

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1214 SCOMM 46: HOUSE SPEC. COMMITTEE ON OIL AND GAS 1985-86

1 Sec. 46.03.309. TEMPORARY COLLECTION OF HAZARDOUS WASTE. The
2 department shall provide for the temporary collection of hazardous
3 waste to be prepared for shipment to a federally approved hazardous
4 waste disposal site. The department shall establish four periods in
5 each calendar year during which it shall collect hazardous waste. A
6 collection point may accept hazardous waste only from small quantity
7 generators and household generators as defined by the Environmental
8 Protection Agency.

9 * Sec. 4. AS 46.03 is amended by adding new sections to read:

10 Sec. 46.03.313. HAZARDOUS WASTE MANAGEMENT FACILITIES AND SITES.

11 (a) The department shall evaluate and select potential sites for
12 hazardous waste management facilities in the state. In evaluating and
13 selecting sites for management facilities, the department shall con-
14 sider at least the following factors:

15 (1) economic feasibility, including proximity to concen-
16 trations of generators of the types of hazardous waste likely to be
17 proposed and permitted for management;

18 (2) intrinsic suitability of the sites;

19 (3) federal and state pollution control and environmental
20 protection regulations;

21 (4) the risk and effect for local residents, units of
22 government, and the local public health, safety, and welfare, includ-
23 ing such dangers as an accidental release of waste during transporta-
24 tion to a facility or at a facility, water, air, and land pollution,
25 and fire or explosion;

26 (5) the consistency of a facility with, and its effect on,
27 existing and planned local land use and development; local laws,
28 ordinances, and permits; and local public facilities and services; and

29 (6) the adverse effects of a facility at the site on agri-

1 culture and natural resources and opportunities to mitigate or
2 eliminate the adverse effects by stipulations, conditions, and re-
3 quirements relating to the design and operation of a management facil-
4 ity at the proposed site.

5 (b) By July 1, 1986, the department shall adopt regulations that

6 (1) interpret and clarify the factors listed in (a) of this
7 section; and

8 (2) establish procedures for processing, reviewing, and
9 approving or disapproving applications for the siting and operation of
10 privately owned hazardous waste management facilities.

11 (c) The department may authorize the siting and operation of
12 privately owned hazardous waste management facilities in accordance
13 with factors and requirements established under this section.

14 (d) The department shall hold public hearings in each election
15 district in which a hazardous waste management facility site is pro-
16 posed to be located. The department shall give reasonable public
17 notice of the time, date, and place of each public hearing at least 30
18 days before the hearing. The public shall be afforded an opportunity
19 at each hearing to submit written and oral testimony concerning a
20 potential site. The department shall consider the testimony submitted
21 at public hearings when it prepares reports under AS 46.03.314.

22 (e) For purposes of this section, "intrinsic suitability" of a
23 site means that, based on existing data on the inherent and natural
24 attributes, physical features, and location of the site, there is no
25 known reason why a waste management facility that may be located in
26 the site could not reasonably be expected to qualify for a permit
27 under AS 46.03.302.

28 Sec. 46.03.314. REPORTS ON MANAGEMENT SITES AND FACILITIES. (a)

29 Not later than July 1, 1987, the department shall submit to the gover-

1 nor and the legislature a preliminary report that includes

2 (1) proposals for the siting of hazardous waste management
3 facilities in the state;

4 (2) proposals for the methods of financing and operating
5 the facilities;

6 (3) proposals for the types of facilities that should be
7 constructed, such as chemical processing facilities, incineration
8 facilities, and transfer and storage facilities; and

9 (4) information about private hazardous waste management
10 sites and facilities approved by the department.

11 (b) Not later than July 1, 1989, the department shall submit to
12 the governor and the legislature a final report that includes

13 (1) identification of sites selected by the department for
14 hazardous waste management facilities;

15 (2) recommendations for the methods of financing and oper-
16 ating facilities at the sites listed in (1) of this subsection;

17 (3) recommendations for the types of facilities that should
18 be constructed at sites listed in (1) of this subsection; and

19 (4) information about private hazardous waste management
20 sites and facilities approved by the department.

21 * Sec. 5. AS 46.03.760(a) is amended to read:

22 (a) A person who violates or causes or permits to be violated a
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
24 provision of [OR] AS 46.04, or a regulation, a lawful order of the
25 department, or a permit, approval, or acceptance, or term or condition
26 of a permit, approval, or acceptance issued under this chapter or
27 AS 46.04 is liable, in a civil action, to the state for a sum to be
28 assessed by the court of not less than \$500 nor more than \$100,000 for
29 the initial violation, nor more than \$5,000 for each day after that

1 [THEREAFTER] on which the violation continues, and that [WHICH] shall
2 reflect, when applicable.

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that [WHICH] shall be determined by the court according to the toxi-
6 city, degradability and dispersal characteristics of the substance
7 discharged, the sensitivity of the receiving environment, and the
8 degree to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation; [AND]

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

13 * Sec. 6. AS 46.03.760(b) is amended to read:

14 (b) Except as determined by the court under (f)(4) of this
15 section, actions [ACTIONS] under this section may not be used for
16 punitive purposes, and sums assessed by the court must be compensatory
17 and remedial in nature.

18 * Sec. 7. AS 46.03.760 is amended by adding a new subsection to read:

19 (f) A person who violates or causes or permits to be violated a
20 provision of AS 46.03.250 - 46.03.314, or a regulation, a lawful order
21 of the department, or a permit, approval, or acceptance, or term or
22 condition of a permit, approval, or acceptance issued under AS 46.-
23 03.250 - 46.03.314 is liable, in a civil action, to the state for a
24 sum to be assessed by the court of not less than \$500 nor more than
25 \$100,000 for the initial violation, nor more than \$10,000 for each day
26 after that on which the violation continues, and that shall reflect,
27 when applicable,

28 (1) reasonable compensation in the nature of liquidated
29 damages for any adverse environmental effects caused by the violation.

1 that shall be determined by the court according to the toxicity,
2 degradability and dispersal characteristics of the substance dis-
3 charged, the sensitivity of the receiving environment, and the degree
4 to which the discharge degrades existing environmental quality;

5 (2) reasonable costs incurred by the state in detection,
6 investigation, and attempted correction of the violation;

7 (3) the economic savings realized by the person in not
8 complying with the requirement for which a violation is charged; and

9 (4) the need for an enhanced civil penalty to deter future
10 noncompliance.

11 * Sec. 8. AS 46.03.790 is amended to read:

12 Sec. 46.03.790. CRIMINAL PENALTIES. (a) Except as provided in
13 (d) - (f) of this section, a [A] person who negligently violates [OR
14 WHO CAUSES OR PERMITS A VIOLATION OF] a provision of this chapter or
15 AS 46.04, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter or AS 46.04 is
18 guilty of a class B misdemeanor.

19 (b) Except as provided in (d) - (f) of this section, a [A]
20 person who knowingly [WILFULLY] violates a provision of this chapter
21 or AS 46.04, or of a regulation, lawful order of the department, or
22 permit, approval, or acceptance, or term or condition of a permit,
23 approval, or acceptance issued under this chapter or AS 46.04 is
24 guilty of a class A misdemeanor.

25 (c) Each day on which a violation described in [(a) OR (b) OF]
26 this section occurs is considered a separate violation.

27 (d) Notwithstanding (a) and (b) of this section, a [A] person
28 who fails to provide or falsely states information required under
29 AS 46.03.755 or AS 46.04 is guilty of a misdemeanor and, upon convic-

1 tion, is punishable by a fine of not more than \$25,000, or by
2 imprisonment for not more than one year, or by both. Each unlawful
3 act constitutes a separate offense.

4 (e) Notwithstanding (a) and (b) of this section, a person who
5 knowingly (1) transports any hazardous waste to a facility without a
6 permit required under AS 46.03.250 - 46.03.314; (2) treats, stores, or
7 disposes of hazardous waste without a permit required under AS 46.-
8 03.250 - 46.03.314; or (3) makes a false statement or representation
9 in an application, label, manifest, record, report, permit, or other
10 document filed, maintained, or used for purposes of compliance with
11 the hazardous waste provisions of AS 46.03.250 - 46.03.314 or regu-
12 lations adopted under those provisions, is punishable by a fine of not
13 more than \$10,000 per day or by imprisonment for not more than one
14 year, or both.

15 (f) Notwithstanding the penalty provisions of (a) - (e) of this
16 section, a defendant that is an organization is, upon conviction of a
17 violation of any of the provisions listed in this section, subject to
18 the penalties set out in AS 12.55.035(c).

19 * Sec. 9. AS 46.03.900 is amended by adding new paragraphs to read:

20 (36) "mining waste" means solid waste from the extraction,
21 beneficiation and processing of ores and minerals, including coal, and
22 including phosphate rock and overburden from the mining of uranium
23 ore;

24 (37) "waste associated with the exploration, development, or
25 production of crude oil, natural gas, or geothermal energy" means (A)
26 waste, including drilling muds, cuttings, hydrocarbons, brine, acid,
27 sand, and emulsions or mixtures of fluids produced from and unique to
28 the operation or maintenance of a well, whether naturally occurring or
29 added for the operation or productivity of the well; and (B) waste

1 that is derived intrinsically from primary field operations; "waste
2 associated with the exploration, development, or production of crude
3 oil, natural gas, or geothermal energy" does not include spent sol-
4 vents and oils from equipment maintenance activities, discarded chemi-
5 cal products, or fuels;

6 (38) "waste derived intrinsically from primary field op-
7 erations" means waste produced from a well, and removed (A) at the
8 drill site; or (B) at crude oil production facilities by crude oil or
9 wastewater treatment process before custody transfer of the crude oil.

10 * Sec. 10. AS 24.60 is amended by adding a new section to read:

11 Sec. 24.60.045. HAZARDOUS WASTE CONTRACTS. A legislative staff
12 member may not solicit or receive a contract concerning hazardous
13 waste from a state agency or department other than the legislature
14 during the interim following a session in which the person worked.
15 This section applies to legislative staff members range 18 or higher.
16 In this section "hazardous waste" has the meaning given in
17 AS 46.03.900.

18 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).

Alaska Oil and Gas Association

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(907) 272-1481

December 11, 1984

Dr. Richard A. Neve', Commissioner
Alaska Department of Environmental
Conservation
Pouch O
Juneau, Alaska 99811

Dear Commissioner Neve':

Pursuant to our meeting with Dave Walker on November 2, 1984, the attached material is intended to provide background information on the State's Hazardous Waste Program; the intent of SB503, Section 1; an explanation as to how the Degree of Hazard (DOH) approach differs from the Federal regulatory scheme; general issues associated with pursuing a regulatory approach substantially different from the Federal program; and sections of the regulations which need to be deleted to obtain a proper beginning vehicle.

Please feel free to contact me or Tom Brooks if we can provide additional information.

Very truly yours,



WILLIAM W. HOPKINS
Executive Director

WWH:TR2:211

Attachment

cc: Bob Martin w/attachment
Dave Walker w/attachment

ALASKA OIL AND GAS ASSOCIATION
DISCUSSION PAPER ON ADEC HAZARDOUS WASTE PROGRAM
DECEMBER, 1984

BACKGROUND

In 1981 the Alaska State legislature passed AS 46.03, charging the Alaska Department of Environmental Conservation with the task of developing Hazardous Waste Management regulations which are "consistent with and substantially equivalent to" federal regulations. AOGA was informed on November 24, 1981 that the Department would begin preparation of a "plan" for the State's Hazardous Waste Program. In May 1982 AOGA received the first draft of the State's proposed regulations at the May 28, 1982 Hazardous Waste Advisory Work Group Meeting (HWA WG). At this meeting, ADEC discussed its intent to establish a State program parallel to the Federal program; so convincing was ADEC that AOGA's representative reported:

"ADEC very much wants their Program to be "consistent with and substantially equivalent to" the Federal Program. Although there was a difference of opinion regarding the interpretation of certain complex sections of the Federal Program, I am not as concerned about this difference as I was when I first reviewed the draft regulations. This is because it can be resolved with a close reading of the regulations. The important point is that the State intended to, and thought they had, interpreted the existing regulations. This significantly assuages my concern that the State had been trying to greatly expand their authority in this program, and trying to include regulatory requirements much more restrictive than the existing Federal Program. ADEC was not trying to expand their program, they were trying to interpret and parallel the Federal Program. Interpretation problems are resolvable with some time devoted to discussing the various sections of the regulations in detail, and utilizing the existing background documents from these same discussions which occurred at the Federal level."

It was not until February 7, 1983, that AOGA received the first draft of State regulations which reflected a "Degree of Hazard" (DOH) regulatory mechanism (a mechanism which is patterned after Washington State's program and is divergent from Federal regulations).

It is appropriate at this time to briefly reflect on Washington's Program. Their program began with passage of their Hazardous Waste Disposal Act in 1976. As a result, Washington's program and the Federal program were being developed simultaneously with the basis for Washington's Program being defined by statute.* The Act took the form of three pages of general directives regarding the identification and management of hazardous wastes. Principal among these directives was the establishment of the "two tiered" designation system or "designation-based on degree of risk". The fundamental basis for designating wastes with this early program was biological and other testing.

In late 1980, the issue was again before the Washington legislature. Unfortunately, its designation process was sufficiently complex to preclude any meaningful review by the legislators. There was no discussion at the legislative level of various alternative approaches that would satisfy the State's enabling act, nor was there any realization that the technical complexities of the State agency's program may have been overly complex to meet the need at hand. Fueling the controversy was the fact that a State site (Commencement Bay) was designated a priority cleanup site under Superfund and other examples of egregious past practices were brought to light during the public hearing process. It is likely that these past practices were illegal under either pre-existing State law or the RCRA regulations and would not have been prevented had the new regulations been in place. Nevertheless, public concern led to a demand for "an approach more stringent than the minimum federal requirements". Hence, in late 1980 the State legislature amended the original act to provide authority to bring the State regulations into federal compliance and did not allow the flexibility to parallel the federal program.

Washington State adopted on February 4, 1982, their present regulatory program. It is a combination of the original concept of waste designation based solely on testing and the Federal concept of designation based on rulemaking and simple testing. In its first few years of operation, the program captured 15% more wastes than the Federal RCRA program. Of the incremental wastes captured, most were designated as "dangerous" wastes; a classification not intended by the original State act to receive the comprehensive management strategy that was to be applied to State designated "extremely hazardous wastes" or Federally designated "hazardous wastes".

*NOTE: The U.S. EPA began formulating the national program (RCRA) in 1976. In 1980, RCRA was significantly amended to its present regulatory framework. At this time EPA decided that waste classification based on testing was inappropriate. For a detailed discussion as to EPA's rationale behind this decision, re: FR Vol. 45, #98/May 19, 1980 pages 33164-33165, and 33105.

In 1984, Washington enacted legislation which required the Department of Ecology to conduct studies regarding the "best management practices" for "dangerous" waste disposal. In the interim and until such time as "best management practices" regulations are in place (July 1, 1986) "dangerous" wastes may not be disposed of at commercial, off-site land disposal facilities. "Dangerous" wastes are now being stored or disposed of on site or must be shipped to RCRA disposal sites out of state.

In addition to the State being unable to facilitate the installation of a "dangerous" waste disposal site, the State has also been ineffective over an eight-year period in facilitating the acceptance and/or installation of an in-state disposal site for "hazardous or extremely hazardous" wastes.

Regarding the Alaska program, on March 3, 1983, AOGA informed Mr. Hungerford that the proposed rules of February 7, which reflected the DOH scheme from Washington State, were in need of in-depth technical review and notified him of forthcoming technical comments. On April 6, 1983, AOGA provided ADEC an in-depth technical review of the regulations. These comments were the culmination of extensive efforts by many engineers, marine biologists, toxicologists, attorneys and corporate management level individuals. The Department informed AOGA's representative on the Advisory Group that the ADEC could not expend the money or the manpower to consider AOGA's comments prior to release of a public hearing draft. On April 11, 1983, AOGA strongly requested that the regulations not be released until AOGA's comments could be reviewed and considered.

On April 19, 1983, the regulations were moved to public notice, with no apparent review or consideration of the technical comments provided to ADEC by AOGA. On April 25, 1983, Commissioner Neve' wrote AOGA indicating that the "comments of every member of the work group...were reviewed seriously and did help significantly in the preparation of these draft regulations". On May 25, 1983, at the Public Hearing AOGA stated that we felt that there was a lack of consideration of our industry's input in the development of the April 11, 1983, draft regulations.

By June 8, 1983, AOGA had provided ADEC with extensive oral and written testimony which was developed by the Environmental Committee in conjunction with the following industry experts:

- ° Joan DiNal, Senior Counsel, Environmental Affairs for Atlantic Richfield Company.
- ° Michael Hulse, Environmental Analyst, IMCO Services.
- ° James P. Ray, Ph.D., Manager of Environmental Sciences Support, Shell Oil Company.

- ° Robert E. Abbott, Ph.D., Coordinator of Environmental Affairs, Conoco Inc.
- ° Philip Dorn, Ph.D., Shell Development Company.
- ° Ilene Danse, M.D., Senior Advisor, Environmental Health Protection, Chevron Environmental Health Center, Inc.

The Department issued their latest draft in October 1983 which failed again to address significant concerns which have been repeatedly expressed by our industry. The Department has accepted AOGA's comments on three sets of draft regulations and failed to address the problems identified by AOGA.

AOGA next presented its case to the legislature. During this process, AOGA participated in the drafting of SB503, a piece of legislation which involved a compromise between members of the environmental community, small business, ADEC, AOGA, Labor, the Governor's Office, Sen. Fahrenkamp's office, etc., on key issues, one of which was DOH vs. the Federal Program.

INTENT OF SB503, SECTION 1

The compromise reached between the various parties for the management and control of hazardous waste in Alaska was a very delicate one. Because the legislature did not desire any confusion over the intent of this legislation, it adopted a Letter of Intent drafted by the Senate Resources Committee. The intent of the Legislature was for the Department of Environmental Conservation to "evaluate the most appropriate mechanism by which to identify a waste characteristic of toxicity, persistence or carcinogenicity and other characteristics identified as hazardous by the EPA". In order for a proper and complete analysis to be performed, no prior assumptions can be made as to the "appropriate mechanism" to be used by the State in its hazardous waste program.

Any regulations that are ultimately developed by the Department "must incorporate the results of this analysis" according to the intent letter. The Legislature, by the action of adopting this wording, instructed the Department to make an analysis and evaluation with no preconceived bias or ideas as to the appropriate mechanisms and only after the analysis is completed are the regulations to be drafted.

In summary, the Legislature has instructed ADEC to begin anew on identifying the regulatory mechanism of waste designation.

EXPLANATION OF DOH VS. RCRA

On May 19, 1980, EPA promulgated RCRA regulations that designated wastes by a formal rulemaking process (lists) and four reproducible and supportable characteristic tests. They reviewed various DOH programs and concluded a DOH approach was not an appropriate waste designation mechanism. To qualify for interim authorization, a state program had to encompass all RCRA wastes. In Washington, the two approaches were consolidated, resulting in the most complex designation system in use in the nation.

To briefly summarize, the DOH program is based on the concept that different wastes should be regulated with different procedures based on the degree of risk presented to human health and the environment, as demonstrated by existing biological and other test data or test results produced by generators. Initially, when the DOH approach was being developed it was envisioned that such data would be the sole basis for designating wastes, and that testing (bioassay, etc.) would be mandatory for all generators.

Although not specifically a designation issue, it must be kept in mind that nationally the small quantity generator exclusions are now much lower. If applied to Alaska, particularly without any special provision for small quantity generators, the combination of a much lower quantity exclusion and an extremely complex designation mechanism will result in an unenforceable program.

One of the difficulties inherent in the DOH designation procedure is that there is no adequate or simple means to describe how the federal and state universes of waste compare. No straightforward comparison can be made between a given category of federal wastes and categories defined under the state program. Consequently, the waste generator would often need to retain expert assistance. For example, professional assistance is especially recommended in instances where a waste not regulated under RCRA has "flunked" the state's proposed toxicity bioassay test. Determinations must be made regarding whether the test animals responded adversely to the potential toxic constituents or whether a physiological response to test conditions was involved. Such determinations will be subjective and inconsistent.

Technical complexities aside, the legal theory underlying the DOH regulations represents a marked departure from that embodied in the federal RCRA regulations. The federal regulations specify the criteria that the EPA administrator will consider in adding wastes to the lists in the RCRA regulations. The administrator is to consider potential wastes from the standpoint of toxicity, persistence, bioaccumulation, genetic effects, etc., and then to add appropriate wastes through formal rulemaking procedures. Thus, EPA's approach for developing hazardous waste lists inherently addresses biological considerations but centralizes the testing under EPA.

In contrast, DOH regulations place the burden on each generator to determine whether a waste not otherwise encompassed by the RCRA regulations is part of the state universe of wastes, and as previously stated, this determination may be made based on uncertain test results.

An individual generator's determination that a waste not regulated by RCRA might, for biological or other reasons, be regulated under the DOH regulations does not lead to a conclusive rulemaking. Thus, the process of identifying state regulated wastes is not accompanied by the certainty and procedural due process protections that characterize the listing process at the federal level.

A legal burden of designation is not to be confused with the cost burden of testing. Under both the federal and state regulations, the generator pays testing costs, as is typical of most environmental programs.

A major difficulty with the DOH designation system is that it creates an area of legal and technical vagueness. For example, biological test data can be inconclusive with regard to actual toxicity. The test animals may react adversely to test conditions rather than to the suspected toxic constituents, thus resulting in the over-designation of wastes. To further complicate the bioassay issue, there are no standard bioassay procedures which have been accepted by the scientific community at large. Difficulties may arise if a generator relies on an initial series of bioassay test results that show a waste to be nonhazardous. A subsequent test on the same waste yielding a positive determination of toxicity by the same or yet another generator may result in liability to the generator, who relied on the first series of tests in good faith. In either case, the uncertainties involved in the biological response of laboratory test animals to potentially toxic wastes may create a large gray area of potential liability for generators.

Under the State's proposed regulations, a generator may apply to the state agency for a determination of hazardous or nonhazardous status of a given waste. (This procedure is specific to the individual generator and does not provide notice or opportunity for comment from other generators of similar or related wastes and the scientific community at large.) However, such a certification would still not shield the generator from potential liability in the event of an erroneous certification by the state agency. Again, this ad hoc certification process cannot be viewed as a substitute for the certainty inherent in the federal designation system. In summary, the DOH generator is truly "at risk" to a degree not experienced by generators in the rest of the nation.

GENERAL ISSUES ASSOCIATED WITH PURSUING A REGULATORY
APPROACH SUBSTANTIALLY DIFFERENT THAN THE FEDERAL PROGRAM

A substantial departure from the Federal and national trend in hazardous waste management by Alaska will make the State's program continually fraught with inherent technical, legal, and economic problems. Such a program will not be as readily able to take full advantage of the continued evolution or efforts of the Federal program.

The technical aspects of the national program is not the product of a few staff specialists or even the combined effort of one or two states. Rather, the Federal program has been and will continue to be the product of a concerted effort by this country's regulatory agencies, academic/scientific community, private industrial sector and environmental organizations. This effort cannot begin to be equaled by any single state.

As you are probably aware, the management of hazardous wastes is technically and legally complicated and highly controversial. Should the State embark on a program substantially different than the Federal program, Alaska will have to expend considerable amounts of time and resources in pursuing the continued development of a program which will be fraught with continuing implementation, legal, educational and enforcement problems. On the other hand, a state program that parallels the national trend can take full advantage of the billions of dollars this country has and will continue to spend in further evolving and implementing hazardous waste regulations.

Again, a state that is contemplating an approach that differs fundamentally from the Federal program should consider the following questions:

- ° Will the alternative program, if based on fundamentally different technical theories, isolate the state from the larger body of developing scientific expertise at the national level?
- ° Will the alternative program, if based on different legal theories, create the need for a divergent trend of judicial interpretation and thereby isolate the state from legal developments at the national level?
- ° How will a fundamentally different program that is more expansive than its federal counterpart be reconciled with related programs such as Superfund that provide mechanisms for partial federal funding for incidents involving federally designated waters?

- ° How will the fundamentally different state program relate to the interstate aspects of hazardous waste transport and management? This involves issues of reciprocity and the equity of burdening another state's disposal facilities if the state of origin has not provided ample sites for its own wastes.
- ° How will a fundamentally different state program be modified to remain consistent with evolving RCRA requirements?
- ° Does the fundamentally different state program exacerbate the interstate problems of hazardous waste management?
- ° What is EPA's enforcement interest in an incident involving a nonfederal waste that is considered hazardous in the state of origin but not in the state where the incident occurs? This issue stems from the fact that authorized state programs operate in lieu of RCRA regulations.
- ° To what extent would a fundamentally different program be delayed in obtaining final authorization?
- ° Will funding levels by the State be adequate to implement and maintain a program that is technically and legally divergent from the Federal program?

SECTIONS TO BE DELETED
TO OBTAIN A PROPER BEGINNING VEHICLE

The following is intended as a list to highlight those major portions of the October 26, 1983, draft which should be deleted, pending a detailed evaluation by the Department:

- ° 18 AAC 62.010 Definition of Hazardous Wastes
- ° 18 AAC 62.030 Lists of Hazardous Wastes
- ° 18 AAC 62.050 Discarded Chemical Products
- ° 18 AAC 62.060 Characteristic of Toxicity
- ° 18 AAC 62.070 Characteristic of Persistence
- ° 18 AAC 62.080 Characteristic of Carcinogenicity
- ° 18 AAC 62.120 Waste Extraction Procedure (WEP)
Characteristic
- ° 18 AAC 62.140 Exclusions
- ° Article 5 - Management of Moderate Risk Wastes

For a more detailed discussion, attached are both oral testimony and detailed written comments which were provided to the Department at the May, 1983 Public Hearing.

In addition, attached is an article from the October 26, 1984, Environmental Reporter, entitled EPA Staff Summary of 1984 Amendments to Resource Conservation and Recovery Act. This recent reauthorization addresses the majority of the real or perceived "loopholes" in the RCRA regulations. The reauthorization amendments only reinforce ACOGA's contention that the nation's commitment to properly manage hazardous waste is real and a divergence from the Federal program is unnecessary.

tr2:220
Attachments



Alaska Health Project

Providing information about hazardous materials on the job and in the community.
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

April 25, 1985

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

APR 29 REC'D

Dear Representative Davis:

Alaska Health Project appreciates your interest in issues concerning hazardous wastes in Alaska. As you may know, I have been directly involved with this issue for about three years at both the state and local level. Reflecting on my involvement in this area brings to mind the need for the Legislature to become more educated about the issue and for the Legislature to decide whether it deems hazardous wastes a priority concern for the future. It is my hope that the oversight hearings, or hearings of that type become the vehicle for this type of education. Further, it is my hope that the Legislature attack that hazardous waste issue in a similar fashion to the way it investigated proposals to develop a full scale petrochemical industry several years ago. The hazardous waste issue deserves legislative commitment and coordination with state and local agencies, the public and industry.

It is important, in my opinion, that Alaska work hard to develop a preventive approach to hazardous waste, rather than falling into a dangerous trap of simply developing a program that reacts to hazardous materials incidents.

In light of this, certain testimony at the teleconference concerned me. While I agree with industry on the need for some sort of a hazardous waste disposal facility in Alaska (not necessarily a landfill) and with their concern regarding the current time frame for selecting a site, I do not wish to see the development of a site supersede development and implementation of a "total" state hazardous waste program. To develop a disposal facility without a state definition for when a solid waste becomes hazardous could result in serious technical, legal, and political problems down the road.

While I am the first to admit that management programs (such as a disposal site) are perhaps dollar for dollar better at solving problems than a regulatory approach, central to any management approach is a regulatory foundation, which the state currently lacks. It is important that the state define, by regulation, when a waste becomes hazardous thus allowing Alaska to decide on hazardous waste management approaches. Determining

Representative Mike Davis
April 25, 1985
Page 2

a state definition for hazardous wastes will also help industry with their plans to manage wastes as well as provide incentives for industry to reduce their wastes streams or investigate alternative processes which do not create a hazardous waste as defined by the State of Alaska.

Last year The Department of Environmental Conservation published a set of hazardous waste regulations which define hazardous waste by degree of hazard. While admittedly controversial, this approach provides a good starting point for future discussions. Regardless of the fact that earlier debates addressing this definition scheme resulted in a "cold war" relationship between industry and public interest organizations, it is important to confront this issue directly. Once the state can settle on a hazardous waste definition, all other aspects of the program will fall into place.

Once again, I sincerely appreciate your interest in this issue and I am available to discuss this issue with you at any time.

Cordially,

A handwritten signature in dark ink, appearing to read "David Wigglesworth", with a long, sweeping horizontal line extending to the right.

David Wigglesworth
Occupational Health Specialist

cc: Commissioner Ross
Committee Members

Statement by ARCO Alaska, Inc.
for Presentation to the
House Oil and Gas Committee
April 24, 1985

By Dr. T.R. Fink, Manager
Environmental Conservation

Waste categories

Waste materials are regulated by both Federal and State requirements. In general, the Federal requirements pertain to hazardous wastes and the State requirements to non-hazardous wastes. All wastes should be handled in an environmentally sound manner. All wastes do not require the same degree of environmental protection.

Wastes are considered hazardous if they are listed as such by the Environmental Protection Agency or if they meet certain characteristics for ignitability, corrosivity, reactivity or toxicity. Diesel fuel and acids are two examples that, when discarded, meet the hazardous characteristics. Household garbage and sewage are solid wastes, not hazardous waste. Drilling mud is a waste common in our industry which is a solid waste but not a hazardous waste.

Alaska must develop a hazardous waste disposal site in the State

There is no hazardous waste disposal site available for general use in Alaska. Even if the various entities involved in the hazardous waste issue in Alaska were to agree on the definition of hazardous waste, the procedures for regulating hazardous waste, and the means for cleaning-up abandoned hazardous waste sites, the hazardous waste problem in Alaska will not be resolved until there is a viable disposal option in Alaska. Costs, legal and technical restrictions and political considerations associated with shipping hazardous waste to the Lower 48 preclude it from being the answer for Alaska's hazardous waste.

The State of Alaska must be involved in the development of a hazardous waste management facility

NIMBYS - Not In My Back Yard Syndrome - is alive and well in Alaska. For a hazardous waste management facility to be developed in Alaska, the State of Alaska must be heavily involved. With the active involvement of the State we can take the most important step toward solving Alaska's hazardous waste problems.

The SB 503 timeframe for hazardous waste siting is too slow

SB 503 requires disposal options and sites to be selected by 1989. After disposal options and sites are selected, the permitting and construction phases will require four to five years to complete. Alaska can not afford to wait until the early 1990's to have a safe, permitted disposal option for Alaska hazardous waste.

The 1984 amendments to the Federal hazardous waste program have forced the siting issue to the forefront. The 1984 Federal amendments phase out land disposal, greatly increase the number of hazardous waste generators, require the study and listing of additional materials as hazardous waste, add a citizens's suit provision and increase the penalty provisions. The Amendments increase the cost and decrease the options currently available for disposal in the Lower 48. There is no statewide hazardous waste disposal site available in Alaska.

A Governor appointed executive level committee is needed

The hazardous waste siting issue can best be resolved by a Governor appointed executive level committee with representatives from DEC, DNR, local government, environmental groups and industries. The task of the committee would be to develop a plan of action for siting a hazardous waste management facility in Alaska.



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#46:7

**INTERIM REPORT OF THE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**Prepared by
Jonathan Sperber, Staff**

**at the direction of
Representative Mike Davis, Chairman
House Special Committee on Oil and Gas**

January 22, 1986

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STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

From: Jonathan Sperber, Committee Aide

To: Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

Re: Interim Activities of the House Special Committee on Oil and Gas

Date: January 22, 1986

The House Special Committee on Oil and Gas focused on the following issues during the interim: the TAPS tariff case, proposals to sell royalty oil to certain in-state refiners, state policy regarding the taking and disposition of royalty oil and gas, projected development of North Slope oilfields, and the unpermitted release of oil and hazardous substances.

The committee held three public hearings in Anchorage on these issues, and all meetings were teleconferenced to Juneau, Fairbanks, Kenai, Valdez and other sites. The committee chairman also moderated a public meeting in Fairbanks regarding a proposal by Arctic Energy Corporation to build a refinery in Fox.

Related activities included attending conferences sponsored by industry and government relating to Arctic drilling technology, the disposal of hazardous wastes and drilling muds, pipeline ratemaking, and marginal oilfield development. The committee chairman also participated in all meetings of the Alaska Royalty Oil and Gas Development Advisory Board during this time.

Information gained through these meetings and conferences was supplemented by on-site visits to the North Slope oilfields, MAPCO's and Petro Star's North Pole refineries, Tesoro's Kenai refinery, one of Shell's Cook Inlet platforms, and one of Chevron's oil tankers.

The trip to the North Slope included visits to Milne Point, Endicott, Lisburne, Kuparuk and West Sak, a flight over Union's drill ship and several exploration islands, and a tour through the West Dock waterflood facility.

The committee drafted two major pieces of legislation as a result of these interim activities. These include one bill which would create a new chapter within AS 38 relating to the taking and disposition of royalty oil and gas, and another bill which would establish a funding mechanism for responding to the release of oil and hazardous substances. A third bill, presently in draft form, would direct the Alaska Power Authority to fund a comprehensive feasibility study regarding the use of North Slope natural gas to produce cogenerated electricity.

HB 495
Question and Answer Overview

What does HB 495 seek to accomplish?

HB 495 attempts to clarify state policy and administrative procedures regarding the taking and disposition of royalty oil and gas. This clarification is intended to facilitate the procurement of royalty oil and gas by eligible purchasers, while also improving the working relationship between industry, the legislature, and the administration.

In order to effect these changes, HB 495 isolates oil and gas royalties from other royalty resources in AS 38. A new chapter comprised in part of sections of AS 38.05 and AS 38.06 would deal exclusively with the taking and disposition of royalty oil and gas. This new chapter, AS 38.16, would also consolidate criteria regarding the sale of royalty oil and gas into a single section.

The revisor of statutes has also been asked to consider rearranging certain sections of AS 38.05 in order to further clarify the requirements and procedures set forth in this chapter.

What are the major policy and procedural issues addressed in the bill?

HB 495 focuses on several issues of consequence to the state. Following is a brief outline of the policy changes proposed in the bill.

1. Clear direction is given to the commissioner of DNR regarding the taking and disposition of royalty oil and gas. Central to this policy is the maximization of state revenues, with secondary goals being to expand foreign markets and to supply existing and new in-state refineries and utilities with royalty oil at current market value.
2. The commissioner of DNR must submit an annual report to the legislature delineating the status of all state-owned royalty oil and gas production and disposition. The report must be submitted no later than the 15th day of each regular session.

- 4
3. The state reserves the right to purchase residual oil from in-state refiners.
 4. Language is deleted that allowed royalty oil or gas taken in kind to be exported from the state only after the commissioner made a determination that "the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs" of the state.
 5. The term of a competitively-bid disposition of royalty oil or gas which may take place without legislative approval is extended to two years from the current one year limitation.
 6. The commissioner of DNR must make public written findings and conclusions relating to non-competitive dispositions of royalty oil and gas.
 7. The Alaska Royalty Oil and Gas Development Advisory Board is transferred to the Department of Natural Resources from the Department of Commerce and Economic Development.
 8. All oil and gas exploration incentives are retained, with the exception that royalties on oil and gas cannot be reduced below 12.5 percent.
 9. An assignment of unrefined royalty oil purchased from the state is prohibited unless certain minimum benefits to citizens of the state are met.
 10. Prior to disposing of royalty oil or gas, consideration must be given not only to a prospective purchaser's ability to provide significant price and supply benefits to citizens of the state, but also to the degree of certainty and intent of the prospective purchaser that these benefits will be provided.
 11. Prior to disposing of royalty oil or gas, consideration must also be given to the local or regional desirability of the disposition.
 12. DNR may provide by regulation for the confidentiality of documents and records in the same manner that this is presently done by the royalty board. In neither case should these confidentiality provisions preclude proper legislative review of proposed sales of royalty oil or gas.

HB 495
Sectional Analysis

* Section 1.

Chapter 16. Taking and Disposition of Royalty Oil and Gas.

HB 495 isolates oil and gas royalties from other royalties in AS 38, and clarifies state policy for the taking and disposition of royalty oil and gas. Chapter 16 is a new chapter comprised, in part, of sections of AS 38.05 and AS 38.06.

Sec. 38.16.010. Directs the state to maximize revenues related to the taking and disposition of royalty oil and gas. Secondary goals are to supply existing in-state refineries and utilities with royalty oil or gas at current market value, supply new in-state refineries and utilities with royalty oil at current market value, and expand foreign markets for royalty resources.

Sec. 38.16.020. Rewording, without substantive change, of the provision that the state give preference to taking its royalty in kind. [AS 38.05.182(a)]

Sec. 38.16.030. (a) Rewording, without substantive change, of the provision that the state give preference to disposing of its royalty by competitive bid to the highest bidder. [AS 38.05.183(a)]

(b) Rewording to clarify that a single competitive bid may be rejected. [AS 38.05.183(b)]

(c) The commissioner must make public written findings and conclusions relating to dispositions of oil or gas which are to be made other than by competitive bid.

Sec. 38.16.040. This section consolidates criteria for the commissioner and the board to consider when reviewing proposals to dispose of royalty oil or gas non-competitively. Changes to these criteria are:

(1) Cash value for the oil or gas shall not be below current market value. [AS 38.05.183(e)]

(2) No substantive change. [AS 38.05.183(e) and AS 38.06.070(a)]

(3) Consideration of projected local and regional economic benefits of refining or processing oil or gas in state. [AS 38.05.183(e) and AS 38.06.070(a)]

6.

Sec. 38.16.040. (Continued)

(4) No substantive change. [AS 38.06.070(a)]

(5) No substantive change. [AS 38.06.070(a)]

(6) No substantive change. [AS 38.06.070(a)]

(7) Consideration must be given not only to a prospective purchaser's ability to provide significant price and supply benefits to citizens of the state, but also to the intent and degree of certainty that these benefits will be provided.

Sec. 38.16.050. (a) No substantive change. [AS38.05.183(f)]

(b)(1) Prohibits an assignment of unrefined royalty oil purchased from the state unless certain minimum benefits to citizens of the state are met.

(b)(2) Reserves to the state the right to purchase residual oil from in-state refiners.

Sec. 38.16.060. Deletes language allowing royalty oil or gas taken in kind to be exported from the state only after the commissioner has made a determination that "the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs" of the state. [AS 38.05.183(d)]

Sec. 38.16.070. Subsection (c)(2) of this section extends the term of a competitively-bid disposition of royalty oil or gas which may take place without legislative approval to two years from one year. [AS 38.06.055]

Sec. 38.16.080. Requires the commissioner to submit a royalty oil and gas report to the legislature no later than the 15th day of each regular legislative session.

Sec. 38.16.090. The department may provide by regulation for the confidentiality of documents and records. Similar provisions remain in effect for the board under AS 38.06. [AS 38.06.060]

Sec. 38.16.900. Definitions.

* Section 2.

Sec. 38.05.020. (b) Technical change, referencing AS 38.16.

* Section 3.

Sec. 38.05.035. Technical change, reflecting Ch. 64 SLA 85 (HB 103).

* Section 4.

Sec. 38.05.036. (a) Technical change, referencing AS 38.16.

* Section 5.

Sec. 38.05.036. (b) Technical change, referencing AS 38.06.060 and AS 38.16.090.

* Section 6.

Sec. 38.05.069. (f) Technical change, referencing AS 38.16.

* Section 7.

Sec. 38.05.135. (a) Retains all exploration incentives, with the exception that royalties on oil and gas cannot be reduced below 12.5 percent.

* Section 8.

Sec. 38.05.140. (c) Technical change, deleting language relating to oil and gas lease acreage. This language is transferred to the new subsection AS 38.05.180(aa).

* Section 9.

Sec. 38.05.180. (l) Technical changes regarding the state's ability to store or trade its royalty share. Also adds a provision requiring the commissioner to make written findings prior to storing or trading the state's royalty share.

* Section 10.

Sec. 38.05.180. (q) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 11.

Sec. 38.05.180. (r) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 12.

Sec. 38.05.180. (t) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 13.

Sec. 38.05.180. Technical change, adding the new subsection (aa).

8.

* Section 14.

Sec. 38.05.182. (a) References to oil and gas are deleted from this subsection relating to the taking of royalty.

* Section 15.

Sec. 38.05.182. The new subsection (c) is added, stating this this section does not apply to royalty oil or gas.

* Section 16.

Sec. 38.05.183. (a) The commissioner is not required to provide written notice to the royalty board regarding the non-competitive sale of non-oil or -gas royalty.

* Section 17.

Sec. 38.05.183. (b) The commissioner is not required to provide written notice to the royalty board regarding the rejection of a competitive bid for non-oil or -gas royalty. Language is changed to clarify that a single bid may be rejected without necessitating the rejection of all bids involved in the sale.

* Section 18.

Sec. 38.05.183. (c) The commission is not required to provide written notice to the royalty board regarding the determination upon which the decision was based to sell non-oil or -gas royalty non-competitively.

* Section 19.

Sec. 38.05.183. A new subsection (h) is added, stating this this section does not apply to royalty oil or gas. Disposition of royalty oil and gas, including requirements that the commissioner provide written notice to the royalty board, is addressed in AS 38.16.030 and AS 38.16.040.

* Section 20.

Sec. 38.06.010. The purpose of AS 38.06 is expanded to include local or regional desirability as a major consideration for the disposition of royalty oil or gas. Also included is a technical change referencing AS 38.16.

* Section 21.

Sec. 38.06.020. The Alaska Royalty Oil and Gas Development Advisory Board is transferred to the Department of Natural Resources from the Department of Commerce and Economic Development.

* Section 22.

Sec. 38.06.040. Technical changes, referencing AS 38.16.

* Section 23.

Sec. 38.06.050. Technical changes, referencing AS 38.16.

* Section 24.

Sec. 38.06.070. Subsection (a) is deleted, and the substance of this subsection is transferred to AS 38.16.040. The board may recommend that refiners proposing to distribute and sell refined products and by-products in-state provide significant price and supply benefits to the citizens of the state.

* Section 25.

Sec. 38.06.080. Definitions.

* Section 26.

Sec. 43.05.010. (16) Technical change referencing AS 38.16.

* Section 27.

Sec. 44.62.175. (a) Technical change referencing AS 38.16.030. Also requires that notice of findings required to be made public by the commissioner be published in the Alaska Administrative Journal.

* Section 28.

Sec. 38.05.183. Subsections (d), (e), (f) and (g) are repealed in order that this section exclusively address the sale of non-oil and -gas royalty. The sale of oil and gas royalty is addressed in AS 38.16.030 and AS 38.16.040.

Sec. 38.06.055. This section is repealed, and provisions regarding legislative approval of royalty oil and gas contracts are transferred to AS 38.16.070.

* Section 29.

Sec. 01.10.070. (c) Provides for an immediate effective date.

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

November 12, 1985

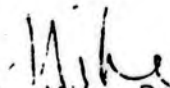
Mr. David Diendorff, Revisor of Statutes
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Mr. ~~Diendorff~~, DAVID

Enclosed is a copy of draft legislation that is presently being placed into bill form by legislative counsel Terry Bannister. I believe that the clarity of AS 38.05 would be enhanced by rearranging certain sections and subsections within the chapter, though I would prefer these changes to be made by revision rather than by legislation. I therefore ask that you take the following proposals into consideration:

1. Transfer AS 38.05.140(a) and (b) to the new subsections AS 38.05.150(f) and (g), respectively.
2. Transfer AS 38.05.140(c) to the new subsections AS 38.05.155(c), 38.05.165(d), and 38.05.180(aa), as appropriate.
3. Transfer AS 38.05.140(f) to the new subsection AS 38.05.184(h).
4. Renumber AS 38.05.181 to AS 38.05.177 in order to segregate oil and gas from other mineral resources.

Sincerely,


Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

December 10, 1985

SUBJECT: Renumbering in AS 38.05
(W.O. 14-1399)

TO: Rep. Mike Davis
Chairman, House Special Committee on
Oil and Gas

FROM: David R. Dierdorff *[Signature]*
Revisor of Statutes

I have reviewed your request for reorganization and renumbering of certain provisions in AS 38.05.140 and 38.05.181. Your request makes a lot of sense and if your bill (W.O. 14-1399) is passed by the 14th legislature, I will do the reorganization in connection with the transmittal of the bill to the Michie Company.

If your bill does not become law, I will make a note to our AS 38 file that the reorganization should be accomplished when the title pamphlet is next replaced.

If I can be of further assistance, please advise.

DRD:mk
M1:125

1 IN THE HOUSE

12.
BY THE HOUSE SPECIAL
COMMITTEE ON OIL AND GAS

2 HOUSE BILL NO. 495

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state oil and gas interests; and
7 providing for an effective date."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 16. TAKING AND DISPOSITION OF ROYALTY OIL AND GAS.

11 Sec. 38.16.010. LEGISLATIVE FINDINGS RELATING TO ROYALTY OIL AND
12 GAS. (a) The legislature finds that it is in the best interest of
13 the state and the citizens of the state that the state take and dis-
14 pose of royalty oil and gas in a manner that maximizes state revenue.

15 (b) To the extent consistent with the primary goal of maximizing
16 state revenue, the secondary goals for the state in the taking and
17 disposition of royalty oil and gas are to

18 (1) supply existing in-state refineries and oil- or gas-
19 based utilities with oil or gas at the current market value for the
20 oil or gas;

21 (2) promote new in-state refineries and oil- or gas-based
22 utilities that are economically feasible at the current market value
23 for oil or gas without the new refineries or utilities relying on
24 royalty oil or gas contracts;

25 (3) expand the foreign market for the resources of the
26 state.

27 Sec. 38.16.020. TAKING OF ROYALTY IN KIND. The state shall take
28 in kind an oil or gas royalty provided for in AS 38.05.180, unless the
29 commissioner determines that taking the royalty in value would be in

1 the best interest of the state.

2 Sec.--38.16.030. METHOD OF DISPOSITION OF ROYALTY. (a) The
3 commissioner shall make a disposition of royalty oil or gas obtained
4 by the state under AS 38.05.180 by competitive bid to the highest
5 responsible bidder, unless the commissioner determines, after prior
6 written notice to the board, that competitive bidding is not in the
7 best interest of the state or that no competition exists.

8 (b) When competitive bids are required, the commissioner may,
9 after prior written notice to the board, reject a bid if the
10 commissioner determines that acceptance of a bid would not be in the
11 best interest of the state due to the amount of the bid, the lack of
12 responsibility of the bidder, or other reasons consistent with the
13 criteria set out in AS 38.16.040.

14 (c) If the commissioner determines that a disposition of oil or
15 gas is to be made other than by competitive bid, the commissioner
16 shall make public in writing the specific findings and conclusions
17 that are the basis for the determination.

18 Sec. 38.16.040. CRITERIA FOR DISPOSITION OF NONCOMPETITIVELY BID
19 ROYALTY OIL OR GAS TAKEN IN KIND. When the state does not use compet-
20 itive bidding to dispose of royalty oil or gas taken in kind by the
21 state under AS 38.16.020, the commissioner shall make the disposition
22 of royalty oil or gas to the prospective purchaser whose proposal
23 offers the maximum revenue or other benefits to citizens of the state.
24 When making an award under this subsection, the commissioner shall
25 consider the following criteria:

26 (1) the cash value offered, which, notwithstanding AS 38.-
27 05.810(a), may not be less than the current market value of the royal-
28 ty oil or gas;

29 (2) the projected effects of the disposition of royalty oil

1 or gas on the revenue needs and projected fiscal condition of the
2 state;

3 (3) the projected benefits to local and regional economies
4 of the state of refining or processing the oil or gas in the state;

5 (4) the projected additional costs and responsibilities
6 that the state and affected political subdivisions of the state may
7 suffer due to the development related to the disposition of royalty
8 oil or gas;

9 (5) the projected social effects of the disposition of
10 royalty oil or gas;

11 (6) the projected environmental effects of the disposition
12 of royalty oil or gas;

13 (7) the ability, intent and degree of certainty of the
14 prospective purchaser to provide refined products or by-products for
15 distribution and sale in the state with significant price and supply
16 benefits for the citizens of the state;

17 (8) the local or regional desirability of the disposition
18 of royalty oil or gas.

19 Sec. 38.16.050. CONTRACT PROVISIONS. (a) The commissioner may
20 not enter into a contract for a disposition of royalty oil or gas
21 obtained by the state under AS 38.05.180 unless the contract provides
22 that an amendment of the contract that appreciably reduces the consid-
23 eration received by the state requires the prior approval of the
24 legislature.

25 (b) A disposition of royalty oil obtained by the state under
26 AS 38.05.180 must

27 (1) prohibit an assignment of unrefined royalty oil pur-
28 chased from the state unless the assignor or assignee demonstrates to
29 the satisfaction of the commissioner that

1 (A) the assignment will result in a significant in-
2 crease of direct monetary benefit to energy consumers in the
3 state; and

4 (B) the total direct monetary benefit to energy con-
5 sumers in the state from the assignment will outweigh the mone-
6 tary benefit to the assignor and assignee; and

7 (2) reserve to the state the right to purchase residual oil
8 from in-state refiners when the residual oil is a by-product of a
9 disposition of royalty oil by the state.

10 Sec. 38.16.060. DISPOSITION OF ROYALTY OIL OR GAS FOR EXPORT. A
11 disposition of royalty oil or gas taken in kind by the state under
12 AS 38.16.020 may not be made for export from the state unless the
13 commissioner determines that the disposition of royalty oil or gas is
14 in the best interest of the state and makes public in writing the
15 specific findings and reasons that are the basis for the determina-
16 tion.

17 Sec. 38.16.070. LEGISLATIVE APPROVAL. (a) In addition to the
18 recommendation by the board required under AS 38.06.050, the commis-
19 sioner may not enter into a disposition of royalty oil or gas obtained
20 by the state under AS 38.05.180 without the prior approval of the
21 legislature by enactment of legislation.

22 (b) The commissioner shall notify the board in writing of a
23 determination by the commissioner that a disposition of royalty oil or
24 gas requires legislative approval.

25 (c) The provisions of (a) of this section do not apply to

26 (1) the disposition of royalty oil or gas for one year or
27 less if the disposition is entered into to relieve storage or market
28 conditions;

29 (2) the disposition of royalty oil or gas for two years or

16.
1 less if the disposition is bid competitively; or

2 (3) contracts for the disposition of royalty oil or gas
3 that specify the sale and delivery of not more than

4 (A) 400 barrels of crude oil per day;

5 (B) 460 barrels of natural gas liquids per day; or

6 (C) 2,400 Mcf of natural gas per day.

7 (d) A disposition of royalty oil or gas under (c)(1) or (c)(2)
8 of this section may not be continued after the end of one year or
9 renewed with the same party without the prior approval of the legisla-
10 ture under (a) of this section. This subsection does not apply to a
11 sequential competitively bid disposition of royalty oil or gas made
12 with the same party under (c)(1) of this section.

13 Sec. 38.16.080. REPORT BY COMMISSIONER. The commissioner shall
14 submit to the legislature between the first and the 15th day of each
15 regular legislative session a royalty oil and gas report that includes

16 (1) the royalty status of all producing royalty oil and gas
17 leases;

18 (2) proposed dispositions of royalty oil and gas;

19 (3) for each noncompetitively bid disposition of royalty
20 oil or gas the findings of the commissioner on the criteria in AS 38.-
21 16.040;

22 (4) an evaluation of the economic consumer benefits
23 resulting from in-state refiners and processors currently receiving
24 royalty oil or gas; and

25 (5) the volume, percentage, and reported value of royalty
26 oil and gas

27 (A) being taken in kind and in value;

28 (B) purchased by in-state refiners and processors;

29 (C) actually refined or processed in the state;

(D) sold on a competitive and noncompetitive bid basis; and

(E) purchased by foreign nations.

Sec. 38.16.090. CONFIDENTIALITY. Notwithstanding AS 09.25.-110 - 09.25.120, the department may provide by regulation for the confidentiality of those documents and records in the possession or control of the department that contain confidential business or marketing information when the protection of the information is essential to the person who has submitted the information to the department, or when the department determines that protection of the information is essential to the best interest of the state. Confidentiality under this section does not preclude proper review by the legislature.

Sec. 38.16.900. DEFINITIONS. In this chapter

(1) "board" means the Alaska Royalty Oil and Gas Development Advisory Board;

(2) "commissioner" means the commissioner of natural resources;

(3) "department" means the Department of Natural Resources;

(4) "dispose of" or "disposition of" royalty oil or gas means the sale, exchange, or other alienation by the state of royalty oil or gas or of an interest in royalty oil or gas, and includes the waiver of a present or future right to take future production of oil or gas as a royalty; and

(5) "interest" in royalty oil or gas includes the right to take future production of oil or gas as a royalty.

* Sec. 2. AS 38.05.020(b) is amended to read:

(b) The commissioner may

(1) establish reasonable procedures and adopt reasonable regulations necessary to carry out this chapter and AS 38.16 and,

18.

whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under the Administrative Procedure Act (AS 44.62); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under the Administrative Procedure Act (AS 44.62);

(2) enter into agreements considered necessary to carry out the purposes of this chapter and AS 38.16, including agreements with federal and state agencies;

(3) review an [ANY] order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter and AS 38.16;

(5) notwithstanding the provisions of another [ANY OTHER] section of this chapter, grant an extension of the time within which payments due on a [ANY] lease or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475;

(7) waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; and

(B) transportation, marketing, and development costs

render the required development uneconomic.

* Sec. 3. AS 38.05.035 is amended by adding a new subsection to read:

(g) The provisions of (e) of this section do not apply to royalty on oil or gas obtained by the state under AS 38.05.180.

* Sec. 4. AS 38.05.036(a) is amended to read:

(a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter and AS 38.16.

* Sec. 5. AS 38.05.036(b) is amended to read:

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not the [THAT] information is confidential, and shall hold the [THAT] information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter, AS 38.06.060, AS 38.16.090, or AS 43.05.230.

* Sec. 6. AS 38.05.069(f) is amended to read:

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 - 38.05.183 or AS 38.16.

* Sec. 7. AS 38.05.135(a) is amended to read:

(a) Except as otherwise provided, valuable mineral deposits in land belonging to the state are [SHALL BE] open to exploration, development, and the extraction of minerals. All land, together with tide, submerged, or shoreland, to which the state holds title [TO] or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.135 - 38.05.-181, land may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives [, INCLUDING A REDUCTION OF ROYALTY TO A MINIMUM OF FIVE PERCENT

1 IN THE CASE OF OIL AND GAS,) and other terms in and granting a permit
2 or lease for exploration and development whenever it appears to be in
3 the best interests of the state to do so.

4 * Sec. 8. AS 38.05.140(c) is amended to read:

5 (c) A person may not take or hold at one time phosphate leases
6 on state land exceeding in the aggregate 10,240 acres. A person may
7 not take or hold sodium leases or permits during the life of sodium
8 leases on state land exceeding in the aggregate acreage 5,120 acres,
9 except that the commissioner may, where it is necessary in order to
10 secure the economic mining of sodium compounds, permit a person to
11 take or hold sodium leases or permits for up to 15,360 acres. [A
12 PERSON MAY NOT TAKE OR HOLD AT ANY ONE TIME OIL OR GAS LEASES EXCEED-
13 ING IN THE AGGREGATE 500,000 ACRES GRANTED ON TIDE AND SUBMERGED LAND
14 AND 500,000 ACRES ON ALL LAND OTHER THAN TIDE AND SUBMERGED LAND,
15 INCLUDING LEASES HELD BOTH AS LESSEE AND UNDER OPTION OR OPERATING
16 AGREEMENT FROM OTHERS. WHERE MORE THAN A SINGLE PERSON HOLDS AN
17 INTEREST IN AN OIL OR GAS LEASE, EACH PERSON SHALL BE CHARGED ONLY
18 WITH THAT PERCENTAGE OF THE TOTAL ACREAGE WHICH CORRESPONDS TO ITS
19 PERCENTAGE SHARE OF THE TOTAL BENEFICIAL INTEREST IN THE LEASE.]

20 * Sec. 9. AS 38.05.180(1) is amended to read:

21 (1) Subject to the provisions of AS 31.05, the commissioner has
22 discretion to enter into an agreement whereby, with the consent of the
23 lessee, all or part of the state's royalty share of oil and gas pro-
24 duction may be stored or retained in storage by the lessee, or the
25 commissioner may enter into an agreement with one or more of the
26 affected field lease holders to trade all or part of the current
27 royalty production from a field for a like amount, kind, and quality
28 of future production, if the commissioner makes a written finding [ON
29 THE CONDITION] that the state receives back its stored or traded

royalty share before 80 percent of the estimated life of the field is depleted, considering the engineering constraints and other relevant factors [DURING THE FIRST HALF OF THE ESTIMATED FIELD LIFE OR NO LATER THAN 15 YEARS AFTER START OF PRODUCTION, WHICHEVER IS SOONER].

* Sec. 10. AS 38.05.180(q) is amended to read:

(q) A plan authorized by (p) of this section that [, WHICH] includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under (aa) of this section [AS 38.05.140]. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

* Sec. 11. AS 38.05.180(r) is amended to read:

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of (aa) of this section [AS 38.05.140].

* Sec. 12. AS 38.05.180(t) is amended to read:

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under (aa) of this section [AS 38.05.-140].

* Sec. 13. AS 38.05.180 is amended by adding a new subsection to read:

(aa) A person may not take or hold at one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land and 500,000 acres on all land other than tide and submerged land, including leases held both as lessee and under option or operating agreement from others. Where more than one person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the acreage that corresponds to the person's share of the total beneficial interest in the lease.

* Sec. 14. AS 38.05.182(a) is amended to read:

(a) A [ANY] royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. [HOWEVER, ROYALTIES ON OIL AND GAS SHALL BE TAKEN IN KIND UNLESS THE COMMISSIONER DETERMINES THAT THE TAKING IN MONEY WOULD BE IN THE BEST INTEREST OF THE STATE.]

* Sec. 15. AS 38.05.182 is amended by adding a new subsection to read:

(c) This section does not apply to a royalty on oil or gas obtained by the state under AS 38.05.180.

* Sec. 16. AS 38.05.183(a) is amended to read:

(a) The sale, exchange, or other disposal of a mineral obtained by the state as a royalty under this chapter [AS 38.05.182], or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner [, AFTER PRIOR WRITTEN NOTICE TO THE ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD UNDER AS 38.06.050,] determines that the best interest of the state does not require it or that no competition exists.

1 * Sec. 17. AS 38.05.183(b) is amended to read:

2 (b) — When competitive bids are required, the commissioner [,
3 AFTER PRIOR WRITTEN NOTICE TO THE ALASKA ROYALTY OIL AND GAS DEVELOP-
4 MENT ADVISORY BOARD,] may reject a bid [ALL BIDS] on a determination
5 that because of the amount of the bid or [BIDS,] the lack of respon-
6 sibility on the part of the bidder, [BIDDERS, OR FOR REASONS CONSIS-
7 TENT WITH THE CRITERIA SET OUT IN AS 38.06.070,] the acceptance of the
8 bid [BIDS] would not be in the best interest of the state.

9 * Sec. 18. AS 38.05.183(c) is amended to read:

10 (c) If the commissioner determines that a sale, exchange, or
11 other disposal of a mineral obtained by the state as a royalty under
12 this chapter [AS 38.05.182] or of a right to receive future mineral
13 production under a state lease under this chapter shall be made other
14 [OTHERWISE] than by competitive bid, [AND THE ALASKA ROYALTY OIL AND
15 GAS DEVELOPMENT ADVISORY BOARD HAS BEEN NOTIFIED IN WRITING OF THAT
16 DETERMINATION,] the commissioner shall make public in writing the
17 specific findings and conclusions on [UPON] which the [THAT] deter-
18 mination is based.

19 * Sec. 19. AS 38.05.183 is amended by adding a new subsection to read:

20 (h) This section does not apply to a royalty on oil or gas
21 obtained by the state under AS 38.05.180.

22 * Sec. 20. AS 38.06.010 is amended to read:

23 Sec. 38.06.010. PURPOSE. It is the purpose of this chapter to
24 facilitate the wise development of Alaska's oil and gas royalty inter-
25 ests by providing means and procedures for [SALES, EXCHANGES OR OTHER]
26 disposition of those interests in ways calculated to promote private
27 economic growth consistent with applicable environmental standards,
28 local or regional desirability, and public fiscal stability, and in
29 accordance with AS 38.16 [AS 38.05.183].

1 * Sec. 21. AS 38.06.020 is amended to read:

2 Sec. 38.06.020. ESTABLISHMENT. There is established in the
3 Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT]
4 the Alaska Royalty Oil and Gas Development Advisory Board.

5 * Sec. 22. AS 38.06.040 is repealed and reenacted to read:

6 Sec. 38.06.040. POWERS AND DUTIES OF THE BOARD. (a) The board
7 shall

8 (1) in accordance with the criteria set out in AS 38.06.070
9 and AS 38.16.040, develop a plan for the wise development of the
10 state's royalty oil and gas interests; the plan of development must be
11 consistent with

12 (A) growth of the private sector of the economy;

13 (B) environmental standards required by law; and

14 (C) public fiscal stability;

15 (2) hold public hearings to determine whether a proposed
16 disposition of royalty oil or gas complies with the criteria in
17 AS 38.16.040;

18 (3) examine a proposed disposition of royalty oil or gas
19 and recommend that the legislature approve or disapprove the proposed
20 disposition of royalty oil or gas; and

21 (4) recommend to the commissioner conditions for the dispo-
22 sition, delivery, transportation, refining, or processing of the
23 royalty oil or gas.

24 (b) The board may

25 (1) direct the commissioner to solicit development plans or
26 bids consistent with the criteria set out in AS 38.06.070 and
27 AS 38.16.040 for the disposition of royalty oil or gas obtained by the
28 state under AS 38.05.180;

29 (2) employ an executive director, and contract for the

1 services of professionals, persons with knowledge of economics and
2 other disciplines, and persons with technical skills who may be
3 necessary to assist the board in the exercise of its powers and
4 duties; and

5 (3) adopt regulations under the Administrative Procedure
6 Act (AS 44.62) that are necessary to exercise its powers and duties.

7 * Sec. 23. AS 38.06.050 is repealed and reenacted to read:

8 Sec. 38.06.050. BOARD REVIEW AND RECOMMENDATION REQUIRED. If
9 legislative approval is required by AS 38.16.070, the commissioner may
10 not dispose of royalty oil or gas without prior review of the proposed
11 disposition of royalty oil or gas by the board. The written
12 recommendation of the board on the proposed disposition of royalty oil
13 or gas shall be submitted to the legislature at the time the
14 legislation approving the proposed disposition of royalty oil or gas
15 is introduced in the legislature.

16 * Sec. 24. AS 38.06.070 is repealed and reenacted to read:

17 Sec. 38.06.070. CRITERIA. In the exercise of the powers of the
18 board under AS 38.06.040(a) and 38.06.050, the board

19 (1) may, when it is economically feasible and in the public
20 interest, recommend to the commissioner as a condition of the disposi-
21 tion of royalty oil or gas that

22 (A) the oil or gas be refined or processed in the
23 state;

24 (B) the purchaser be a refiner who provides refined
25 products or by-products for distribution and sale in the state
26 with significant price and supply benefits to the citizens of the
27 state; or

28 (C) the purchaser construct a processing or refining
29 facility in the state;

(2) shall report fully to the department on each criterion in AS 38.16.040 and in (1) of this section for each disposition of royalty oil or gas that requires legislative approval under AS 38.16.-070; the report shall be submitted to the legislature for review when the legislation approving the proposed disposition of royalty oil or gas is introduced in the legislature.

* Sec. 25. AS 38.06.080 is amended by adding new paragraphs to read:

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "dispose of" or "disposition of" royalty oil or gas means the sale, exchange, or other alienation by the state of royalty oil or gas or of an interest in royalty oil or gas, and includes the waiver of a present or future right to take future production of oil or gas as a royalty;

(6) "interest" in royalty oil or gas includes the right to take future production of oil or gas as a royalty.

* Sec. 26. AS 43.05.010(16) is amended to read:

(16) audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05 and AS 38.16;

* Sec. 27. AS 44.62.175(a) is amended to read:

(a) The lieutenant governor shall publish or contract for the publication of the Alaska Administrative Journal. The journal shall be published weekly. The journal must include

(1) notices of proposed actions given under AS 44.62.-190(a);

(2) notices of state agency meetings required under AS 44.-62.310(e), even if the meeting has been held;

(3) notices of solicitations to bid issued under AS 37.-05.230 and AS 38.16.030;

(4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 19.10.190; AS 19.40.020; AS 35.15.-030; AS 36.98.030; AS 37.05.230, 37.05.315(d); AS 38.05.120; and AS 43.40.010;

(5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal whether or not it has taken effect;

(8) a summary of the text of recently issued formal opinions and memoranda of advice of the attorney general; [AND]

(9) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(10) a notice of the findings required to be made public by the commissioner of natural resources under AS 38.16.030 and 38.16.-060.

* Sec. 28. AS 38.05.183(d), (e), (f), and (g); and AS 38.06.055 are repealed.

* Sec. 29. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites which will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

How does the funding mechanism of the response fund work?

The Oil and Hazardous Substance Release Response Fund is modeled after the Disaster Relief Fund and the Fire Suppression Fund. These three funds are also similar in that they are all directed toward the abatement of emergency situations. The response fund allows the governor to transfer up to \$10 million during a fiscal year from the emergency operating expenses account to the fund, and money remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

The response fund may also receive legislative appropriations based on federal grants, money recovered from responsible parties for containment and cleanup, money recovered from responsible parties for fines, penalties or damages, and other sources.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, although the commissioner of the Dept. of Revenue is custodian of the fund. Accounting records are maintained by ADEC, and the commissioner of ADEC must consult with the Governor and the commissioner of the Dept. of Revenue before adopting regulations governing fund accounting. The commissioner must also submit a fiscal report regarding the response fund to the Governor and the Legislature no later than the 10th day of each regular legislative session.

How does the response fund affect businesses and local communities?

The commissioner may enter into agreements with businesses, municipalities, unincorporated communities and other entities in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures or the cooperative review of oil and hazardous substance release contingency plans.

What provisions are made for the training and safety of workers cleaning up these materials?

Money from the response fund may be used to facilitate the efforts of the Department of Labor to assist employers in developing safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

The Oil Spill Mitigation Account would be repealed immediately upon the effective date of the Oil and Hazardous Substance Release Response Fund.

HB 470
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

Sec. 46.08.050. Delineates accounting procedures of the fund. Accounting records are maintained by ADEC, and by July 1 of each year the department must determine projected costs of the fund for the next fiscal year. The commissioner must adopt rules governing fund accounting, but shall consult with the governor and the commissioner of the Dept. of Revenue before adopting regulations in this regard.

Sec. 46.08.060. No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature and the governor. The report must include the amount of money expended from the fund, and the amount and source of money recovered or received by the fund, during the previous fiscal year.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

Sec. 46.08.080. The commissioner shall adopt regulations in order to carry out the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release. Persons may, however, enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into the waters of the state.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm than the release itself.

(b) The commissioner must adopt regulations prescribing procedures and methods for containing and cleaning up releases and for disposing of wastes from a release.

(c) The Commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 3.

Sec. 26.23.230. (1) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 4.

Sec. 37.05.159. (g) The governor may transfer a maximum of \$10 million during a fiscal year from the reserve for emergency operating expenses account to the fund.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 7.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 8.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 9.

Sec. 46.03.780. (a) Liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 10.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 11.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 12.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both.

* Section 13.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section may be appropriated by the legislature to the response fund.

* Section 14.

Sec. 46.03.758. (k) The Oil Spill Mitigation Account is repealed.

* Section 15.

Sec. 01.10.070. (c) Immediate effective date.

Introduced: 1/13/86
Referred: Resources and
Finance

36.
BY DAVIS, KOPONEN, HURLEY,
SZYMANSKI, COLL, GRUENBERG,
JENKINS, NAVARRE, SUND,
MARROU, GRUSSENDORF,
PIGVALBERI AND M.M. MILLER

1 IN THE HOUSE

2 HOUSE BILL NO. 470

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or
2 from a private donor;

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

8 (4) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation and Liability Act of
11 1980); and

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

7 (1) the amount of money expended under AS 46.08.040 during
8 the preceding fiscal year; and

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 (3) "department" means the Department of Environmental
2 Conservation;

3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;

16 (B) a substance defined as a hazardous substance under
17 state or federal law or by regulations adopted under state or
18 federal law;

19 (8) "oil" means petroleum products of any kind and in any
20 form, whether crude, refined, or a petroleum by-product, including
21 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
22 refuse, oil mixed with other wastes, liquified natural gas, propane,
23 butane, and other liquid hydrocarbons regardless of specific gravity;

24 (9) "release" means an intentional or unintentional release
25 into the environment of the state.

26 * Sec. 2. AS 46 is amended by adding a new chapter to read:

27 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

28 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

29 Except as provided in (b) of this section, a person in charge of a

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1 vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department promptly after learning of the release.

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4 (b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into the water of the state.

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7 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
8 SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

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12 (1) after consulting the Environmental Protection Agency, that containment or cleanup is technically infeasible; or

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14 (2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated.

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16 (b) The commissioner shall adopt regulations prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

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20 (c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

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25 (d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

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29 (1) after consulting the Environmental Protection Agency,

1 that containment or cleanup is technically infeasible; or
2 (2) that containment or cleanup would cause greater en-
3 vironmental damage than the release would cause if unabated.
4 (e) The commissioner shall enter into agreement with the En-
5 vironmental Protection Agency, and may enter into agreements with
6 other persons, in order to
7 (1) facilitate a coordinated and effective hazardous sub-
8 stance response in the state; or
9 (2) provide for cooperative hazardous substance release
10 notification procedures.
11 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
12 request the governor to determine that an actual or imminent release
13 of a hazardous substance constitutes a disaster emergency under
14 AS 26.23. If the governor declares a disaster emergency under
15 AS 26.23, the commissioner may assist the adjutant general in the
16 relief of the emergency.
17 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
18 The commissioner may contract with a person or a municipality of the
19 state for personnel, equipment, or services that may be useful to
20 carry out the requirements of this chapter. If the commissioner
21 determines that it is infeasible to contract with a person or a munic-
22 ipality in the state, the commissioner may establish and maintain
23 containment and cleanup personnel, equipment, and supplies necessary
24 to carry out the requirements of this chapter.
25 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
26 designated by the commissioner as enforcement officers in the imple-
27 mentation of this chapter are peace officers of the state.
28 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
29 into supplementary agreements, reciprocal arrangements, and compacts

1 with another state or country for the implementation of this chapter
2 subject to the approval of the Congress of the United States, if
3 required, under the Constitution of the United States.

4 Sec. 46.09.070. MUNICIPAL POWERS. (a) If a provision of this
5 chapter or of a regulation adopted by the commissioner under this
6 chapter conflicts with the charter, ordinance, or regulation of a
7 municipality of the state, the provision of this chapter or of the
8 regulation adopted by the commissioner under this chapter prevails.

9 (b) Except as provided in (a) of this section, a municipality of
10 the state may exercise its police power within the area of the munic-
11 ipality.

12 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
13 regulations necessary to implement the provisions of this chapter.

14 Sec. 46.09.900. DEFINITIONS. In this chapter

15 (1) "commissioner" means the commissioner of environmental
16 conservation;

17 (2) "containment and cleanup" includes the direct and
18 indirect efforts associated with the prevention, abatement, contain-
19 ment, or removal of a hazardous substance, the restoration of the
20 environment to its former state, and incidental administrative costs;

21 (3) "department" means the Department of Environmental
22 Conservation;

23 (4) "hazardous substance" means

24 (A) an element or compound that, when it enters into
25 or on the surface or subsurface land or water of the state,
26 presents an imminent and substantial danger to the public health
27 or welfare, or to fish, animals, vegetation, or any part of the
28 natural habitat in which fish, animals, or wildlife may be found;

29 or

1 (B) a substance defined as a hazardous substance under
2 state or federal law or by regulations adopted under state or
3 federal law;

4 (6) "release" means an intentional or unintentional release
5 into the environment of the state.

6 * Sec. 3. AS 26.23.230(1) is amended to read:

7 (1) "disaster" means the occurrence or imminent threat of
8 widespread or severe damage, injury, or loss of life or property
9 resulting from any natural or nonmilitary man-made cause including,
10 but not limited to, fire, flood, earthquake, landslide, mudslide,
11 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
12 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
13 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
14 blight, infestation, explosion, riot, equipment failure, or shortage
15 of food, water, fuel, or clothing, or the release of oil or a hazard-
16 ous substance requiring prompt action to avert environmental danger or
17 damage;

18 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

19 (g) Notwithstanding the provisions of (b) of this section and
20 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
21 during a fiscal year from the reserve for emergency operating expenses
22 account to the oil and hazardous substance release response fund
23 (AS 46.08).

24 * Sec. 5. AS 44.19.050 is amended to read:

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring emergency action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 46.03.290(a) is amended to read:

7 (a) When the department finds that an actual or imminent dis-
8 charge of oil, a hazardous substance, or low level radioactive mate-
9 rials to the air, water, land or subsurface land of the state poses an
10 immediate threat to the public health or welfare, or the environment
11 of the state, it may issue an order declaring an emergency and direct-
12 ing a person or persons to take action the department believes neces-
13 sary to meet the emergency, and protect the public health, welfare, or
14 environment.

15 * Sec. 7. AS 46.03.760(a) is amended to read:

16 (a) A person who violates or causes or permits to be violated a
17 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
18 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
19 the department, or a permit, approval, or acceptance, or term or
20 condition of a permit, approval, or acceptance issued under this
21 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
22 state for a sum to be assessed by the court of not less than \$500 nor
23 more than \$100,000 for the initial violation, nor more than \$5,000 for
24 each day after that on which the violation continues, and that shall
25 reflect, when applicable,

26 (1) reasonable compensation in the nature of liquidated
27 damages for any adverse environmental effects caused by the violation,
28 that shall be determined by the court according to the toxicity,
29 degradability and dispersal characteristics of the substance

1 discharged, the sensitivity of the receiving environment, and the
2 degree to which the discharge degrades existing environmental quality;

3 (2) reasonable costs incurred by the state in detection,
4 investigation, and attempted correction of the violation;

5 (3) the economic savings realized by the person in not
6 complying with the requirement for which a violation is charged.

7 * Sec. 8. AS 46.03.765 is amended to read:

8 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
9 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
10 or of a regulation, a lawful order of the department, or permit,
11 approval, or acceptance, or term or condition of a permit, approval,
12 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
13 In actions brought under this section, temporary or preliminary relief
14 may be obtained upon a showing of an imminent threat of continued
15 violation, and probable success on the merits, without the necessity
16 of demonstrating physical irreparable harm. The balance of equities
17 in actions under this section may affect the timing of compliance, but
18 not the necessity of compliance within a reasonable period of time.

19 * Sec. 9. AS 46.03.780(a) is amended to read:

20 (a) A person who violates a provision of this chapter, [OR]
21 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
22 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
23 order, permit, or other determination of the department made under the
24 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
25 and thereby causes the death of fish, animals, or vegetation or other-
26 wise injures or degrades the environment of the state is liable to the
27 state for damages.

28 * Sec. 10. AS 46.03.790(a) is amended to read:

29 (a) Except as provided in (d) - (f) of this section, a person

1 who negligently violates a provision of this chapter, [OR] AS 46.04,
2 or AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class B misdemeanor.

6 * Sec. 11. AS 46.03.790(b) is amended to read:

7 (b) Except as provided in (d) - (f) of this section, a person
8 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
9 AS 46.09, or of a regulation, lawful order of the department, or
10 permit, approval, or acceptance, or term or condition of a permit,
11 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
12 AS 46.09 is guilty of a class A misdemeanor.

13 * Sec. 12. AS 46.03.790(d) is amended to read:

14 (d) Notwithstanding (a) and (b) of this section, a person who
15 fails to provide or falsely states information required under AS 46.-
16 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
17 upon conviction, is punishable by a fine of not more than \$25,000, or
18 by imprisonment for not more than one year, or by both. Each unlawful
19 act constitutes a separate offense.

20 * Sec. 13. AS 46.04.010 is amended to read:

21 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
22 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
23 760(e), AS 46.08.070, or from an applicable federal fund, for the
24 expenses it incurs in cleaning up or containing a discharge of oil.
25 If the department obtains reimbursement for a portion of its expenses
26 from a federal fund, the remainder of the expenses incurred may be
27 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
28 the department under this section shall be deposited in the general
29 fund and may be appropriated by the legislature to the oil and

- 1 hazardous substance release response fund (AS 46.08).
- 2 * Sec. 14. AS 46.03.758(k) is repealed.
- 3 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
- 4 10.070(c).

STATE OF ALASKA



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HOUSE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

From: Rep. Mike Davis, Chairman
To: Members of the House Special Committee on Oil and Gas
Re: TAPS Tariff Case
Date: January 22, 1985

The House Special Committee on Oil and Gas is not convinced that the TAPS Settlement Agreement is in the best interest of the state. The committee also believes that the Department of Law should cease pursuing settlement with Sohio and Amerada Hess, and that the department should instead continue to litigate the case with these parties.

The state has offered Sohio and Amerada Hess the opportunity to sign the settlement by February 12. The state will return to litigation with these carriers if they do not become party to the settlement by that date. The state is averse to requesting that FERC impose the settlement on these companies in the belief that an imposed settlement would be subject to legal challenge. FERC may, however, elect to impose the settlement at any time.

Unfortunately, the leverage of a drop-dead date works to the advantage of the carriers rather than to the benefit of the state. Having been given a deadline by which to sign the settlement, it benefits the companies to continue negotiating a settlement during the next few weeks in the hope of extracting concessions from the state, rather than to settle at this time.

The specific reasons given as to why the state should settle the TAPS case, all of which date back to the rejection of an earlier proposed settlement in the Spring of 1982, are as follows: certainty of revenue, presumed uncollectibility of refunds, marginal field development, stable tariffs in the outyears, and the deferring of revenues.

These elements, which comprise the basis for the settlement, deserve reexamination in light of changes which have taken place within the oil industry and the state's budget outlook since negotiations on the present settlement began four years ago.

On June 28, 1985 FERC issued the Williams II decision in regard to the Williams Brothers Co. pipeline ratemaking case. The most significant aspect of Williams II from the state's perspective was FERC's rejection of Modern Valuation, the industry's favored methodology. By adopting a modified Trended Original Cost (TOC) methodology, regardless of how this methodology may differ from a TAPS application, the committee believes that the state has gained a tremendous amount of certainty regarding its litigation position.

The uncanny timing of several carriers signing the settlement within days of the Williams II decision also indicates that these carriers felt they had little chance of winning through litigation, and that settlement was their preferred alternative.

In response to legislative concerns regarding the settlement, the Department of Law this summer requested the Department of Revenue to analyze the TAPS case in terms of uncertainty caused by continued litigation. The memorandum requesting this analysis also described in detail how such an analysis might be conducted.

The result of this request was a report issued by the Department of Revenue on November 14. Rather than review the settlement in regard to the state's Depreciated Original Cost (DOC) litigation position, however, the report focuses on comparisons of the potential revenue outcome of the settlement to Williams II. This comparison between two TOC methodologies, one of which has no direct application to TAPS, is of limited benefit in analyzing the settlement.

The Department of Revenue report is also surprising in that reference to refunds is omitted from an enumeration of those factors of greatest concern to the case. A statistical analysis of the collectibility of refunds also assumes a low likelihood that refunds would be collected by the state.

The presumed uncollectibility of refunds has often been cited by the state as one of the primary reasons why the state should abandon litigation in favor of settling the TAPS case. The reasoning in this regard has been that FERC would not subject the carriers to paying out large refunds to shippers, although little basis has been provided for this assumption.

It is also worth noting that several months ago Exxon was ordered by the courts to refund \$1.2 billion to utilities as a pass-through to consumers for money received through price-fixing. More recently, Texaco was ordered to pay Pennzoil several billion dollars in reparation for takeover attempts of Getty Oil. Because the state is not collecting full refunds, the federal government is also receiving less than full windfall profits on pre-1982 oil.

Promoting marginal field development is another important factor relating to the settlement. North Slope oilfield economics have changed dramatically, however, in the time since settlement negotiations began in 1982. During the time of spiralling oil prices, concern was expressed that the state not exploit too great a share of its oil at a price which was certain to increase in the future.

A recent decline in oil prices has made the development prospects of marginal fields even more marginal, though, while at the same time resulting in lower state revenues from Prudhoe Bay and Kuparuk. To what extent, then, is the state subsidizing marginal field development through the settlement by paying carriers excessive tariffs? An important question which has not been adequately addressed is what the cost comparison is between this indirect subsidy and the revenues which would accrue to the state through development of these fields.

Another important consideration is that marginal fields, as all oilfields, are most expensive in their initial exploration and development phases since money must be provided on an up-front basis for these activities. Tariffs, on the other hand, are a relatively minor operations cost paid out over time on a per-barrel basis. It is deceptive and incorrect to look at overall projected tariff costs associated with a field and then treat these costs, and their timing, with the same degree of importance as exploration and development.

Arctic Slope Regional Corporation (ASRC) attorneys argue that the settlement debt equity provisions and a guaranteed after-tax profit of 35 cents per barrel would allow excessive future tariffs, and therefore impede marginal field development. ASRC economists also note problems with the allocation of fixed operating costs of the pipeline as provided in the settlement, stating that this cost allocation would create a disincentive for carriers to lower their tariffs in the future.

The problem, then, is that the after-tax profit agreed to in the settlement precludes the state from knowing what the carriers' rate-of-return will be, establishes a tariff that does not meet the standard of being just and reasonable, and does not necessarily attain the goal of promoting marginal field development. A factor directly related to this situation is that the development of marginal fields is far more sensitive to the price of oil than to the certainty of future tariffs.

In terms of revenue certainty and the deferring of state revenue, it should be noted that revenue from the TAPS case is not critical to the running of state government at this time, nor is it expected to be critical in the future. Although no one wishes to prolong the TAPS case longer than necessary, the apparent urgency of settling the case in order to gain future revenue certainty is far from being a fiscal necessity.

Having already signed with two-thirds of the TAPS owners, however, the state has already secured two-thirds of the revenue security that it has sought. Surely, the state can continue to litigate with Sohio and Amerada Hess in the hope of receiving at least some of the pre-1982 excess tariffs that have been paid by the state.

By refraining from continuing litigation, the state increases the opportunity for FERC to impose the settlement on the remaining parties. By continuing litigation, the state would enhance its opportunity to increase revenues received from Sohio and Amerada Hess, maintain the degree of certainty already received from parties that have signed the settlement, and minimize the chance of entering into an imposed settlement that could lead to greater expense and uncertainty to the state in the future.

In a settlement which consists of different agreements with different signatories and which fails to provide for just and reasonable tariffs, the state is certainly not precluded from continuing to litigate with those parties who, having been given the opportunity to sign or further negotiate the settlement for months, have refused to do so.