

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1631 SCOMM 62: SENATE SPEC. COMM. ON OIL & GAS, 1989-1990

(7) make surveys of industries, resources, and facilities in the state, both public and private, as are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(9) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(13) develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;

(14) do other things necessary or proper for the implementation of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.050. Financing. (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986)

Cross references. — For the status of catastrophic oil discharge as a disaster emergency, see AS 48.04.080.

Effect of amendments. — The 1986 amendment, in subsection (b), inserted "or the oil and hazardous substance release response fund, as appropriate" at the end of the second sentence.

Sec. 26.23.060. Local and interjurisdictional disaster agencies and services. (a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. An incorporated municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as otherwise provided in this chapter, has jurisdiction over and serves the entire borough.

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that city in the work of disaster prevention, preparedness, response, and recovery.

(d) The principal executive officer of each political subdivision in the state shall notify the Alaska division of emergency services of the manner in which the political subdivision is providing or securing disaster planning and intends to provide or secure emergency services, identify the person who heads the agency from which the services are or will be obtained, and furnish additional information relating to the services as the Alaska division of emergency services requires.

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(f) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials. (§ 3 ch 104 SLA 1977)

Sec. 26.23.070. Establishment of interjurisdictional disaster planning and service areas. (a) If the governor finds that two or more adjoining political subdivisions would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, the governor may designate by order an interjurisdictional area adequate to plan for, prevent, or respond to a disaster in that area, and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency

planning and services. A finding by the governor under this subsection must be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system without an interjurisdictional relationship, such as

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the political subdivisions in an area; or
- (5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within the state and includes territory in a foreign jurisdiction, and that it would be desirable to establish an international relationship, mutual aid, or an area organization for disaster, the governor shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact substantially as contained in AS 26.23.130, any resulting agreement may be considered a supplemental agreement under Article VI of that compact.

(c) If a jurisdiction with which the governor proposes to cooperate under (b) of this section has not enacted the Interstate Civil Defense and Disaster Compact, the governor may negotiate a special agreement with that jurisdiction. (§ 3 ch 104 SLA 1977)

Sec. 26.23.080. Community disaster loans. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant local government;

(2) determine the amount needed by any applicant local government to restore or resume its governmental functions, and to certify the amount to the federal government; however, an application amount may not exceed 25 per cent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurred;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the local government is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character. (§ 3 ch 104 SLA 1977)

Sec. 26.23.090. State financial participation in grants to disaster victims. (a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 per cent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants, the total of federal and state shares not to exceed \$5,000, to an individual or family in any single major disaster declared by the President, to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance.

(c) A person who fraudulently or wilfully makes a misstatement of fact in connection with an application for financial assistance under this chapter is, upon conviction, punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. (§ 3 ch 104 SLA 1977)

Sec. 26.23.100. Temporary housing. (a) Whenever the governor has proclaimed a disaster emergency, or the President, at the request of the governor, has declared an emergency or a major disaster to exist in this state, the governor may

(1) purchase, lease, or make other arrangements with any agency of the United States or state for temporary housing units to be occupied by disaster victims and to make those units available to any political subdivision of the state;

(2) assist any political subdivision of this state that is the location of temporary housing for disaster victims to acquire sites necessary for the temporary housing and do all things necessary to prepare the site to receive and use temporary housing units by

(A) advancing or lending funds available to the governor from an appropriation made by the legislature or from any other source;

(B) "passing through" funds made available by any agency, public or private; or

(C) becoming a copartner with a political subdivision for the execution and performance of any temporary housing for disaster-victim projects and, for those purposes, pledging the credit of the state on terms considered appropriate, having due regard for current debt transactions of the state;

(3) under whatever relevant regulations the governor may adopt, temporarily suspend or modify, for not more than 60 days, any public health, safety, zoning, transportation, or other requirement of law or regulation of the state, when by proclamation, the governor declares a suspension or modification essential to provide temporary housing for disaster victims.

(b) A political subdivision of this state may acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip those sites to receive and use the housing units. (§ 3 ch 104 SLA 1977)

Sec. 26.23.110. Debris and wreckage removal in disaster emergency or major disaster. (a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under (a)(1) of this section may not be exercised unless the affected local government, corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal. (§ 3 ch 104 SLA 1977)

Sec. 26.23.120. Intergovernmental arrangements. The Interstate Civil Defense and Disaster Compact is hereby enacted into law and entered into with all jurisdictions legally joining in it in a form substantially as contained in AS 26.23.130. (§ 3 ch 104 SLA 1977)

Sec. 26.23.130. Interstate Civil Defense and Disaster Compact. The terms and provisions of the compact referred to in AS 26.23.120 are as follows:

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

ARTICLE I

PURPOSE

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster resulting from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts, direct attacks by bombs, shellfire, and nuclear, radiological, chemical or bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective states, including the resources that may be available from the United States government or any other source, are essential to the safety, care, and welfare of the people of the respective states in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan, or plans, of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties to this compact. The directors of civil defense of all party states constitute a committee to formulate plans to take all necessary steps for the implementation of this contract.

ARTICLE II

CIVIL DEFENSE PLANS AND PROGRAMS

It is the duty of each party state to formulate civil defense plans and programs for application within that state. There shall be frequent consultation between the representatives of the states and with the United States government, and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out these civil defense plans and programs, the party states shall, so far as possible, provide and follow uniform standards, practices, and regulations, including:

(1) distinctive insignia or articles to designate and distinguish the different civil defense services;

(2) practice air attack drills, mobilization of civil defense forces, and other tests and exercises;

(3) warnings and signals for drills or attacks, and the mechanical devices to be used in connection with them;

(4) shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

(5) all materials or equipment used, or to be used, for civil defense purposes, in order to assure that those materials and that equipment will be easily and freely interchangeable when used in, or by, any other party state;

(6) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, before, during, and after drills or attacks;

(7) the safety of public meetings or gatherings; and

(8) mobile support units.

ARTICLE III

ASSISTANCE TO PARTY STATE

Any party state requested to render mutual aid shall take the action necessary to provide and make available the resources covered by this compact in accordance with its terms; however, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for itself. Each party state shall extend to the civil defense forces of any other party state, while operating within its state boundaries under the terms and conditions of this compact, the same powers (except that of arrest, unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in their home state. Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

ARTICLE IV

INTERSTATE RECOGNITION OF INDIVIDUAL QUALIFICATIONS

If a person holds a license, certificate, or other permit issued by any state or political subdivision of a state evidencing the meeting of qualifications for professional, mechanical or other skills, that person may render aid involving that skill in any party state to meet an emergency or disaster, and that state shall give due recognition to the license, certificate, or other permit as if issued in the state in which aid is rendered.

ARTICLE V

LIABILITY

No party state or its officers or employees rendering aid in another state pursuant to this compact is liable on account of any act or omission in good faith on the part of those forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering that aid.

ARTICLE VI

SUPPLEMENTAL AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other party states, this compact contains elements of a broad base common to all states, and nothing in this compact precludes any state from entering into supplementary agreements with other states. The supplementary agreements may comprehend, but are not limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment and supplies.

ARTICLE VII

INJURY AND DEATH COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of those forces, in case those members sustain injuries or are killed while rendering aid under this compact, in the same manner and on the same terms as if the injury or death were sustained within that state.

ARTICLE VIII

COMPENSATION TO ASSISTING STATE

A party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to, or expense incurred in, the operation of any equipment answering a request for aid, and for the cost incurred in connection with the request; however, an aiding party state may assume in whole or in part the loss, damage, expense, or other costs, or may loan the equipment or donate the services to the receiving party state without charge or cost; in addition, any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may re-

lieve the party state receiving aid from any liability, and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of those forces during the time of rendering the aid or assistance outside the state, and may also pay fair and reasonable compensation for the use of the supplies, materials, equipment, or facilities so used or consumed.

ARTICLE IX

CRISES RELOCATION PLANS

Plans for the orderly relocation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas of those states. These plans shall include the manner of transporting the persons being relocated, the number of people to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of those relocated, the provision of facilities for the notification of relatives or friends, the provision of additional materials and supplies, and all other relevant factors. These plans shall provide that the party state receiving persons relocated shall be reimbursed generally for the out-of-pocket expenses incurred for transportation, food, clothing, medicines, medical care and like items. These expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster, the party state from which the people relocated shall assume the responsibility for their ultimate support or return.

ARTICLE X

AVAILABILITY OF COMPACT

- (a) This compact is available to any state, territory, or possession of the United States, and the District of Columbia.
- (b) The term "state" also includes any neighboring foreign country and a province or state of one.

ARTICLE XI

NON-BORDERING STATES

The governor may enter into this compact with any state that does not border this state if the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

ARTICLE XII

UNITED STATES CIVIL DEFENSE AGENCY PARTICIPATION

The committee established under Article I of this compact may request the Civil Defense Agency of the United States government to act as an informational and coordinating body under this compact, and representatives of that agency may attend meetings of the committee.

ARTICLE XIII

ENTRY INTO FORCE

This compact becomes operative immediately upon its ratification by any state as between it and any other state or states so ratifying, and is subject to approval by Congress, unless prior Congressional approval has been given. Duly authenticated copies of this compact, and of supplementary agreements that may be entered into, shall, at the time of their approval, be deposited with each of the party states, the Civil Defense Agency and other appropriate agencies of the United States government.

ARTICLE XIV

WITHDRAWAL

This compact continues in force and remains binding on each party state until the legislature or the governor of a party state takes action to withdraw from it. Withdrawal is not effective until 30 days after notice of that action has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ARTICLE XV

SEVERABILITY

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is held unconstitutional, or its applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and its applicability to other persons and circumstances are not affected by that holding.

ARTICLE XVI

COVERAGE

- (a) This Article is in effect only as among those states that have enacted it into law or in which the governors have adopted it under constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this Article or in

any supplementary agreement made in implementation of it abridges, impairs, or supersedes any other provision of this compact or any obligation undertaken by a state pursuant to it, except that if its terms so provide, a supplementary agreement in implementation of this Article may modify, expand, or add to any such obligation as among the parties to the supplementary agreement.

(b) In addition to the occurrences, circumstances and subject matter to which preceding Articles of this compact make it applicable, this compact and its authorizations, entitlements, and procedures apply to:

(1) searches for and rescue of persons who are lost, marooned, or otherwise in danger;

(2) action useful in coping with disasters arising from any cause or designed to increase the capability to cope with any such disasters;

(3) incidents, or the imminence of them, that endanger the health or safety of the public and that require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger;

(4) the giving and receiving of aid by political subdivisions of party states;

(5) exercises, drills or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

(c) Except as expressly limited by this compact or a supplementary agreement in force pursuant to it, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party state, by a political subdivision of a party state, or by a joint agency; such an agency or political subdivision is entitled to reimbursement for the aid to the same extent and in the same manner as a state. The personnel of a joint agency, when rendering aid under this compact, have the same rights, authority and immunity as personnel of party states.

(d) Nothing in this Article excludes from the coverage of Articles I — XV of this compact any matter that, in the absence of this Article, could reasonably be construed to be covered by Articles I — XV.

ARTICLE XVII

CONSTRUCTION

Nothing in this compact limits previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states. (§ 3 ch 104 SLA 1977)

Sec. 26.23.140. Local disaster emergencies. (a) A local disaster emergency may be declared only by the principal executive officer of a political subdivision. It may not be continued or renewed for a period in excess of seven days, except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity, and shall be filed promptly with the Alaska division of emergency services and the appropriate municipal clerk.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans, and to authorize the furnishing of aid and assistance under those plans.

(c) No interjurisdictional agency or official of one may declare a local disaster emergency unless expressly authorized by the agreement under which the agency functions. An interjurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions. (§ 3 ch 104 SLA 1977)

Sec. 26.23.150. Disaster prevention. (a) In addition to disaster prevention measures as included in the state, local and interjurisdictional disaster plans, the governor shall consider, on a continuing basis, steps that could be taken to prevent or reduce the harmful consequences of disasters. At the governor's direction, and under any other authority and competence they have, state agencies, including but not limited to those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning and construction standards, shall make studies of disaster-prevention-related matters. The governor, from time to time, shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for the prevention or reduction of the harmful consequences of disasters.

(b) Appropriate departments, in conjunction with the Alaska division of emergency services, shall keep land uses and location of structures and other facilities under continuing study, and identify areas that are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences of it.

(c) If the Alaska division of emergency services believes, on the basis of the studies or other competent evidence and after consultation with the appropriate local planning agencies, that an area is susceptible to a disaster of catastrophic proportions without adequate warning,

that existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. (§ 3 ch 104 SLA 1977)

Sec. 26.23.160. Compensation. (a) Personal services may not be compensated by the state or any political subdivision or agency of it, except in accordance with Alaska law or a local ordinance.

(b) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency, and its use or destruction was ordered by the governor or by a member of the disaster emergency forces of this state who is authorized by the Alaska division of emergency services to issue such an order.

(c) Any person claiming compensation for the use, damage, loss, or destruction of property occasioned by action taken under this chapter shall file a claim for that compensation with the Alaska division of emergency services in the form and manner required by the division.

(d) Unless the amount of compensation resulting from property damaged, lost, or destroyed is agreed upon between the claimant and the Alaska division of emergency services, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property under the condemnation laws of this state. (§ 3 ch 104 SLA 1977)

Sec. 26.23.170. Communications. The Alaska division of emergency services shall ascertain what means exist for rapid and efficient communications in times of disaster emergency. The division shall consider the desirability of supplementing these communications resources, or of integrating them into a comprehensive state or state-federal telecommunications network or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of multi-purpose use of it or its parts for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate. (§ 3 ch 104 SLA 1977)

Sec. 26.23.180. Mutual aid. (a) Political subdivisions not participating in interjurisdictional arrangements under this chapter nevertheless shall be encouraged and assisted by the Alaska division of emergency services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employment.

(b) In concurring with local disaster plans, the governor shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor to require an interjurisdictional agreement or arrangement under AS 26.23.070 that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis, and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring an interjurisdictional arrangement in order to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes. (§ 3 ch 104 SLA 1977)

Sec. 26.23.190. Right of entry. If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of this chapter shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings. (§ 3 ch 104 SLA 1977)

Sec. 26.23.200. Limitations. Nothing in this chapter

(1) interferes with or allows interference with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interferes with or allows interference with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency, in a manner that encroaches as little as possible upon the normal functions of the news media;

(3) affects the jurisdiction or responsibilities of police forces, fire-fighting forces, units of the armed forces of the United States, or of any personnel of them, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) limits, modifies, or abridges the authority of the governor to proclaim martial law, or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.210. Relationship to civil defense statute. The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary manmade disasters. (§ 3 ch 104 SLA 1977)

Sec. 26.23.220. Administration. This chapter shall be administered by the Department of Military and Veterans' Affairs, which is responsible to, and which may receive delegations of authority from, the governor. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 17 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.230. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

(2) "disaster emergency" means the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief Act of 1974);

(4) "major disaster" has the meaning given in 42 U.S.C. 5122;

(5) "political subdivision" means a home rule or general law borough or city including a unified municipality, an unincorporated village, or other unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143);

(7) "unorganized militia" means all able-bodied persons between the ages of 17 and 59 years, inclusive, who reside in the state. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986)

Revisor's notes. — With regard to (6) of this section, provisions related to temporary housing assistance can be found at 42 U.S.C. 5174 and in 44 C.F.R. 205.52 implementing that section.

Effect of amendments. — The 1985 amendment rewrote paragraph (5).

The 1986 amendment, in paragraph (1), deleted "oil spill or other water contami-

nation requiring emergency action to avert danger or damage" preceding "volcanic activity" and added the language be-

ginning ", or the release" at the end of the paragraph.

Chapter 25. National Guard Mutual Assistance Compact.

Section

10. Entry into Compact

20. Terms and provisions of Compact

Section

30. Rights and benefits

Sec. 26.25.010. Entry into Compact. The National Guard Mutual Assistance Compact is enacted into law and entered into on behalf of the State of Alaska with all other states and jurisdictions legally joining in it in a form substantially as contained in AS 26.25.020. (§ 1 ch 77 SLA 1968)

Sec. 26.25.020. Terms and provisions of Compact. The terms and provisions of the Compact referred to in AS 26.25.010 are as follows:

ARTICLE I. PURPOSES.

The purposes of this Compact are to:

(1) provide for mutual aid among the party states in the utilization of the National Guard to cope with emergencies;

(2) permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency;

(3) maximize the effectiveness of the National Guard in those situations that call for its utilization under this Compact; and

(4) provide protection for the rights of National Guard personnel when serving in other states on emergency duty.

ARTICLE II. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This Compact shall enter into force when enacted into law by any two states. Thereafter, this Compact becomes effective as to any other state upon its enactment in that state.

(b) A party state may withdraw from this Compact by enacting a statute repealing it, but the withdrawal does not take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

ARTICLE III. MUTUAL AID.

(a) In this Article:

(1) "emergency" means an occurrence or condition, temporary in nature, in which police and other public safety officials and locally

SCOMM

62:10

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

RES
FIN

4/7/89

DATE TURNED INTO OFFICE _____

Mr. President:

OIL & GAS

Committee considered SB 266

establishing an oil spill emergency containment fund to mitigate the effects of damages attributable to oil discharges and to support an oil spill containment strike force and, as a source of revenue for deposit into that fund, imposing an oil spill fee on crude oil; efd

and recommended:

☐ replace with CS _____ ☐ same title

☐ attached amendment(s) and ☐ new title

☐ _____ letter of intent adopted

☒ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☐ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tim Kelly
Ge. Kesteven
Rick Halford
Dan G. Hulse

True Notice - no rec
Chair signature and recommendation

☐ Committee backup attached

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB 266

PUBLISH DATE: 4-7-89

FISCAL NOTE

REQUEST:

Revision Date: _____

Title: An Act establishing an oil spill

containment

fund to mitigate the effects, etc.

Sponsor: Halford, Jones, Coghill, Eliason,

Requestor: etc

Agency Affected: Environmental Conservation

BRU: Environmental Quality

Administrative Services

Components: Environmental Quality

Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		740.0	740.0	740.0	740.0	740.0
TRAVEL		65.0	65.0	65.0	65.0	65.0
CONTRACTUAL		1160.0	1080.0	1080.0	1080.0	1080.0
SUPPLIES		20.0	20.0	20.0	20.0	20.0
EQUIPMENT		115.0	95.0	95.0	95.0	95.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2100.0	2000.0	2000.0	2000.0	2000.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		2100.0	2,000.0	2,000.0	2,000.0	2,000.0
TOTAL		2100.0	2,000.0	2,000.0	2,000.0	2,000.0

POSITIONS:

FULL-TIME		11	11	11	11	11
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton

Division: Environmental Quality

Phone: 465-2640

Date: April 21, 1989

Approved by Commissioner: [Signature]

Agency: Alaska Department of Environmental Conservation

Date: April 21, 1989

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

THE FOLLOWING IS A VERY PRELIMINARY ANALYSIS BASED ON A BRIEF REVIEW OF THE PROPOSED LEGISLATION. THE ANALYSIS AND INCLUDED ESTIMATES WILL BE REFINED DURING THE COMMITTEE PROCESS.

ADMINISTER OIL SPILL EMERGENCY CONTAINMENT FUND
(\$170.0)

The Department projects the need for an accountant and an accounting technician to set up and administer the fund, and to track and approve payments from the fund (\$120.0).

The Department also foresees a need for \$50.0 in contractual funds to prepare, publish and distribute the annual report on discharges, environmental effects, the operational status of the response corps, and needed changes.

100	\$	80.0
200	\$	5.0
300	\$	60.0
400	\$	5.0
500	\$	20.0
Total	\$	170.0

ESTABLISH OIL SPILL CONTAINMENT STRIKE FORCE
(\$1,930.0)

The Strike Force would consist of a full-time staff of nine agency personnel: a director, six response specialists, one clerk-typist and one administrative assistant. First-year costs to establish and staff the office are estimated at \$700.0. Subsequent year costs are estimated at \$600.0. Other costs include training contracts (\$200.0), contracts with local governments (\$500.0), wages and per diem for volunteer training (\$300.0), and contracts with private response specialists (\$100.0).

100	\$	660.0
200	\$	60.0
300	\$	1100.0
400	\$	15.0
500	\$	95.0
Total		\$1.930.0*

*includes \$100.0 in first-year costs

ALASKA STATE LEGISLATURE

Anchorage Office:
3111 C St., Suite 530
Anchorage, AK 99503
907-561-7616



While in Juneau:
P.O. Box V
Juneau, AK 99811
907-465-4958

Senator Rick Halford

MEMORANDUM

To: Senator Drue Pearce, Chairman
Senate Oil and Gas Committee

From: Senator Rick Halford *Rick*

Date: April 12, 1989

I understand that you are considering using one bill as a vehicle to move forward regarding the oil spill cleanup.

When I was preparing Senate Bill 266 for introduction, I spent several days in discussion with the drafter to ensure that the bill would be a solution and not simply a reaction to the catastrophic oil spill that occurred in the Prince William Sound. Senate Bill 266 contains all of the elements I believe are necessary to provide the solution we are all looking for. It includes a funding source, a means of collection, administration and a method for responding to future oil spills. I do not believe that any of the other bills contain all of these elements, though some develop certain aspects more fully. I certainly have no objection to amending SB 266 to include some of these more detailed provisions.

Initially, it is appropriate to consider increasing the fee from 2 cents to 4 cents to more rapidly fill the fund; and to ensure that fund expenditures are reimbursed to the state for redeposit by the Legislature. I believe the issues of catastrophic crude oil spills and other hazardous waste matters are different and probably should be addressed in separate ways.

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



WHILE IN JUNEAU
P O BOX V
JUNEAU, ALASKA 99811
(907) 465 4993

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99503
(907) 561 2038

SENATE SPECIAL COMMITTEE ON OIL AND GAS

To: Members of the Senate Special
Committee on Oil and Gas

From: Committee staff

Re: SB 266, sectional analysis

Date: April 11, 1989

Section 1: Fee on Crude Oil Delivered

AS 43.59.010, Fee Levied.

A new chapter is added to Title 43, Revenue and Taxation. Chapter 59, would impose a 2 cent per barrel fee on crude oil that is transported in the marine waters of the state.

AS 43.59.020, Administration of the Fee.

The fee would be paid on the amount of oil, less royalty oil, reported by the person delivering the crude oil to the port for transportation. The person paying the fee would file a report, under oath, with the Department of Revenue. If the report is delinquent, a penalty of \$1,000 per day will be imposed. This penalty is in addition to the penalty for delinquent fees.

The department may also require the person obligated to pay the fee to furnish additional information to determine how the fee was computed. The department also is authorized to conduct hearings, compel witnesses and require the production of documents to investigate the facts supporting the reported volume of crude oil transported.

If the reported volume of crude is untrue or incorrect, or the person responsible fails to make a report, the department shall determine the correct amount of crude oil on which to base the fee.

If the fee is delinquent it will bear an interest of 12 percent. If the report is not filed, the department will examine the documents of the responsible party and compute the fee. The costs of examination will be added to any penalties accrued.

Any overpayment will be refunded. The department may adopt regulations required by this chapter. The department may also require a sufficient bond from the responsible party.

If the reports have not been filed or are insufficient, the Department of Law shall institute the necessary action to enjoin the person from continuing operations.

AS 43.59.030, Disposition of Proceeds of Fee.

The collected fees will be separately accounted for within the general fund.

AS 43.59.040, Use of Revenue Derived from Fee.

The legislature may appropriate the annual estimated balance of the account to the oil spill emergency containment fund.

AS 43.59.050, Suspension and Reimposition of the Fee.

The fee may be suspended or reimposed under varying circumstances. If the fund contains \$20,000,000 after payment of the fees and amounts expended from the fund, fee collection is suspended. When the fund dips below \$20,000,000 the fee is reimposed.

AS 43.59.060, Fee Not Imposed.

A year-long suspension will occur if the legislature fails to appropriate an amount of money from the general fund to restore the contingency fund to at least \$20,000,000.

AS 43.59.100, Definitions.

Definitions pertinent to this section.

Section 2:

AS 46.04.090, Oil Discharge Cleanup Personnel, Equipment Expenses.

This section is amended to require the department, when private contracting is not feasible, to establish and maintain at ports, harbors and other locations from which crude oil is regularly transported, cleanup personnel, equipment and supplies that are necessary to clean up oil discharges.

Section 3: Oil Spill Containment

AS 46.04.200, Oil Spill Emergency Containment Fund.

A new section creating the oil spill emergency containment fund is added to Chapter 4, Oil Pollution Control, Title 46. The fund is a nonlapsing, revolving fund within the Department of Environmental Conservation. The legislature may annually appropriate fees collected under AS 43.59.

AS 46.04.210, Duties of the Commissioner.

The commissioner of ADEC shall administer the fund; pay direct costs associated with an oil discharge; report annually regarding circumstances relating to the use of the fund to the legislature and governor; and make recommendations regarding changes necessary to the strike fund or fund itself.

AS 46.04.220, Use of Fund.

The fund may expend money from the fund when an oil discharge in excess of 100,000 barrels occurs or is imminent, or the governor declares the oil discharge an emergency.

The fund may not be used for grants or to reimburse parties for expenditures incurred without prior authorization from the commissioner.

AS 46.04.230. Oil Spill Containment Strike Force.

The commissioner shall establish an oil spill strike force comprised of oil spill specialists. The commissioner is authorized to hire directly, contract with others or do both. The fund may be used for personal services or contracts and any necessary supplies.

AS 46.04.900 Definitions.

Pertinent definitions to this section.

Section 4:

Repeals existing definition section of Chapter 4.

Section 5:

Immediate effective date.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

April 6, 1989

SUBJECT: Oil spill emergency fund and response mechanism, and identification of a source of revenue for containment and cleanup -- sectional analysis (Work order 6-1180E)

TO: Senator Rick Halford

FROM: Jack Chenoweth
Legislative Counsel 

The bill title summarizes the principal provisions of this legislation, addressing, as it does

- creation of an oil spill emergency containment fund as a source of money to mitigate the effects of damages from oil spills, and setting limitations on use of money from that fund;
- establishment of a state oil spill containment strike force; and
- imposition of a 2 cent per barrel fee on oil delivered to an Alaska port for transportation from the state by marine vessel.

Bill section 1, amending AS 43, imposes the fee. In essence:

-- AS 43.59.010 levies the fee and defines its application.

-- AS 43.59.020 sets out the process of administration and collection of the fee. Patterned after similar provisions of AS 43.55, the fee is made payable quarterly, 20 days after the close of the calendar quarter, and is due and payable by the party delivering the oil for transportation.

-- AS 43.59.030 requires deposit of the fee proceeds into the general fund and requires a separate accounting of them.

-- AS 43.59.040 authorizes the legislature to appropriate the annual estimated balance of revenue obtained from payment of the fee to the oil spill emergency containment fund established later in the legislation.

-- AS 43.59.050 prescribes circumstances under which the fee may be suspended and reimposed. Payment of the fee is suspended commencing the first day of the second calendar quarter following a determination that the difference between the cumulative deposits of the fee made through the calendar quarter and amounts expended from the contingency fund equal or exceed \$20,000,000. Payment of the fee is reimposed commencing the first day of the second calendar quarter following a determination that the difference between the cumulative deposits of the fee made through the calendar quarter and amounts expended from the contingency fund are less than \$20,000,000. The section sets out a process by which these determinations are to be made.

-- AS 43.59.060 authorizes a year-long suspension of the fee payable during a state fiscal year if the legislature fails to appropriate an amount of money from the general fund to restore the contingency fund to at least \$20,000,000.

-- Definitions pertinent to the fee are collected and set out in AS 43.59.100.

Bill section 2 amends existing AS 46.08.090(a) to require the commissioner of environmental conservation to establish and maintain, at state ports and harbors "from which crude oil is regularly transported by vessel" the necessary personnel and equipment to be able to properly address oil discharges. Authority given in current law by which the commissioner may meet this responsibility by contract is continued.

The material in article 2, added by bill section 3, establishes the oil spill emergency containment fund and defines the duties of the commissioner of environmental conservation with respect to that fund. The requirement of submission of an annual report should serve to keep the legislature apprised of the fund's ability to address oil discharge clean-up efforts. The commissioner may draw on the fund if the

Senator Rick Halford
Page 3
April 6, 1989

discharge is catastrophic or if the governor declares an emergency.

Bill section 3 also specifies that the commissioner is to establish an oil spill containment strike force, and indicates how that force may be maintained. Expenditure of money from the fund for maintenance of the task force is subject to legislative appropriation.

Article 3 bill section 3 carries forward from AS 46.04.120 the definitions applicable to this chapter (AS 46.04). The existing definitions, set out AS 46.04.120, are repealed in bill section 4. (This change effectively re-orders the definitions in order to keep them last in the chapter, following the additional material.)

The bill is given an immediate effective date by bill section 5.

JC:gc
WKG9/019

An oil cleanup barge and smaller skimmer boats sit out the wind and

Spill dooms Sound

Counting bodies is all anyone can do, state wildlife

By CRAIG MEDRED
Daily News outdoors editor

As the grimy tentacles of an 11-million-gallon oil spill spread west from Valdez to choke and drown the wildlife of primordial Prince William Sound on Monday, would-be rescuers stood powerless to act.

A body count of dead animals is about all that anyone can hope to do, said Jor Lyman, a spokesman for the Alaska Department of Fish and Game.

The wilderness that has made the Sound so rich and unique now stands as a major barrier to efforts to rescue the thousands of birds, sea otters, fish and other creatures expected to be caught in North America's largest oil spill.

Fewer than 100 animals are known to be dead so far,



but thousands are expected to die.

Officials in the state of Washington estimated that 10,000 birds perished there after a barge spilled 231,000 gallons of bunker oil off that state's southwest coast in late 1988.

Bunker oil is gooier than the North Slope crude that spilled in Prince William Sound, but the Washington spill was only about one-fiftieth the size of the spill near Valdez.

In Washington, rescuers were able to mobilize thou-

sands of volunteers who could easily get to the scene to help. That will not be the case in the Sound.

"There's just a lot of problems out there," said Pam Bergman, head of the regional response team for the Department of the Interior.

Problems cited by Bergman and others include:

- A coastline so remote that rescuers are afraid to send out volunteers for fear they might not be equipped or prepared for wilderness survival.

- Beaches so rugged that in many places it is impossible to land a boat, let alone chase down and capture oil-coated birds or wildlife.

- Distances to aid facilities so great that animals captured on the beach would likely die in captivity waiting to be tak-

en to be...
• And with...
and powerful...
could be seriously...
"It's not good," Bergman said.

And as of Monday evening, it was getting worse. Strong, northwest winds were pushing the oil spill farther and farther from the rescue coordination center at Valdez.

The contamination was stretching far beyond the reach of would-be animal rescuers, Bergman said, and the winds had made it impossible to retrieve oil-soaked wildlife.

"It was tough just flying this morning," said Joe Sautner of the Alaska Department of Environmental Conservation. "There is not much that

Please see Page E-3, WILDLIFE

How promises about terminal stack up to reality

The North Slope oil companies, Alyeska Pipeline Service Co. and others supporting a tidewater terminus for the Alaska Pipeline made broad promises to the people of Valdez and the rest of Alaska about their ability to operate safely and to respond effectively in the event of a major oil spill.

Here, on the left, from testimony and exhibits presented at U.S. Department of Interior hearings in 1971, are some of the promises.

In the right-hand column is the reality.

WHAT WAS SAID THEN

"From my own experience and the studies of many other workers in the pollution field, I am satisfied that tanker traffic to and from Port Valdez, and operation of an oil port there, will not cause any significant damage to the marine environment or to fisheries interests."

"The contingency plan which will be drawn up will detail methods for dealing promptly and effectively with an oil spill which may occur, so that its effect on the environment will be minimal. We have adequate knowledge for dealing with oil spills and improvements in techniques and equipment are continuing to become available through worldwide research. The best equipment, materials and expertise which will be made available as part of the oil spill contingency plan, will make operations at Port Valdez and in Prince William Sound the safest in the world."

— L.R. Beynon, head of Environmental Studies in British Petroleum's Technical Development Division, representing Alyeska Pipeline Services, 1971.

"When the maximum has been done to prevent the spread of oil, the main cleanup activity should always be physical retrieval of the spillage. . . . It is not proposed to use dispersants for oil spill cleanup in Alaska waters."

— Beynon for Alyeska

"The Port of Valdez and Prince William Sound approaches can accommodate any method of ship movement control now known to man. . . . Bridge-to-bridge and ship-to-shore voice communication systems exist today. Shipboard radar can be augmented by a shore based command center equipped with radar. . . . The few ships in the area can be stopped, backed up, moved sideways, ordered into any maneuver desired or any approach or departure route."

— George Esley, Alaska commissioner of public works, 1971.

WHAT IS BEING SAID NOW



Anchorage Daily News/Enk H-4
Steve McCall, Coast Guard captain of the Port of Valdez

"There's a lot more equipment due in overnight and tomorrow morning. The first hurdle is getting it in to Valdez and getting it from Valdez out to the site. As we know, it's a difficult, time-consuming process."

— Coast Guard Cmdr. Steve McCall on Saturday, more than a day after the Exxon Valdez spill.

"The oil spill contingency plan, we followed the plan exactly how

Please see Page E-3, NOW

thing. But maybe someone else note we don't want the are a first name. ns about either of these ableshooter at 257-4343.

S IN MASS MAILINGS: To be in the direct marketing ng smart," says Denison Mailing What!, an industry ight now include: 9-inch by bright-colored stickers on mobile decals; free premiums r cards (you tear off the all it in) and personalized Amoco Motor Club has a be a winner, Hatch said; it

Haunted by a question or leshooter, P.O. Box 149001, call 257-4343. Please include umber and photocopies of iswers are not possible due to ll be edited.

NOW: What Coast Guard, oil ind

Continued from Page E-1

we're supposed to do it. The only deviation we had from that was the fact we had taken all this material off of the barge to be able to weld the punctures that were in the bow. And the additional response that it took was to be able to put that gear back on the barge."

— Alyeska spokesman Chuck O'Donnell, explaining that containment efforts did not begin immediately because the barge needed to carry equipment had been broken for two weeks.

"The volume of oil released in the water is for all intents and purposes beyond control by mechanical means alone."

— McCall of the Coast Guard, Sunday night.

Question from reporter: "How long will it take to clean that 240,000 barrels of oil?"

"I don't know. It's never been done before ... weeks at least."

— Frank Iarossi, president of Exxon Shipping Co., in Valdez on Sunday.

"It's a little mind-boggling to fathom the amount of oil that is in the

water.
release
respons
— M
"By ton
disposa
afterno
— I
"This is
very di
impacts
mamma
the long
— Sp

ET TO SUCCESS! EW MEETING OF THE LEGIE COURSE®

king, Human Relations,
rship Training
ORDIALLY INVITED
ree Preview Meeting
rch 30, at 6:29 p.m.
MINING CENTER
c Blvd., Suite 104
by Jerry Hines & Associates
one: 349-5116
p & Save

Need insurance for your home, car, life, boat or RV?

Call us! We have the
right coverage for all
your needs.

Allstate®

Allstate Insurance Company
Allstate Life Insurance Company
Northbrook, Illinois



Steve Flascher



Jeff Schulz

Leave
it to The
Good Hands
People.

3335 E. Tudor
562-2645

Limited-Time Edition by Robert Bateman!



MIDNIGHT- BLACK WOLF

\$325

Order Deadline:
May 22, 1989

Image Size 23 X 30 1/2
\$50 Deposit-Will Hold Until
Christmas.

Hea



GI

\$2

1

try officials have to say

been stated, and most accurately so: This is the largest
in the United States in the history of oil pollution

the Coast Guard.

we're going to be going all out, using all the tools at our
We weren't even up and running until 12 o'clock yesterday

of Exxon, three days after the spill.

unique situation in that it is a very remote area, presenting
problems, and we see a potential for acute and severe
animals that use the surface of the waters, i.e. marine
birds and inter-tidal fisheries. We're also concerned about
impact for salmon, fry, herring, spawn and tanner crab."
oman for NOAA

Carl Hatch

Sunday, April 2, 10 & 11 a.m. & 6 p.m.
Wednesday, April 5, 7:30 p.m.

- *Once an Alcoholic
- *Now one of America's most outstanding speakers
- *Has appeared on many TV talk shows
- *Inherited a million dollars and gave it away

Anchorage Baptist Temple

6401 E. Northern Lights/333-6535

**NT PEUGEOT
SALE!!!
SAVE
000-\$5000**





ALASKA'S ECONOMY: Some hard facts of life, Business, B-1

IN THE FOUR

Seton Hall,
Michigan win

SPORTS

NINTENDO

Game-maker
plays for keeps

BUSINESS

ZOO DEBATE

Refuge or prison
for the animals?

PARADE



Anchorage Daily News

VOL. XLIV, NO. 85 330 PAGES

ANCHORAGE, ALASKA, SUNDAY, MARCH 26, 1989

PRICE 50 CENTS

Oil keeps spreading in Sound

State says Alyeska's cleanup effort inadequate, slow

INSIDE

■ PLAN OF ATTACK: Despite opposition from environmentalists and fishermen, oil company officials intend to drop chemical dispersants on some of the oil to dilute it. A-6



VALDEZ SPILL

■ EARLY WARNINGS: The prospect of an oil spill in the Sound was an issue even before the pipeline was built. A-6

By LARRY CAMPBELL
Daily News reporter

VALDEZ — State, federal and oil company officials ended Saturday as they had begun it, no closer to a solution to the problems posed by more than 11 million gallons of North Slope crude oil washing around the fish-

and-wildlife-rich, enclosed waters of Prince William Sound.

But while the oil of the nation's largest spill was left mostly unmolested, the chief of the state Department of Environmental Conservation assailed the Alyeska Pipeline Service Co. for

its failure to respond quickly to the disaster.

DEC Commissioner Dennis Kelso called Alyeska's response "inadequate and slow," and said the company failed to fulfill its obligations under the state-approved contingency plan Alyeska itself had written.

The accusations came in a letter to the Alaska Regional Response Team, a joint federal-state group charged with overseeing oil spill cleanups. The DEC is a member of the team.

In response, Alyeska ter-

Please see Back Page, OIL

'64 QUAKE

Lessons For Anchorage?

A CITY ON THE EDGE



Photo by Steve McCutcheon
Fourth Avenue was hit hard by the 1964 earthquake.

Captain gets drug, alcohol test in Valdez

Two crewmen also tested;
mechanical failure ruled out

By DAVID HULEN
Daily News reporter

VALDEZ — The Coast Guard has given drug and alcohol tests to the captain and two members of the crew of the grounded tanker Exxon Valdez, and a team from the National Transportation Safety Board is scheduled to arrive here today to find out why the accident that caused the nation's largest oil spill happened.

The head of Exxon Shipping Co., which owns the tanker, said his company's investi-

THE BACK PAGE

OIL SPILL: State says Alyeska's response slow and inadequate

Continued from Page A-1

minial superintendent Chuck O'Donnell said Kelso was right.

"This one time, I'd have to say, yes," O'Donnell said. "We were behind."

The spill occurred about 12:30 a.m. Friday, when the tanker Exxon Valdez ran aground on Bligh Reef, about 25 miles southwest of here. The accident punctured at least eight of the ship's tanks, spewing crude oil into the Sound. The tanker was well outside the normal shipping lanes when it hit the well-marked and well-charted reef.

Alyeska's plan calls for, among other things, a response within five hours that would have brought containment booms and oil skimmers to the spill site.

But the equipment sat idle for five hours because the barge that carries it was down for repairs. Since reaching the scene late, the equipment has not made much headway against the spill. Kelso said Saturday that he still considered the company's efforts inadequate.

The plan also requires Alyeska to call on local boat owners to haul materials to the spill. Lots of local boat owners say they never heard from the company, but O'Donnell said his company did ask for private help.

The shifting answers and vague information about the accident and the ineffective containment and clean-up effort is creating lots of frustration among Prince William Sound fishermen and local residents. These people see their livelihoods endangered, both from the spilled oil and from the chemical dispersants that may finally be used to solve the problem.

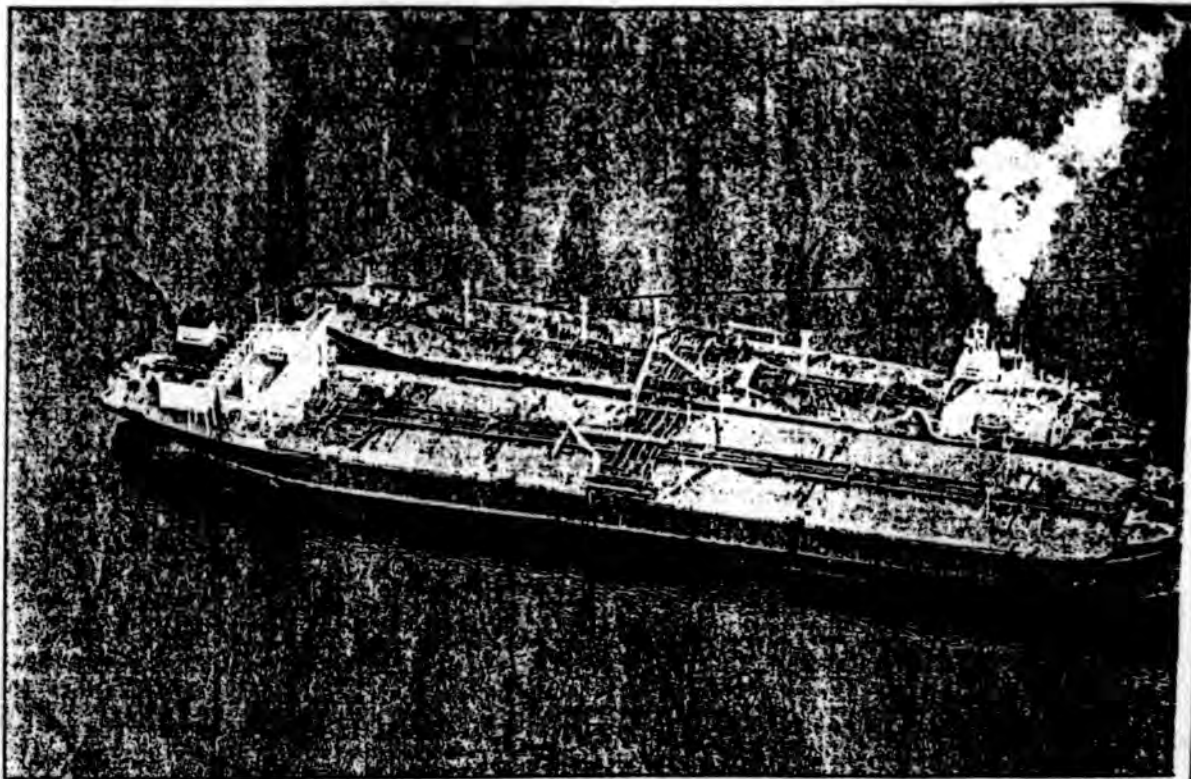
"Am I angry? Angry's not the word for it," said Sandra Cesarini, who owns the Sea Hawk Seafoods processing plant with her husband, Ray. "I'm beside myself."

Environmentalists are equally critical. In Anchorage, the environmental law firm Trustees for Alaska urged the state to mount its own cleanup effort "to prevent any more destruction to the marine resources." The state could pay for that with more than \$17 million in oil-spill penalties the law allows it to collect from Exxon, said Randall Weiner, the group's executive director.

In Juneau, David Ramseur, Gov. Steve Cowper's press secretary, said that despite DEC's criticism of Alyeska, the state has no plans for its own cleanup. "I'm not sure we are equipped to do that, or if it would help at this point," he said.

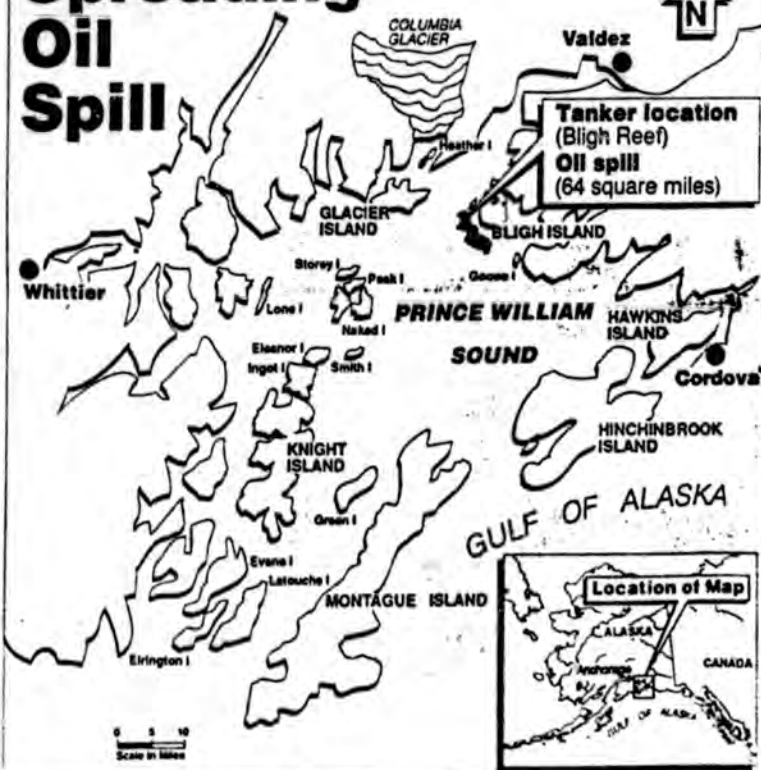
For whatever else it might be worth, with 11 million gallons of crude oil strung out over a 64-square-mile area, O'Donnell's admission didn't do much to solve the growing problem.

As of Saturday evening, the oil slick had extended fingers 10 miles to the west from its original 30-square-mile area, and those current-driven streams were turning south. Oil sheen surrounded tiny Reef Island and was lapping at Bligh



The Exxon Baton Rouge, the smaller ship at top, moves alongside the Exxon Valdez, bottom, in an attempt to offload oil from the Valdez.

Spreading Oil Spill



AGROUND: Captain tested for drugs, alcohol

Continued from Page A-1

be available for questioning, a Coast Guard spokesman said.

The three men were ordered by a pair of investigators to give blood samples aboard Friday morning, according to Todd Neilson, spokesman. The samples were sent to Anchorage to be analyzed for both alcohol and drugs.

Coast Guard officials would not say whether the tests are known. Under federal law, required of all crewmen "directly involved" in marine accidents.

Iarossi said two Exxon lawyers boarded the tanker, about 25 miles south of Valdez near Friday morning, and began interviewing crew members.

According to the Coast Guard and Exxon ship left the Alyeska tanker terminal on Thursday night and steamed on a routine 10 passed through the three-quarter-mile wide V it dropped off the harbor pilot and continue the Gulf of Alaska.

The ship "ran across ice after dropping Iarossi said, "and in the process the vessel's course changes and had turned toward the when it grounded."

The ship is sitting between one and two regular tanker shipping lanes, its bow pointing the shipping lanes.

Exxon officials can still not explain why so far outside the lanes, or why crew members avoid the reef, which local boaters describe as the best-known hazards in Prince William Sound.

The Coast Guard routinely monitors tankers going from the Alyeska port, using radar vessels. But the Valdez was on the outer that can be monitored by radar, and a spokesman was not being monitored because the ships in the area and there was no danger of collision.

The NTSB's involvement in the investigation is unusual, according to a safety board official.

"The safety board is charged with investigating aviation, highway, railroad, marine and pipeline accidents," said Terry J. Armentrout, director of the National Transportation Safety Board.

"Since this is a U.S. flag ship, we have authority," he said, adding that the board has 30 marine accidents last year. "We are not that makes and enforces the rules."

The team is being headed by Bill Wood, investigator. The team is composed of three investigators and a "human performance investigator" described as a person trained to look into such things as fatigue and substance use.

the tanker's 13 cargo holds are damaged, including, "six to eight openings large enough for a man to swim through, and a number of open seams, one to two inches wide," he said.

Still of concern is what the broken ship will do once its cargo is unloaded. If the ship floats, it may also list and capsize or break apart. That was why the company

an armed security guard, wearing a yellow hard hat, at the door.

"I think he'd just ask you to please not enter," said Exxon spokesman Tom Cirigliano, acknowledging the guard. "We just can't have all kinds of people trying to get in."

While a legion of state, federal and oil officials spoke about options in

have to take a look at everything."

By late Saturday night, however, Exxon had completed preparations to bomb the slick with the dispersant Corexit 9527 delivered by aircraft.

Dispersants are controversial. The chemicals are intended to bond with the oil, break it into small pieces, and cause it to mix with the water. Environmentalists

ing plant with her husband, Ray. "I'm beside myself."

Environmentalists are equally critical. In Anchorage, the environmental law firm Trustees for Alaska urged the state to mount its own cleanup effort "to prevent any more destruction to the marine resources." The state could pay for that with more than \$17 million in oil-spill penalties the law allows it to collect from Exxon, said Randall Weiner, the group's executive director.

In Juneau, David Ramseur, Gov. Steve Cowper's press secretary, said that despite DEC's criticism of Alyeska, the state has no plans for its own cleanup. "I'm not sure we are equipped to do that, or if it would help at this point," he said.

For whatever else it might be worth, with 11 million gallons of crude oil strung out over a 64-square-mile area, O'Donnell's admission didn't do much to solve the growing problem.

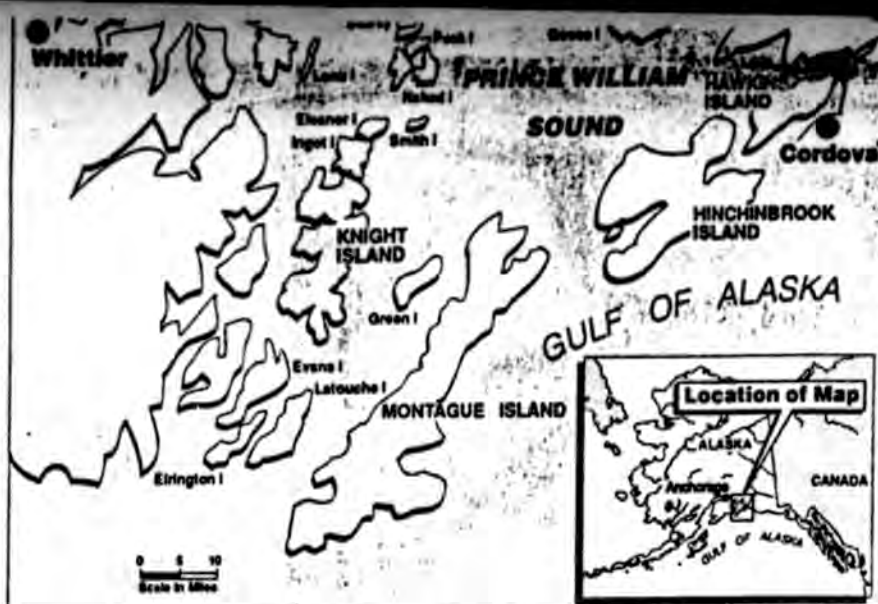
As of Saturday evening, the oil slick had extended fingers 10 miles to the west from its original 30-square-mile area, and those current-driven streams were turning south. Oil sheen surrounded tiny Reef Island and was lapping at Bligh Island, both on the east shore of the Sound.

Exxon officials say about 50 sea lions could be affected by the oil and some birds have been killed, but that no major fish and wildlife destruction has yet been caused.

Efforts to pump oil from the damaged tanker into another, the Exxon Baton Rouge, have been stymied since they began late Friday night. First, a defective hose had to be replaced. When that was fixed, the transfer had to be stopped when a new leak developed. Officials did not know where the new oil was coming from, maybe from a loose connection, maybe from beneath the vessel.

Divers swam beneath the Valdez in the blackness of early morning Saturday. According to Exxon Shipping Co. President Frank Iarossi, they found the ship in a more precarious position than they first thought.

The vessel is actually balanced on a ridge of rock, with deeper water beneath its bow and stern. Eight of



Anchorage Daily News / Ron Engstrom

the tanker's 13 cargo holds are damaged, including, "six to eight openings large enough for a man to swim through, and a number of open seams, one to two inches wide," he said.

Still of concern is what the broken ship will do once its cargo is unloaded. If the ship floats, it may also list and capsize or break apart.

That was why the company had a number of crewmen taken off the Valdez Saturday, and everyone left on board, including a DEC observer, were wearing cold water survival suits.

The sense of concern was obvious early Saturday morning when DEC regional supervisor, Dan Lawn, talked to Joe LeBeau, his man aboard the Valdez, by marine telephone.

"They're afraid she (the Valdez) may turn turtle on 'em," Lawn said, hunched over his office phone. "There's gonna be no more people on board."

More experts are on shore in Valdez than on the tanker Valdez. Exxon officials, environmental officials from other states and Canada, and spill experts from around the world continued to arrive in town Saturday, most of them gathering at the Westmark Hotel, overlooking the small boat harbor.

Also at the Westmark, Exxon has set up its command headquarters, complete with a telephone bank in a second-floor room and

an armed security guard, wearing a yellow hard hat, at the door.

"I think he'd just ask you to please not enter," said Exxon spokesman Tom Cirigliano, acknowledging the guard. "We just can't have all kinds of people trying to get in."

While a legion of state, federal and oil officials spoke about options in cleaning up the spill, it seemed the final solution was in black and white all the time. In the Alyeska Oil Spill Contingency Plan, chemical treatment is continually mentioned as the best possible option.

The portion of the plan dealing with the Prince William Sound includes a scenario for dealing with a hypothetical, 200,000-barrel spill. Such a spill is termed in the plan as "catastrophic."

The plan concludes: "In reviewing the aspects of this size spill it becomes very apparent how important it is to have dispersants approved so that they can be used very effectively to prevent the continuing input of oil..."

Yet, all day Saturday, in press conferences and private interviews, state, federal and oil company officials remained adamant that other options were open.

"I don't think that means that dispersants are the only solution," Kelso said. "We

have to take a look at everything."

By late Saturday night, however, Exxon had completed preparations to bomb the slick with the dispersant Corexit 9527 delivered by aircraft.

Dispersants are controversial. The chemicals are intended to bond with the oil, break it into small pieces, and cause it to mix with the water. Environmentalists say that just spreads the oil through the water from top to bottom, endangering many different life forms. Fishermen fear the oil will harm salmon, bottomfish and crustaceans.

Late Friday and again Saturday, Alyeska and Exxon officials tried spreading dispersant in a small test. The test failed, because calm seas didn't produce the agitation needed to mix the chemicals with the oil.

Iarossi said a burn test might also be conducted, but that had not been done by late evening Saturday. That would involve corralling a portion of the spill and setting it afire.

The officials say they are taking the cautious approach. But folks in Valdez are growing increasingly impatient.

"We've put our blood into this operation, and now, no one can tell us what's going to happen," Cesarini said. "What am I going to tell my employees? What am I going to tell my fishermen?"

Iarossi said two Exxon lawyers boarded the grounded tanker, about 25 miles south of Valdez near Bligh Island, on Saturday and began interviewing crew members.

According to the Coast Guard and Exxon officials, the ship left the Alyeska tanker terminal near Valdez on Thursday night and steamed on a routine 10 miles. After it passed through the three-quarter-mile wide Valdez Narrows, it dropped off the harbor pilot and continued south toward the Gulf of Alaska.

The ship "ran across ice after dropping off the pilot," Iarossi said, "and in the process the vessel made a series of course changes and had turned toward the ... ship lane when it grounded."

The ship is sitting between one and two miles east of the regular tanker shipping lanes, its bow pointed west toward the shipping lanes.

Exxon officials can still not explain why the ship veered so far outside the lanes, or why crew members failed to avoid the reef, which local boaters describe as one of the best-known hazards in Prince William Sound.

The Coast Guard routinely monitors tankers coming and going from the Alyeska port, using radar to track the vessels. But the Valdez was on the outer edge of the area that can be monitored by radar, and a spokesman said the ship was not being monitored because there were no other ships in the area and there was no danger of a ship to ship collision.

The NTSB's involvement in the investigation is not unusual, according to a safety board official in Washington, D.C.

"The safety board is charged with investigation of all aviation, highway, railroad, marine and pipeline accidents," said Terry J. Armentrout, director of the agency's Bureau of Accident Investigations.

"Since this is a U.S. flag ship, we have investigative authority," he said, adding that the board looked into about 30 marine accident last year. "We are not the Coast Guard that makes and enforces the rules."

The team is being headed by Bill Woody, a marine safety investigator. The team is composed of three marine investigators and a "human performance investigator," whom Armentrout described as a person trained in psychology to look into such things as fatigue and substance abuse.

□ Daily News reporter David Whitney in Washington, D.C., contributed to this story.

WARNINGS: Sounded years ago

Continued from Page A-6

Prince William Sound. The Sound's fjord-like topography means that the effects of an oil spill there might be magnified many times.

"The contamination will be widespread and the oil's residence time can be very high because it will become entrapped," said M.F. "Pat" Wennkens, an oceanographer with the state's Arctic Environmental Information and Data Center, who spoke at a conference at Cordova in April 1977.

Chancy Croft, an Alaska state senator, told the conference: "Some time there's going to be an oil spill" in Prince William Sound. The only questions, he said, are how soon and what size.

The fishermen and state

officials argued that because of the remote area's logistics problems, oil skimmers and oil-containment booms should be located at specially designated areas on islands in the sound.

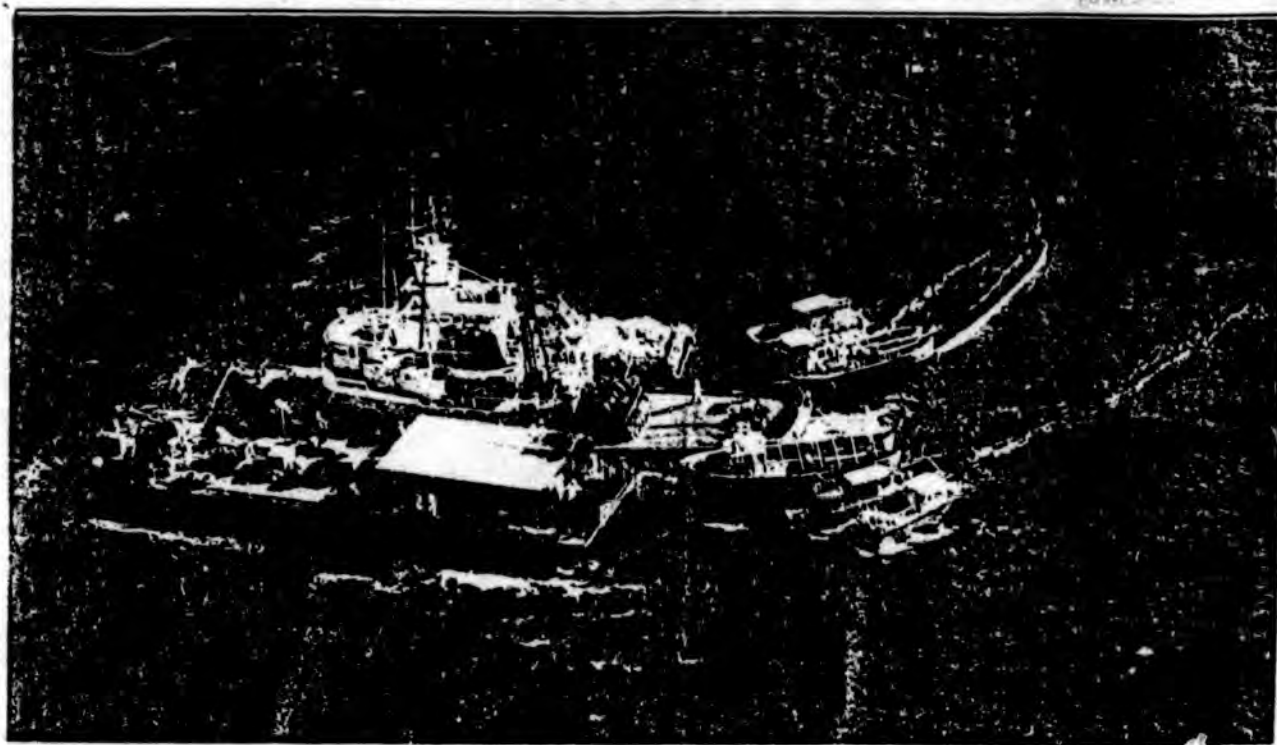
"In most cases, equipment coming from Port Valdez will arrive too late to contain a spill in Prince William Sound before it reaches shore," said a 1977 report on Alyeska's contingency planning for an oil spill by the Alaska Department of Fish and Game.

Coast Guard officials admitted that an oil spill in the Sound would be difficult to deal with. "It could take two days, two weeks or two months, depending on the weather, before we could get our equipment in," one officer said.

METRO

TUESDAY

SECTION E March 28, 1989



An oil cleanup barge and smaller skimmer boats sit out the wind and rough seas near Bligh Reef on Monday, unable to do their work.

Spill dooms Sound animals

Counting bodies is all anyone can do, state wildlife official says

By CRAIG MEDRED

Daily News outdoors editor

As the grimy tentacles of an 11-million-gallon oil spill spread west from Valdez to choke and drown the wildlife of primordial Prince William Sound on Monday, would-be rescuers stood powerless to act.

A body count of dead animals is about all that anyone can hope to do, said Jon Lyman, a spokesman for the Alaska Department of Fish and Game.

The wilderness that has made the Sound so rich and unique now stands as a major barrier to efforts to rescue the thousands of birds, sea otters, fish and other creatures expected to be caught in North America's largest oil spill.

Fewer than 100 animals are known to be dead so far,



but thousands are expected to die.

Officials in the state of Washington estimated that 10,000 birds perished there after a barge spilled 231,000 gallons of bunker oil off that state's southwest coast in late 1988.

Bunker oil is gooier than the North Slope crude that spilled in Prince William Sound, but the Washington spill was only about one-fiftieth the size of the spill near Valdez.

In Washington, rescuers were able to mobilize thou-

sands of volunteers who could easily get to the scene to help. That will not be the case in the Sound.

"There's just a lot of problems out there," said Pam Bergman, head of the regional response team for the Department of the Interior.

Problems cited by Bergman and others include:

- A coastline so remote that rescuers are afraid to send out volunteers for fear they might not be equipped or prepared for wilderness survival.

- Beaches so rugged that in many places it is impossible to land a boat, let alone chase down and capture oil-coated birds or wildlife.

- Distances to aid facilities so great that animals captured on the beach would likely die in captivity waiting to be tak-

en to a hospital.

- And wild animals so large and powerful that rescuers could be seriously injured.

"It's not good," Bergman said.

And as of Monday evening, it was getting worse. Strong, northwest winds were pushing the oil spill farther and farther from the rescue coordination center at Valdez.

The contamination was stretching far beyond the reach of would-be animal rescuers, Bergman said, and the winds had made it impossible to retrieve oil-soaked wildlife.

"It was tough just flying this morning," said Joe Sautner of the Alaska Department of Environmental Conservation. "There is not much that

Please see Page E-3, WILDLIFE

Ray m. levine SHOOTER

A MYSTERY: I'm writhing, a coupon brokering ticket to Dallas and never any had closed down. Then pen. I went to the office but never found anyone owner or find out about I would know better how y back or at least a ticket.

I recommend you ask the state to and proof of payment to tion, P.O. Box C, Juneau to contact the owner; he's discuss his business or recall, Adventure Internat- owned by Robert Merry, an al Facility. When the firm Schmidt, the institution's not against prison regula- and supervise a business

aid the firm would reopen, was wrong. Corrections prisoners from operating the state would be respon- according to Deputy Correc- Prewitt. He said Merry business by phone. He also e if it is liable for losses ers.

the answer should be, and seem to get any further on. I always seem to be the right contact or who is for a pronouncement: Get.

Troubleshooter is looking ple of things. The first is a d "Success With House reader who wants it. H.S. ouse plants that arrives in ow assembled. She needs a firm that offers it. bly an illusion. A reader is full-sized souvenir Alaska have a friend's eight-letter n't think such plates exist; and souvenir suppliers say thing. But maybe someone ase note we don't want the

futures prices rose sharply in a bullish market.

"A market that was already poised to trade up a little was set on fire," said Madison Galbraith, senior energy specialist with Mer-

New York Mercantile Exchange trading. Prices for subsequent months also rose sharply.

It was the highest near-month closing price for the key grade since Aug. 14,

Alaska North Slope crude, delivered to Gulf of Mexico refineries, soared 95 cents a barrel to close at \$19.40.

The price surge was sparked by the oil spill off the port of Valdez, where an

the heavy buying of energy futures.

"The market's reaction was a little overdone" despite the interruption in North Slope supplies, Galbraith said.

WILDLIFE: Spill holds would-be rescuers powerless

Continued from Page E-1

can be done now ... under these conditions."

Sautner reported surf pounding oil onto beaches at a half-dozen islands. The farthest of those was 75 miles by airplane from Valdez.

The spill is already threatening thousands of animals and more are arriving daily as northward migrations of birds, sea mammals and fish begin.

Bergman said some thought had been given to setting up an animal rescue facility closer to that westward spreading oil, but there is simply no place to put such a facility.

There are no communities in the southwest portion of the Sound. It is an area of rocky reefs and tree-studded islands, of wilderness and wildlife. It is a land few people call home.

"There are few good beaches in many of the areas," Bergman said. "A lot of the beaches that are there are small."

None of them would work well for catching birds, she said, and catching birds from boats is out for safety reasons.

"Nobody wants anybody getting hurt capturing wildlife," she said.

Bergman has recent experience in bird rescues. She was in Dutch Harbor in the

Aleutians only a few weeks ago trying to catch oil-fouled sea birds.

At Dutch Harbor, she said, volunteers were able to drive to a long, sandy beach perfect for captures. They still only caught 28 birds, and they were able to save only eight.

"It's difficult, even in a good situation," Bergman said.

"It's real hard to sneak up on (birds)," she said. "You end up racing the birds down the beach with a net trying to catch them. Once you capture an oiled bird, you can't leave it in a box for 12 hours."

The bird must go almost immediately to a rehabilitation center where it can be fed, de-oiled and dried. That is its only hope. And nobody has come up with a good way to get oiled birds from the western Sound to a facility in any community.

"Could you airlift birds out?" Bergman asked. "Is that the reasonable and best use of helicopters? There are a finite number of helicopters available here. As far as I know, no one is talking about doing that."

Sea otters present even bigger problems, she added. People need a lot of training and a fair amount of experience to learn how to handle them safely.

"They're a potential dan-

ger," she said. "They look sweet and cuddly and wonderful, but they got sharp teeth and claws."

A lot of people want to help. Bergman said she's been talking to groups organizing volunteers. But rescue coordinators aren't sure what volunteers could do.

They might be able to help, but they might also do harm.

"You don't want a bunch of these boats going out there and getting oily and spreading oil elsewhere," Bergman said.

A bird and animal clean-up after the Washington spill didn't really get going for a week or more and then lasted about six weeks.

Two thousand volunteers worked the beaches of Washington, according to Pam Miller, ocean issues coordinator for the Washington State Department of Ecology. They found 8,000 dead birds, and 3,000 oiled birds that were still alive. Only 1,000 of the oiled birds ever made it back to the wild, she added.

Murres, a cousin of the puffin, seemed to have the best chances of survival, Miller said. Other birds, among them loons, often died from shock as soon as they were picked up.

Ken Pritchard, an activist with Adopt-A-Beach, a non-profit organization involved

in Washington state oil clean-ups, said any rescue effort requires a lot of planning.

Rescuers must find somewhere to set up a roomy bird hospital, he said. The facility has to have lots of hot water and access to volunteers. Few such sites are available anywhere in Alaska.

Pritchard recommended Anchorage as the best possibility. It might be far from the oil spill, but it is closer to the thousands of volunteers that would be needed, he said.

Pritchard was not optimistic about the chances for the birds that could be rounded up. Many of the birds brought to the hospital probably would be killed by lethal injection because of their slim chance of survival, he said.

The rest would be tube-fed pureed food until their health stabilized. Then, they would be rinsed or washed in soapy water. Eventually, he said, some would be released back into the wild.

Environmental groups in Anchorage have begun organizing volunteers should their help become needed. Bergman has asked that volunteers not come to Valdez.

There is no place to stay, no boats to take people out, no equipment to work with, and nothing to do, she said.

NOW: What Coast Guard, oil industry officials have to say

Officials hope dispersants will dilute the spill

Daily News 3-26-89

Warnings of tanker spill's likelihood go back a long way

By LARRY PRYOR
Los Angeles Times

Throughout the mid-1970s, as the trans-Alaska Pipeline System was being planned and debated, the pipeline's builders said that chances of an oil spill in Prince William Sound were extremely remote. The normal safety precautions used in domestic tanker trade would provide sufficient protection to coastal waters.

But environmentalists and Alaska state officials strenuously argued that a tanker accident there was inevitable. They said that the fleet designated to carry the North Slope oil should be specially designed to be maneuverable in the close confines of the sound and have special ballast tanks and double bottoms to limit leakage if a tanker had an accident.

Until Friday, the oil industry had won the argument.

The debate over threats of oil spills from the fleet of the trans-

Alaska Pipeline System fleet, or TAPS, as it became known, began almost from the day in 1978 when Atlantic Richfield and Humble Oil and Refining (now Exxon USA) discovered the Prudhoe Bay oil field and planning began for the 800-mile pipeline, its terminus at Valdez and the transportation fleet.

The pipeline's marine leg was the first movement of large amounts of domestic crude oil by means other than large pipelines.

Some members of Congress sought a study of the feasibility of bringing the oil by pipeline through Canada, but that idea was cut off even before the planning stage. A bitter Rep. Morris Udall, D-Ariz., said at that time: "The saga of the trans-Alaska pipeline is at once one of the most remarkable and regrettable of the decade."

In order to shortcut the review process required by the National Environmental Policy Act, Secre-

tary of Interior Rogers Morton and Alyeska Pipeline Service Co., the consortium of eight oil companies building the pipeline, in 1972 testified that the TAPS fleet would "set new and exacting standards to govern the marine transportation of American oil."

Morton testified before a congressional committee that "newly constructed American flag vessels carrying oil from Port Valdez to the United States ports will be required to have segregated ballast systems incorporating a double bottom ..."

The environmental impact statement on the project made repeated references to the "modern Alyeska tanker system," and Alyeska published a brochure promising that its fleet of tankers would be "thoroughly modern and unique" and would be "precedent-setting in the petroleum and marine industries."

Alaska regulators and environmental groups opposed to the pipe-

line interpreted those promises as meaning that the ships entering Prince William Sound would be a specially dedicated fleet with segregated ballast to be used as defensive space, with double bottoms and added maneuvering systems, such as double screw and bow thrusters.

However, as the pipeline drew close to being finished in August 1977, it became clear that only a handful of the ships that would carry the North Slope oil would have double bottoms. Because of a series of decisions by the U.S. Coast Guard and the oil companies, most innovations in tankers did not apply to the TAPS fleet.

Moreover, the 500-member Cordova District Fisheries Union, as well as Alaska officials and scientists, urged Alyeska and the Coast Guard to take special precautions in case of a tanker accident in

Please see Back Page, **WARNINGS**

more toxic compound in the water," said Rick Steiner, a biologist who heads the University of Alaska marine advisory program in Cordova.

Hydrogen and oxygen atoms in the normally harmless water could bond with chemicals in dispersants to create new and harmful chemicals, he said, or chemical reactions between the water and the dispersants could release heavy metals or other toxics formerly locked up in hydrocarbon compounds.

Most of the dangerous chemicals would probably

that inhabits the surface and the wildlife in the water column and on the floor."

An oil company executive said that was not the case. Dispersants would help more than hurt, insisted Don Cornett, Alaska coordinator for Exxon USA. He said dispersants could prevent oil from reaching sensitive beaches and the shallow water where herring are beginning to spawn.

"We believe we can substantially limit the damage done to the shoreline," Cornett said.

The EPA had by late Sat-

it to be a cure-all.

"To the common layman, you'd think: 'Blast it with this stuff, and it will go away, and it's cheaper.' But it's not quite that simple," he said.

He noted a long list of potential problems:

- The dispersants have only limited effectiveness. Lautenberger said the success rate ranges from 0 to 80 percent. He expected a 30 percent success rate in the Sound. Trial use early Saturday failed because there wasn't enough wind and tide to agitate the chemicals, the

- No one is certain what dissolved oil, or even the dispersant, will do to marine life in the long term.

"It might not cause absolute, acute mortality," Steiner said, but it could still cause plenty of damage. The fisheries of the Sound are particularly vulnerable at this time of year, he said.

Young salmon emerging from their natal streams depend on adequate supplies of plankton, which could fall victim to dispersed oil. Larval crabs, clams and herring eggs are sensitive as well.

Herring eggs exposed to even small quantities of wa-

agency agrees the best way to clean up the oil is to skim it off the surface mechanically, Lautenberger said.

But, realistically, this spill is so big and the equipment on scene so limited that dispersants might be one of the best options available, Lautenberger said.

Others options have, however, been discussed, including burning the oil or dumping sand on it. The sand would bond to the oil, and together they would sink to the bottom. Steiner said Cordova fishermen are backing that idea, but environmental



Anchorage Daily News / Ron Engstrom

ard, have to take a look at every-
hat, thing."

you By late Saturday night,
said however, Exxon had com-
Circ- pleted preparations to bomb
the slick with the dispersant
ave- Corexit 9527 delivered by
g to aircraft.

ate, Dispersants are controver-
sial. The chemicals are in-
tended to bond with the oil,
break it into small pieces,
and cause it to mix with the
water. Environmentalists
say that just spreads the oil
all through the water from top
Oil to bottom, endangering
an, many different life forms.
tin- Fishermen fear the oil will
rest harm salmon, bottomfish
and crustaceans.

lan Late Friday and again
Wil- Saturday, Alyeska and
ce- Exxon officials tried spread-
ny- ing dispersant in a small
rel test. The test failed, because
ed calm seas didn't produce the
sh- agitation needed to mix the
chemicals with the oil.

In Iarossi said a burn test
his might also be conducted, but
ry that had not been done by
is late evening Saturday. That
p- would involve corralling a
pe- portion of the spill and set-
e- ting it afire.

of The officials say they are
n taking the cautious ap-
i- proach. But folks in Valdez
s- are growing increasingly im-
p- patient.

"We've put our blood into
this operation, and now, no
one can tell us what's going
to happen," Cesarini said.
s "What am I going to tell my
7 employees? What am I going
2 to tell my fishermen?"

avoid the reef, which local boaters describe as one of the
best-known hazards in Prince William Sound.

The Coast Guard routinely monitors tankers coming and
going from the Alyeska port, using radar to track the
vessels. But the Valdez was on the outer edge of the area
that can be monitored by radar, and a spokesman said the
ship was not being monitored because there were no other
ships in the area and there was no danger of a ship to ship
collision.

The NTSB's involvement in the investigation is not
unusual, according to a safety board official in Washington,
D.C.

"The safety board is charged with investigation of all
aviation, highway, railroad, marine and pipeline accidents,"
said Terry J. Armentrout, director of the agency's Bureau of
Accident Investigations.

"Since this is a U.S. flag ship, we have investigative
authority," he said, adding that the board looked into about
30 marine accident last year. "We are not the Coast Guard
that makes and enforces the rules."

The team is being headed by Bill Woody, a marine safety
investigator. The team is composed of three marine investi-
gators and a "human performance investigator," whom
Armentrout described as a person trained in psychology to
look into such things as fatigue and substance abuse.

□ Daily News reporter David Whitney in Washington, D.C.,
contributed to this story.

WARNINGS: Sounded years ago

Continued from Page A-6

Prince William Sound. The
Sound's fjord-like topogra-
phy means that the effects of
an oil spill there might be
magnified many times.

"The contamination will
be widespread and the oil's
residence time can be very
high because it will become
entrapped," said M.P. "Pat"
Wennekens, an oceanogra-
pher with the state's Arctic
Environmental Information
and Data Center, who spoke
at a conference at Cordova
in April 1977.

Chancy Croft, an Alaska
state senator, told the con-
ference: "Some time there's
going to be an oil spill" in
Prince William Sound. The
only questions, he said, are
how soon and what size.

The fishermen and state

officials argued that because
of the remote area's logistics
problems, oil skimmers and
oil-containment booms
should be located at special-
ly designated areas on is-
lands in the sound.

"In most cases, equipment
coming from Port Valdez
will arrive too late to con-
tain a spill in Prince William
Sound before it reaches
shore," said a 1977 report on
Alyeska's contingency plan-
ning for an oil spill by the
Alaska Department of Fish
and Game.

Coast Guard officials ad-
mitted that an oil spill in
the Sound would be difficult
to deal with. "It could take
two days, two weeks or two
months, depending on the
weather, before we could get
our equipment in," one offi-
cer said.

SCOMM

62:11

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

RES
FIN

4/8/89

DATE TURNED INTO OFFICE _____

Mr. President:

OIL & GAS

Committee considered

SB 271

civil penalties for the unpermitted discharge of uncontaminated crude oil and for the failure to implement an oil discharge contingency plan in

and recommended:

☒ replace with CS Oil & Gas ☒ same title

☐ attached amendment(s) and

☐ new title

☐ _____ letter of intent adopted

☐ do pass

☐ do not pass

☐ no recommendation

☒ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☐ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Tim Kelly

OTHER RECOMMENDATIONS

Rick Halford NO REC

Al Adams NO REC

Irue Pearce - do pass
chair signature and recommendation

☐ Committee backup attached

Alaska State Legislature

Senator Drue Pearce, Chair

Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465 4993

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99503
(907) 561 2038

SENATE SPECIAL COMMITTEE ON OIL AND GAS

To: Members of the Senate Special
Committee on Oil and Gas

From: Senator Drue Pearce, Chair

Re: SB 271, Sponsor Statement

Date: April 11, 1989

This legislation will put into effect a necessary civil penalty structure that 1). will compensate the public for the unquantifiable and undetectable natural resource and environmental damage caused by massive oil discharge and 2). will provide oil handlers with a meaningful incentive to perform their operations as safely as possible.

The existing civil penalty statute, AS 46.03.758, caps liability at \$100,000,000. It can be expected that the massive discharge into Prince William Sound will cost the state much more in terms of damage to the environment, tourism, the fisheries industry and the well-being of the residents of the effected areas.

While in 1977 the legislature attempted to draft a civil penalty statute which would provide the incentive to the oil companies to operate in a prudent and responsible manner, extensive lobbying by the industry significantly watered-down the legislation. The original legislation contained penalties of \$50, \$25 and \$10 per gallon depending on what type of environment was impacted. The current penalties, ranging from \$10 to \$1 per gallon, do not carry the weight necessary to adversely impact a multi-national corporation's profit.

Even at the lower penalty levels, the industry regarded the penalties as excessive. In a House Judiciary Committee Meeting on March 4, 1977, an Exxon lobbyist testified that

"the penalty limits in this bill are so excessively high that they threaten the viability of the oil business in the State of Alaska. The risks of spilling all of the oil in a large tanker are very minimal. But for example, a 250,000 dead weight ton tanker

carries 250,000 tons or approximately 1.7 million barrels of oil. At 42 gallons/barrel, that's 73,500,000 gallons. At \$50/gallon, that's \$3.5 billion, even at the reduced maximum penalty of \$10, the penalty would be \$735 million."

I have introduced SB 271 to provide the type of incentive that will be seriously considered by the oil companies. This bill only deals with the catastrophic discharge of crude oil, spills in excess of 100,000 barrels. The \$1,000 and \$2,000 per barrel penalties should garner serious thought toward safe operations.

I have also included an incentive section, similar to the present law, which would credit the oil companies for each barrel cleaned up within 36 hours of the discharge. This does not apply to chemical dispersions.

These penalties will be increased fivefold for those acts that are based on gross negligence or intentional acts or when the defendant did not take reasonable measures to clean up the discharged oil.

These penalties supersede all other penalties for the discharge of oil. The penalties may be reduced if the defendant can demonstrate that the discharge was caused solely by the negligent act of a third party who cannot be found jointly and severally liable for the discharge.

Section 4 extends the civil penalty provisions of this bill to any person who has an oil discharge contingency plan who fails to respond in a manner required by law.

In conclusion, even though an event such as a massive oil spill, may have a low risk probability, it is important to raise the penalties to the level where this risk is taken into account when making operational decisions.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

April 7, 1989

SUBJECT: Civil Penalties for Oil Discharges
(Work Order No. 6-1197)

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

FROM: Terri Lauterbach *TLW*
Legislative Counsel

Enclosed is a draft relating to your request to increase civil penalties for the discharge of crude oil.

Section 1 of the draft amends the definition of "oil" in the current civil penalty statute to exclude uncontaminated crude oil.

Section 2 of the draft enacts a new penalty scheme for discharges of uncontaminated crude oil. It assumes a finding of liability under another statute and imposes a civil penalty that would be in addition to any other liability of the discharger. The penalty would be approximately \$24 per gallon for the first 420,000 gallons and \$48 per gallon for discharges over that amount. However, I have drafted the penalty in terms of barrels, as you requested.

Subsection (b) establishes the incentive for cleanup in the first 36 hours, as you requested. Subsection (c) is patterned after AS 46.03.758(b)(2), causing a higher penalty on a showing of gross negligence or failure to reasonably respond to a discharge. Subsection (d) is patterned after AS 46.03.758(i). Subsection (e) is patterned after AS 46.03.758(j). The definition in subsection (f) is patterned after the definition in AS 46.03.758(1)(3). (Note that it includes discharges on public land - you had asked about discharges on land when we last spoke.)

At your direction, I have not included a subsection on mitigation like that of AS 46.03.758(g). I have also not

Senator Drue Pearce, Chair
Page 2
April 7, 1989

included a subsection patterned after AS 46.03.758(h) because those exceptions would be covered in the underlying liability determination that would occur before the new civil penalty section would be applicable.

Section 3 makes a technical change to accommodate the new civil penalties enacted by secs. 2 and 4 of the draft.

Section 4 makes a person who fails to implement a contingency plan jointly and severally liable for a civil penalty assessed under AS 46.03.759. If it is your intent that their penalty be separate and in addition to the other person's penalty, please let me know, and I will redraft section 4. As drafted, the penalty is not limited to oil terminal facilities, but would be applicable to anyone who didn't respond adequately if their plan called for them to respond to a particular discharge.

Sections 5 and 6 make technical changes to accommodate the new civil penalties enacted by secs. 2 and 4 of the draft.

For your information, I have enclosed a general summary of statutes related to oil pollution discharges like the Prince William Sound disaster and a bibliography of material available at the Alaska State Library related to oil spills. The bibliography was prepared by the Alaska State Library.

If I can be of further assistance, please let me know.

TL:gc
WKG9/024

Enclosure

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 271
PUBLISH DATE: 4/8/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to civil penalties
for discharge of unpermitted contaminated
oil discharge contingency plan
Sponsor: Senate Special Committee on
Oil and Gas

Agency Affected: Environmental Conservation
BRU: Environmental Quality
crude oil and for failure to implement an
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton Phone: 465-2640
Division: Environmental Quality Date: April 11, 1989
Approved by Commissioner: A. D. Kelly Date: 4/13/89
Agency: Alaska Department of Environmental Conservation

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
Title: An Act relating to civil penalties BRU: _____
for the unpermitted discharge of uncontaminated crude oil...
Sponsor: _____ Components: _____
Requestor: Senator Pearce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
Division: Commissioner's Office Date: _____

Approved by Commissioner: A. D. Kyle Date: 4/18/89
Agency: Department of Environmental Conservation

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

SCOMM

62:12

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

4/12/89

DATE TURNED INTO OFFICE _____

Mr. President:

OIL & GAS

Committee considered SB 277

establishing a panel to investigate the Valdez oil discharge disaster
and to recommend changes needed to minimize the possibility and effects
of similar oil discharges; efd

and recommended:

☒ replace with CS Oil & Gas ☐ same title

☐ attached amendment(s) and

☒ new title

☐ _____ letter of intent adopted

☒ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☐ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Rick Halford
Al Adams
Tim Keel

OTHER RECOMMENDATIONS

☐ Committee backup attached

Chair signature and recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a commission to
investigate the Exxon Valdez oil spill
Sponsor: Faiks, Halford, Kelly, et al.
Requestor: Senator Pearce

Agency Affected: Office of the Governor
BRU: Commissions and Special Offices
Components: Exxon Valdez Oil Spill
Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	100.0	500.0				
TOTAL OPERATING	100.0	500.0	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0	500.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	100.0	500.0	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director
Division: Division of Administrative Services

Phone: 465-3616
Date: 4-18-89

Approved by Commissioner: Garrey M. Peska
Agency: Chief of Staff

Date: 4-18-89

Distribution (by preparer):

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

CS SB 277 (Oil & Gas) Fiscal Analysis:

It is not possible to accurately assess the costs of the proposed commission. They will, however, be substantial and will include personal services, travel, contractual services, supplies and equipment. An estimated total is shown on the miscellaneous line of the fiscal note.

The number of staff the commission would need to hire, including legal counsel, investigative staff, and administrative staff with legal expertise is unknown. The timeframe specified for the commission to complete its investigations and gather information for its final recommendations would indicate a substantial staffing requirement. The number of meetings that will be necessary in order to hear testimony, review documents and depositions, evaluate information and formulate final recommendations are impossible to predict.

The needed funds are indicated from the general fund. As the specified charges of the commission appear to be duplication of the work of existing entities, i.e., the Department of Law, the Department of Environmental Conservation, federal efforts under the Clean Water Act and the T.A.P.S. Act, N.O.A.A.'s long-term impact studies, etc., recovery of commission costs from Exxon is unlikely.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a commission to
investigate the Exxon Valdez oil spill....
Sponsor: Faiks, Halford, Kelly, et al.
Requestor: Senator Pearce

Agency Affected: Office of the Governor
BRU: Commissions and Special
Offices
Components: Exxon Valdez Oil Spill
Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	100.0	500.0				
TOTAL OPERATING	100.0	500.0	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0	500.0				
FEDERAL FUNDS						
OTHER						
TOTAL	100.0	500.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director
Division: Division of Administrative Services

Phone: 465-3616
Date: 4-14-89

Approved by Commissioner: Garrey M. Peska
Agency: Chief of Staff

Date: 4-14-89

Distribution (by preparer):

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

CS SB 277 (Oil & Gas) Fiscal Analysis:

It is not possible to accurately assess the costs of the proposed commission. They will, however, be substantial and will include personal services, travel, contractual services, supplies and equipment. An estimated total is shown on the miscellaneous line of the fiscal note.

The number of staff the commission would need to hire, including legal counsel, investigative staff, and administrative staff with legal expertise is unknown. The timeframe specified for the commission to complete its investigations and gather information for its final recommendations would indicate a substantial staffing requirement.

The number of meetings that will be necessary in order to hear testimony, review documents and depositions, evaluate information and formulate final recommendations are impossible to predict. At a minimum, the full commission will receive \$1,500 per day for meetings or commission business in addition to travel and per diem costs.

The needed funds are indicated from the general fund. As the specified charges of the commission appear to be duplication of the work of existing entities, i.e., the Department of Law, the Department of Environmental Conservation, federal efforts under the Clean Water Act and the T.A.P.S. Act, N.O.A.A.'s long-term impact studies, etc., recovery of commission costs from Exxon is unlikely.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing a panel to
investigate the Valdez oil discharge disaster...
Sponsor: Senate Special Com. on Oil & Gas
Requestor: Senate Special Com. on Oil & Gas

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Legislative Operating Budget
Components Legislative Operating Budget
Session Expenses

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No fiscal impact. Travel costs for legislators absorbed within existing budgets of Session Expenses and the Legislative Operating Budget.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 4/14/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W Endicott

Date: 4/14/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

SENATE BILL NO. 277

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a panel to investigate the Valdez oil discharge disaster and to recommend changes needed to minimize the possibility and effects of similar oil discharges; and providing for an effective date."

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

* Section 1. VALDEZ OIL DISASTER REVIEW PANEL. (a) There is established the Valdez Oil Disaster Review Panel consisting of 14 members. Two members shall be senators appointed by the president of the senate and two members shall be representatives appointed by the speaker of the house of representatives. Ten members shall be appointed by the governor.

(b) Before appointing 10 members to the panel under (a) of this section, the governor shall request the United States Coast Guard, the Environmental Protection Agency, the Alyeska Pipeline Service Company, and the Exxon USA Corporation to each nominate a representative to serve as a member of the panel. If an entity named in this subsection nominates a representative, the governor shall appoint the nominee as one of the 10 members to be appointed by the governor.

(c) After appointing members under (b) of this section, the governor shall appoint additional members up to a total of 10 members, including

- (1) a representative of the merchant shipping industry;
- (2) a representative of environmental groups;
- (3) a representative of fishermen from the Prince William Sound area; and

1 (4) three persons who are recognized nationally or statewide for
2 their expertise in science, technology, or management.

3 (d) The panel members shall elect from among themselves a chair and
4 vice-chair.

5 (e) The panel may hire staff it considers necessary to perform its
6 duties, including legal counsel.

7 (f) Members of the panel serve without compensation, but nongovern-
8 mental members are entitled to per diem and travel expenses authorized for
9 boards and commissions under AS 39.20.180.

10 * Sec. 2. DUTIES OF THE PANEL. (a) The panel shall gather information
11 relating to

12 (1) the events leading up to the Valdez oil disaster that began
13 March 24, 1989;

14 (2) the ensuing efforts to contain and clean up the oil dis-
15 charged;

16 (3) the short-term and long-term effects of the Valdez oil
17 disaster on the natural resources and the economy of the state.

18 (b) By March 1, 1990, the panel shall submit a report to the governor
19 and to the legislature containing its findings and recommendations on

20 (1) the factual chain of events that preceded the grounding of
21 the Exxon Valdez and the extent to which oil industry practices and govern-
22 mental practices or laws should be changed to minimize the potential for
23 future similar events;

24 (2) the containment and cleanup actions that were taken or not
25 taken after the discharge, the extent to which current technology was
26 available and used, and ways to improve oil spill response technology and
27 procedures;

28 (3) the environmental and economic effects of the oil discharge;
29 and

1 (4) recommendations on steps that should be taken by the oil
2 industry and by all levels of government to ensure proper management,
3 handling, and transportation of crude oil and to improve the ability of
4 industry and governmental agencies to respond to oil discharges.

5 * Sec. 3. INVESTIGATIONS; HEARINGS. (a) The panel may issue subpoe-
6 nas, administer oaths, hold hearings, and conduct investigations related to
7 its duties.

8 (b) The panel may compel the attendance of witnesses and production
9 of papers, books, records, accounts, documents, and testimony, and may have
10 the deposition of witnesses taken in a manner prescribed by court rule or
11 law for the taking of depositions in civil actions when consistent with the
12 duties assigned to the panel.

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

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

23 * Sec. 4. This Act is repealed March 21, 1990.

24 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
25
26
27
28
29

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

Senate Bill 277 Sectional Analysis

Establishing a panel to investigate the Valdez oil discharge disaster and to recommend changes needed to minimize the possibility and effects of similar oil discharges; and providing for an effective date

Section 1. VALDEZ OIL DIASTER REVIEW PANEL.

- (a) A 14 member panel is established consisting of:
 - 2 Senators appointed by President of the Senate
 - 2 Representatives appointed by the House Speaker
- (b) and (c) Ten members appointed by the Governor, representing:
 - 1 United States Coast Guard
 - 1 Environmental Protection Agency
 - 1 Alyeska Pipeline Service Company
 - 1 Exxon USA Corporation
 - 1 merchant shipping industry
 - 1 environmental community
 - 1 fishermen from Prince William Sound area
 - 3 recognized for expertise in science, technology or management
- (d) The panel shall select its chairman and vice chairman.
- (e) The panel may hire staff to perform its duties.

Section 2. DUTIES OF THE PANEL.

- (a) The panel shall gather information relating to:
 - (1) events leading up to the Valdez spill

OUT OF SESSION

- (2) efforts to contain and clean up the oil discharged
- (3) short and long term effects of the spill on the natural resources and the economy of the state.

(b) The panel's report shall be submitted by March 1, 1990 and will include findings and recommendations on:

(1) factual chain of events preceding the grounding of the Exxon Valdez and the extent oil industry and governmental practices or law should be changed to minimize the potential for future similar events;

(2) containment and clean up actions, the extent to which current technology was available and used, and ways to improve spill response;

(3) environmental and economic effects of the oil discharge;

(4) recommendations on steps to be taken to ensure proper management, handling, and transportation of crude oil in the future

Section 3. INVESTIGATIONS; HEARINGS.

(a) - (c) The panel may issue subpoenas, administer oaths, hold hearings and conduct investigations related to its duties.

(d) State agencies shall, to the extent permitted by law, cooperate with the panel and provide information requested.

Section 4. Panel Termination

The panel sunsets twenty days after submission of its report (March 21, 1990).

Section 5. Effective Date

Immediate effective date.

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



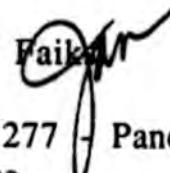
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

April 12, 1989

MEMORANDUM

TO: Senator Drue Pearce, Chairman
Senate Oil and Gas Committee

FROM: Senator Jan Faiks 

SUBJECT: Senate Bill 277 - Panel to Investigate the Valdez
Oil Discharge

Senate Bill 277 is modeled after the executive order which established the Presidential Commission on the Space Shuttle Challenger Accident. It is my hope that by establishing a similar mechanism, Alaskans will be able to examine the facts and circumstances leading to the spill as well as develop recommendations on steps which can be taken to minimize the possibility of a similar accident occurring again in the future.

For your reference, attached is a sectional analysis of the bill, as well as a copy of the Presidential Commission's executive order and summary of the commission's report on the Challenger accident.

OUT OF SESSION

3111 C STREET ANCHORAGE, ALASKA 99503 907-561-7610

January 3, 1986, which established
the Presidential Commission on the Space Shuttle Challenger Accident

EXECUTIVE ORDER

PRESIDENTIAL COMMISSION ON THE
SPACE SHUTTLE CHALLENGER ACCIDENT

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

- (1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and
- (2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

Report to the President

By The
**PRESIDENTIAL
COMMISSION**
*on the Space Shuttle
Challenger Accident*

June 6th, 1986
Washington, D.C.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

January 2, 1986, which established
the Presidential Commission on the Space Shuttle Challenger Accident

EXECUTIVE ORDER

PRESIDENTIAL COMMISSION ON THE
SPACE SHUTTLE CHALLENGER ACCIDENT

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

Ronald Reagan

THE WHITE HOUSE,

February 3, 1986.

Report to the President

By The
**PRESIDENTIAL
COMMISSION**
*on the Space Shuttle
Challenger Accident*

June 6th, 1986
Washington, D.C.

Presidential Commission on the Space Shuttle Challenger Accident

William P. Rogers, Chairman

Former Secretary of State under President Nixon (1969-1973), and Attorney General under President Eisenhower (1957-1961), currently a practicing attorney and senior partner in the law firm of Rogers & Wells. Born in Norfolk, New York, he was awarded the Medal of Freedom in 1973. He holds a J.D. from Cornell University (1937) and served as LCDR, U.S. Navy (1942-1946).

Neil A. Armstrong, Vice Chairman

Former astronaut, currently Chairman of the Board of Computing Technologies for Aviation, Inc. Born in Wapakoneta, Ohio, Mr. Armstrong was spacecraft commander for Apollo 11, July 16-24, 1969, the first manned lunar landing mission. He was Professor of Aeronautical Engineering at the University of Cincinnati from 1971 to 1980 and was appointed to the National Commission on Space in 1985.

David C. Acheson

Former Senior Vice President and General Counsel, Communications Satellite Corporation (1967-1974), currently a partner in the law firm of Drinker Biddle & Reath. Born in Washington, DC, he previously served as an attorney with the U.S. Atomic Energy Commission (1948-1950) and was U.S. Attorney for the District of Columbia (1961-1965). He holds an LL.B. from Harvard University (1948) and served as LT, U.S. Navy (1942-1946).

Dr. Eugene E. Covert

Educator and engineer. Born in Rapid City, South Dakota, he is currently Professor and

Head, Department of Aeronautics and Astronautics, at Massachusetts Institute of Technology. Member of the National Academy of Engineering, he was a recipient of the Exceptional Civilian Service Award, USAF, in 1973 and the NASA Public Service Award in 1980. He holds a Doctorate in Science from Massachusetts Institute of Technology.

Dr. Richard P. Feynman

Physicist. Born in New York City, he is Professor of Theoretical Physics at California Institute of Technology. Nobel Prize winner in Physics, 1965, he also received the Einstein Award in 1954, the Oersted Medal in 1972 and the Niels Bohr International Gold Medal in 1973. He holds a Doctorate in Physics from Princeton (1942).

Robert B. Hotz

Editor, publisher. Born in Milwaukee, Wisconsin. He is a graduate of Northwestern University. He was the editor-in-chief of *Aviation Week & Space Technology* magazine (1953-1980). He served in the Air Force in World War II and was awarded the Air Medal with Oak Leaf Cluster. Since 1982, he has been a member of the General Advisory Committee to the Arms Control and Disarmament Agency.

Major General Donald J. Kutyna, USAF

Director of Space Systems and Command, Control, Communications. Born in Chicago, Illinois, and graduate of the U.S. Military Academy, he holds a Master of Science degree from Massachusetts Institute of Technology (1965). A command pilot with over 4,000 flight

hours, he is a recipient of the Distinguished Service Medal, Distinguished Flying Cross, Legion of Merit and nine air medals.

Dr. Sally K. Ride

Astronaut. Born in Los Angeles, California, she was a mission specialist on STS-7, launched on June 18, 1983, becoming the first American woman in space. She also flew on mission 41-G launched October 5, 1984. She holds a Doctorate in Physics from Stanford University (1978) and is still an active astronaut.

Robert W. Rummel

Space expert and aerospace engineer. Born in Dakota, Illinois, and former Vice President of Trans World Airlines, he is currently President of Robert W. Rummel Associates, Inc., of Mesa, Arizona. He is a member of the National Academy of Engineering and is holder of the NASA Distinguished Public Service Medal.

Joseph F. Sutter

Aeronautical engineer. Currently Executive Vice President of the Boeing Commercial Airplane Company. Born in Seattle, he has been with Boeing since 1945 and was a principal figure in the development of three generations of jet aircraft. In 1984, he was elected to the National Academy of Engineering. In 1985, President Reagan conferred on him the U.S. National Medal of Technology.

Dr. Arthur B. C. Walker, Jr.

Astronomer. Born in Cleveland, Ohio, he is currently Professor of Applied Physics and was formerly Associate Dean of the Graduate Divi-

sion at Stanford University. Consultant to Aerospace Corporation, Rand Corporation and the National Science Foundation, he is a member of the American Physical Society, American Geophysical Union, and the American Astronomy Society. He holds a Doctorate in Physics from the University of Illinois (1962).

Dr. Albert D. Wheelon

Physicist. Born in Moline, Illinois, he is currently Executive Vice President, Hughes Aircraft Company. Also a member of the President's Foreign Intelligence Advisory Board, he served as a consultant to the President's Science Advisory Council from 1961 to 1974. He holds a Doctorate in Physics from Massachusetts Institute of Technology (1952).

Brigadier General Charles Yeager, USAF (Retired)

Former experimental test pilot. Born in Myra, West Virginia, he was appointed in 1985 as a member of the National Commission on Space. He was the first person to penetrate the sound barrier and the first to fly at a speed of more than 1,600 miles an hour.

Dr. Alton G. Keel, Jr., Executive Director

Detailed to the Commission from his position in the Executive Office of the President, Office of Management and Budget, as Associate Director for National Security and International Affairs; formerly Assistant Secretary of the Air Force for Research, Development and Logistics; and Senate Staff. Born in Newport News, Virginia, he holds a Doctorate in Engineering Physics from the University of Virginia (1970).

	Executive Secretary	White House MAJ, USA/OMB
Special Assistants		
Marie C. Hunter	Executive Assistant to the Chairman	Rogers & Wells
M. M. Black	Personal Secretary to Vice Chairman & Executive Director	OMB
Mark D. Weinberg	Media Relations	White House
Herb Hetu	Media Relations	Consultant
John T. Shepherd	NASA Tasking Coordination	CAPT, USN (Ret)/Atty.
Administrative Staff		
Stephen B. Hyle	Administrative Officer	LTC, USAF
Patt Sullivan	Administrative Assistant	NASA
Marilyn Stumpf	Travel Coordination	NASA
Joleen A. B. Bottalico	Travel Coordination	NASA
Jane M. Green	Secretary	NASA
Lorraine K. Walton	Secretary	NASA
Vera A. Barnes	Secretary	NASA
Virginia A. James	Receptionist	Contract Support
Investigative Staff		
William G. Dupree	Investigator, Development and Production	DOD IG
John B. Hungerford, Jr.	Investigator, Development and Production	LTC, USAF
John P. Chase	Investigator, Pre-Launch Activities	MAJ, USMC/DOD IG
Brewster Shaw	Investigator, Pre-Launch Activities	LTC, USAF/NASA Astronaut
John C. Macidull	Investigator, Accident Analysis	FAA/CDR, USNR-R
Ron Waite	Investigator, Accident Analysis	Engineering Consultant
John Fabian	Investigator, Mission Planning and Operations	COL, USAF/Former Astronaut
Emily M. Trapnell	Coordinator, General Investigative Activities	FAA Atty.
Randy R. Kehrli	Evidence Analysis	DOJ Atty.
E. Thomas Almon	Investigator	Special Agent, FBI
Patrick J. Maley	Investigator	Special Agent, FBI
John R. Molesworth, Jr.	Investigator	Special Agent, FBI
Robert C. Thompson	Investigator	Special Agent, FBI
Dr. R. Curtis Graeber	Human Factors Specialist	LTC, USA/NASA
Michael L. Marx	Metallurgist	NTSB

Writing Support

Woods Hansen	Editor	Free Lance
James Haggerty	Writer	Free Lance
Anthony E. Hartle	Writer	COL, USA/USMA
William Bauman	Writer	CAPT, USAF/USAF
Frank Gillen	Word Processing Supervisor	Contract Support
Lawrence J. Herb	Art Layout	Free Lance
Willis Rickert	Printer	NASA
Lynne Komai	Design	Contract Support

Documentation Support

Clarisse Abramidis	Case Manager	DOJ
Fritz Geurtsen	Project Manager	DOJ
John Dunbar	Contract Representative	Contract Support
Valarie Lease	Support Center Supervisor	Contract Support
Stephen M. Croll	Correspondence Support	Contract Support

Independent Test Observers

Eugene G. Haberman	Rocket Propulsion Lab	USAF
Wilbur W. Wells	Rocket Propulsion Lab	USAF
Don E. Kennedy	TRW Ballistic Missile Office	Pro Bono
Laddie E. Dufka	Aerospace Corp	Pro Bono
Mohan Aswani	Aerospace Corp	Pro Bono
Michael L. Marx	Metallurgist	NTSB

An Overview

President Reagan, seeking to ensure a thorough and unbiased investigation of the Challenger accident, announced the formation of the Commission on February 3, 1986. The mandate given by the President, contained in Executive Order 12546, required Commission members to:

- (1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and
- (2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

Following their swearing in by Chairman Rogers on February 6th, Commission members immediately began a series of hearings during which NASA officials outlined agency procedures covering the Shuttle program and the status of NASA's investigation of the accident.

Shortly thereafter, on February 10th, Dr. Alton G. Keel, Jr., Associate Director of the Office of Management and Budget, was appointed Executive Director. Dr. Keel began gathering a staff of 15 experienced investigators from various government agencies and the military services, and administrative personnel to support Commission activities.

During a closed session on February 10, 1986, the Commission began to learn of the troubled history of the Solid Rocket Motor joint and seals. Moreover, it discovered the first indication that the contractor, Morton Thiokol, initially recommended against launch on January 27, 1986, the night before the launch of 51-L, because of con-

cerns regarding low temperature effects on the joint and seal. To investigate this disturbing development, additional closed sessions were scheduled for February 13th and 14th at Kennedy. The February 13, 1986, session was an extensive presentation of film, video and telemetry data relating to the Challenger accident. It provided the Commission the first evidence that the Solid Rocket Motor joint and seal may have malfunctioned, initiating the accident.

The session on February 14th included NASA and contractor participants involved in the discussion on January 27, 1986, not to launch 51-L. After testimony was received, an executive session of the Commission was convened. The following statement was subsequently issued by the Chairman on February 15, 1986, reflecting the conclusion and view of the Commission:

"In recent days, the Commission has been investigating all aspects of the decision making process leading up to the launch of the Challenger and has found that the process may have been flawed. The President has been so advised.

"Dr. William Graham, Acting Administrator of NASA, has been asked not to include on the internal investigating teams at NASA, persons involved in that process.

"The Commission will, of course, continue its investigation and will make a full report to the President within 120 days."

The role of the Commissioners thus changed from that of overseers to that of active investigators and analysts of data presented by NASA and its contractors.

The Commission itself divided into four investigative panels:

1. Development and Production, responsible for investigating the acquisition and test and evaluation processes for the Space Shuttle elements;
2. Pre-Launch Activities, responsible for assessing the Shuttle system processing, launch readiness process and pre-launch security;
3. Mission Planning and Operations, responsible for investigating mission planning and operations, schedule pressures and crew safety areas; and
4. Accident Analysis, charged with analyzing the accident data and developing both an anomaly tree and accident scenarios.

By February 17th, the panel organization had been finalized and, on February 18th, Chairman Rogers described the Commission's new approach before Congress. Working groups were sent to Marshall, Kennedy and Thiokol to analyze data relating to the accident and to redirect efforts. NASA's investigation was also reorganized to reflect the structure of the Commission's panels.

A series of public hearings were planned on February 25th, 26th and 27th to assure an orderly and fair presentation of all the facts that the Commission had discovered concerning the launch decision making process for flight 51-L. At these hearings, additional information about the launch decision was obtained from the testimony of Thiokol, Rockwell and NASA officials. Details about the history of problems with the then suspect Solid Rocket Motor joints and seals also began emerging and served to focus the Commission's attention on a need to document fully the extent of knowledge and awareness about the problems within both Thiokol and NASA.

Following these hearings, a substantial portion of the investigative efforts of the Commission was conducted by the separate panels in parallel with full Commission hearings.

The Accident Analysis Panel, chaired by Major General Donald Kutyna, made several trips to both Kennedy and Marshall and traveled to Thiokol facilities in Utah to review photographic and telemetric evidence as well as the results of the salvage operation and to oversee the tests being conducted by NASA and Thiokol engineers.

The Accident Analysis Panel followed standard investigative procedures. An extensive effort

was needed to establish the design, manufacturing and processing baseline configuration of the Shuttle vehicle for STS 51-L. A data base was established for the examination and analysis of information related to all flight elements and segments. From these data and a compilation of possible and observed deviations from the norm, scenarios that might have led to the accident were developed. Tests and analyses were then performed to determine the specific scenarios most likely to have caused loss of Challenger.

Early in March, at the request of the Chairman, this group assembled and directed the Commission's independent team of technical observers with extensive experience in Solid Rocket Motor technology and accident investigation to validate and interpret the tests and analyses performed on the Thiokol motor by NASA and Thiokol.

The Development and Production Panel, chaired by Joseph Sutter, centered its investigation on the production and testing activities of the Shuttle element contractors. Starting at Johnson, the panel and staff investigators looked at how these contractors and their NASA counterparts interact.

They next traveled to the Wasatch plant of Thiokol in Promontory, Utah. Thiokol personnel briefed the group on the details of the design, manufacturing, verification and certification of the Solid Rocket Motors. Similar sessions took place in April in Downey, California, at the headquarters of Rocketdyne, Inc., the Shuttle main engine contractor; in Canoga Park, California, at the facilities of Rockwell International, the Orbiter contractor; in Michoud, Louisiana, at the plant of Martin Marietta, the External Tank contractor; and in Berea, Kentucky, at the facilities of Parker Seal Company, the manufacturers of the O-ring seals of the Thiokol Solid Rocket Motors.

In addition, the panel traveled to Marshall to learn about Marshall's interaction with Thiokol and to discuss issues that had been raised during the visits to the contractors' plants.

The Pre-Launch Activities Panel, chaired by David Acheson, centered its investigation at Kennedy where the Shuttle elements are assembled and all other final launch preparations are completed. This panel, in conjunction with the Mission Planning and Operations Panel, chaired by Dr. Sally Ride, met with its NASA counterparts in early March. This series of meetings identified for the Commission the various aspects of the pre-

launch process that required thorough review, not only for the purpose of the Challenger accident investigation but also to increase safety margins for the future.

Later in March the Pre-Launch Panel again met at Kennedy to receive the NASA Team's preliminary reports and to focus on the spare parts issue and Solid Rocket Booster assembly operations. Panel members also met with contractor personnel involved in Shuttle processing and Kennedy security work.

After the joint meeting at Kennedy with the Pre-Launch Activities Panel, the Mission Planning and Operations Panel traveled to Johnson to begin working with its NASA counterparts and to initiate its own investigative efforts. A specific focus of its work was the mission planning and crew preparation for STS 51-L and details of NASA's safety, reliability and quality assurance programs. Later meetings at both Johnson and Marshall dealt with range safety, weather criteria for launch, flight delays and hardware testing.

While the work of the individual panels and their investigative staffs was ongoing, a general investigative staff began a series of individual interviews to document fully the factual background of various areas of the Commission's interest, including the telecon between NASA and Thiokol officials the night before the launch; the history of joint design and O-ring problems; NASA safe-

ty, reliability and quality assurance functions; and the assembly of the right Solid Rocket Booster for STS 51-L. Subsequent investigative efforts by this group were directed in the area of the effectiveness of NASA's organizational structure, particularly the Shuttle program structure, and allegations that there had been external pressure on NASA to launch on January 28th.

More than 160 individuals were interviewed and more than 35 formal panel investigative sessions were held generating almost 12,000 pages of transcript (Table 1 and Table 2). Almost 6,300 documents, totaling more than 122,000 pages, and hundreds of photographs were examined and made a part of the Commission's permanent data base and archives. These sessions and all the data gathered added to the 2,800 pages of hearing transcript generated by the Commission in both closed and open sessions.

In addition to the work of the Commission and the Commission staff, NASA personnel expended a vast effort in the investigation. More than 1,300 employees from all NASA facilities were involved and were supported by more than 1,600 people from other government agencies and over 3,100 from NASA's contractor organizations. Particularly significant were the activities of the military, the Coast Guard and the NTSB in the salvage and analysis of the Shuttle wreckage.

Table 1

Commission Investigative Interviews

Interviews of January 27, 1986

Teleconference (8:15 PM EST)

Participants

Ben Powers	John Schell	William Macbeth	Jerry E. Mason
Frank Adams	Keith Coates	Brian Russell	Robert Lund
Larry Wear	George Hardy	Jack Kapp	Joseph Kilminster
James Smith	Jud Lovingood	Ron Ebeling	Roger Boisjoly
Boyd Brinton	Jack Buchanan	Calvin Wiggins	Arnold Thompson
Robert Schwinghamer	Allan McDonald	Larry Sayer	Jerry Peoples
William Reihl	Carver Kennedy	Joel Maw	James Kingsbury
Wayne Little	Cecil Houston	Kyle Speas	
John Q. Miller	Lawrence Mulloy	Jerry Burn	
John McCarty	Stanley Reinartz	Don Keiner	

(c) Every official and employee shall, unless otherwise authorized by law to travel outside the state, obtain prior approval for travel outside the state from the head of the official's or employee's department or from an immediate supervisor, or from the Department of Administration if the official or employee is not within a department or is not under the direct supervision of an official or supervisor. If an employee deviates materially from the travel authorized under this section, the employee must obtain approval for the deviation from the person who approved the travel before the Department of Administration may reimburse the employee for the travel. (§ 7 ch 60 SLA 1957; am § 1 ch 83 SLA 1962)

Sec. 39.20.150. Advances and recovery. (a) An agency may advance, through proper disbursing methods, to a person entitled to per diem or mileage allowance under AS 39.20.110 — 39.20.170 the sums considered advisable considering the character and probable duration of the travel to be performed.

(b) Sums advanced and not used for allowable travel expense are recoverable by setoff against salary due, or otherwise, from the person to whom advanced, or the person's estate, by deduction from any amount due from the state, or by other legal methods of recovery that may be necessary. (§ 8 ch 60 SLA 1957)

Sec. 39.20.160. Regulations. The fixing and payment under AS 39.20.110 — 39.20.170 of travel and per diem allowances and of advances and recovery and reimbursement of travel expenses shall be in accordance with regulations adopted by the commissioner of administration. The regulations shall be uniform for all officials and employees, and all agencies and departments. The regulations shall also govern the use of public transportation facilities by officials and employees. The regulations relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 9 ch 60 SLA 1957; am § 2 ch 13 SLA 1963)

Sec. 39.20.170. Construction of AS 39.20.110 — 39.20.170. AS 39.20.110 — 39.20.170 may not be construed to modify or repeal a law providing for the travel expenses of the governor, or members of the legislature, or members of boards or commissions of the state government. (§ 10 ch 60 SLA 1957)

Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc. Except as otherwise provided by law, from and after March 27, 1962, the provisions in this section relating to per diem and transportation govern exclusively and supersede all other provisions of law with respect to a member of a state board, commission, committee, judicial council, or other similar

body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) For transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170.

(2) For reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974)

Cross references. — For coverage of state board and commission members under the Worker's Compensation Act, see AS 23.30.242.

Opinions of attorney general. — In order to recover an allowance for non-meeting activity, an occupational licensing board member must be engaged in an activity within the scope of the applicable board's powers. November 6, 1984 Op. Att'y Gen.

* An occupational licensing board member cannot receive a per diem allowance for conducting an activity that should be performed by division personnel; any activity approved must be specifically defined by statute as a board duty and

should be an activity that cannot be accomplished within the confines of a board meeting. If the task can be performed during a meeting, then per diem should not be paid for time unnecessarily spent by a board member outside a board meeting. It is important, of course, for budgetary reasons, that board activity for which per diem compensation is sought be kept to a minimum. November 6, 1984 Op. Att'y Gen.

The Alaska Power Authority may reimburse a member only for (1) time spent in actual meeting or (2) time spent on authorized official business incident to his duties as a member. April 19, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Laborers & Hod Carriers Local (File Nos. 1435, 1459), 494 P.2d 808 341 v. Groothuis, Sup. Ct. Op. No. 773 (1972).

Sec. 39.20.185. State employees who are members of certain boards. A state official or employee who is a member of the judicial council or a state official or employee appointed by the governor to a state board, commission, or committee established under the authority of law is not entitled to per diem when the meeting or other business takes place in the community of which the member is a resident. (§ 1 ch 139 SLA 1968)

Collateral references. — 2 Am. Jur. 73 C.J.S., Public Administrative Law and Procedure, § 405.

Sec. 44.62.420. Form of notice of hearing. (a) The agency shall deliver or mail a notice of hearing to all parties at least 10 days before the hearing. The hearing shall not be held before the expiration of the time within which the respondent is entitled to file a notice of defense.

(b) The notice to respondent shall be substantially in the following form but may include other information:

You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the day of, 19...., at the hour of, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office or agency). (§ 10 (ch 2) ch 143 SLA 1959)

Sec. 44.62.430. Subpoena. (a) Before the hearing begins the agency shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure. After the hearing begins the agency hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. A witness is not obliged to attend at a place out of the election district in which the witness resides unless the distance is less than 100 miles from the place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

(c) A witness who is not a party and who appears under a subpoena is entitled to receive

- (1) fees, except a witness who is an officer or employee of the state or a political subdivision of the state;
- (2) mileage in the same amount and under the same circumstances as prescribed by law for a witness in a civil action in a superior court;
- (3) an additional fee and mileage to a per diem compensation of \$15 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing, if the witness attends a hearing at a point so far removed from the residence of the witness as to prohibit return to the residence from day to day.

(d) Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed. (§ 11 (ch 2) ch 143 SLA 1959)

Opinions of attorney general. AS 23.30.115 and 23.30.135 cover much the same ground as AS 44.62.430, 44.62.440 and AS 44.62.460 of the earlier Administrative Procedure Act. This would have been unnecessary if the intent had been that the Administrative Procedure Act should govern the procedure for hearings in workers' compensation hearings. 1959 Op. Att'y Gen., No. 24.

The Alaska Police Standards Council cannot request the issuance of subpoenas for investigative police reports or documents from other agencies without having initiated proceedings for revocation of a certificate under the Administrative Procedure Act November 24, 1980, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Commercial Union Cos. v. Smallwood, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Collateral references. — 1 and 2 Am. Jur. 2d, Administrative Law, §§ 89 to 91, 263 to 272.
73 C.J.S., Public Administrative Law and Procedure, §§ 131, 132.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction. 27 ALR2d 1208.

Sec. 44.62.440. Depositions. (a) On verified petition of a party, an agency may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the nature of the pending proceeding; (2) the name and address of the witness whose testimony is desired; (3) a showing of the materiality of the testimony; (4) a showing that the witness will be unable or cannot be compelled to attend; and (5) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) If the witness resides outside the state and if the agency orders the taking of the testimony of the witness by deposition, the agency shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court nearest to the principal office of the agency. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in the superior court in a civil action. (§ 12 (ch 2) ch 143 SLA 1959)

Opinions of attorney general. — AS 23.30.115 and 23.30.135 cover much the same ground as AS 44.62.430, 44.62.440 and AS 44.62.460 of the earlier Administrative Procedure Act. This would have

been unnecessary if the intent had been that the Administrative Procedure Act should govern the procedure for hearings in workers' compensation hearings. 1959 Op. Att'y Gen., No. 24.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of Rule 32(a).

(b) *Pending Appeal and Review.* The court in which a judgment, order or decision has been rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court, as follows:

- (1) If an appeal has been taken from a judgment.
- (2) If a petition for review of an order or decision of the court has been filed with the supreme court.
- (3) If before the taking of an appeal or filing a petition for review, the time therefor has not expired.

In any case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) *Testimony for Use in Foreign Jurisdictions.* When the deposition of any person is to be taken in this state pursuant to the laws of another state, or of the United States or of another country, for use in proceedings in such other state, the United States or other country, the court upon motion may order issuance of subpoena in aid of taking such deposition, as provided in Rule 45(d).

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967, by SCO 158 effective February 15, 1973; and by SCO 888 effective July 15, 1988)

Annotations

Cases

Petition to perpetuate testimony, filed before complaint, does not commence an action. *Chiei v. Stern*, Op. No. 1400, 561 P2d 1216 (Alaska 1977).

Where plaintiff sought to take deposition before end of limitation period but filed complaint after end of limitation period, action was barred. *Chiei v. Stern*, Op. No. 1400, 561 P2d 1216 (Alaska 1977).

Rule 28. Persons Before Whom Depositions May be Taken.

(a) *Within the State.* Within the state, depositions shall be taken before an officer authorized by the laws of this state to administer oaths, or before a person appointed by the court in which the action is pending. A person appointed has power to administer oaths and take testimony.

(b) *Without the State but Within the United States.* Without the state but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *In Foreign Countries.* In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(d) *Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, except that in the case of an audio or audio-visual deposition, an attorney involved in the case may also operate or direct the operation of the recording machinery.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 733 effective December 15, 1986)

Rule 29

ALASKA RULES OF COURT

Rule 29. Stipulations Regarding Discovery Procedure.

Unless the court orders otherwise, the parties may by written stipulation: (1) provide the depositions may be taken before any person, at any time or place, upon any notice, and in any manner and that when so taken may be used like other depositions; and (2) modify the procedures provided by these rules for other methods of discovery.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 411 effective June 15, 1980)

Rule 30. Depositions Upon Oral Examination.

(a) **When Depositions May be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) **Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization.**

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the judicial district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support

the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b) (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(5) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph (b) (5) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) **Examination and Cross-Examination: Record on Examination; Oath; Objections.** Examination and cross-examination of witnesses may proceed as permitted at the trial under the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. For an audio or audio-visual deposition, any officer authorized by the laws of this state to administer oaths shall swear the witness. The recording machinery may be operated by such officer, or someone acting under his direction and in his presence, even where such officer is also an attorney in the case. The testimony shall be taken stenographically or recorded by audio or audio-visual means. A party may arrange at his own expense to have any portion of the record typewritten.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party,

and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the judicial district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses in relation to the motion.

(e) Submission to Witness; Changes; Signing.

When a stenographic deposition is taken and the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d) (4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert

name of witness]" and shall promptly send it to the party who requested that the deposition be transcribed. If requested, the officer shall also send a copy of the deposition to the other party for the reasonable cost of postage and copying.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; by SCO 634 effective September 15, 1985; by SCO 731 effective December 15, 1986; by SCO 732 effective December 15, 1986; and by SCO 773 effective December 15, 1986)

Rule 30

ALASKA RULES OF COURT

Annotations

Cases

The provision of this rule permitting a motion by a party during the taking of a deposition for a court to order a deposition terminated covers those situations where the deponent, after showing bad faith or a course of conduct that unreasonably annoys, embarrasses or oppresses deponent, to receive appropriate relief by court order. Such suspension has no application to a motion for relief made prior to the commencement of the deposition. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

The person filing a motion to set aside subpoenas to appear and depose is not automatically excused from appearing and deposing. The motion must be noticed for hearing and ruled on favorably by the court before the movant is excused from obeying the subpoena. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

Rule 30.1. Audio and Audio-Visual Depositions.

(a) Authorization of Audio-Visual Depositions.

(1) Any deposition upon oral examination may be recorded by audio or audio-visual means without a stenographic record. Any party may make at his own expense a simultaneous stenographic or audio record of the deposition. Upon his request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) The audio or audio-visual recording is an official record of the deposition. A transcript prepared in accordance with Rule 30(c) is also an official record of the deposition.

(3) On motion for good cause the court may order the party taking, or who took, a deposition by audio or audio-visual recording to furnish at his expense a transcript of the deposition.

(b) Use. An audio or audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(c) Notice. The notice for taking an audio or audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio or audio-visual means.

(d) Procedure. The following procedure must be observed in recording an audio or audio-visual deposition:

(1) The deposition must begin with an oral statement which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the name of the witness;

(F) the party on whose behalf the deposition is being taken; and

(G) any stipulations by the parties.

(2) Counsel shall identify themselves on the recording.

(3) The oath must be administered to a witness on the recording.

(4) The videotaped deposition shall depict the witness in a waist-up shot, seated at a table. The camera and lens shall not be varied except as may be necessary to follow natural body movements of the witness or to present exhibits or describe evidence that is being used during the deposition.

(5) If the length of the deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on the recording.

(6) At the conclusion of the deposition, a statement must be made on the recording that the deposition is concluded. A statement may be made on the recording setting forth any stipulations made by counsel concerning the custody of the recording and exhibits or other pertinent matters.

(7) Audio depositions must be indexed by a brief written log notation of the recorder counter number at the beginning of each examination whether direct, cross, redirect, etc. The log must be attached to the tape.

(8) Audio visual depositions may be indexed by a time generator or similar method.

(9) An objection must be made as in the case of stenographic depositions.

(10) Unless otherwise stipulated by the parties, the original audio or audio-visual recording of a deposition shall be held by the party noticing the deposition.

(11) If the court issues an editing order, the original audio or audio-visual recording must not be altered.

(e) Costs. The reasonable expense of recording, editing, and using an audio or audio-visual deposition may be taxed as costs.

(f) Standards. The Administrative Director may establish standards for audio or audio-visual equipment and guidelines for taking and using audio or audio-visual depositions. Incompatible audio or audio-visual recordings must be conformed to the standards at the expense of the proponent. Conformed recordings may be used as originals.

(SCO 734 effective December 15, 1986)

Rule 31. Depositions on Written Questions.

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(5).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) **Notice of Filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(Adopted by SCO 5 October 9, 1959; amended by SCO 158 effective February 15, 1973; and by SCO 388 effective July 15, 1988)

Rule 32. Use of Depositions in Court Proceedings.

(a) **Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying may be used against any party who was present or represented at

the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any part for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(5) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or (F) that the witness' testimony has been recorded on video tape.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) **Objections to Admissibility.** Subject to the provisions of Rule 28(c) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) **Effect of Taking or Using Depositions.** A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or

Rule 43.1

ALASKA RULES OF COURT

- (3) drugs and alcoholic beverages;
- (4) perishable, flammable or hazardous materials;
- (5) money, jewelry or other valuable items; and
- (6) items which are unwieldy due to bulk and/or weight.

Whenever exhibits are returned to counsel for safekeeping pending appeal, the court may require counsel to submit an affidavit setting forth the specific measures taken to insure safekeeping of the exhibits.

(h) **Administrative Bulletin.** The administrative director shall establish standards and procedures by appropriate bulletin consistent with these rules governing the marking, handling, storage, safekeeping, and disposal of all exhibits coming into the court's custody. Unless otherwise ordered by the court, such standards and procedures are controlling.

(Added by SCO 598 effective September 1, 1984; amended by SCO 948 effective January 15, 1989)

Rule 45. Subpoena.

(a) **For Attendance of Witnesses—Form—Issuance.** Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and title of the action, and shall command each person to whom it is directed to attend and give testimony or to produce documents at a time and place therein specified. The clerk shall issue a subpoena for the attendance of a witness, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. The clerk shall issue a subpoena for the production of documentary evidence signed and sealed and indicating the date, time and place of the deposition or court proceeding at which the documentary evidence is to be produced.

(b) **For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) void or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

(c) **Service.** A subpoena may be served by a peace officer, or any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage prescribed by rule. When the subpoena is

issued on behalf of the state, a municipality, a borough, a city, or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may also be served by registered or certified mail. In such case the clerk shall mail the subpoena for delivery only to the person subpoenaed and, unless not required under this rule, shall enclose a warrant or postal money order in the amount of the fees for one day's attendance and of the mileage prescribed by rule. The returned delivery receipt shall be so addressed that it is returned to the party requesting the subpoena or his attorney. Proof of service shall be made by affidavit.

(d) Subpoena for Taking Depositions—Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the court for any judicial district of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subparagraph (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the judicial district in which the deposition is to be taken may be required to attend an examination at any place within the district, unless otherwise ordered by the court. A nonresident of the judicial district in which the deposition is to be taken, and a nonresident of the state subpoenaed within the state, may be required to attend at any place within the district wherein he is served with a subpoena, unless otherwise ordered by the court.

(e) **Subpoena for a Hearing or Trial.** At the request of any party subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court for the judicial district in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(f) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

(g) **Enforcement of Administrative Subpoenas.** When any officer or agency of the state has the authority to issue subpoenas, enforcement of such subpoenas to compel the giving of testimony or the production of documents may be secured by proceedings brought in the court in the manner provided by the Administrative Procedures Act of the state.

(Adopted by SCO 5 October 9, 1959; amended by SCO 90 effective July 24, 1967; by SCO 167 dated June 25, 1973; by SCO 258 effective November 15, 1976; by SCO 374 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 558 effective May 2, 1983; and by SCO 934 effective January 15, 1989)

Rule 51. Instructions to Jury.

(a) **Requested Instructions—Objections.** At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court give the jury specific instructions. The court shall inform counsel of the final form of jury instructions prior to their arguments to the jury. Following the close of the evidence, before or after the arguments of counsel, the court shall instruct the jury. Additionally, the court may give the jury such instructions as it deems necessary at any stage of the trial. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity must be given to make the objection out of the hearing of the jury, by excusing the jury or hearing objections in chambers.

(b) **Instructions to be Given.** The court shall instruct the jury that they are the exclusive judges of all questions of fact and of the effect and value of evidence presented in the action. The court shall instruct the jury on all matters of law which it considers necessary for their information in giving their verdict. On all proper occasions they shall also be instructed:

(1) That they are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in their minds against a less number, or against a presumption or other evidence satisfying their minds.

(2) That a witness wilfully false in one part of his testimony may be distrusted in other parts.

(3) That the oral admissions of a party ought to be viewed with caution.

(4) That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one party to produce and of the other party to contradict; and if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of one party to produce, that the evidence offered should be viewed with distrust.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 79 effective February 1, 1966; and by SCO 920 effective January 15, 1989)

PART IX. JUDGMENT

Rule 58.1. Judgments and Orders—Effective Dates and Commencement of Time for Appeal, Review and Reconsideration.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) **Oral Orders.** The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge shall also announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) **Written Orders Not Preceded by Oral Orders.** The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) **Judgments.** The date of entry of a civil judgment is the date it is signed unless otherwise specified in the judgment. All judgments shall be reduced to writing.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) **Oral Orders.**

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces his intention of having the order reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.