forecast, are rather conservative. For example, that forecast assumed a 50% production decline at Kuparuk by the year 2000 with little or no replacement production from the West Sak reservoir. ARCO, which has the major interest in both fields, has indicated that Kuparuk will probably hold at current levels through the end of the century, and that West Sak production may be brought on line when Kuparuk does slow down. (For a detailed look at the assumptions used and the results, see North Slope Profits and Production Prospects, pp. 69-79.)
17. Oil Industry Profitability in Alaska, 1969 through 1987. pp. T74-75.
18. Oil Industry Profitability in Alaska, 1969 through 1987. pp. 20, T58-T63.
19. "Settlement Agreement between the State of Alaska and ARCO Pipe Line Co. [et al.]," June 28, 1985, p. 14.
20. For the history of the DR&R provision in the TAPS settlement and an analysis of its economic consequences, see the author's Hidden Billions: The TAPS DR&R Provision (report prepared for Stan Stephens, PO Box 1297, Valdez, Alaska, 99686, August 21, 1992).
21. Kim Fararo, "Stuck on Alaska: Arco's bet pays off for state, company," Anchorage Daily News (May 23, 1993), p. A-1.

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(Resume)

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Present Position:

Freelance research and writing (October 1989 - present). Primary focus: Alaska North Slope oil and gas economics, production prospects and environmental policy.

Previous Positions:

Policy Analyst, Office of Management and Budget, Office of the Governor of Alaska (1987-89). Duties: special advisor to the governor on oil and gas issues; member of state oil and gas litigation policy working group; member of state revenue forecasting group; special assignments.

Senior Analyst, Office of Management and Budget, Office of the Governor of Alaska (1983-1987). Duties: compilation of state revenue and budget totals, preparation and publication of annual report on same; special assignments.

Freelance investigative reporting and research (1976-1982).

Resources and Staff Investigative Reporter, Fairbanks Daily News-Miner (1975-1976).

Freelance investigative reporting (1972-1975).

Assistant Professor of Political Science, University of Alaska (1969-71). Duties: Teaching undergraduate and graduate courses in government; setting up and leading Master's in Public Administration Program at the University's Juneau branch.

Academic Training: Beloit College, B.A., 1964; Claremont Graduate School, M.A., 1967; Claremont Graduate School, Ph.D., 1970 (all degrees in government). Major areas of focus include Contemporary China and comparative politics, public administration. Doctoral dissertation on "Green Card" Labor and the 1968 California Grape Strike in the San Joaquin Valley; master's essay on the sociological theory of collective behavior.

Academic Awards: National Defense Foreign Language Fellowship, 1966-67; National Endowment for the Humanities Post-Doctoral Fellowship, 1971 (declined); Danforth Fellowship for Economic Reporting, University of Missouri School of Journalism, 1976.

*Print Journalism (partial list of publications):*¹ Articles on a wide range of subjects ranging from the use of chemical and biological warfare in Southeast Asia to investigation of a U.S. Senator's mismanagement of the bank he previously headed have appeared in magazines such as Alaska, Alaska Business, Lithopinion, The Nation, The New Republic, The Progressive, Saturday Review / World and newspapers including The All-Alaska Weekly, The Anchorage Daily News, The Boston Globe, The Chicago Tribune, The Miami Herald, The St. Louis Post-Dispatch and The Washington Star.

Print Journalism (awards): Amos Tuck Award for Excellence in Economic Reporting (\$5,000 first prize, 1979, for a series on the Northwest Energy Co.'s efforts to build a natural gas pipeline from Alaska's North Slope to the Lower 48); best weekly column, Alaska Press Club (1975, for coverage of construction of the trans-Alaska oil pipeline); best reporting (weekly) and second best reporting (daily), Alaska Press Club (1979, for reporting on workers' compensation problems).

Research Reports, Monographs:

- "Cook Inlet Oil Platform Hiring Practices," Alaska State Legislature (1980);
- "Fatalities during Construction of the Trans-Alaska Pipeline," Alaska Science Conference (1980);
- "Workers' Compensation Problems in Alaska," Alaska State Legislature (1981);
- "Chaos in the Capitol: The Alaska State Budget System in Crisis," Alaska Public Interest Research Group (1982);
- "Oil and Gas Revenue Disputes: Status Report and Recommendations," Alaska State Legislature (1990);
- "The 1985 TAPS Tariff Settlement: A Case Study in the Effects of Confidentiality on Information Available to Decision Makers" (supplemental report to "Oil and Gas Revenue Disputes"), Alaska State Legislature (1990);
- "Corexit 9580: Report and Recommendations," Alaska Department of Environmental Conservation Oil Spill Response Center (1990);
- "North Slope Production Prospects, 1990-2010," Alaska State Legislature (1990);
- "Worker Safety and the Dutch Harbor Fishery Boom," Alaska State Department of Labor (1991);
- "Alyeska Pipeline Terminal Ballast Water Treatment and Northbound Shipments: Final Report," Prince William Sound Regional Citizens' Advisory Council (1991);
- "Hidden Billions: The TAPS DR&R Provision," under contract to Stan Stephens, Valdez, Alaska (1992);
- "North Slope Profits and Production Prospects," Alaska State Legislature (1992);
- "Alaska North slope Oil Profits and Proposed Environmental Mitigation Measures," for presentation to the N. Amer. Conference, International Association for Energy Economics (1993).

Book chapters:

"Cambodia: The Struggle Continues," in Vietnam: What Kind of Peace? (Washington, D.C.: Indochina Resource Center, 1973);

"The Press in Alaska," in McBeath and Morehouse (eds.), Alaska State Government and Politics (Fairbanks, Alaska: University of Alaska Press, 1987).

Additional Experience In Oil & Gas:

1. Legal and Accounting: In addition to extended field trips to assist the Alaska Department of Law and its consultants on disputes over payments to the state due from (or related to) North Slope oil production and income taxes, royalties and pipeline tariffs while working for the State of Alaska, I furthered my professional training in these areas by attending the following meetings or professional conferences of special note:

Oil Pipeline Ratemaking Workshop, Executive Enterprises, Inc. (Houston, Texas, May 1985);

Short Course on the Fundamentals of Oil and Gas Law and Taxation , Southwestern Legal Foundation (Dallas, Texas, May 1988);

OPEC Meeting (observer for State of Alaska; Vienna, Austria, November 1988).

2. Environmental: In 1989 I spent more than a month in Prince William Sound assisting the State Department of Environmental Conservation in the cleanup of the Exxon Valdez oil spill. In addition to frequent follow-up visits to Prince William Sound, I subsequently attended the following major conferences (partial list);

Arctic Marine Oil Pollution Conference (Calgary, Alberta, June 1989; and Vancouver, B.C., June 1991);

International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), American Petroleum Institute, U.S. Coast Guard and U.S. Environmental Protection Agency (San Diego, California, March 1991);

Third American Society for Testing and Materials (ASTM) Symposium on Environmental Toxicology and Risk Assessment — Exxon Valdez oil spill (Atlanta, Georgia, May 1993).

References: Available on Request.

International Association for Energy Economics 15th Annual North American Conference

Westin Hotel, Seattle, Washington
October 11-13, 1993

Conference Theme:

Energy and the Environment

Panels and topics for consideration include:

Energy/Environment Balance

Externalities in planning and operation
Command and control vs. marketable rights
Structure of pollution markets
Mitigation options

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Transmission
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Incentive regulation
Nonutility suppliers

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Oil and gas trading
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Privatization

Frontier Oil & Gas Development

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Audit Report

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
OIL AND HAZARDOUS SUBSTANCE
RELEASE RESPONSE FUND

January 10, 1994



Audit Control Number:

18-4463-94

Division of Legislative Audit

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

SB 015 SFM 13/94

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

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ALASKA STATE LEGISLATURE

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January 10, 1994

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number

18-4463-94

The objective of the audit was to review policy issues relating to the Oil and Hazardous Substance Release Response Fund within the Department of Environmental Conservation.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology beginning on page one.

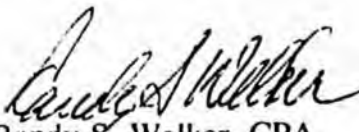

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted a review of policy issues relating to the Oil and Hazardous Substance Release Response Fund (Response Fund) administered by the Department of Environmental Conservation (DEC).

Objectives

The objective of the review was to gain an understanding of policy issues relating to the Response Fund. Specific objectives of the review were to:

1. Review the history of the Response Fund; including the original purposes of the fund, the reasons for establishing a 5¢ per barrel of oil surcharge, and the current purposes of the Response Fund.
2. Determine the criteria DEC uses in its decisions to fund certain projects and whether the criteria is consistent from project to project.
3. Determine what accounting procedures are currently in place that allow the legislature to track where and how Response Funds are being spent.
4. Recommend possible statutory changes that will clarify how Response Fund monies should be administered by agencies outside of DEC.

Scope

We focused our examination on the legislative history of the Response Fund, the budgeting process for FY 91 through FY 94, and FY 92 and FY 93 expenditures that were related to selected projects.

Methodology

Our evaluation of policy issues relating to the Response Fund involved review and analysis of the following documents:

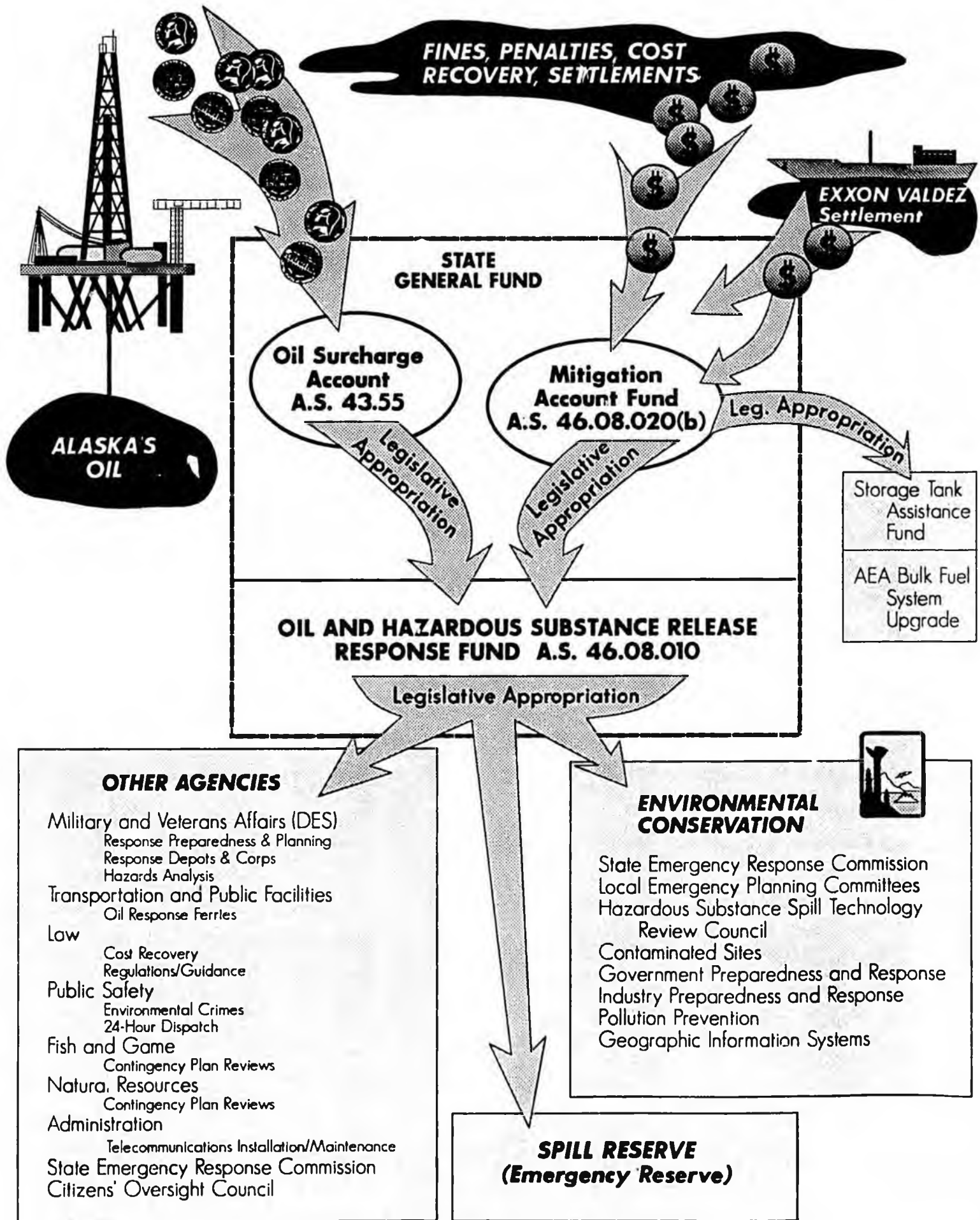
1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.
2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, SLA 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13, SLA 1989.
4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29, SLA 1989.
5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 39, SLA 1989.
6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90, SLA 1989.
7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112, SLA 1989.
8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113, SLA 1989.
9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190, SLA 1990.
10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191, SLA 1990.
11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199, SLA 1990.
12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48, SLA 1991.
13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83, SLA 1991.
14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.
15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.
16. Response Fund Annual Reports for FY 87 through FY 93.
17. DEC Policy Statements on the Response Fund.
18. Attorney General Opinions and memorandums on the Response Fund.
19. Industry contingency plans and corresponding documentation maintained at DEC.

20. Documents pertaining to DEC spill responses through November 8, 1993.
21. DEC database information and other documentation related to contaminated sites.
22. Oil Spill Commission Final Report.
23. A pamphlet put out by the Prince William Sound Regional Citizens' Advisory Council entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill.*"
24. Newspaper coverage regarding the Response Fund and its usage.

Additionally, we interviewed the following:

1. Staff within DEC.
2. Staff within Department of Military and Veterans Affairs.
3. Staff within Division of Legislative Finance.
4. Staff of Office of the Governor, Office of Management and Budget.
5. Staff within Division of Legal Services.
6. Chairman of the former Alaska Oil Spill Commission and current chairman of Hazardous Substance Technology Review Council.



ORGANIZATION AND FUNCTION

The 1986 Alaska State Legislature passed House Bill (HB) 470 (Ch 59, SLA 86), a bill relating to the release of oil and hazardous substances. This legislation established an Oil and Hazardous Substance Release Response Fund (Response Fund) on July 1, 1986 with appropriations from three different sources totalling \$680,666; \$158,677 from the balance of the Oil Spill Mitigation Account, \$221,989 from the balance of the Oil Spill Expense Reserve, and a \$300,000 FY 87 capital budget appropriation. The facing page illustrates flows into and out of the Response Fund.

Between 1986 and 1989, deposits into the Response Fund were made from general fund appropriations and from the Oil and Hazardous Substance Release Mitigation Account (mitigation account). This account is composed of money recovered from parties responsible for oil and hazardous substance spills through cost recovery and fines, penalties, or damages. Money in the mitigation account may be appropriated each year to the Response Fund. In the past, the legislature has also appropriated money from the mitigation account into the storage tank assistance fund and to the Alaska Energy Authority's program directed at upgrading bulk fuel storage systems.

In 1989, the legislature enacted statutes which levied a surcharge of 5¢ per barrel of taxable oil produced from each lease or property in the State. The commissioner of the Department of Administration accounts for the money in a separate general fund account, which is commonly called the Oil Surcharge Account (surcharge account). As explained on page 13 in Background Information, the surcharge is subject to suspension and reimposition if certain criteria are met. Between FY 87 and FY 94, a total of \$109,200,000 has been appropriated to the Response Fund from the surcharge account and \$5,033,600 has been appropriated from the mitigation account. In addition, the legislature has appropriated in excess of \$74,000,000 from the general fund to the Response Fund through FY 93.

Money left over in the Response Fund after all appropriations have been made to agencies for their operating costs has been appropriated to the spill reserve. The spill reserve may be accessed by the Department of Environmental Conservation (DEC) only for costs necessary to investigate, evaluate, contain, clean up, and take other necessary action to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. DEC does not budget for "response" to releases of oil or other hazardous substances, so all spill reserve expenditures are unbudgeted response activities.

DEC can only make expenditures out of the Response Fund with specific legislative appropriation, except for emergency releases of oil or hazardous substances paid out of the spill reserve. Each year the legislature determines what projects and activities will be paid for out of the Response Fund. In addition to DEC, twelve state agencies have been funded with monies from the Response Fund. These agencies have been active in contingency plan review, state master and regional contingency planning, and working with the State Emergency Response Commission.

Spill Prevention and Response Division

Within DEC, the primary user of the Response Fund is the Spill Prevention and Response Division (SPAR). SPAR was created in July 1991 for the purpose of preventing and responding to negative impacts to public health and the environment caused by oil and hazardous substance spills. The division administers four programs:

1. The Government Preparedness and Response Program (GPRP) was developed to protect public health and the environment by ensuring a planned and safe response to releases or threatened releases of oil or hazardous substances. The emphasis of this program is on the State's ability to prevent and respond to spills. The program is responsible for facilitating local, regional, and statewide response preparedness. To achieve this, GPRP prepares, reviews, and revises state and regional prevention and response plans for oil and hazardous discharge. An integral part in the planning process is the State Emergency Response Commission (SERC).

GPRP provides staff support to SERC. SERC evolved from the federal Superfund Amendments and Reauthorization Act (1986). This legislation required the State to minimize the impact on human health and the environment from oil and hazardous substance releases by facilitating local, regional, and statewide response planning. SERC was established by executive order in 1987 but did not become operational until FY 91.

The commission is comprised of the commissioners or their designees of eight state agencies, the adjutant general or his designee, and seven public members appointed by the governor. To the extent practicable, public members have expertise in the emergency response field. The main duties of the group are to designate Local Emergency Planning Districts, appoint the membership of Local Emergency Planning Committees (LEPCs), comment on local emergency plans, provide technical assistance to LEPCs, and receive and process information requests from the public.

2. The Industry Preparedness Program (IPP) focuses on the oil industry's ability to prevent and respond to releases or threatened releases of oil. Statute requires the industry to submit proof they have both the financial ability and physical ability to respond to releases. Their physical ability is demonstrated by a contingency plan which must be approved before obtaining a permit to operate. Contingency plan requirements apply to oil tank vessels, barges, crude oil pipelines, and onshore and offshore oil exploration and production facilities. In addition, oil terminal facilities that contain an amount of product specified in statute must have a contingency plan. IPP is responsible for reviewing, approving, and testing contingency plans as well as ensuring operators meet the financial responsibility requirements set out in statute.
3. The Contaminated Sites Remediation program was created to abate threats to public health and the environment posed by sites contaminated by improper disposal or discharges of hazardous substances. The number of contaminated sites is large and ever increasing. The program attempts to identify and assess contaminated sites and

ascertain their potential threat to public health and the environment. With this information, contaminated sites can be prioritized so those sites posing the greatest threat are addressed first. The method by which the program addresses a contaminated site depends on the identity of the party responsible for the contamination. Cooperative agreements are in place with the federal government to clean up sites where the federal government is the responsible party. A memorandum of agreement exists between several state departments to address those sites where the State is the responsible party. For sites where a responsible party is willing to help clean up, the program provides oversight. If a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead cleanup efforts.

4. The Underground Storage Tank program assists owners and operators in meeting federal regulations. These regulations require new underground storage tank installations to meet national standards and tanks already in operation phase-in to meet those standards. Federal law also requires each facility to demonstrate financial responsibility in the event of a spill. In Alaska, a Storage Tank Assistance Fund was established which offers grants and loans to owners and operators to test, clean up, upgrade, or close their facilities. The Storage Tank Assistance Fund receives monies from the mitigation account thereby reducing funding that flows from the mitigation account into the Response Fund.

These four programs are developed and managed by the director of SPAR. Program managers are centralized in SPAR's central office and their role is to develop policy and provide technical guidance to the four regions of DEC so that programs are implemented in an effective and consistent manner across regions.

DEC has been divided into Northern Region, Southcentral Region, Southeast Region, and Pipeline Corridor Region. Regional managers report directly to the commissioner and are responsible for making sure SPAR program objectives, as well as other divisions' program objectives, are accomplished. Regional offices assume line authority of district and field office staffs. Actual work on contaminated sites, spill response, spill drill and inspections, and review of contingency plans is accomplished primarily by district offices with support from their region.

**PURPOSES OF THE RESPONSE FUND
AS 46.08.040**

| | |
|---|--|
| <p style="text-align: center;">Senate Bill 25 [Ch 83, SLA 91]</p> | <p>(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to</p> |
| <p style="text-align: center;">Senate Bill 261 [Ch 90, SLA 89]</p> | <p>(1) investigate and evaluate the release or threatened release of oil or a hazardous substance and</p> |
| <p style="text-align: center;">House Bill 470 [Ch 59, SLA 86]</p> | <p>contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;</p> |
| <p style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]</p> | <p>(2) pay all costs incurred to (A) establish and maintain the oil and hazardous substance response office;</p> |
| <p style="text-align: center;">House Bill 567 [Ch 191, SLA 90]</p> | <p>(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030; (C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and (D) to verify or establish proof of financial responsibility required by AS 46.04.040;</p> |
| <p style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]</p> | <p>(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;</p> |

House Bill 470
[Ch 59, SLA 86]

- (4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);
- (5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

Senate Bill 261
[Ch 90, SLA 89]

- (6) prepare, review, and revise
 - (A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and
 - (B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and
- (7) restore the environment by addressing the effects of an oil or hazardous substance release.

House Bill 566
[Ch 190, SLA 90]

- (b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020, the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.
- (c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)--(7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

House Bill 578
[Ch 199, SLA 90]

- (d) Upon request from
 - (1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

Senate Bill 165
[Ch 48, SLA 91]

- (2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

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BACKGROUND INFORMATION

The Response Fund was established with the passage of House Bill 470 in 1986 (Ch 59, SLA 86) by the legislature and the governor signing the bill into law. The bill, which was sponsored by Representative Mike Davis, created the Response Fund in the state general fund. The legislature set out their reason for establishing the Response Fund in the Purpose, AS 46.08.005. In that stated purpose, they declared the release of oil or hazardous substances presents a substantial threat to public health, to the environment, and to the economy of the State. The Response Fund was to provide a readily available fund for the payment of expenses incurred by DEC in protecting the environment from oil and hazardous substances releases.

Original uses of the Response Fund

The commissioner of DEC was named the Response Fund administrator and was authorized to use the fund for three distinct purposes:

1. Contain and clean up, which includes monitoring, assessing, investigating, and evaluating, the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.
2. Provide matching funds for participation in federal oil discharge cleanup activities.
3. Recover the cost to the State or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

Alaska Statute 46.08.010 specifically disallowed using the fund for capital improvements.¹ During meetings of the House Special Committee on Oil and Gas, the commissioner of DEC explained that he did not want the fund to be viewed only as a means to deal with future spills, but also "*to investigate and deal with sites where poor management of waste disposal may have occurred in the past.*"

Original methods to finance the Response Fund

The legislature could appropriate money received from federal, state, or other sources into the Response Fund. Money recovered from parties responsible for the containment and cleanup at a specific site and fines, penalties, or damages recovered because of an oil or hazardous release would be deposited in the general fund into a special account called the mitigation account. The legislature could annually appropriate to the Response Fund a sum

¹"Capital improvement" is defined in AS 46.08 to mean "*construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall.*"

equal to the amount received in the mitigation account during the calendar year preceding that legislative session.

Legislature reacts to Exxon Valdez grounding

No new legislation was introduced or passed regarding the Response Fund between June 1, 1986, the effective date of the original legislation, and March 24, 1989 when the *Exxon Valdez* hit Bligh Reef in Prince William Sound. After that incident, six bills were enacted in 1989 that affected the Response Fund. The current purposes of the fund with annotation of the bill and date of each section change can be found on pages 8 and 9. Senate Bill 247 [Ch 13, SLA 89] went into effect just 20 days after the *Exxon Valdez* oil spill and was to cover expenditures necessitated by the state response. The legislature appropriated \$20 million to the Response Fund, of which \$10 million came from the general fund and \$10 million came from general fund program receipts, which were to be reimbursement of cleanup costs from Exxon.

Senate Bill (SB) 256 [Ch 29, SLA 89], while being approved by the governor on May 11, 1989, was made retroactive so that the effective date was March 24, the day of the grounding. The bill amended AS 46.08.070 so cost recovery had to be immediately sought by DEC for money expended to contain or clean up oil or a hazardous substance. Previously the statute had allowed DEC to seek cost recovery, but did not require the department to do so. Senate Bill 256 also permitted DEC to reimburse a municipality for actual expenses incurred in the abatement of a release if the municipality entered into an agreement with DEC.²

House Bill 68 [Ch 39, SLA 89], which had an effective date of May 13, 1989, provided for strict liability for the release of a hazardous substance. A new section was added to AS 46.08 to allow the State to place a lien for expenditures by the State from the Response Fund against all property owned by a person who is determined by the commissioner to be liable for the expenditures.

The authorized uses of the fund were expanded with the passage and signing into law Senate Bills 261 [Ch 90, SLA 89] and 264 [Ch 113, SLA 89]. From testimony at public hearings, it was apparent that residents of the State did not trust the oil industry to live up to their responsibilities identified in contingency plans. Residents discussed the need for oil facilities to be inspected and for unannounced drills to test industry's ability to implement their contingency plans. Residents also expressed that DEC needed to be adequately funded to upgrade monitoring and response efforts. Many residents voiced support for the oil industry to be held strictly liable for their spills, but at the same time have an independent state response capability. The two senate bills recognized this concern by containing identical Findings and Purpose, which included, "*the March 24, 1989, oil spill disaster in the Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability.*"

²Prior to the statute amendment, the municipality could only be reimbursed if the agreement had been entered into before the expenses were incurred.

Senate Bill 261 added a state master plan and regional master plans to the duties of DEC. The State Master Plan, which was to be addressed in AS 46.04.200, included requiring or scheduling unannounced oil spill drills to test the sufficiency of an oil terminal facility discharge prevention and contingency plan. The preparation, review, and revision of the state master plan and regional master plans were added as the fourth authorized use of the fund. In addition, the first use of the fund was amended to include investigate and evaluate as well as the contain and clean up previously allowed. A fifth purpose allowed the Response Fund to be used to restore the environment by addressing the effects of an oil or hazardous substance release.

Senate Bill 264 established an oil and hazardous substance response office in DEC. That office was authorized to establish emergency response depots, which would be staffed and equipped in areas of the state determined to be potential sites of releases of oil or hazardous substances. The response office was authorized to establish response corps, which were to be in the Department of Military and Veterans' Affairs (DMVA), Division of Emergency Services (DES). The corps would consist of volunteers who register with the office and are trained by the office in techniques for containment and cleanup. The costs for the response office, depots, and corps were included as a purpose of the Response Fund.

Imposition of a 5¢ per barrel conservation surcharge

The passage of SB 260 (Ch 112, SLA 89), which was sponsored by Senator Jalmar Kerttula and co-sponsored by Senator Mike Szymanski, levied a 5¢ per barrel surcharge on crude oil. The sponsor statement dated April 11, 1989 said the intent of the legislation was that revenues from this additional tax would provide a continuing source of funding for the Response Fund. This would ensure that adequate funds are available to meet the State's responsibility for oil spill clean up.

Since the legislature cannot dedicate revenues in any piece of legislation without a constitutional amendment, a clause was included in SB 260 to encourage the appropriation of the surcharge from the surcharge account into the Response Fund. If the legislature does not appropriate the balance of the surcharge account to the Response Fund or if the governor vetoes or reduces the appropriation of the surcharge account to the Response Fund, the surcharge would not be imposed that fiscal year.

The surcharge would also be suspended by the commissioner of the Department of Revenue if the commissioner of the Department of Administration reported that the difference between the cumulative total of surcharge money appropriated to the Response Fund equals or exceeds the amount expended by the fund by \$50 million. If the surcharge had been suspended, it could be reimposed if the commissioner of the Department of Administration reports that the difference is less than \$50 million.

During committee meetings regarding SB 260, discussion was held as to how long the imposition was likely to remain in effect based on expenditures from the Response Fund. One senator pointed out that 13 oil spill related pieces of legislation were currently pending and passage of them all would create more expenditures from the Response Fund than had

occurred so far. A member of legislative counsel agreed that there would be an unlimited draw from the Response Fund, but the sponsor of the legislation said the draw could not be unlimited. Expenditures from the Response Fund were limited by what revenues were produced by the 5¢ per barrel. Legislative counsel explained that, "through legislation and statutes, the legislature establishes the purposes for which the fund can be used." In the Findings and Purpose of the enacted piece of legislation, the legislature explained their purpose by stating:

(a) *The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.*

(b) *It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.*

Uses of Response Fund continue to expand

House Bill 567 [Ch 191, SLA 90] extended the number of the purposes of the fund which were to review oil discharge prevention and contingency plans; to conduct training, response exercises, inspections, and tests in order to verify state, municipality, and industry preparedness; and to verify or establish proof of financial responsibility. The bill also clarified DEC's reporting requirements on the Response Fund to include describing each personal services position and total compensation for the position, each contract in excess of \$20,000, and each purchase in excess of \$10,000.³

House Bill 566 [Ch 190, SLA 90] established SERC in DEC. The oil and hazardous substance response office in DEC established by Senate Bill 264 would serve as staff for SERC. SERC was to designate boundaries of local emergency planning districts and establish local emergency planning committees. SERC was to review and approve local, regional, and state plans for hazardous substance discharge response.

³House Bill 470 had required the commissioner of DEC to submit an annual report to the legislature. The report had to include the amount of money expended from the fund in the preceding fiscal year, the amount and source of money received, a summary of municipal participation in responses paid by the fund, a detailed summary of department activities paid by the fund, and the projected cost for the next fiscal year of monitoring sites oil spill or hazardous waste sites. The report also had to include a summary of contaminated sites, the threat these sites represented to public health or the environment, and the cost and action needed to clean the sites.

A Hazardous Substance Spill Technology Review Council,⁴ which was to review and recommend research topics to DEC, was created under SERC. The bill clarified that the Response Fund was to pay expenses incurred by DMVA, DES for response corps and depots when presented with appropriate documentation by the division. This bill allowed the Response Fund to be used for response to a declared disaster emergency related to an oil or hazardous substance discharge.

House Bill 578 [Ch 199, SLA 90] created a Citizens' Oversight Council on Oil and Other Hazardous Substances in the legislature (oversight council). The oversight council would request money from the Alaska Legislative Council, which in turn would seek reimbursement from the Response Fund. The oversight council would determine whether state and federal agencies were fulfilling their responsibilities for the prevention and response to oil and hazardous releases. The oversight council was to file an annual report with the legislature and governor and make policy recommendations to prevent releases.

Senate Bill 25 [Ch 83, SLA 91] amend. the authorized uses of the Response Fund to include making grants to a municipality or village that is affected by a release involving extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from current revenue sources. Senate Bill 165 [Ch 48, SLA 91] allowed the Response Fund to be used to construct or refurbish one or more ferries so the ferries would have the capability to assist in responding to oil or hazardous substance spills.

Legislature plays active role in shaping purpose of fund

In addition to expanding the purpose of the Response Fund through statutory amendments, the legislature has taken an active role in shaping the purpose of the fund by appropriating on a project specific basis. In FY 93 over \$50 million was appropriated from the Response Fund. The legislature was specific in the purpose of the appropriations by allocating each appropriation to individual projects. On several occasions, the legislature was detailed to the point of listing a specific project's purpose and location. For example the appropriation for the Nearshore Demonstration Project reads:

The sum of \$1,200,000 is appropriated from the oil and hazardous substance release response fund (AS 46.08.010) to the Department of Environmental Conservation, division of spill prevention and response, for fiscal year 1993, for nearshore strike team demonstration projects along the Gulf of Alaska coast and in southeast Alaska that are developed in consultation with the division of emergency services and the regional citizens' advisory councils in the affected region.

The legislature has chosen to supplant general fund appropriations with Response Funds. They have done so when services previously funded out of the general fund qualified for

⁴The Division of Legislative Audit conducted a Sunset Audit on the Department of Environmental Conservation, Hazardous Substance Spill Technology Review Council, dated November 29, 1993.

Response Funding. For example in FY 93, the legislature changed the funding source for over \$950,000 in SPAR management costs from the general fund to the Response Fund. In addition, when DEC requested capital appropriations to clean up contaminated sites where the State was the responsible party, the legislature changed the funding source to the Response Fund from the general fund.

Various budgeting procedures used to track Response Fund expenditures

In FY 91, direct appropriations from the Response Fund were made to other agencies. This made it very difficult for DEC, as fund administrator, to manage expenditures. In an attempt to give DEC greater control and responsibility for activities supported by the Response Fund, especially those of other agencies, the legislature put the entire Response Fund appropriation into the front section of the FY 92 budget bill [Ch 73, SLA 91]. This had the effect of greatly increasing the complexity of accounting for Response Fund expenditures. To gain access to the Response Fund appropriation, DEC was forced to use intra-agency reimbursable services agreements (RSAs) between itself and the Response Fund. DEC would then fund approved projects from other agencies such as DMVA and the Department of Fish and Game (DFG) via inter-entity RSAs. This created a chain of interlocking RSAs which made it very difficult to track expenditures related to the Response Fund.

Different budget processes were used in FY 93 and FY 94

DEC took a more effective role in the management of the Response Fund in FY 93 and FY 94. For FY 93, DEC notified other agencies that they must file a formal request for any activities they wanted funding with Response Funds. This procedure improved coordination, but was untimely. By the time agency requests had been received, reviewed by DEC, and forwarded to the Office of the Governor, Office of Management and Budget (OMB) with DEC's recommendation; the State's budget had essentially already been submitted.

DEC followed the same interagency process for the FY 94 budget, but the memorandums were submitted to the other agencies in a timely manner. DEC reviewed the requests based on the anticipated statutory requirements those agencies needed to fulfill. DEC submitted to OMB a list of allocations of Response Funds DEC recommended for approval. OMB has the final approval authority in making recommendations to the governor's budget.

Except for two notable appropriations,⁵ there were no direct operating appropriations to agencies other than DEC in FY 93. However, direct capital appropriations were made to other agencies for cleanup of contaminated sites. In FY 94, no "front section" appropriations were made to DEC except for the transfer from the oil surcharge and mitigation accounts to the Response Fund. The SPAR division is the direct recipient of the funds. SPAR is responsible for RSAs between DEC and other agencies.

⁵The two FY 93 appropriations made to agencies other than DEC were, \$7,500,000 appropriated to the Alaska Marine Highway Ferry Replacement Fund and \$237,300 appropriated to the Legislative Council for the Citizens' Oversight Council on Oil and Other Hazardous Substances.

Reimbursable Services Agreements extensively used for Response Funds expenditures

DEC entered into 16 RSAs with other agencies in FY 92 and entered into 17 RSAs with other agencies in FY 93 where the primary funding source was the Response Fund. In addition, DEC had 17 internal RSAs between its own divisions in FY 92 and 16 internal RSAs in FY 93. Response Fund expenditures on both internal and external RSAs combined totalled almost \$16 million in FY 92. In FY 93, there were over \$6 million in Response Fund RSA expenditures related to FY 92 RSAs and over \$8 million on FY 93 RSAs.

Agencies provide minimal supporting information to DEC for their RSA expenditures when requesting reimbursement from the Response Fund. Generally the supporting summary of accounting information provides limited detail of the agencies' activity, especially those related to personal services. DEC requires copies of invoices for purchases exceeding specified dollar amounts. Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. Examples of individual external FY 92 and FY 93 RSAs are included in Table D of this report.

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REPORT CONCLUSIONS

Purposes of the Response Fund prevail over contradictory purpose of major funding source

As explained on page 13 of Background Information, SB 260, which established the 5¢ per barrel surcharge on taxable oil produced, indicated the purpose of the surcharge was for the "state to have an independent spill containment and cleanup capability in the event of **future discharges** [emphasis added] of oil or a hazardous substance." Under the provisions of the bill, the revenue generated by the surcharge was to be appropriated to the Response Fund.

The Response Fund had already been used to address cleanup of existing contaminated sites. This resulted in a situation whereby the major funding source of the Response Fund had the more narrow focus of being used for **future discharges**. But the activities of the Response Fund itself were broader, in that they addressed the results of historical oil and hazardous substance spills, i.e., contaminated sites.⁶

Members of the oil and gas industry have expressed dismay at how the expanded uses of the fund, particularly as it is being used to cleanup existing contaminated sites, does not meet their understanding of the reason for the surcharge. There are claims that "there have been abuses to the oil spill fund since it was established in 1989."⁷ Such arguments appear to us to be based on the emphasis on future discharges that was placed on the 1989 imposition of the surcharge. As quoted above, this emphasis was part of the Findings and Purpose of Senate Bill 260. The Findings and Purpose does not carry the degree of authority that an enacted statute does.

Therefore AS 46.08.040, Purposes of the Fund, is the overriding authority on appropriate uses of the fund. At payment date, the surcharge becomes an unrestricted revenue to the State, albeit from a specified source. It is the prerogative of the legislature to determine the best use of the State's unrestricted revenues. Specific cleanup activities cited by an oil and gas industry group as being inappropriate uses of the Response Fund include "cleaning up state campgrounds, state airports, responding to chlorine leaks and buying new ferries." All of these specific projects are appropriate uses of the Response Fund; the first two involved cleanup of contaminated sites; the third project is a response to a hazardous substance spill; and the fourth item is a specific allowed use of the fund under expanded legislation. However, the dichotomy between the purposes of the fund and the purpose of

⁶In 1986 during committee meetings regarding the bill originating the Response Fund, the commissioner of DEC had made it clear he intended cleanup activities from the Response Fund to address both current and past spill activity. The final legislation was silent as to what time period would be used to determine cleanup activities. In addition, the purposes of the Response Fund were expanded in 1989 and have continued to expand since that time.

⁷Quote came from an article entitled "AOGA supports bill to fix the oil-spill-response fund," which was published in the Forum/Letters section of the *Anchorage Daily News* on November 27, 1993. The letter was written by Ardie Gray, who is the public affairs manager of the Alaska Oil and Gas Association.

the major funding source has created a continuing controversy about the appropriateness of how the fund is being used.

Current spill reserve balance is close to DEC goal for adequate response

As of the end of FY 93, the unreserved balance of the spill reserve was \$27,084,100. In a draft report, DEC stated the spill reserve had two primary purposes. One was to address costs faced by communities, municipalities, and villages in responding to a major spill incident. The second purpose would be to cover state costs. DEC has a goal of depositing and maintaining \$30 million in spill reserve for these two purposes; \$10 million for communities, municipalities, and villages; and, \$20 million for the State.

Alaska Statute 29.60.510 states in part that the commissioner of the Department of Community and Regional Affairs "*may not expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill reserve or of the unrestricted balance of the fund for grants authorized under this section. . .*" The other \$20 million in the spill reserve may be accessed by DEC.

Allowed uses include costs necessary to investigate, evaluate, contain, clean up, and take other necessary action, to address a release or threatened release of oil or a hazardous substance. Such release or threatened release must pose an imminent and substantial threat to the public health or welfare, or to the environment. One reason for having the spill reserve is for an immediate source of start-up cash in the event of a catastrophic spill. It is estimated that \$50 million would last about 10 days in a spill the magnitude of *Exxon Valdez*.

Spill reserve balance and the 5¢ surcharge suspension formula are unrelated

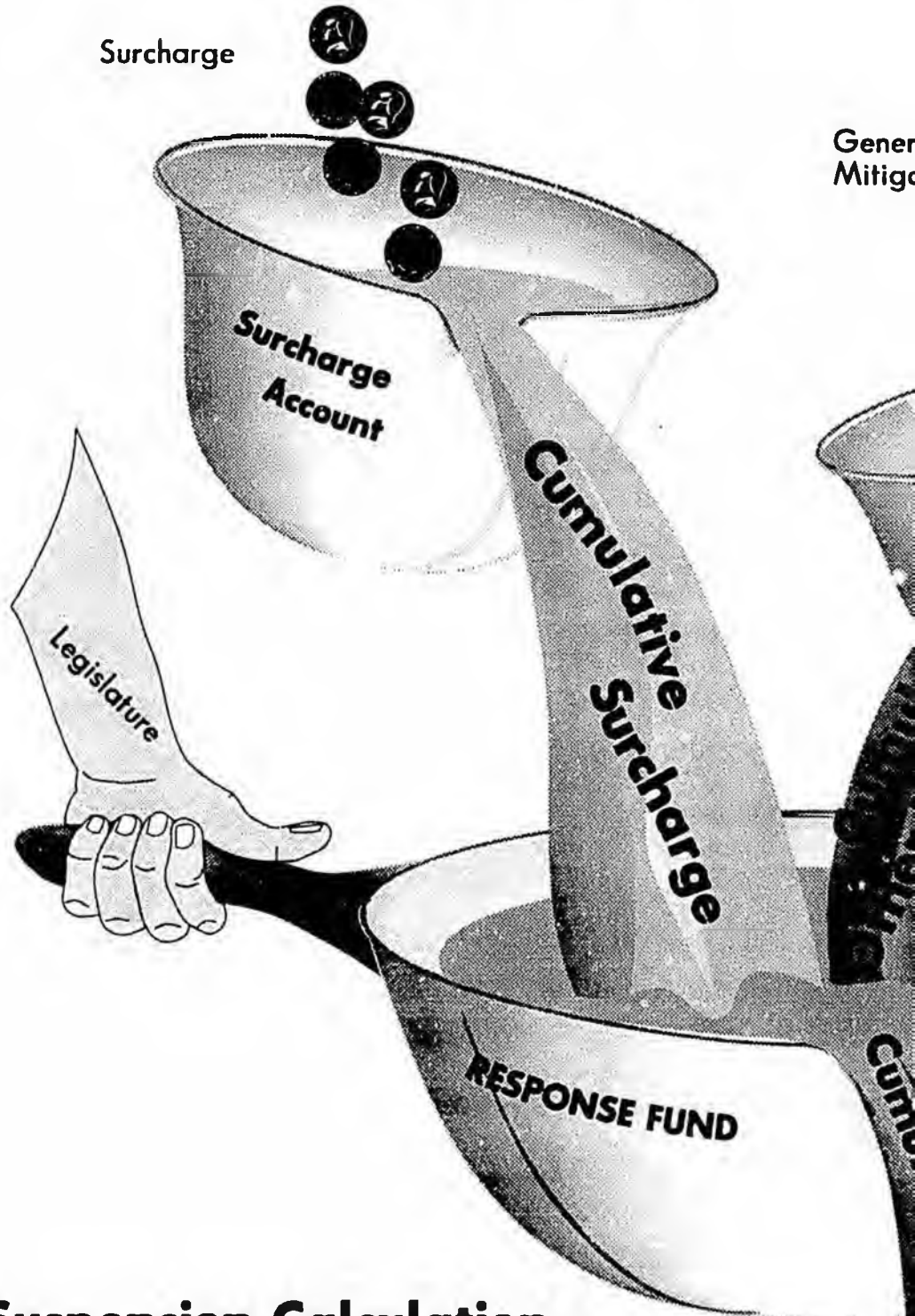
As discussed above, the State had over \$27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a deficit balance of over \$8.5 million as of the same time. It should be recognized that there is a difference between the spill reserve balance and the surcharge suspension balance. The difference between these two is based on the revenues that go into calculating each balance. The facing page illustrates the difference between the suspension calculation and the balance of the Response Fund.

The \$27 million set aside to respond to spills includes all revenue sources, i.e., fines, penalties, damages, surcharge revenues, and additional general fund appropriations. While the suspension calculation only considers surcharge revenues. Both the spill reserve and suspension calculation consider cumulative expenditures.

DEC lacks authority and capability of monitoring other agencies Response Fund expenditures

Although DEC is the administrator of the Response Fund, the department lacks the authority to control the spending of other agencies. Further, DEC does not have the personnel to

SURCHARGE SUSPENSION RESPONSE FUND BALANCE



Suspension Calculation =
Cumulative Surcharge – Cumulative Expenditures

Balance of Response Fund =
*(Cumulative Surcharge + Cumulative Other Funds)
– Cumulative Expenditures*

monitor or audit the appropriateness of other agencies' expenditures. Other agencies have had access to the Response Fund through the use of RSAs. According to Alaska Administrative Manual 40.060, an RSA is an inter-entity transfer where one agency is reimbursed for costs associated with services provided to another agency. As administrator of the Response Fund, DEC has been forced to enter into RSAs for which the agency has limited inherent interest or expertise. In some cases, the RSA represents a project or budget request for which DEC did not originally endorse or support the other agency's request for access to the Response Fund.

DEC has made it a standard practice on all RSAs with other agencies to require five pieces of information. This information is required in order for DEC to fulfill its annual reporting requirements to the legislature. DEC requires the servicing agency to provide:

1. a listing of each position control number (PCN) with title and the amount compensated the position;
2. copies of all contracts in excess of \$20,000 and all subsequent amendments, and copies of all RSAs with the University of Alaska in excess of \$20,000 and all subsequent amendments;
3. documentation of each purchase in excess of \$10,000;
4. the amount paid to each municipality, community, or village; and
5. RSAs to other state agencies funded by the RSA must also report the information requested in items 1 through 4.

Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. The reports are generally submitted; however, the extent of information varies between servicing agencies.

DEC has spent an inordinate amount of time trying to monitor RSAs with other agencies. DEC's experience has been, in a practical sense, the department has no power to monitor the expenditures or deny a request for funds from other agencies. An example of the lack of power, is provided for by an FY 92 reimbursement request: the Department of Fish and Game (DFG) came to DEC and wanted reimbursement for expenditures that DFG could not support; DEC initially refused reimbursement; but because the only alternative left to DFG would be to request a supplemental appropriation, DEC staff was directed to pay the RSA reimbursement request.

Criteria for allocating resources within SPAR varies by program

The only Response Fund expenditures that DEC has direct control over are the expenditures actually made by the department, the majority of which occur in the SPAR division. The criteria used by SPAR in determining which projects will be undertaken varies between programs. SPAR can exercise discretion when allocating resources for the following

services: spill response, reviewing and testing contingency plans, and contaminated site cleanup.

1. Response depends on the risk posed by a spill: The Government Preparedness and Response Program within SPAR is charged with responding to spills that pose an imminent and substantial threat to public health or the environment. No preset policy exists as to which spills will be responded to in a region. Determining if a spill poses an imminent and substantial threat is a subjective process. Every region and district has taken into consideration a myriad of factors and developed its own method for deciding whether a spill warrants a response. Common criteria for response among regions include proximity of a spill to populations and water source, size of spill, and type of spill. The level of response can vary from responding via telephone, to monitoring the cleanup, to taking the lead in response through a contractor.
2. Progress in reviewing contingency plans has lagged behind agency projections: As discussed in Background Information, the *Exxon Valdez* oil spill caused major revisions to the statutes that set forth requirements for oil discharge prevention and contingency planning. As a result of the new statutes, SPAR's IPP was required to draft new regulations. These regulations forced affected operators to either prepare contingency plans or make amendments to their existing plans. The new regulations also created the need for technical assistance to be provided to those operators who were either drafting amended, or developing new, contingency plans. IPP has focused their resources on drafting new regulations, providing technical assistance to operators and reviewing contingency plans.

As a result of the new regulations which became effective in August 1992, a large number of new and amended plans were submitted to IPP. To cope with the influx of plans requiring review, regulations provided for a transitional period. During this period, IPP was permitted to review the plans in a predetermined order of priority.

Review of contingency plans has fallen behind agency projections. Almost 200 contingency plans required approval by IPP. Most of the submissions requiring approval are amendments to existing plans that were previously approved under the old regulations. These plans continue to be considered approved until plan amendments that incorporate the new regulations have been reviewed. Of the almost 200 plans, only 30 have been approved under the new regulations as of December 9, 1993. However, many plans are in the final stages of review and, according to DEC staff, most should be approved by the end of 1994.

A successful oil spill prevention program is composed of interrelated parts. The success of IPP is dependent on the combined strength of its facility inspections, oil spill drills, contingency plans, and financial responsibility sections.

Contingency plans must be tested and facilities inspected to provide assurance that personnel are being trained and that equipment and resources are available and can be mobilized quickly. To help speed up its contingency plan review process, IPP has

shifted resources away from performing oil spill drills and facility inspections.

As a result, most of IPP drill activity has been limited to oversight of industry-initiated drills and fewer inspections have been performed. Once the review process has advanced to a point where the program is reviewing contingency plans on a regular rotational basis, SPAR plans to shift its IPP resources back to testing contingency plans through department-initiated drills and inspections.

3. Priority for contaminated sites perceived differently: One of the major purposes of the Contaminated Sites Remediation Program is to determine the priority (see sidebar to the right for a discussion on the Hazard Ranking Model, which is used to prioritize sites) in which sites should be addressed. This is necessary so that resources can be allocated in such a way that the sites which represent the greatest risk to the public and the environment are addressed first — regardless of ownership.

Although central office presents prioritization as one of the program's main emphases, a statewide list of all contaminated sites in priority order does not exist. Instead, resources are allocated based on the identity of a responsible party, their willingness and capacity to clean up, site priority when known, and the amount of public interest in a site.

As discussed in Organization and Function, SPAR's central office is responsible for developing policy and providing technical assistance to regions and districts. Work on contaminated sites is accomplished at the district level with support from their region. Most of staff time at the district level is spent providing oversight to responsible parties who are willing to perform cleanup.

The logic behind addressing willing responsible parties (RPs) is simple. Helping willing RPs is efficient in that more sites are cleaned up by oversight than by working with uncooperative RPs or by taking state lead in cleanup. The other motivation behind helping RPs is a socioeconomic concern. RPs are often stimulated to clean up their site because a real estate, construction, or some other financial transaction is involved. In the past when DEC staff explained they did not have time to monitor

Hazard Ranking Model

The Hazard Ranking Model is the primary tool available to the Contaminated Site Remediation Program to determine caseload priorities. The hazard ranking model is an exposure model that uses factors such as the level of toxicity, exposure to ground or surface water, and population density to determine a site's relative priority. The model provides for unknowns, allowing sites to be ranked when information is missing. The ranking scores compose an index of relative threat posed by the contaminated sites to public health and the environment.

DEC personnel do not consider the hazard ranking score an absolute indicator of priority because ranking scores can be skewed by factoring in unknowns and because the model does not take into consideration certain elements. In practice, the ranking score is considered one of many indicators when determining caseload priorities.

cleanup of a site, the RP contacted their legislator, who in turn contacted the district and insisted their constituent be assisted.

It is not uncommon for political pressure to play a role in the way resources are allocated. In the past, sites, which were a lower priority relative to other sites, have received funding because of an heightened interest in the site taken by the general public, the governor, or a particular legislator.

4. District personnel reluctant to initiate state-lead in contaminated site cleanup: For a site to be eligible for state-lead, potential RPs must be identified and an extensive notification process must be completed. Because state-lead sites are labor intensive, district personnel are reluctant — or do not have the resources — to conduct RP searches or go through the notification process.

District personnel are also hesitant to take state lead because they feel their role should be one of service agency rather than enforcement agency. Rather than taking the lead in cleanup and holding the RP liable, staff want to help RPs find some way to assume responsibility. False promises from unwilling or incapable RPs have also slowed down the process of cleaning up sites with state-lead money.

Because of the amount of resources required to identify state-lead sites and a general reluctance by district staff, the program does not have a complete listing of contaminated state-lead sites.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should make statutory changes to clarify the role of the fund administrator.

A. Currently there is no clearcut criteria in place stating how DEC should "manage" the Response Fund.

In order to be properly evaluated as the fund administrator, DEC needs the legislature to clarify their expectations of the department's role. Alaska Statute 46.08.050 identifies two accounting duties of DEC. This statute says DEC

- (1) shall maintain accounting records showing the income and expenses of the fund; and
- (2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

This statutory requirement has not been amended since the Response Fund was first established in 1986. The duties were appropriate when the fund was used to respond to emergency spills, and DEC was virtually the only user of the fund. But DEC lost its effectiveness as administrator when the Response Fund began to be used as a funding source for a number of projects managed by many different agencies.

As explained on page 22 of Report Conclusions, DEC has spent an inordinate amount of time trying to monitor the appropriateness of expenditures made by other agencies. It has been difficult for DEC to monitor the appropriateness of reimbursement requests from other agencies when the service provided is beyond DEC's interest or expertise. DEC is often put in the position of having to approve for reimbursement an expenditure for which the department has no way of determining represents a valid project cost. DEC has not experienced as many problems on those RSAs with other agencies for services which the department would normally contract.

DEC has, with the assistance of Office of the Governor, Office of Management and Budget (OMB) and Legislative Finance, developed an adequate budget process showing appropriations into and out of the Response Fund. DEC can track allocations to specific projects. The department has also developed an internal process to review other agencies' Response Fund requests and make recommendations to OMB for inclusion in the Governor's budget. These duties are appropriate for DEC to fulfill in its role as fund administrator.

We recommend the legislature amend part (1) of AS 46.08.050 to state that DEC shall develop procedures governing the expenditure of, and accounting for, money expended from the fund for activities of their own department. Other agencies who

receive monies from the Response Fund must develop their own procedures governing the expenditure of, and accounting for, money expended from the fund. To receive reimbursement from the Response Fund, other agencies must submit to DEC the detailed information required to be included in the annual report on the Response Fund's activities. DEC shall rely on the other agencies' internal procedures when responding to a request for reimbursement. The legislature may request Division of Legislative Audit to review the procedures developed by each agency and audit that agency's expenditures against the Response Fund.

B. Some of the information DEC is required to submit in their annual report is either too voluminous or too uncertain to provide meaningful information to the legislature.

Information required by AS 46.08.060 to be included in DEC's annual report is as follows:

- (1) a summary of the sites identified by the department;
- (2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and
- (3) the appropriate actions needed to abate these threats, and their estimated cost.

DEC has not been providing this information as part of the annual report because of the volume and uncertainty of information involved. DEC has indicated this information is available for review in their office in the Statewide List of Contaminated Sites. A list of contaminated sites dated November 8, 1993, which is 104 pages long, contains site name and address and hazard ranking model score on 1,858 sites, of which 338 are in a closed status and 1,520 are in an active status. Of the 1,520 active sites, 240 sites are unranked, and 38 sites cannot be ranked due to lack of information available on the site. In addition to the known sites, DEC is aware that there are likely to be a large number of sites which are not yet on their database.

We recommend the legislature amend part (b) of AS 46.08.060 to allow DEC to report information on contaminated sites that can be readily prepared and still be of use to the legislature. DEC should be asked to identify how many sites are in active and closed status on the database. DEC should identify the number of sites and prioritize those sites based on immediate and long-term threats to the public health or welfare; or to the environment. Since the information is too uncertain, DEC should not be asked to provide individual discussion on each site, nor due to the volume of sites, should the department be asked to report the appropriate actions and estimated costs involved.

Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

In the original legislation on the Response Fund, DEC was not required to seek recovery of money expended by the department to contain and clean up oil or hazardous substances. The actual wording was,

The attorney general, at the request of the commissioner, may seek [emphasis added] to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control threatened release of oil or a hazardous substance.

While DEC did seek recovery and levy fines and penalties in some instances, many contaminated sites were cleaned up without any intention of seeking cost recovery. In addition, appropriations were made from FY 88 through FY 90 to cleanup contaminated sites on the Kenai peninsula. There were no cost recovery requirements related to these appropriations.

Because of the lack of cost recovery requirements DEC district staff and the public developed a cooperative relationship regarding DEC's monitoring of the clean up of contaminated sites. The public came to view monitoring of clean up of contaminated sites as a service provided by DEC, rather than as an enforcement action. Since cost recovery would not be sought, DEC staff did not consistently track their personal service costs related to cleanup.

The passage of Senate Bill 256 [Ch 29, SLA 1989] changed the optional nature of the statutory phrasing. The legislation made it definite that cost recovery must be sought. Specifically the statute called for:

The attorney general, at the request of the commissioner, shall immediately seek [emphasis added] to recover money expended by the department 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 hazardous substance.

DEC has been slow to develop policy and procedures related to accumulating cost information that can be used to support recovery efforts. DEC has developed a draft Cost Recovery Policy and Procedures manual that addresses when and how to code costs to sites. As of the date of this report, this policy still has not been fully implemented. Of particular concern is the failure to consistently charge personal service costs to specific sites. This makes it difficult, if not impossible, to recoup these costs from the responsible party.

The draft Cost Recovery Policy and Procedures manual also addresses how to identify and notify potential responsible parties (PRPs) of their obligation to clean up a site. Staff who

have received training on the manual reported to us a reluctance to implement the policy. Specifically staff feel the public needs to be adequately notified of DEC's policy change of seeking cost recovery for containment and cleanup efforts.

Not all applicable DEC personnel have received training on the Cost Recovery Policy and Procedures manual. In some districts, we found staff unaware that a cost recovery procedures manual was available.

We recommend DEC revise the draft Cost Recovery Policy and Procedures manual to address public notification and consistent statewide implementation. After the manual is revised, training should be provided to DEC personnel so that the department's policy will be consistently implemented. The manuals need to be made available in each region and district office.

Recommendation No. 3

DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

A. Program personnel and resources have been allocated to contaminated sites based on the identity of the PRP and the willingness/insistence of the RP to clean up a site.

The Contaminated Sites Remediation Program is in place to carry out one of the original purposes of the Response Fund, to clean up oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare, or to the environment. The program has a limited amount of resources that must cope with a large and ever increasing number of contaminated sites. Because there exists more contaminated sites than resources to address them, a system must be in place to allocate resources to the highest priority sites. Central office of the Spill Prevention and Response division, has drafted policy which sets criteria for determining priority and allocates resources to the highest priority sites. However, district personnel are reluctant to implement the proposed policy change. As a result, highest priority sites are not being addressed.

As discussed in Report Conclusions, district personnel spend most of their time providing oversight to RPs who are willing to clean up contamination. Because RP searches, PRP notification, and negotiation with unwilling RPs is timeconsuming and frustrating, district staff prefer to allocate their resources to sites where the RP is known and is willing to cleanup. This method of allocating resources is efficient in that it allows more sites to be cleaned given districts' limited staffing. It also provides the easiest way to cope with pressure from insistent RPs who need their sites cleaned for socioeconomic reasons, such as real estate transactions or potential construction. However many of the sites with a willing RP do not pose an imminent and substantial threat relative to other sites.

Such an approach only provides limited assurance that Response Funded activities are addressing sites that pose the most "imminent and substantial" threat to the general public. While we recognize district personnel have a legitimate basis for wanting to work with willing RPs, their approach does not ensure that the statutory purpose of the Response Fund is met.

DEC should work to implement their draft guidance policy entitled Prioritization of Contaminated Site Work. The policy addresses allocating resources in such a way that the highest priority sites are addressed first. In addition, DEC should redefine their role in monitoring RPs with relatively low priority sites. Any change in DEC's policy of providing oversight to willing RPs should be accompanied with a thorough public notice campaign.

B. Contrary to what the department has reported to the legislature, DEC has not maintained a current complete prioritized list of state-lead⁸ sites.

In budget papers presented to the legislature, DEC stated that they maintained a list of state-lead sites and prioritized them based on their threat to human health or the environment, or unique social or economic factors. The department also claims that sites are placed on the list only after DEC staff have determined that PRPs will not clean up the site or when no PRP can be determined or located.

DEC also made it clear to the legislature that the list of state lead sites accompanying the budget request is dynamic. If a responsible party decides to perform cleanup or a site's relative priority changes, the funding allocated to that site will be used to fund the next highest priority site.

In practice, DEC has not maintained a complete prioritized list of state-lead sites. In addition, the department has not always completed the proper notification process before placing sites on the state-lead list. As discussed in Report Conclusions, district staff are reluctant to perform RP searches or go through the RP notification process because the procedures are timeconsuming. Once a site is allocated funding, taking lead in cleanup is highly labor intensive.

DEC has not documented their rationale for allocating funding among state-lead sites. We recognize that a state-lead list is dynamic. However, in our view, the dynamic nature of the program makes a current list of prioritized state-lead sites essential. In addition, the dynamic nature of the program makes it imperative that the rationale used to justify funding decisions be documented and presented to the legislature.

⁸As stated in the Organization and Function section, if a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead in cleanup efforts. These sites are commonly called state-lead or orphan sites.

DEC should make an effort to pursue state-lead on sites that present an imminent and substantial threat to public health and the environment. As part of this effort, an updated list should be prepared and maintained to guide in the allocation of funding. Before sites are placed on the state-lead site list, their orphan status should be confirmed through the proper notification process.

AUDITOR COMMENTS

State better able to prevent and respond to oil spill, but ability jeopardized by cuts in staffing

The Prince William Sound Regional Citizens' Advisory Council (PWS-RCAC) and staff in the Department of Environmental Conservation (DEC) both believe the State has improved its prevention and response capabilities for oil and hazardous substance spills. Both organizations feel that the State is in a better position than it was on March 24, 1989, the date of the *Exxon Valdez* spill. Much of the reason for these improved capabilities is attributed to the financing of prevention and response activities made possible by the Oil and Hazardous Substance Release Response Fund (Response Fund). However, the two organizations are concerned about the current trend of reducing staff positions in DEC. In a pamphlet entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill*" the PWS-RCAC points out:

Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding. Laws must be implemented through clear, strong regulations and enforced by committed agencies that are given the funding necessary to monitor, oversee and enforce compliance.

PWS-RCAC's point echoes one of the observations made in the report produced by the Alaska Oil Spill Commission (AOSC). AOSC said, "*The Valdez DEC office always has been seriously understaffed, which weakened the state's position relative to Alyeska. The state cannot negotiate or enforce effectively without adequate competent personnel.*"

As we explain in Report Conclusions, DEC's progress in reviewing contingency plans has lagged behind the department's projections. To increase staff time devoted to contingency plan review and approval, inspections and drills have been severely limited. DEC's oil program consists of several interrelated parts. Prevention includes contingency plans, inspections, and drills. Other parts include response and cleanup, which occur only when prevention has failed. If any part of DEC's program is hindered, the department does not have an effective, viable program.

We understand the decision DEC was forced to make in allocating resources to contingency plan review and approval. However, inspections and drills are a fundamental portion of a successful prevention program. DEC is already dangerously close to having to implement statute with limited resources. Any reduction of staff positions in the Spill Prevention and Response (SPAR) division will jeopardize the likelihood of a successful prevention program. AOSC addressed this same problem in their final report on the events leading up to the *Exxon Valdez* grounding, "*Rigor flagged, complacency took root. Prevention was neglected with disastrous results.*"

We wonder whether complacency is again taking root. Program consequences must be considered when SPAR funding is reduced. SPAR needs to be funded at least at the current level to maintain its ongoing operations. However, if the legislature decides to reduce

funding for SPAR then statutes should be amended or repealed so that required programs can be eliminated. Reduction of funding alone does not eliminate a department's duty to fulfill statute.

SPAR needs general funds if contaminated sites are to be cleaned for socioeconomic reasons

As explained in Recommendation No. 3, district staff often monitor the cleanup of willing responsible parties (RPs). While many of these sites do meet Response Fund criteria (that is, they pose an imminent and substantial threat to public health or the environment) others clearly do not. The RP is often motivated to clean their site in order to obtain bank financing for the sale of the property or obtain a permit to do construction on the property. While these sites may not pose a substantial risk, the monitoring of the site cleanup by DEC is important to the owner for their own socioeconomic reasons. If the legislature feels that DEC is providing a valuable and valid public service by providing technical assistance on sites that do not pose an imminent and substantial threat, then the legislature needs to make general funds available to SPAR.

ISSUES NEEDING FURTHER STUDY

It was beyond the scope of this audit request for us to test Oil and Hazardous Substance Release Response Fund (Response Fund) expenditures and accounting procedures developed in agencies other than the Department of Environmental Conservation (DEC). However, as explained in the Background Information section, other agencies are significant users of the Response Fund. In FY 92 DEC entered into over \$18.5 million in Response Fund reimbursable services agreements (RSAs) with other agencies; in FY 93 DEC entered into almost \$5 million in Response Fund RSAs with other agencies. Consistently, the largest participants in using the Response Fund outside of DEC are the Department of Law, the Department of Military and Veterans Affairs, and the Department of Fish and Game.

As stated in Report Conclusions and Recommendation No. 1, DEC has little authority and receives limited information supporting requests for reimbursement on the RSAs. Supporting information submitted with the request for reimbursement usually provides little detail and DEC is forced to rely on the other department's accounting procedures.

We suggest that the Legislative Budget and Audit Committee may want to consider reviewing the support for selected expenditure transactions, the accounting procedures, and project results of Response Fund activity in agencies outside of DEC. Those agencies we recommend be considered for review include the Department of Law, Department of Military and Veterans Affairs, and the Department of Fish and Game.

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TABLE A

RESPONSE FUND SUMMARY AS OF JUNE 30, 1993

Sources of funding:

| | |
|--|--------------------|
| Oil Surcharge Revenue | \$82,500,000 |
| General Fund | 44,447,000 |
| Program Receipts: Exxon Reimbursements 1989 & 1990 | 30,000,000 |
| Mitigation Revenue | <u>4,346,600</u> |
| | <u>161,293,600</u> |

Uses of funding:

| | |
|---|---------------------|
| Expenditures through FY 93 (Note 1) | 119,567,992 |
| Reserve for Encumbrances | 6,786,808 |
| Reserve for Prior Year Appropriations | 2,190,914 |
| Accounts receivable recorded for Exxon Valdez cleanup | <u>2,338,795</u> |
| Fund Balance/Spill Reserve (Note 2) | <u>\$30,409,091</u> |

Note 1: Expenditures are inception to date as reported in Response Fund Annual Reports for FY 87 - FY 93. This amount is the same as the total reported in our Table B.

Note 2: Department of Environmental Conservation has stated their fund balance/spill reserve is \$27,084,100; which is \$3,324,991 less than what we have calculated. Review of their backup indicates the discrepancy occurred in FY 91 and FY 92 when information for the annual report was pulled from the Alaska accounting system. The department needs to reconcile this discrepancy.

TABLE B

SUMMARY OF EXPENDITURES BY FISCAL YEAR
(NOTE 1)

| PROJECT | FY 87 | FY 88 |
|---|-----------|-----------|
| Contaminated site investigation, safety, cleanup, and cost recovery | \$428,815 | \$329,977 |
| Spill Response containment, safety, cleanup, and cost recovery | | |
| Spill prevention and response preparedness | | |
| State and regional contingency planning | | |
| Spill response office, depots, and corps | | |
| Mt. Redoubt Volcano/Publication of 1990 annual report | | |
| Spill reserve | | |
| Spill response drills | | |
| Kenai cleanup project | | |
| State Emergency Response Commission and local emergency response planning | | |
| Local Emergency Planning Committees | | |
| UAA - Soldotna Fire Training | | |
| DFG - Spill prevention and response preparedness | | |
| LEG - Citizen's Oversight Council | | |
| Hazardous Substance Spill Technology Review Council | | |
| Arctic Marine Resources Commission | | |
| Prince William Sound Regional Citizens' Advisory Council | | |
| Non-crude Oil Tanker/Barge Study | | |
| Nearshore Strike Team Demonstration Projects | | |
| Oil spill contingency plans/requirements | | |
| Geographic Information System | | |
| Advisory Council/transportation of oil | | |
| Ferries with oil spill response ability | | |
| Natural resource damage assessment | | |
| Subtotal of Non-Exxon Related Expenses | \$428,815 | \$329,977 |

| FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | Total |
|-----------|-------------|-------------|--------------|--------------|--------------|
| \$320,900 | \$774,500 | \$1,671,700 | \$1,262,400 | \$2,926,700 | \$7,714,992 |
| | 211,000 | 690,200 | 378,500 | 71,000 | 1,350,700 |
| | | 1,056,200 | 3,846,200 | 5,385,800 | 10,288,200 |
| | 158,400 | 556,700 | 223,500 | 54,700 | 993,300 |
| | 199,800 | 967,700 | 1,125,100 | 2,663,000 | 4,955,600 |
| | 112,800 | 4,800 | | | 117,600 |
| | 245,500 | 313,600 | 71,400 | 268,500 | 899,000 |
| | | 448,500 | 105,700 | | 554,200 |
| | | 583,700 | 555,900 | 177,900 | 1,317,500 |
| | | 399,600 | 257,000 | 186,200 | 842,800 |
| | | | 575,200 | 1,039,700 | 1,614,900 |
| | | | | 88,400 | 88,400 |
| | | 119,800 | | | 119,800 |
| | | 119,500 | 237,300 | 88,300 | 445,100 |
| | | | 112,400 | 275,300 | 387,700 |
| | | | 100,000 | 90,000 | 190,000 |
| | | | 57,200 | 10,200 | 67,400 |
| | | | 29,900 | | 29,900 |
| | | | | 3,300 | 3,300 |
| | | | 84,200 | 15,000 | 99,200 |
| | | | | 91,600 | 91,600 |
| | | | 120,300 | | 120,300 |
| | | | 102,400 | 7,501,500 | 7,603,900 |
| | | | 1,358,400 | 59,400 | 1,417,800 |
| \$320,900 | \$1,702,000 | \$6,932,000 | \$10,603,000 | \$20,996,500 | \$41,313,192 |

| PROJECT | FY 87 | FY 88 | FY 89 |
|--|------------------|------------------|--------------------|
| Subtotal of Non-Exxon Related Expenses (from page 38) | \$428,815 | \$329,977 | \$320,900 |
| DEC - Exxon Valdez | | | 5,456,300 |
| RSAs - Exxon Valdez | | | 609,700 |
| Local Response - Exxon Valdez | | | 205,600 |
| LAW - Exxon Valdez Litigation | | | |
| DFG - Exxon Valdez Damage Assessment | | | |
| Exxon Valdez - Spill Cleanup and Cost Recovery | | | |
| Exxon Valdez - Assessment and Restoration | | | |
| Exxon Valdez Litigation | | | |
| Exxon Valdez Project | | | |
| Subtotal for Exxon expenses | | | 6,271,600 |
| Total Expenses | \$428,815 | \$329,977 | \$6,592,500 |

Note 1: This table was prepared from expenditures reported by the Department of Environmental Conservation in their Response Fund Annual Reports for FY 87 - FY 93. We have not audited this information and therefore do not express an opinion on its reliability. Since project titles changed over the seven years, for comparability purposes we have grouped those activities that seemed the same despite small title changes.

| FY 90 | FY 91 | FY 92 | FY 93 | <i>Exxon Valdez</i> | Total |
|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|
| \$1,702,000 | \$6,932,000 | \$10,603,000 | \$20,996,500 | | \$41,313,192 |
| 24,005,400 | 11,977,700 | | | 41,439,400 | |
| 4,560,000 | | | | 5,169,700 | |
| 3,210,200 | | | | 3,415,800 | |
| | 4,100,000 | | | 4,100,000 | |
| | 8,834,400 | | | 8,834,400 | |
| | | 2,337,300 | \$492,600 | 2,829,900 | |
| | | 6,654,400 | 407,000 | 7,061,400 | |
| | | 1,576,900 | 2,703,500 | 4,280,400 | |
| | | 1,123,800 | | 1,123,800 | |
| 31,775,600 | 24,912,100 | 11,692,400 | 3,603,100 | 78,254,800 | 78,254,800 |
| \$33,477,600 | \$31,844,100 | \$22,295,400 | \$24,599,600 | | \$119,567,992 |

(Intentionally left blank)

TABLE C

DESCRIPTION OF RESPONSE FUND ACTIVITIES APPROPRIATED
IN FY 92 AND FY 93

As reflected by discussion in Background Information, there have been numerous changes to the Oil and Hazardous Substance Release Response Fund (Response Fund) since its inception in 1986. Many of the amendments expanded the authorized purposes of the fund. The following table illustrates all Response Fund appropriations for FY 92 and FY 93. The table indicates if these appropriations would have been covered under the original purposes of the fund or if they are allowed due to amendments subsequent to 1986 inception.

The first two columns of the table give the name of the project or activity and a brief description of the purpose of the project. FY 92 operating appropriation amounts came from Ch 73, SLA 91. FY 93 operating appropriation amounts come from Ch 136, SLA 92 and capital appropriation amounts come from Ch 5, FSS 1992.

Some projects meet both original and expanded legislation and are so indicated by a checkmark in both columns. One project, Arctic Marine Resources Commission, in our opinion, does not appear to meet either the original or any expanded use of the Response Fund, but there is nothing that prevents the legislature from appropriating from the Response Fund for other uses.

| Project/Activity | Description |
|--|--|
| Department of Environmental Conservation (DEC) Operating Programs - except Contaminated Sites | Operating programs include the Director's Office and the Division of Spill Prevention and Response (SPAR). The Director's Office is responsible for administrative support, safety and data management. In addition to contaminated sites, SPAR is composed of three sections: Government Preparedness and Response, Industry Preparedness Program, and Underground Storage Tank Program. Government Preparedness develops regulations and guidelines for SERCs and LEPCs, ensures that local plans are under development and are integrated with other plans, ensures that there is a complete compilation of hazards analysis for the State, and conducts drills on the state and local plans. Industry Preparedness reviews oil discharge prevention and contingency plans for oil operations, conducts inspections and spill drills, and administers the statewide financial responsibility program to ensure that oil operators demonstrate sufficient proof of ability to respond. |
| <i>Exxon Valdez</i> Oil Spill Project | Response funded activities in FY 92 included data compilation and documentation, monitoring, and select restoration activities. The funding was also allocated to coordinate support efforts by state agencies. FY 93 monies funded DEC's Oil Spill Response Office whose staff gathered data regarding the extent of subsurface oil and surveyed selected beaches. In addition, staff archived records and created a records database. |
| Contaminated site projects identified by DEC | Contaminated sites are ranked based on a hazard ranking model that prioritizes sites based on their threat to human health or the environment. DEC also takes into account unique social or economic factors. However, the ranking model allows for numerous unknowns, which affects the reliability of the numeric scores. The cleanup list is subject to constant change as responsible parties assume cleanup responsibilities and as new contaminated sites become known. DEC provides oversight only on sites where the responsible party is taking action. Contaminated sites that require cleanup, but where the potential responsible party is unknown, unwilling, or unable to clean up are referred to as orphan sites. DEC must go through a notification process to the potential responsible party before a site is placed on the orphan site list. The State initiates cleanup on orphan sites. |
| Contaminated sites identified by other agencies | Beginning in FY 92, contaminated sites with the State as the responsible party were dealt with by a Memorandum of Agreement between several state agencies. Department of Natural Resources, Department of Transportation and Public Facilities, and DEC formed a work group that determined which sites were the highest priority and submitted a capital budget request for funding. The major tool used by the group to rank the various sites was DEC's ranking model. The work group recommended funding for 10 projects in FY 93 for a total capital request of \$2.6 million. Actual expenditures in FY 93 came to slightly over \$310,000. |
| Oil Spill Reserve | The legislature established the spill reserve so that funds would always be available for the abatement of a release of oil or a hazardous substance. The spill reserve can only be accessed to address a release that poses an imminent and substantial threat to public health or the environment. DEC only uses the spill reserve to address unbudgeted activities that pose an imminent and substantial threat. Eleven spills were responded to in FY 92 for a total of \$71,382.76, and thirty were responded to in FY 93 for a total of \$245,995.37. |
| Oil Response capable ferry | The legislature authorized expanding the use of the fund to include refurbishment or construction of marine response vessels. Alaska Marine Highway System is currently in the design phase of constructing a vessel that could be used to respond to oil spills. For FY 93, the legislature appropriated \$7.5 million from the Response Fund to the Alaska Marine Highway System Replacement Fund for the oil response ferry. But these funds will not be used until the vessel is in construction phase, which is currently targeted for the first quarter of FY 95. |
| State Emergency Response Commission (SERC) | SERC was established by executive order in 1987 and formalized in 1990 with the passage of HB 566. SERC guides and coordinates a state-wide emergency response plan. SERC designates Local Emergency Planning Districts (LEPDs) and approves LEPCs for those districts. SERC reviews and comments on local emergency plans, including oil facility and vessel spill contingency plans. |
| Local Emergency Planning Committees (LEPCs) | The State has been divided into 26 LEPDs. SERC establishes and appoints a Local Emergency Planning Committee for each district; however, only 14 LEPCs have been established to date. |

| FY 92 Appropriation | FY 93 Appropriation | Original Legislation | Expanded Legislation | Cite for Expanded Legislation |
|------------------------|------------------------|-------------------------|-------------------------|---|
| \$5,731,300 | \$7,339,300 | ✓ | ✓ | SB 261 [Ch 90, SLA 89] HB 567 [Ch 191, SLA 90] |
| \$20,081,900 | \$3,318,000 | ✓ | ✓ | SB 261 [Ch 90, SLA 89] SB 264 [CH 113, SLA 89] |
| \$4,203,200 | \$3,528,600 | ✓ | | |
| S0 | \$2,193,000 | ✓ | | |
| \$12,627,400 | \$23,656,700 | ✓ | | |
| \$500,000 | \$7,500,000 | | ✓ | SB 165 [Ch 48, SLA 91] |
| \$329,900 | \$350,800 | | ✓ | SB 261 [Ch 90, SLA 89] |
| \$900,000 | \$1,200,000 | | ✓ | SB 261 [Ch 90, SLA 89] |

| Project Activity | Description |
|---|---|
| Response office, depots/corps | The legislature authorized that depots and corps were to be planned through the DEC master and regional contingency planning and the State Emergency Response Commission approval process. The exact determination of locations was left to the DEC and SERC planning process. The State was to pay for training volunteers in communities selected as depot sites and pay them when necessary to combat a spill or participate in training. Exact types and amounts of containment equipment and materials to be stored at depots was also left to the DEC and SERC planning process. DEC and DMVA have jointly expended over \$4 million on depots and corps to date. The only depot that has been established to date is a \$1.6 million project for a communications depot, which is 50% Response Funded and 50% funded by the Federal Emergency Management Authority. Other expenditures have been used to train 823 first responders and develop an Incident Command System and an Advanced Integrated Management System. |
| Citizens' Oversight Council on Oil and Other Hazardous Substances | This council was established in 1990 following the passage of HB 578. The council assesses the performance of state and federal agencies in preventing and responding to releases of oil and hazardous substances, identifies risks, and recommends improvements for environmental safety to the legislature, governor, and federal agencies. |
| Nearshore Strike Team Demonstration Projects | The legislature appropriated \$1.2 million for FY 93 to provide coastal communities that are not connected by a highway system with the resources to be able to respond to a major oil spill. Currently, contingency plans do not always address industry's preparedness to respond to a spill in communities for extended distances downstream from an oil terminal facility or tank vessel route. One purpose for the demonstration project was to define the optimum array of equipment needed in communities to mobilize and respond to spills which have escaped initial containment or to orphan spills which may occur within the operating range of nearshore communities. Two informal planning committees were organized - one for the Gulf of Alaska region and the other for Southeast Alaska region. Each region developed their own project design criteria. |
| Hazards Analysis | A Hazards Analysis covers four stages: (1) identifying the hazard, which is defined in AS 46.03.826, (2) performing a vulnerability analysis, (3) conducting a risk analysis, and (4) assessing response capability by industry and local response. After DEC had prepared a request for proposals to perform a statewide Hazards Analysis, LEPCs indicated that they preferred to control this project themselves. In FY 92, DEC delegated the responsibility and funding to LEPCs for the Hazards Analysis. As of October 15, 1993, hazards analyses are completed for four LEPDs, are in process for twelve LEPDs, and the other ten LEPDs are scheduled for completion in June 1994 as part of a statewide Hazards Analysis contract. Once the hazard analyses are complete, DEC believes they will have an inventory of between 80%-90% of all facilities with hazardous substances required to report under SARA Title III. DEC will need to keep their database of information up-to-date. |
| Geographic Information System (GIS) | The legislature appropriated \$689,300 for a GIS. DEC administered \$250,000 and signed a reimbursable services agreement with the Department of Military and Veterans Affairs (DMVA), Division of Emergency Services (DES) for the remaining \$439,300. GIS will be a map-based system that monitors where a spill has occurred in comparison to the natural surroundings. The GIS will be able to track the response of industry or the responsible parties and can be used to project what path the spill will follow. The GIS could store countless data useful in making decisions, such as population centers, location of contaminated sites and hazardous substances, and location of equipment. Two demonstration projects have been completed for DEC. One problem that has not been reconciled is how the DEC and DMVA, DES systems will coordinate. DES is developing an Advanced Integrated Incident Management System to respond to an emergency situation. DES is interested in knowing where manpower, communication, and aircraft are located. DEC will not be able to view DES' information on a geographic base. |
| Hazards Substances Spill Technology Review Council | The council exists within the SERC. The council's duties include responsibility for reviewing and recommending research topics to DEC, establishing testing protocols for the department to use to evaluate the effectiveness of hazardous substance spill technologies within the State, and compiling and maintaining information relating to containment and cleanup technology. |

| FY 92 Appropriation | FY 93 Appropriation | Original Legislation | Expanded Legislation | Cite for Expanded Legislation |
|------------------------|------------------------|-------------------------|-------------------------|-------------------------------|
| \$1,700,000 | \$800,000 | | ✓ | SB 264 [Ch 113, SLA 89] |
| \$237,300 | \$237,300 | | ✓ | HB 578 [Ch 199, SLA 90] |
| S0 | \$1,200,000 | | ✓ | HB 567 [Ch 191, SLA 90] |
| S0 | \$177,300 | | ✓ | SB 261 [Ch 90, SLA 89] |
| S0 | \$689,300 | ✓ | ✓ | SB 261 [Ch 90, SLA 89] |
| \$236,800 | \$420,000 | | ✓ | HB 567 [Ch 191, SLA 90] |

| Project/Activity | Description |
|---|---|
| Arctic Marine Resources Commission (AMRC) | The legislature appropriated \$100,000 to fund the commission through FY 92, with the intent to form a Regional Citizens' Advisory Council for residents of Alaska's Arctic coastal communities. AMRC would review Arctic oil exploration and development issues affecting Alaskans and attempt to secure federal and industry recognition and support as an Arctic Regional Citizens' Advisory Council. |
| Alyeska Terminal Ballast Water Testing/Monitoring | The legislature appropriated \$175,000 for DEC to disburse to the Prince William Sound Regional Citizens Advisory Council. RCAC was to retain technical experts who would review and evaluate three monitoring programs being conducted by DEC at the Alyeska Valdez Marine Terminal. The three programs, which have been completed with final reports, were to monitor the influent ballast water to the ballast water treatment facility, to monitor the treated discharge from the ballast water treatment facility, and to monitor sediment hydrocarbon chemistry and sediment toxicity in Port Valdez. |

| FY 92 Appropriation | FY 93 Appropriation | Original Legislation | Expanded Legislation | Cite for Expanded Legislation |
|------------------------|------------------------|-------------------------|-------------------------|----------------------------------|
| \$100,000 | \$100,000 | | | See discussion on page 43 |
| \$175,000 | \$0 | ✓ | | |

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TABLE D

EXAMPLES OF EXTERNAL FY 92 AND FY 93 RSAs

FY 92 RSA, DEC/DMVA Oil Spill Depots/Corps \$1,700,000

Over \$1.2 million has been spent on this RSA through fiscal year end 93.

The "communications depot" is the only depot in place. The communications depot is a \$1.6 million project that will be 50% Response Funded and 50% federally funded by the Federal Emergency Management Agency. The equipment includes two 4.5 meter trailer mounted satellite communication dishes, four foamy satellite communication packages, and two mobile satellite telephones.

On the same RSA, DMVA trained 823 people to be first responders in the event of a spill. First responders include such persons as police and fire personnel. DMVA and the LEPCs worked together to determine who should be trained and in what localities. A database of people who were trained was prepared and given to GPRP.

FY 93 RSA, DEC/DMVA Oil and Hazardous Substance Release and Response Preparation and Planning \$800,000

This RSA, which only had \$155,000 in expenditures through fiscal year end 93, was to fund six different projects, many of the projects being continuing and open-ended. On Response Corps and Emergency Response Depots DMVA assisted and will continue to assist SPAR is preparing a 3-year strategic plan on the development of depots and corps to facilitate planning and budgeting.

For the State Emergency Response Commission, the Chief of Logistics was appointed by the Adjutant General as his designee and vice-chair on the commission. DMVA staff assisted and will continue to assist the Chief of Logistics in his membership roles on various SERC committees. DMVA provided and will continue to provide a person to serve as the State's alternate member of the Alaska Regional Response Team.

DMVA provided and will continue to provide an ex-officio, non-voting member to the board of directors on each of the two Regional Citizens' Advisory Councils in Alaska. For Emergency Response Planning, DMVA provided technical assistance to Local Emergency Planning Committees to ensure their response plans are consistent with the State Emergency Operations Plan. DMVA assisted and will continue to assist SPAR in developing a communications plan for response to oil and hazardous substance releases.

FY 93 RSA, DEC/DMVA Geographic Information Systems (FEMME) \$439,300

This RSA is to be used primarily for contractual services from the University of Alaska, Anchorage and the purchase of hardware and software. DMVA will develop an emergency management decision system for the State Emergency Operations Center with this funding ensuring that the system aids management of oil and hazardous substance release incidents. The system will incorporate a graphic user interface which will be compatible with DEC's geographic information system (GIS). GIS will provide an automated decision support system and an automatic resource tracking system. The GIS system will use computer graphics to show a map of response capabilities.

For an estimated \$250,000, the university will prepare a briefing paper on the emergency management decision system which includes: estimated costs for equipment, software, and training; a phasing plan; schedules and project milestones; cost/benefit analysis; and personnel utilization.

The hardware and software for the emergency management decision system is estimated to cost \$175,000.

FY 93 RSA, DEC/DFG Spill Prevention Planning and Management Assistance and State Emergency Response Commission Contingency Plans \$202,200

This RSA is to have DFG's participation on three distinct projects. DFG is expected to be reimbursed \$5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DFG will complete work tasks assigned by the commission or committees and provide expertise on fish and wildlife services.

DFG anticipates having \$127,200 in reimbursable expenditures for their participation in oil pollution control. DFG will review and comment on approximately 180 oil spill contingency plans submitted by industry for compliance with state regulations. DFG's primary focus is to enhance protection of fish and wildlife populations, habitats, and public uses of these resources.

DFG anticipates having \$70,000 in reimbursable expenditures for their participation in reviewing the state master and regional plans.

FY 93 RSA, DEC/DNR Industry Contingency Plan Reviews and State Emergency Response Commission \$28,900

This RSA is to have the Department of Natural Resources' (DNR's) participation on two distinct projects. DNR is expected to be reimbursed \$5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DNR will complete work tasks assigned by the commission or committees.

DNR anticipates having \$23,900 in reimbursable expenditures for their participation in oil pollution control. DNR will review and comment on approximately 170 oil spill contingency plans submitted by industry for compliance with state regulations. DNR's primary focus is to ensure that sensitive natural resource areas are adequately protected.

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DEPT. OF ENVIRONMENTAL CONSERVATION

410 Willoughby St., Juneau, AK 99801

(907)465-5010

Mr. Randy S. Welker
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300



LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to reply to the Division of Legislative Audit's Preliminary Audit of the Oil and Hazardous Substance Release Response Fund (Response Fund). First I would like to formally thank Ms. Cynthia Ryan and Ms. Kristin Dolquist for the professional and thorough manner in which they conducted this audit. I have heard this comment made by several members of my staff.

In general, we believe that this draft audit report accurately reflects the legislative and Department of Environmental Conservation (DEC) history of the Response Fund. We also generally agree with the description of current DEC management of the Response Fund. In the face of the many misunderstandings currently existing about the Response Fund and its intended purpose, it is refreshing to see such an accurate explanation of the Fund.

Recommendation No. 1

The legislature should make statutory changes to clarify the role of the fund administrator.

We agree with the proposed statutory changes and will work with the Attorney General's Office and the respective Senate Finance and House Resource Committees to investigate ways that these statutory changes can be made.

Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

We generally agree with this recommendation and will take immediate steps to implement it.

DEC has been pursuing cost recovery on selected oil and hazardous releases since FY90. A formal cost recovery notification policy and process has been in place since April of 1992 and a draft cost recovery manual and training was completed in August of 1993.

We agree that these policies and procedures should be finalized and that any training inadequacies should be remedied as soon as possible.

Recommendation No. 3

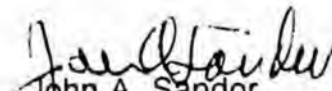
DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

This is an excellent recommendation and one that will require coordinated assessments with other government agencies, especially the Department of Defense (DOD). The DEC has a formal Statement of Cooperation with the DOD and an assessment of the effectiveness of joint environmental programs is now underway. Opportunities for improvements in contaminated sites management will be identified and implemented as a result of this assessment.

What the DEC has been providing is a prioritized list of high priority contaminated sites determined by the ranking model and judgement by regional staff with the suspicion that the responsible party is reluctant or unwilling to conduct the necessary cleanup. We agree with the recommendation to provide a better listing and have been developing policies and guidance during this fiscal year to put in place a more aggressive approach to confirm responsible party intent and prioritize all contaminated sites into a high/medium/low category.

Thank you again for the opportunity to respond to this draft audit and we look forward to working with your office toward the completion of the proposed management recommendations.

Sincerely,


John A. Sandor
Commissioner

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

March 2, 1994

Alaska-Juneau
Court Reporting & Secretarial
Services
326 4th Street, Suite B
Juneau, Alaska

Re: Transcript of March 1, 1994, Senate
Finance Committee Hearing on
SB 215 - Oil/Hazardous Subs. Release Response Fund

Enclosed are copies of Senate Finance Committee tapes no. 22 and no. 24 containing local and teleconference testimony on Senate Bill 215 from the committee's March 1, 1994, meeting. SB 215 relates to the five-cent surcharge on oil, the income from which flows to the oil and hazardous substance release response fund (the 470 fund). Please prepare a transcript of testimony on the bill. Tape No. 22 has been rewound to begin with that subject matter on side 1. Also enclosed is a brief log of the discussion, listing both department representatives and individuals who spoke from teleconference sites.

Our office received a request from Senator Kerttula for a transcript as soon as possible.

Please give me a call at 465-2618 if you have questions or I can be of further assistance.

Sincerely

A handwritten signature in cursive script, appearing to read "Kathy Holmquist".

Kathy Holmquist
Secretary
Senate Finance Committee

Enclosures

SENATE FINANCE COMMITTEE
March 1, 1994

SB 215 - OIL/HAZARDOUS SUBS. RELEASE RESPONSE FUND

SFC-94, #22, Side 1, Footage 435

Senator Pearce: Brief comments re: packet materials

Senator Miller: Sponsor statement and review of provisions within the bill.

Senator Kelly: Question

Senator Miller: Response

Senator Kerttula: Question

Senator Rieger: Question re: releases

Senator Miller: Response

Reverse Tape, SFC-94, #22, Side 2

Senator Kerttula: Conforming amendments?

Senator Miller: Relate to other statutes

John Sandor, Commissioner, Dept. of Environmental Conservation

Senator Pearce: Who has jurisdiction over North Slope operations?

Sandor: Response

Senator Pearce: What could DEC have done that it didn't do?

Sandor: Response

Senator Pearce: Does bill impact your ability to respond?

Sandor: Response

Senator Pearce: I don't think SB 215 is going to impact that.

Sandor: Response

Senator Kelly: Question

Sandor: Response, 10,000 gallons. Issue is not the size of the

spill.

Senator Frank: Trying to determine how the fund works.

Mike Conway, Director, Division of Spill Prevention and Response,
Dept. of Environmental Conservation

Senator Pearce: Where is break between DEC budget and 470 fund?

Conway: Response

Senator Frank: Statements re: use of 470 fund for DEC travel
and per diem.

Conway: Response

Sandor: Response

Senator Jacko: Question re: catastrophic account

Sandor: Response

Bob Poe, Director, Information and Administrative Services,
Dept. of Environmental Conservation

Senator Frank: Question re: DEC's part in spill cleanup.

Conway: Response, approx. 22 spills annually.

Senator Frank: Question regarding total costs recovered.

Conway: I have that back at the office.

Poe: Reports from Central and Northern regions.

Senator Frank: Question

Conway: Response regarding payment for cleanup and monitoring.

Senator Frank: Need clear picture of what fund should be used for.

Poe: Citing of figures relative to response effort.

Conway: Statement re: spills where we have to hire a contractor
to handle the spill.

Senator Pearce: Question

Conway: Will have to look at that information. Statement re:
human error prevention.

Senator Frank: Assume amount of activity has not increased.

TELECONFERENCE

Anchorage -

Mary Shields
Ken Freeman
Walt Furnace
Ardie Gray
Patti Saunders
Tom Lakosh

Homer -

Larry Smith
Mike O'Meara

Change Tape, SFC-94, #24, Side 1

Fairbanks -

Martin King
Randy McGovern

Kodiak -

Wayne Coleman
Mary Forbes

Kenai -

Bill Frazer
Bill Stamps
Gerald Brookman

Testimony from Juneau -

Dave Parish, Exxon Company, USA (Distributed handout)

Senator Kerttula: Who is your employer?

Parish: Exxon

Senator Kerttula: Do you support no longer contributing to this fund?

Parish: Blackmail clause is part of existing law. Support having the existing spill reserve preserved.

Senator Kerttula: Question

Parish: I would not paraphrase my comments as that extreme.

We support the transition of the spill reserve into some type of ongoing reserve.

Senator Kerttula: Would like to talk to some of your principals. No. three man.

Parish: Senate Resources adopted that provision.

Senator Kerttula: Comment.

Ginny Faye: Take exception to citing of "Alaska's Oil & Hazardous Substance Release Response Fund," report by BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention and Response Committee, as source of handout figures.

Parish: Response, referencing page nos.

Faye: Statement regarding what chart fails to convey.

Parish: Legislature has continued to go back and expand use of the fund.

Russell Heath, Alaska Environmental Lobby

Senator Pearce: Statement re: fact that the fund by would emptied by a budget crunch. Lack of establishment of corps and depots.

Heath: Do not see how SB 215 solves the problem. Dispute between Dept. of Environmental Conservation and Dept. of Military and Veterans Affairs.

Reverse Tape, SFC-94, #24, Side 2

Senator Pearce: Statement regarding DEC budget. Request that DEC provide information sought by Senator Frank.

Senator Kerttula: Fax no. for written testimony.

Senator Frank: Additional request for info. from DEC.

Jerry McCune, Cordova District Fishermen United, and United Fishermen of Alaska

ADJOURNMENT

2/1/94
 (5) RES
 THEN FIN
 BILL NO. SB 215

Outdated Form

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____

Affected: Administration

Title: "An Act redesigning the oil/hazardous substance release response fund: ..."

Component: Finance

Sponsor: Senator Miller

Requestor: Senate Resources

COMPONENT SERIAL 59

Expenditures/Revenues:

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|----------------------|---|---|---|---|---|---|
| REVENUE FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

FUNDING:

| | | | | | | |
|-----------------|---|---|---|---|---|---|
| 1002 Federal | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

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

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Wanie *DW*
 Division: Finance

Phone: 465-2240
 Date: _____

Approved by Commissioner: Nancy Bear Usura *NBU*
 Agency: Administration

Date: 1/26/94

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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 5/8/93

FURTHER: FINANCE

Date of 5-Day Notice: 1/13/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

RESOURCES Committee considered SB 215

Oil and hazardous substance release response fund/repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; etc.

and recommends:

and a majority of the committee recommends it be replaced with

replace with _____ CS SB 215 (RES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and do pass**

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

2 FW's

FISCAL NOTE INFORMATION

| Department | Date | Zero | Fiscal |
|------------|---------|------|--------|
| CS DEC | 2-24-94 | | 550.0 |
| DEC | 1-19-94 | | 5.1 |
| | | | |
| | | | |
| | | | |

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

~~_____~~
~~_____~~
[Signature] (NO REC)
[Signature] (No Fees - No Rec)

Mike Miller DO PASS
Chair: Signature and Recommendation

SB

217

HFIN

FILE

HOUSE CS FOR CS FOR SENATE BILL NO. 217(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS FRANK, Kerttula, Miller, Rieger, Taylor, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the University of Alaska and university land, authorizing the
2 University of Alaska to select additional state public domain land, and defining
3 net income from the University of Alaska's endowment trust fund as 'university
4 receipts' subject to prior legislative appropriation; and providing for an effective
5 date."

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

7 * Section 1. FINDINGS AND PURPOSE. The legislature finds that

8 (1) as the beneficiary under the provisions of the Acts of August 30, 1890, and
9 March 4, 1907, designating the Alaska Agricultural College and School of Mines as
10 beneficiary, and of March 4, 1915, 38 Stat. 1214, transferring certain land for its location and
11 support, the University of Alaska is a land grant university;

12 (2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45
13 Stat. 1091, the Congress of the United States granted to the Territory of Alaska certain federal

1 land to be held in trust for the benefit of the predecessor of the University of Alaska;

2 (3) the Territory was unable to receive most of the land conveyed by the Act
3 of March 4, 1915, before repeal of that Act by Sec. 6(k) of the Alaska Statehood Act (P.L.
4 85-508, 72 Stat. 339);

5 (4) the Congress of the United States granted the State of Alaska the right to
6 select 102,500,000 acres of federal land under Sec. 6(b) of the Alaska Statehood Act;

7 (5) the land selection rights embodied in the Alaska Statehood Act reflect in
8 part congressional recognition that the state would need the land to support its government and
9 programs, and the Congress assumed that the State of Alaska would in turn devote some of
10 the land or the income from it for the use and benefit of the University of Alaska;

11 (6) most land grant colleges in the western United States have obtained a larger
12 land grant from the federal government than the University of Alaska has received;

13 (7) an academically strong and financially secure state university system is a
14 cornerstone to the long-term development of a stable population and to a healthy, diverse
15 economy in the state; and

16 (8) it is in the best interests of the state and the University of Alaska that the
17 university take ownership of a significant and substantial portfolio of income producing land
18 in order to provide income for the support of public higher education in the state.

19 * Sec. 2. AS 14.40.170(a) is amended to read:

20 (a) The Board of Regents shall

21 (1) appoint the president of the university by a majority vote of the
22 whole board, and the president may attend meetings of the board;

23 (2) fix the compensation of the president of the university, all heads of
24 departments, professors, teachers, instructors, and other officers;

25 (3) confer such appropriate degrees as it may determine and prescribe;

26 (4) have the care, control, and management of

27 (A) all the real and personal property of the university; and

28 (B) land

29 (i) conveyed to the Board of Regents by the
30 commissioner of natural resources in the settlement of the claim of the
31 University of Alaska to land granted to the state in accordance with the

1 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
2 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and
3 (ii) selected by the University of Alaska and conveyed
4 to it by the commissioner of natural resources under AS 14.40.365.
5 except as provided in AS 14.40.368(2):

6 (5) keep a correct and easily understood record of the minutes of every
7 meeting and all acts done by it in pursuance of its duties;

8 (6) under procedures to be established by the commissioner of
9 administration, and in accordance with existing procedures for other state agencies,
10 have the care, control, and management of all money of the university and keep a
11 complete record of all money received and disbursed;

12 (7) adopt reasonable rules for the prudent trust management and the
13 long-term financial benefit to the university of the land of the university;

14 (8) provide public notice of sales, leases, exchanges, and transfers of
15 the land of the university or of interests in land of the university;

16 (9) report each year within the first 10 days of the convening of a
17 regular session of the legislature on the expenditures made during the preceding fiscal
18 year from the funds of the University of Alaska that are derived from sales, leases,
19 exchanges, or transfers of the land of the university or of interests in land of the
20 university

21 (A) that were conveyed to the University of Alaska in
22 settlement of the claim of the University of Alaska to land granted to the state
23 in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and
24 in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended;
25 and

26 (B) that were selected by and conveyed to the University of
27 Alaska under AS 14.40.365.

28 * Sec. 3. AS 14.40.291 is amended to read:

29 Sec. 14.40.291. LAND OF THE UNIVERSITY OF ALASKA NOT PUBLIC
30 DOMAIN LAND. Notwithstanding any other provision of law, university-grant land,
31 state replacement land that becomes university-grant land on conveyance to the

1 university, land selected by and conveyed to the University of Alaska under
2 AS 14.40.365, and any other land owned by the University of Alaska is not and may
3 not be treated as state public domain land. Title to or interest in [TO] land described
4 in this section may not be acquired by adverse possession, prescription, or in any other
5 manner except by conveyance from the university. The land is subject to
6 condemnation for public purpose in accordance with law.

7 * Sec. 4. AS 14.40 is amended by adding a new section to read:

8 Sec. 14.40.365. UNIVERSITY LAND FROM STATEHOOD ACT LAND
9 SELECTION CONVEYANCES. (a) The University of Alaska may select and is
10 entitled to receive the conveyance of 500,000 acres of land conveyed to the state under
11 Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339) that, on the date of
12 its selection by the university,

13 (1) has not been conveyed by the state;

14 (2) has not been reserved by law from the public domain;

15 (3) is not land

16 (A) included in a five-year proposed oil and gas leasing
17 program under AS 38.05.180(b); or

18 (B) leased under, or for which a lease application is pending
19 under, AS 38.05.180(d);

20 (4) is not subject to a possessory interest or encumbrance other than

21 (A) a lease that is not an oil or gas lease;

22 (B) a timber contract;

23 (C) a mining claim;

24 (D) a sale of materials under AS 38.05.110 - 38.05.120;

25 (E) a land use permit or right-of-way issued by the Department
26 of Natural Resources under AS 38.05;

27 (5) is not necessary to carry out the purpose of an interagency land
28 management agreement; or

29 (6) is not subject to conveyance under a land exchange or land
30 settlement agreement.

31 (b) Notwithstanding AS 38.05.125(a), the transfer of ownership and