

SCOMM

62:17

*Comparison with SB503:
Secs. 3 and 5 of SB503 are omitted.
New material in CS = Secs. 3-7*

*SB 421 material, starting on pg. 8, ending on pg. 11
plus miscellaneous changes noted in red*

go0520sE
Lauterbach
3/26/90

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 CS FOR SENATE BILL NO. 503 (Oil & Gas)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the governor to spend money from
7 the oil and hazardous substance release response fund
8 for declared disasters; establishing the Alaska State
9 Emergency Response Commission and the Hazardous
10 Substance Spill Technology Review Council; and pro-
11 viding for an effective date."

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

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

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

18 * Sec. 2. AS 26.23.050(b) is amended to read:

19 (b) Whenever, and to the extent that, money is needed to cope
20 with a disaster, the first recourse shall be to funds regularly appro-
21 priated to state and local agencies. The second recourse shall be to
22 funds available in the disaster relief fund or, for oil or hazardous
23 substances discharges, the oil and hazardous substance release re-
24 sponse fund, as the governor determines appropriate. If money avail-
25 able from these sources is insufficient, and if the governor finds
26 that other sources of money to cope with the disaster are not avail-
27 able or are insufficient, the governor may, notwithstanding any limi-
28 tation imposed by AS 37.07.080(e), transfer and spend money appropri-
29 ated for other purposes or, in situations involving natural disasters,

1 borrow from the United States government or other public or private
2 sources for a term not to exceed two years.

3 **NEW**
* Sec. 3. AS 26.23 is amended by adding a new section to read:

4 Sec. 26.23.215. RELATIONSHIP TO OTHER PLANNING STATUTES. To the
5 extent that the state emergency plan, interjurisdictional plans, and
6 local plans prepared under this chapter relate to action required to
7 avert damage from a release of oil or a hazardous substance, the plans
8 must be substantially equivalent in relevant respects to the emergency
9 plans prepared or approved by the Alaska State Emergency Response
10 Commission under AS 46.13 and use the same incident command system
11 used in those plans.

12 **NEW - from SB 421**
* Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

13 (50) Hazardous Substance Spill Technology Review Council
14 (AS 46.13.110).

15 **NEW - from SB 421**
* Sec. 5. AS 44.66.010(a) is amended by adding a new paragraph to read:

16 (17) Hazardous Substance Spill Technology Review Council
17 (AS 46.13.110) -- June 30, 1994.

18 **NEW - deletion of DEC research authority**
* Sec. 6. AS 46.03.020 is amended by adding a new subsection to read:

19 (b) Notwithstanding the provisions of (a) of this section or any
20 other law, the department may not undertake or contract for studies or
21 research within the jurisdiction of the Alaska State Emergency Re-
22 sponse Commission established under AS 46.13.

23 **NEW**
* Sec. 7. AS 46.04 is amended by adding a new section to article 2 to
24 read:

25 Sec. 46.04.220. CONSISTENCY WITH OTHER PLANS. The plans pre-
26 pared under AS 46.04.200 - 46.04.210 must be substantially equivalent
27 in relevant respects to the emergency plans prepared or approved by
28 the Alaska State Emergency Response Commission under AS 46.13 and use
29 the same incident command system used in those plans.

1 * Sec. 8. AS 46.08.040 is amended by adding a new subsection to read:

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

6 * Sec. 9. AS 46 is amended by adding a new chapter to read:

7 CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

8 Sec. 46.13.010. ALASKA STATE EMERGENCY RESPONSE COMMISSION
9 ESTABLISHED. (a) There is established in the Department of Environ-
10 mental Conservation the Alaska State Emergency Response Commission.

11 (b) ^{NEW} The oil and hazardous substance response office established
12 under AS 46.08.100 shall serve as staff for the commission.

13 Sec. 46.13.020. COMPOSITION OF THE COMMISSION. The commission
14 consists of the commissioners of community and regional affairs,
15 environmental conservation, fish and game, health and social services,
16 labor, natural resources, ^{NEW} public safety, and transportation and public
17 facilities, or the designees of the commissioners, the adjutant gen-
18 eral of the Department of Military and Veterans' Affairs or a desig-
19 nee, and seven public members to be appointed by the governor. To the
20 extent practicable, the commission must include members with expertise
21 in the emergency response field.

22 ^{.040 in SB 503}
23 Sec. 46.13.030. OFFICERS, TERMS, AND COMPENSATION. The adjutant
24 general of the Department of Military and Veterans' Affairs, or the
25 adjutant general's designee, shall chair the commission. The commis-
26 sioner of environmental conservation, or the commissioner's designee,
27 shall serve as vice-chair. Members of the commission other than those
28 from the designated state departments serve at the pleasure of the
29 governor for staggered terms of three years. Members of the commis-
sion serve without compensation but are entitled to per diem and

portions
of DMV
and DEC
revised

1 travel expenses authorized for members of boards and commissions under
2 AS 39.20.180.

3 Sec. 46.13.^{030 in 58503}040. POWERS AND DUTIES OF COMMISSION. (a) The
4 commission shall

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

7 (2) designate, and revise as necessary, the boundaries of
8 emergency planning districts, using the boundaries of political sub-
9 divisions if appropriate;

10 (3) review, oversee, and facilitate the preparation and
11 implementation of an incident command system and emergency plans for
12 *new* hazardous substance response, including the statewide, regional, and
13 local contingency plans prepared under AS 26.23 and AS 46.04.200 -
14 46.04.210;

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

18 (5) supervise and coordinate the activities of local emer-
19 gency planning committees;

20 (6) establish procedures for receiving and processing
21 requests from the public for information under 42 U.S.C. 11044, in-
22 cluding tier II information under 42 U.S.C. 11022;

23 (7) perform other coordinating, advisory, or planning tasks
24 related to hazardous substance emergency planning and preparedness,
25 community right-to-know reporting, toxic chemical release reporting,
26 or management of hazardous substances;

27 ^{(9) in 58503} (8) provide procedures and oversight to integrate, as
28 appropriate, hazardous substance response planning under 42 U.S.C.
29 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and

1 other federal laws applicable to hazardous substance discharges, and
2 state, regional, and local hazardous substance contingency planning
3 *New* under AS 26.23 and AS 46.04.200 - 46.04.210;

4 (b) in 56503 (9) to the extent consistent with the constitution and law
5 of the state, perform all other functions prescribed for state emer-
6 gency response commissions under 42 U.S.C. 11001 - 11005; and

7 (8) in 56503 (10) adopt regulations necessary to carry out the purposes
8 of this chapter and 42 U.S.C. 11001 - 11005.

9 (b) For the purpose of assisting state agencies in being pre-
10 pared to respond to a hazardous substance discharge, the commission
11 shall

12 all
13 new
14 (b)
15 from
16 56421
17 (1) contract for or conduct research designed to develop or
18 discover appropriate containment and cleanup technologies;

19 (2) establish and maintain a schedule of approved contain-
20 ment and cleanup technologies;

21 (3) maintain testing protocols for cleanup products and
22 procedures; and

23 (4) compile and maintain a list of manufacturers and
24 sources of approved containment and cleanup products.

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

30 Sec. 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES. Bound-
aries for emergency planning districts are the regions designated by
the division of emergency services, Department of Military and

1 Veterans' Affairs unless otherwise designated by the commission.

2 Sec. 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES. The com-
3 mission shall establish and appoint the members of a local emergency
4 planning committee for each emergency planning district. Each commit-
5 tee must include, at a minimum, representatives from each of the
6 following groups or organizations: elected state and local officials;
7 law enforcement; civil defense; fire fighting; first aid; health;
8 local environmental, hospital, and transportation personnel; broadcast
9 and print media; community groups; and owners and operators of facili-
10 ties subject to the requirements of 42 U.S.C. 11001 - 11005.

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

13 (1) establish procedures for receiving and processing
14 requests from the public for information under 42 U.S.C. 11044, in-
15 cluding tier II information under 42 U.S.C. 11022;

16 (2) appoint a chair and establish rules by which the com-
17 mittee shall function, including provisions for public notification of
18 committee activities, public meetings to discuss the emergency plan,
19 public comments, response to the comments by the committee, distribu-
20 tion of the emergency plan, and designation of an official to serve as
21 coordinator for information;

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

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

28 (5) to the extent consistent with the constitution and law
29 of the state, perform all other functions prescribed for emergency

1 planning committees in 42 U.S.C. 11001 - 11005; and

2 (6) participate as a local advisory committee in the prepa-
3 ration of statewide regional contingency plans.

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

6 (1) identification of facilities subject to the require-
7 ments of 42 U.S.C. 11001 - 11005 that are within the emergency plan-
8 ning district, identification of routes likely to be used for the
9 transportation of substances on the list of extremely hazardous sub-
10 stances referred to in 42 U.S.C. 302(a), and identification of addi-
11 tional facilities contributing or subjected to additional risk due to
12 their proximity to facilities subject to the requirements of 42 U.S.C.
13 11001 - 11005 such as hospitals or natural gas facilities;

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

19 (3) designation of a community emergency coordinator and
20 facility emergency coordinators, who shall make determinations neces-
21 sary to implement the emergency plan;

22 (4) procedures providing reliable, effective, and timely
23 notification by the facility emergency coordinators to persons des-
24 ignated in the emergency plan, and to the public, that a release has
25 occurred, consistent with the emergency notification requirements of
26 42 U.S.C. 11004;

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

29 (6) a description of emergency equipment and facilities in

1 the community and at each facility in the community subject to the
2 requirements of 42 U.S.C. 11001 - 11005, and an identification of the
3 persons responsible for the equipment and facilities;

4 (7) evacuation plans, including provisions for a precau-
5 tionary evacuation and alternative traffic routes;

6 (8) training programs, including schedules for training of
7 local emergency response and medical personnel; and

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

10 (b) Each emergency plan must incorporate within it an incident
11 command system. The incident command system must provide that final
12 state decision-making authority in situations involving a response to
13 the release of a hazardous substance lies with the division of emer-
14 gency services, Department of Military and Veterans' Affairs.

15 Sec. 46.13.100. FINDINGS AND PURPOSE. (a) The legislature

16 From
17 SB 421
18 (1) finds and declares that there exists a lack of scien-
19 tific knowledge concerning the availability, properties, and effec-
20 tiveness of various hazardous substance containment and cleanup tech-
21 nologies; and

22 (2) concludes that it is in the best interest of the state
23 and its citizens for the Alaska State Emergency Response Commission to
24 adopt regulations to

25 (A) establish and maintain a schedule of department-
26 approved oil and hazardous substance cleanup technologies;

27 (B) maintain and review testing protocol for oil and
28 hazardous substance cleanup products and procedures; and

29 (C) compile and maintain a listing of manufacturers
and sources of department-approved containment and cleanup prod-
ucts.

From
50421

(b) It is the intent of the legislature in AS 46.13.100 - 46.13.130 to establish a Hazardous Substance Spill Technology Review Council in the Alaska State Emergency Response Commission to identify containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment.

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

(b) The council consists of the adjutant general of the Department of Military and Veterans' Affairs, ~~the commissioner of environmental conservation,~~ a representative of the University of Alaska appointed by the ~~president of the university,~~ *Governor* the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, ~~and~~ management; fisheries; economics; sociology; or law. Appointed members of the commission serve overlapping three-year terms.

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

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

(e) Members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and

1 From commissions under AS 39.20.180.

2 58421 (f) The council shall meet regularly at the call of the commis-
3 sion or the chair of the council.

4 (g) Members of the council are subject to AS 39.50.

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

6 (1) review and recommend to the commission research topics;

7 (2) obtain information relating to

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

13 (B) steps that should be taken by government and
14 industry to ensure proper management, handling, and transporta-
15 tion of hazardous substances and to improve the statewide ability
16 of industry and governmental agencies to respond to discharges of
17 hazardous substances;

18 (C) the extent to which industry practices and govern-
19 mental practices or laws should be changed to reduce or minimize
20 the potential for hazardous substance discharges;

21 (D) hazardous substances spill technology research
22 conducted by the oil and hazardous substance response office
23 under AS 46.08.130, as authorized by AS 46.08.150, or as under-
24 taken by the commission under AS 46.13.040(b);

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

27 (4) make proposals to the governor and commission to en-
28 courage and fund prevention, response, cleanup, and mitigation of
29 future discharges of hazardous substances; and

From
SB424

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

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

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

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

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

Sec. 46.13.900. DEFINITIONS. In this chapter,

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

(2) ^{from SB421} "council" means the Hazardous Substance Spill Technology Review Council;

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

* ^{NEW} Sec. 10. TRANSITIONAL PROVISION. The Alaska State Emergency Response Commission established under AS 46.13, enacted by sec. 9 of this Act, is a

1 continuation of the Alaska State Emergency Response Commission established
2 by Administrative Order No. 103. The terms of the public members of the
3 commission who are serving terms on the effective date of this Act continue
4 until the date that was scheduled for their expiration before the effective
5 date of this Act.
6 * *New - deletes DEC research authority*
7 * Sec. 11. AS 46.08.150(3) is repealed.
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STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

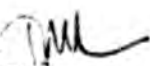
HOUSE OF REPRESENTATIVES
ALASKA 99511
7-465-3800

MEMORANDUM

March 26, 1990

SUBJECT: Comments on CSSB 468 (O&G) and CSSB 503(O&G)

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

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed are new drafts of CSSB 468(O&G) and CSSB 503(O&G), as requested by David Rogers. The following comments are in response to the corresponding numbers on the attached memo from David Rogers.

Points 1 and 5: You have requested separation of SB 468 and SB 503, while amending SB 503 to say that the incident command system adopted by the new commission must put DMVA in charge of responses. That leaves the CS for SB 503 as a very incomplete bill, and I have only very reluctantly provided it to you. The CS is incomplete because it does not amend other current laws that say DEC is in charge of responses. We do not ordinarily provide drafts that fail to amend all the necessary laws; we have done so only because you say you will take care of this problem in the next committee. We will be alerting the next committee to the problem in CSSB 503(O&G), if it is still there, when the next committee gets possession of the bill.

Point 2. I have not deleted the last line of AS 46.04.-080(a) because I think it has a different meaning than the sentence that precedes it. The middle sentence of subsection (a) tells DEC to augment and support DES in the performance of DES's duties. The last sentence tells DEC to coordinate DEC's duties with DES. In other words, whatever duties DEC has must be coordinated with DES and DEC must also support DES in the performance of DES's duties.

I believe the bills address only oil and hazardous substances. The terms differ in various sections because of current law. AS 46.03 uses the term "hazardous substance"

but defines it to include oil in some sections. AS 46.04 regulates only oil. AS 46.09 regulates only hazardous substances (not including oil). AS 46.08 sets up the fund to cover both oil and hazardous substances. Only "catastrophic" oil releases trigger a disaster. SB 468 gives response authority to DMVA only in catastrophic situations and where an "emergency" has been declared (under AS 46.03.-865(a) or AS 46.09.030). It does not transfer from DEC the responsibility to clean up other releases.

The response corps and depots are effectively transferred in SB 468. If there are other functions you want transferred, let me know.

I have added secs. 8-9 to the CS for SB 468 to clarify that DMVA has the authority to recover its response costs, too.

Point 3(a): There are no other technical changes compared to the House CS.

Point 3(b). SARA law only requires that the governor, "to the extent practicable, appoint persons...who have technical expertise in the emergency response field." There are no requirements either for or against having heads of state departments on the commission.

Point 3(c). Done.

Point 3(d). I have given the commission the authority to conduct or contract for research relating to oil and hazardous substances at AS 46.13.090(b). In sec. 6 of the CS for SB 503, I have amended DEC's general research authority to exclude oil and hazardous substances. I have deleted their authority for research into spill technology by the repeal of AS 46.08.150(3) in bill section 11.

Point 3(e). Done. However, I have used the language in sec. 3 of SB 421 as part of the research authority for the commission in AS 46.13.090(b). Sec. 3 of SB 421 gives these duties to DEC, which seems to me would be in conflict with your directions in Point 3(d).

Point 3(d)(sic). Done.

Point 4. I have enclosed a copy of each CS that shows changes highlighted.

Senator Drue Pearce
Page 3
March 26, 1990

Point 5. Dealt with under Point 1.

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

TML:lmb
L10/025

Enclosures

cc: David Rogers

SECTIONAL ANALYSIS

The following is a sectional analysis a bill that authorizes the governor to spend oil and hazardous substance release response fund money during declared disasters, expands the role of the division of emergency services ("DES") during oil spill-related disasters, and establishes the Alaska State Emergency Response Commission.

Sections 1, 2, and 4 authorize the governor to use money from the oil and hazardous substance release response fund to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

Section 3 clarifies the Department of Environmental Conservation's ("DEC") emergency order authority and distinguishes it from DES's authority to respond to declared disaster emergencies under AS 26.23.

Section 5: AS 46.04.080(a) now provides that DEC performs the duties of DES during catastrophic oil discharges. Section 5 returns those duties to DES.

Section 6 establishes the Alaska State Emergency Response Commission. At present, the Commission is established by administrative order.

Section 7 provides that the Act takes effect immediately.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 29, 1990

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

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

FROM: Terri Lauterbach *TL*
Legislative Counsel

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

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

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

Senator Drue Pearce
Page 2
March 29, 1990

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

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

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

TL:pl
WKP3/111

Enclosure

cc: David Rogers

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 503(Oil & Gas)

Page 3, lines 9 - 10:

Delete "Environmental Conservation"

Insert "Military and Veterans' Affairs"

Page 9, line 22:

Delete "commission"

Insert "council"

go0520sH
Lauterbach
3/29/90

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 CS FOR SENATE BILL NO. 503 (Oil & Gas)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the governor to spend money from
7 the oil and hazardous substance release response fund
8 for declared disasters; transferring the oil and
9 hazardous substance response office to the Department
10 of Military and Veterans' Affairs; relating to the
11 duties of the Department of Environmental Conserva-
12 tion and the Department of Military and Veterans'
13 Affairs in relation to oil, hazardous substances, and
14 radioactive material; providing that the Department
15 of Military and Veterans' Affairs has final state
16 decision-making authority in responses to catas-
17 trophic oil discharges and emergency disasters de-
18 clared by the governor that relate to oil or hazard-
19 ous substances; establishing the Alaska State Emer-
20 gency Response Commission and the Hazardous Substance
21 Spill Technology Review Council; transferring the
22 responsibility for the statewide and regional master
23 oil and hazardous substance discharge and prevention
24 contingency plans to the Alaska State Emergency
25 Response Commission; and providing for an effective
26 date."

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

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

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

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

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

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

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

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

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

1 same incident command system used in those plans.

2 * Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:

3 (50) Hazardous Substance Spill Technology Review Council
4 (AS 46.13.110).

5 * Sec. 6. AS 44.66.010(a) is amended by adding a new paragraph to read:

6 (17) Hazardous Substance Spill Technology Review Council
7 (AS 46.13.110) -- June 30, 1994.

8 * Sec. 7. AS 46.03.020 is amended by adding a new paragraph to read:

9 (14) enter into agreements with agencies of the state and
10 federal government, political subdivisions, the University of Alaska,
11 or private entities to conduct research into oil and hazardous sub-
12 stances spill technology; the department shall give priority to re-
13 search topics recommended to it by the Hazardous Substance Spill
14 Technology Review Council under AS 46.13.120.

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

16 (a) When the department finds that an actual or imminent dis-
17 charge of oil, a hazardous substance, or low level radioactive mate-
18 rials to the air, water, land, or subsurface land of the state poses
19 an immediate threat to the public health or welfare [,] or the envi-
20 ronment of the state, it may issue an order declaring an emergency and
21 directing a person or persons to take action the department believes
22 necessary to meet the emergency, and protect the public health, wel-
23 fare, or environment. The department may also exercise the authority
24 granted to the oil and hazardous substance response office under
25 AS 46.08.140. However, if the situation for which the department
26 declares an emergency develops into a catastrophic oil discharge, as
27 defined in AS 46.04.900, or becomes a declared disaster emergency
28 under AS 26.23, the division of emergency services, Department of
29 Military and Veterans' Affairs, shall exercise the authority of the

1 department under this subsection and the department's activities shall
2 be subject to the approval of the division.

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

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

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

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

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

29 (a) The department, when feasible, shall enter into contracts

1 with persons or private organizations to provide the personnel, equip-
2 ment, or other services or supplies that [WHICH] may be required to
3 carry out this chapter. Contracts under this section are governed by
4 AS 36.30 (State Procurement Code). When private contracting is not
5 feasible, the department may establish and maintain at ports, harbors,
6 or other locations in the state, the cleanup personnel, equipment, and
7 supplies that [WHICH], in its judgment, are necessary to carry out
8 this chapter. When exercising its authority under this subsection,
9 the department shall coordinate with the oil and hazardous substance
10 response office in the Department of Military and Veterans' Affairs to
11 avoid duplication of efforts.

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

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

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

18 (1) take into consideration the elements of an oil dis-
19 charge contingency plan approved or submitted for approval by the
20 Department of Environmental Conservation under AS 46.04.030;

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

27 (A) the Department of Environmental Conservation, the
28 division of emergency services in the Department of Military and
29 Veterans' Affairs, and other agencies of the state;

1 (B) municipalities of the state;

2 (C) appropriate federal agencies;

3 (D) operators of facilities;

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

6 (F) other parties identified by the commission [COM-
7 MISSIONER] as having an interest in or the resources to assist in
8 the containment and cleanup of an oil or hazardous substance
9 discharge;

10 (3) include an incident command system consistent with the
11 requirements of AS 46.13.090(b) that specifies [SPECIFY] the respec-
12 tive responsibilities of parties identified in (2) of this subsection
13 in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.-
14 080; and

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

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

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

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

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

27 (4) require or schedule unannounced oil spill drills to
28 test the sufficiency of an oil discharge contingency plan approved
29 under AS 46.04.030 or of the cleanup plans of a party identified under

1 (b)(2) of this section.

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

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

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

12 Sec. 46.04.220. DEFINITION. In AS 46.04.200 - 46.04.210, "com-
13 mission" means the Alaska State Emergency Response Commission estab-
14 lished under AS 46.13.

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

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

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

24 (1) establish and maintain the oil and hazardous substance
25 response office and for the expenses of the oil and hazardous sub-
26 stance response corps and the oil and hazardous substance response
27 depots established by that office; and

28 (2) contain, clean up, and take other necessary action to
29 address a release or threatened release of oil or a hazardous

1 substance.

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

6 * Sec. 16. AS 46.08.070(a) is amended to read:

7 (a) The commissioner and the adjutant general shall seek reim-
8 bursement promptly under this section, AS 46.03.760(e), or federal law
9 for the cost incurred in the cleanup or containment of oil or a haz-
10 ardous substance that has been released.

11 * Sec. 17. AS 46.08.070(b) is amended to read:

12 (b) The attorney general, at the request of the commissioner or
13 the adjutant general, shall immediately seek to recover money expended
14 by the department or the division of emergency services under AS 46.-
15 08.005 - 46.08.080 or other law to contain and clean up oil or a
16 hazardous substance that has been released or to control the threaten-
17 ed release of oil or a hazardous substance.

18 * Sec. 18. AS 46.08.100 is amended to read:

19 Sec. 46.08.100. OFFICE ESTABLISHED. There is established in the
20 division of emergency services, Department of Military and Veterans'
21 Affairs, [DEPARTMENT] the oil and hazardous substance response office.
22 The office shall include a director and employees who are specially
23 trained in programs and technologies related to the containment and
24 cleanup of releases or threatened releases of oil and hazardous sub-
25 stances.

26 * Sec. 19. AS 46.08.110(c) is amended to read:

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

1 * Sec. 20. AS 46.08.130(b) is amended to read:

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

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

6 (2) the discharge of oil or a hazardous substance is de-
7 clared to be an emergency under AS 46.03.865;

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

10 (4) the division director or the commissioner of environ-
11 mental conservation reasonably believes that there has been a dis-
12 charge of oil or a hazardous substance, or that there is a potential
13 discharge of oil or a hazardous substance, and the discharge may
14 qualify under (1) - (3) of this subsection; or

15 (5) the office is requested by the commissioner of environ-
16 mental conservation to assist the department because the commissioner
17 reasonably believes that the discharge or potential discharge poses an
18 imminent and substantial threat to public health or welfare or to the
19 environment.

20 * Sec. 21. AS 46.08.130 is amended by adding a new subsection to read:

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

25 * Sec. 22. AS 46.08.190 is amended by adding a new paragraph to read:

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

28 * Sec. 23. AS 46.08 is amended by adding new sections to read:

29 ARTICLE 3. RESPONSE TECHNOLOGIES.

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

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

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

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

19 * Sec. 24. AS 46.09.030 is amended to read:

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

29 * Sec. 25. AS 46 is amended by adding a new chapter to read:

1 CHAPTER 13. ALASKA STATE EMERGENCY RESPONSE COMMISSION.

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

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

7 Sec. 46.13.020. COMPOSITION OF THE COMMISSION. The commission
8 consists of the commissioners of community and regional affairs,
9 environmental conservation, fish and game, health and social services,
10 labor, natural resources, public safety, and transportation and public
11 facilities, or the designees of the commissioners, the adjutant gen-
12 eral of the Department of Military and Veterans' Affairs or a desig-
13 nee, and seven public members to be appointed by the governor. To the
14 extent practicable, the commission must include members with expertise
15 in the emergency response field.

16 Sec. 46.13.030. OFFICERS, TERMS, AND COMPENSATION. The adjutant
17 general of the Department of Military and Veterans' Affairs, or the
18 adjutant general's designee, shall chair the commission. The commis-
19 sioner of environmental conservation, or the commissioner's designee,
20 shall serve as vice-chair. Members of the commission other than those
21 from the designated state departments serve at the pleasure of the
22 governor for staggered terms of three years. Members of the commis-
23 sion serve without compensation but are entitled to per diem and
24 travel expenses authorized for members of boards and commissions under
25 AS 39.20.180.

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

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

1 (2) designate, and revise as necessary, the boundaries of
2 emergency planning districts, using the boundaries of political sub-
3 divisions if appropriate;

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

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

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

13 (6) supervise and coordinate the activities of local emer-
14 gency planning committees;

15 (7) establish procedures for receiving and processing
16 requests from the public for information under 42 U.S.C. 11044, in-
17 cluding tier II information under 42 U.S.C. 11022;

18 (8) perform other coordinating, advisory, or planning tasks
19 related to hazardous substance emergency planning and preparedness,
20 community right-to-know reporting, toxic chemical release reporting,
21 or management of hazardous substances;

22 (9) provide procedures and oversight to integrate, as
23 appropriate, hazardous substance response planning under 42 U.S.C.
24 11001 - 11005, federal contingency planning under 33 U.S.C. 1321 and
25 other federal laws applicable to hazardous substance discharges, and
26 state, regional, and local hazardous substance contingency planning
27 under AS 26.23 and AS 46.04.200 - 46.04.210;

28 (10) to the extent consistent with the constitution and law
29 of the state, perform all other functions prescribed for state

1 emergency response commissions under 42 U.S.C. 11001 - 11005; and

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

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

11 Sec. 46.13.060. EMERGENCY PLANNING DISTRICT BOUNDARIES. Bound-
12 aries for emergency planning districts are the regions designated by
13 the division of emergency services, Department of Military and Veter-
14 ans' Affairs unless otherwise designated by the commission.

15 Sec. 46.13.070. LOCAL EMERGENCY PLANNING COMMITTEES. The com-
16 mission shall establish and appoint the members of a local emergency
17 planning committee for each emergency planning district. Each commit-
18 tee must include, at a minimum, representatives from each of the
19 following groups or organizations: elected state and local officials;
20 law enforcement; civil defense; fire fighting; first aid; health;
21 local environmental, hospital, and transportation personnel; broadcast
22 and print media; community groups; and owners and operators of facili-
23 ties subject to the requirements of 42 U.S.C. 11001 - 11005.

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

26 (1) establish procedures for receiving and processing
27 requests from the public for information under 42 U.S.C. 11044, in-
28 cluding tier II information under 42 U.S.C. 11022;

29 (2) appoint a chair and establish rules by which the

1 committee shall function, including provisions for public notification
2 of committee activities, public meetings to discuss the emergency
3 plan, public comments, response to the comments by the committee,
4 distribution of the emergency plan, and designation of an official to
5 serve as coordinator for information;

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

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

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

15 (6) participate as a local advisory committee in the prepa-
16 ration of statewide regional contingency plans.

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

19 (1) identification of facilities subject to the require-
20 ments of 42 U.S.C. 11001 - 11005 that are within the emergency plan-
21 ning district, identification of routes likely to be used for the
22 transportation of substances on the list of extremely hazardous sub-
23 stances referred to in 42 U.S.C. 302(a), and identification of addi-
24 tional facilities contributing or subjected to additional risk due to
25 their proximity to facilities subject to the requirements of 42 U.S.C.
26 11001 - 11005 such as hospitals or natural gas facilities;

27 (2) methods and procedures to be followed by facility
28 owners and operators and local emergency and medical personnel to
29 respond to a release of hazardous substances, and to a release of

1 substances on the list of extremely hazardous substances referred to
2 in 42 U.S.C. 302(a);

3 (3) designation of a community emergency coordinator and
4 facility emergency coordinators, who shall make determinations neces-
5 sary to implement the emergency plan;

6 (4) procedures providing reliable, effective, and timely
7 notification by the facility emergency coordinators to persons des-
8 ignated in the emergency plan, and to the public, that a release has
9 occurred, consistent with the emergency notification requirements of
10 42 U.S.C. 11004;

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

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

17 (7) evacuation plans, including provisions for a precau-
18 tionary evacuation and alternative traffic routes;

19 (8) training programs, including schedules for training of
20 local emergency response and medical personnel; and

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

23 (b) Each emergency plan must incorporate within it an incident
24 command system. The incident command system must provide that final
25 state decision-making authority in situations involving a response to
26 a release of a hazardous substance lies with the Department of Envi-
27 ronmental Conservation unless the release is a declared disaster
28 emergency under AS 26.23 or a catastrophic oil discharge under AS 46.-
29 04.080, in which case the incident command system must provide that

1 final state decision-making authority lies with the division of emer-
2 gency services, Department of Military and Veterans' Affairs.

3 Sec. 46.13.100. FINDINGS AND PURPOSE. The legislature

4 (1) finds and declares that there exists a lack of scien-
5 tific knowledge concerning the availability, properties, and effec-
6 tiveness of various hazardous substance containment and cleanup tech-
7 nologies; and

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

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

19 (b) The council consists of the adjutant general of the Depart-
20 ment of Military and Veterans' Affairs, the commissioner of environ-
21 mental conservation, a representative of the University of Alaska
22 appointed by the governor, the governor's senior science advisor, a
23 representative of the Prince William Sound Science Center in Cordova
24 appointed by the governor, and four other members, one from each
25 judicial district of the state, appointed by the governor, with broad
26 experience or expertise in one or more of the following areas: phys-
27 ical or biological science; oil technology, transportation, or manage-
28 ment; fisheries; economics; environmental engineering; or law. The
29 U.S. Coast Guard and the Environmental Protection Agency may each

1 appoint a federal employee to the council to represent their agencies
2 as nonvoting members. Appointed state members of the council serve
3 overlapping three-year terms.

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

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

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

11 (f) The council shall meet regularly at the call of the commis-
12 sion or the chair of the council.

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

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

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

18 (2) establish testing protocols to be used by the Depart-
19 ment of Environmental Conservation to evaluate the effectiveness of
20 hazardous substance spill technologies for use in the state;

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

23 (4) make proposals to the governor and commission to en-
24 courage and fund prevention, response, cleanup, and mitigation of
25 future discharges of hazardous substances;

26 (5) compile and maintain information relating to

27 (A) containment and cleanup technology that is avail-
28 able in the event of a hazardous substance discharge, the extent
29 to which current containment and cleanup technology is available

1 and may be applied in the state, and ways to improve hazardous
2 substance spill response technology and procedures;

3 (B) steps that should be taken by government and
4 industry to ensure proper management, handling, and transporta-
5 tion of hazardous substances and to improve the statewide ability
6 of industry and governmental agencies to respond to discharges of
7 hazardous substances;

8 (C) the extent to which industry practices and govern-
9 mental practices or laws should be changed to reduce or minimize
10 the potential for hazardous substance discharges;

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

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

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

18 (b) The council may compel the attendance of witnesses and
19 production of papers, books, records, accounts, documents, and testi-
20 mony, and may have the deposition of witnesses taken in a manner
21 prescribed by court rule or law for the taking of depositions in civil
22 actions when consistent with the duties assigned to the council.

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

1 (d) State agencies shall, to the extent permitted by law, coop-
2 erate with the council and provide it with information it requests for
3 carrying out its duties.

4 Sec. 46.13.900. DEFINITIONS. In this chapter,

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

7 (2) "council" means the Hazardous Substance Spill Technol-
8 ogy Review Council;

9 (3) "hazardous substance" has the meaning given in AS 46.-
10 03.826.

11 * Sec. 26. TRANSITIONAL PROVISION. The Alaska State Emergency Response
12 Commission established under AS 46.13, enacted by sec. 25 of this Act, is a
13 continuation of the Alaska State Emergency Response Commission established
14 by Administrative Order No. 103. The terms of the public members of the
15 commission who are serving terms on the effective date of this Act continue
16 until the date that was scheduled for their expiration before the effective
17 date of this Act.

18 * Sec. 27. TESTING PROCEDURES. (a) The Hazardous Substance Spill
19 Technology Review Council shall establish the initial testing protocols
20 required under AS 46.13.120(2), enacted by sec. 25 of this Act, by
21 January 1, 1991.

22 (b) The Department of Environmental Conservation shall adopt the
23 initial regulations required under AS 46.08.200(a), enacted by sec. 23 of
24 this Act, by July 1, 1991.

25 * Sec. 28. AS 46.08.040(2), 46.08.040(5), and 46.08.150(3) are re-
26 pealed.

27 * Sec. 29. AS 46.08.210, enacted by sec. 23 of this Act, takes effect
28 July 1, 1992.

29 * Sec. 30. Except as provided in sec. 29 of this Act, this Act takes

1 effect July 1, 1990.

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MAR 14 1990

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE: 465-4322

March 14, 1990

The Honorable Drue Pearce
Chair - Senate Special Committee
on Oil and Gas
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: SB 503; establishing the
Alaska State Emergency
Response Commission

Dear Senator Pearce:

One of the bills currently before the Senate Special Committee on Oil and Gas is SB 503 which, among other things, establishes the Alaska State Emergency Response Commission. I am writing to request that the Department of Public Safety (DPS) be added to the other State agencies which comprise the commission.

As you know, SB 503 would create by statute the successor to the present Emergency Response Commission (ERC) which was created by Administrative Order in response to the EXXON VALDEZ oil spill in Prince William Sound last year. While the Department of Public Safety has worked closely with the present ERC, we are not formally a member of it. Considering the limited role that DPS played in the spill cleanup efforts, after the initial response was over, we felt it was not necessary for DPS to be on the oil spill ERC.

The ERC established by SB 503 is of a more general, and long term nature, however. Considering the broad responsibilities the new ERC would have, we strongly believe that DPS should be included in the commission. We have discussed this with the Governor's Office and they agree with our position. I

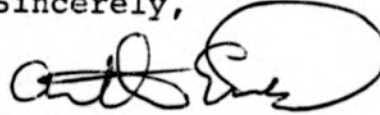
The Honorable Drue Pearce -2-

March 14, 1990

respectfully request that, if SB 503 is moved from committee, a committee substitute which adds DPS to the commission be considered.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Arthur English', enclosed within a large, loopy oval shape.

Arthur English
Commissioner

cc: Shari Kochman
Legislative Staff Assistant
Office of the Governor

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY
OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREVENTION

PREPAREDNESS

RESPONSE

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY
OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREVENTION

**VESSEL TRAFFIC SYSTEMS
TANKER DESIGN AND CONSTRUCTION
MANNING STANDARDS
IMPROVED RADAR
PILOTS
SUBSTANCE ABUSE TESTING
VESSEL ESCORTS
UNLIMITED LIABILITY
RESTRICT MOVEMENTS DURING BAD WEATHER
PENALTIES THAT PROVIDE INCENTIVES**

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

PREPAREDNESS

STATE EMERGENCY RESPONSE COMMISSION

LOCAL EMERGENCY PLANNING COMMITTEES

INTERSTATE COMPACTS

RESPONSE PLANNING

TRAINING

DRILLS

INSPECTIONS

FINANCIAL RESPONSIBILITY

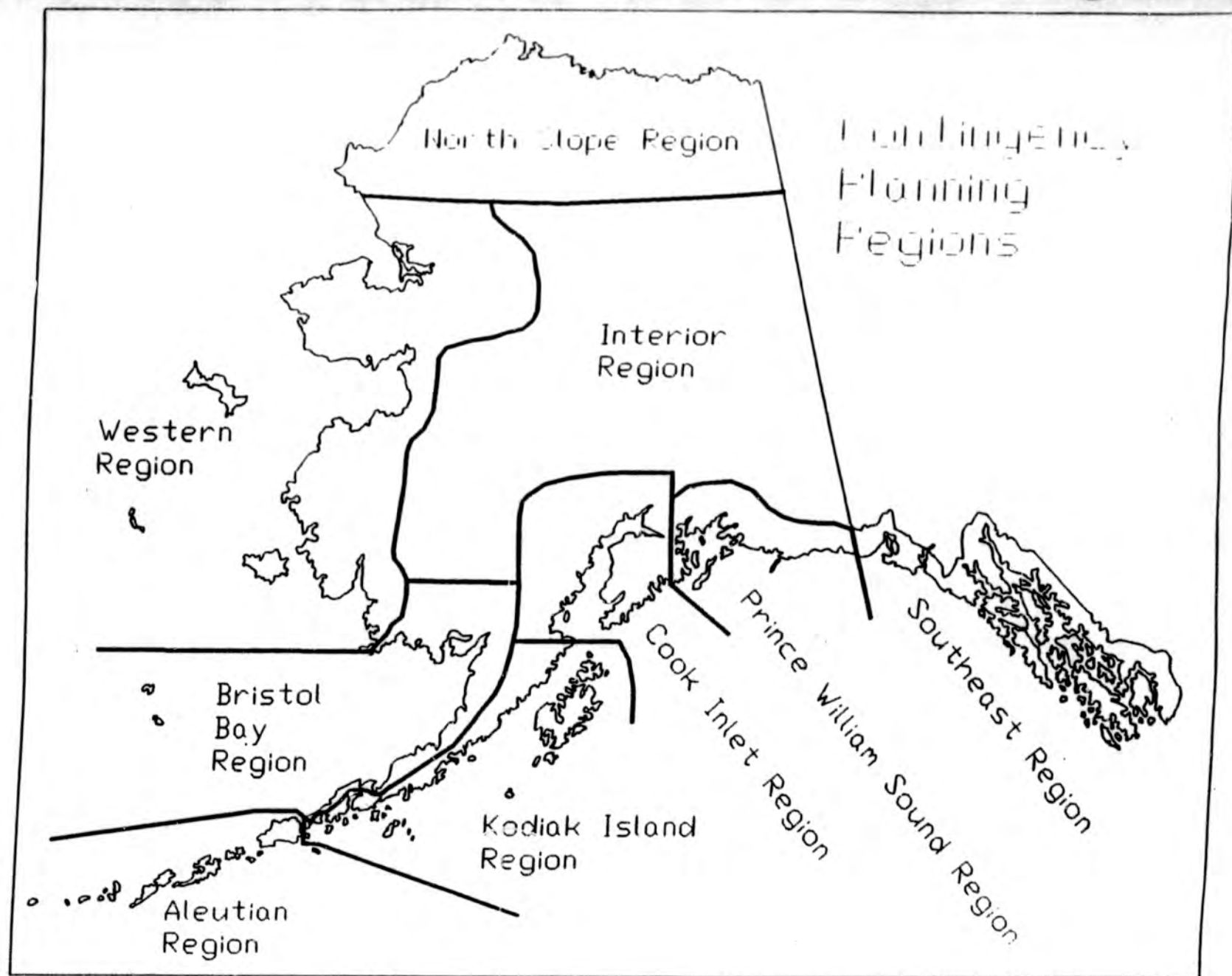
RESPONSE FUNDING

RESPONSE CORPS

RESPONSE DEPOTS

LOCAL AGREEMENTS

OIL DISCHARGE CONTINGENCY PLANS



STATE EMERGENCY RESPONSE PLANNING ORGANIZATION

Role:

- (1) Develop State and Regional Oil and Hazardous Substance Discharge Contingency Plans
- (2) Implement the federal Emergency Planning and Community Right to Know Act (SARA Title III)
-fact sheet attached
- (3) Preparedness

STATE EMERGENCY RESPONSE COMMISSION (SERC)

Chair - DEC
Vice-chair - DES

Members:

DPS
DOT&PF
DHSS
DCRA
Oil Industry Representative
Municipality of Anchorage
Kenai Peninsula Borough
Fairbanks N.S. Borough
Alaska Fire Chiefs Ass'n.
Rural Representatives
Public Interest Group
DNR*
ADF&G*
DOL*

|

LOCAL EMERGENCY PLANNING COMMITTEE

Role:

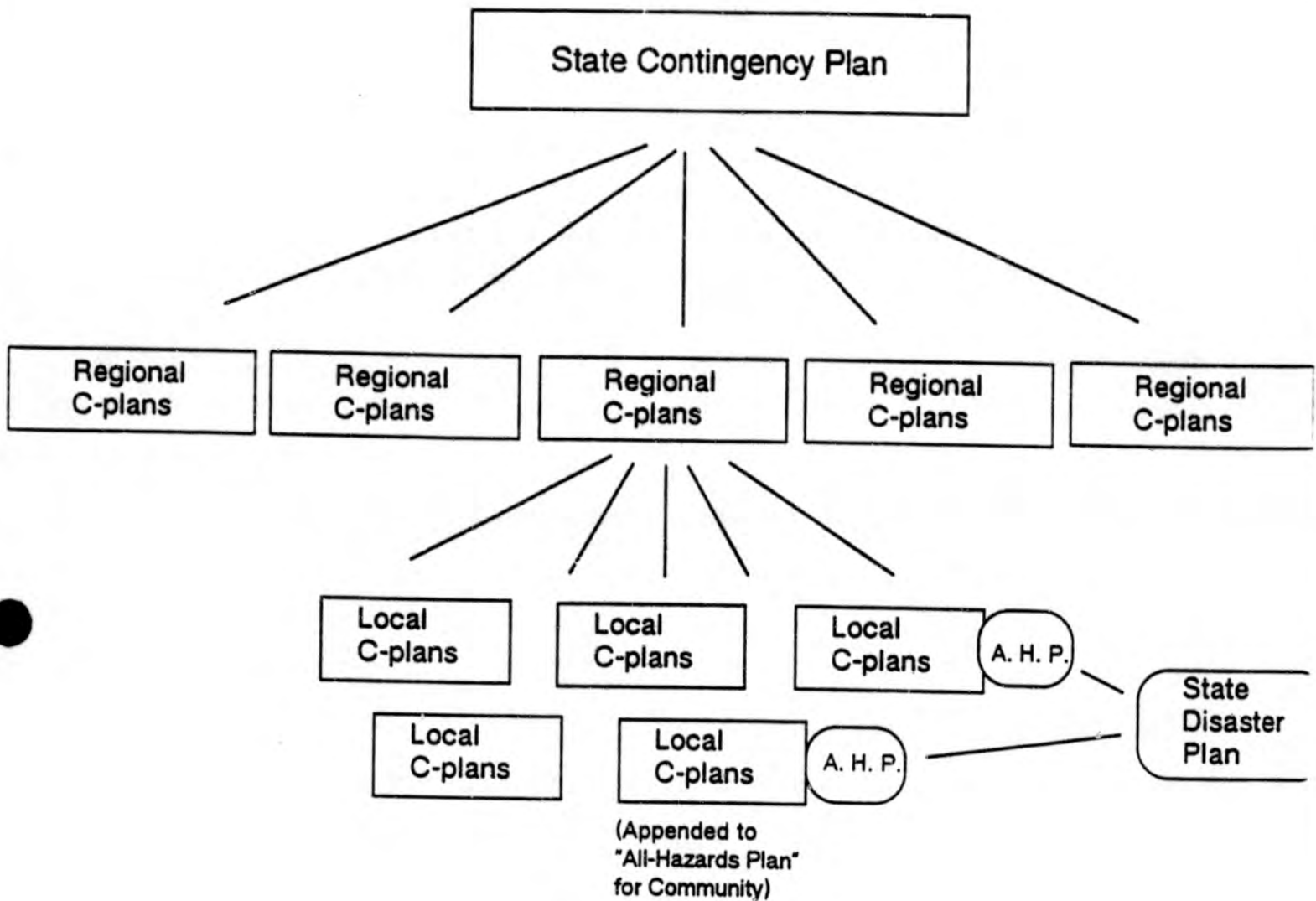
- (1) Develop Local Emergency Response Plans
- (2) Spill Response Preparedness

Chair: Elected Official

Members:

Law Enforcement
Civil Defense /
Emergency Management
Firefighting
First Aid
Health
Hospital
Local Environmental
Transportation Personnel
Broadcast and Print Media
Community Groups
Owners / Operators of
Applicable Facilities
Other

CONTINGENCY PLANS



- (1) Local plans are appended to the regional oil and hazardous substances contingency plans
- (2) Regional oil and hazardous substances plans are appended to the state oil and hazardous substances contingency plan
- (3) Community "All Hazards" plans are appended to the State Disaster Plan

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

RESPONSE

DEC-STATE ON SCENE COORDINATOR

INCIDENT COMMAND SYSTEM

UNIFIED COMMAND STRUCTURE

SAFETY

PUBLIC INFORMATION

RESPONSE DEPOTS

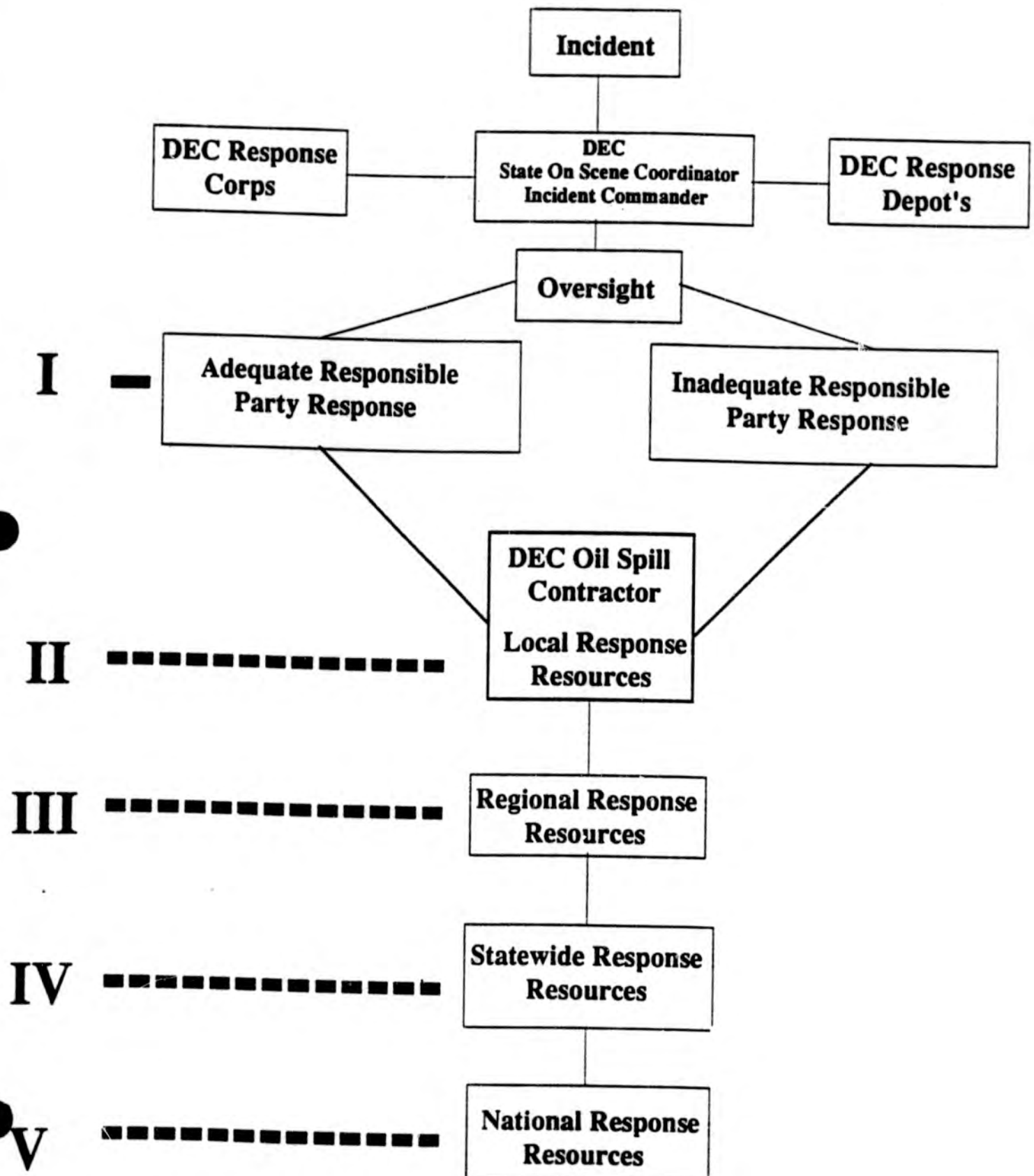
DEC RESPONSE OFFICE

OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS

**COORDINATION WITH LOCAL, REGIONAL, STATE, FEDERAL
AND PRIVATE PARTIES**

DEC CONTRACTOR MOBILIZATION

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**





Other state agencies, the USC&A PA, and other federal agencies, the sponsor, local officials, and other experts may be asked to assist in command meetings as advisors.

- work in health and safety

(Note: During a large incident there will be a unit head and staff for each duty.)

(Note: During a large incident there will be a unit head and staff for each duty.)

- implement policy, objectives, plans
- hold meetings to coordinate and organize response operations with all Operations groups and Planning and Logistics sections

(Note: During a large incident there will be a unit head and staff for each duty.)

(Note: During a large incident there will be a unit head and staff for each duty.)

(Note: During a large incident there will be a unit head and staff for each duty.)

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(Note: During a large incident there will be a unit head and staff for each shift.)

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO PREVENTION

Prior to 1989

- o Oil pollution prohibited
- o Ballast water discharge prohibited
- o Criminal penalties
- o Civil penalties for discharge of oil
 - > 18,000 gallons...up to \$10/gallons
 - five times multiplier for negligence
- o Liability limit of 100,000,000 for oil
- o Strict Liability
- o Recovery of costs to state for oversight, cleanup, damages, restoration
- o Detention of vessels as security for damages
- o Emergency powers
- o Injunctive powers

1989

- o Increased civil penalties for crude oil spills
 - > 18,000 gallons...\$8 for first 420,000 gallons
 - \$12.50 > 420,000 gallons
 - Four times multiplier for negligence
 - Credit applied for amount of oil recovered in first 36 hours
- o Liability limit of \$500,000 for crude oil spills

1990

- o Strengthen financial responsibility requirements

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO PREPAREDNESS

Prior to 1989

- o Oil Discharge contingency plans required
 - Terminals > 10,000 bbls
 - Offshore exploration or production facilities
 - Tank vessels
 - Oil Barges
- o Proof of Financial Responsibility
- o Inspection Authority
- o Compacts authorized
- o Contracting Authority
- o Perform DES role in declared disaster emergencies

1989

- o State Master Oil and Hazardous Substance Discharge and Prevention Contingency Plan
- o Regional Master Oil and Hazardous Subsurface Discharge and Prevention Contingency Plan
- o Unannounced spill drills
- o Spill technology research
- o Response corps training

1990

- o Use of response fund during declared disaster emergencies.
- o Expand role of Division of Emergency Services
- o Establish State Emergency Response Commission and Local Emergency Planning Districts and Committees
- o Extend the requirement for Contingency Plans
- o Strengthen inspection authority to include structural integrity of tank vessels

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY**

**OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION
AND RESPONSE PROGRAM**

LAWS PERTAINING TO RESPONSE

Prior to 1989

- o Discharge notification required
- o Provide for containment and cleanup of discharges of unknown origin
- o Require maximum practicable use of private services and resources
- o Ensure cleanup is initiated and adequate
- o Identify source, cause and responsible party

1989

- o Established response office for spills that present a grave and substantial threat
- o Established response corps
- o Established response depot

1990

- o Define "realistic maximum oil discharge"

ALASKA STATE LEGISLATURE

MAR 19 1990

While in Ketchikan
352 Front Street
Ketchikan, AK 99901
907-225-9675



While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

MEMORANDUM

FROM: Senator Jones *LJ*

TO: Senator Pearce, Chair, Special Committee on Oil & Gas
Senator Fahrenkamp, Chair, Resources Committee
Senator Faiks, Chair, Judiciary Committee
Senator Uehling, Co-Chair, Finance Committee
Senator Binkley, Co-Chair, Finance Committee

DATE: March 16, 1990

RE: A letter with information on SB 504 and SB 432.

Enclosed is a letter with a few important points regarding two pieces of "oil spill" legislation. Boyer Towing is a maritime transportation company with a good reputation for service in Southeast Alaska and I hope that you will consider this letter when deliberating on this legislation.

BOYER TOWING INC.
P.O. BOX 8000
KETCHIKAN, ALASKA
99901
907-225-2090

March 8, 1990

Senator Lloyd Jones
P.O. Box V
Juneau, AK 99811

Dear Senator Jones

I have recently reviewed several pieces of pending legislation related to oil spills, spill contingency planning, spill liabilities, etc., to determine how they will impact our company. In reviewing these proposals, I find myself taking particular exception to SB 432 in it's entirety and to a provision of SB 504 which would assign authority to a state agency to "examine the structural integrity of tank vessels and oil barges."

I will speak first to SB 504. My specific objections to state agencies being allowed to "examine" oil vessels for structural integrity are that it is patently unfair to one segment of the marine industry, and it exposes one type of already heavily inspected and regulated watercraft to the dubious expertise of state inspectors, while ignoring the potential for environmental disaster from other maritime sources.

As you may know, tank vessels and barges under the U.S. flag are currently one of the most heavily regulated and thoroughly inspected classes of vessels in the world. For example, Boyer Towing owns and operates two relatively small tank barges hauling refined oil products. Both of these barges are inspected by the U.S. Coast Guard and the American Bureau of Shipping at least annually. Frequently, because of the myriad of rules governing these vessels, they end up being examined by these two entities on a more frequent than annual basis. As part of the regulatory processes established by these organizations, our oil barges are under continuous technical evaluation as to their structural integrity and operational condition.

The single sentence establishing the examination requirement in SB 504 will, of necessity, require the state to hire new personnel with the professional competence to make judgements as to naval architecture, naval engineering, and vessel dynamic stability. With the exception of a few employees of the Marine Highway, none of the above currently exist in any state agency, and especially not within the Department of Environmental Conservation.

Both the Coast Guard and American Bureau of Shipping use inspectors with these kinds of qualifications, yet both encounter difficulty in attracting and retaining people with these credentials despite their ability to provide broad experience, a wide variety of work locations, and highly refined technical support and training. It is laughable to think that the State of Alaska, with its ever declining resources, would be able to attract and retain inspectors with equal or greater competence to those in the Coast Guard and ABS. Consequently the State of Alaska would saddle industry with inspection personnel of lower competence than those already inspecting our vessels, with a net lack of any gain in vessel safety or reliability.

Additionally, this requirement will mandate that the state expend ever reducing revenues to create entirely new regulations for the guidance of both "inspectors" and industry. It will also require establishing procedures and logistics for conducting these "examinations".

I believe that there are significant threats to the environment posed by other vessels which are not proposed to be "examined". To illustrate, let me compare one of these classes of vessel to our barges. The ~~foreign flag passenger vessel~~ **ROTTERDAM** travels upon the territorial waters of Alaska at least as frequently as our oil barges. Unlike our barges, the ROTTERDAM's activities are concentrated during the seasons of highest marine traffic activity when the risk of collision and grounding is highest.

The **ROTTERDAM** carries more oil onboard than both of our barges combined. The ROTTERDAM carries huge quantities of "heavy marine fuel oil". This oil is environmentally more dangerous than the diesel oils and gasoline carried aboard our barges. The crew of ROTTERDAM is made up of a small nucleus of highly skilled Dutch officers who oversee a very large number of low skilled, poorly trained, and poorly paid crew members, most of whom are from third world nations, many of whom cannot speak English. ROTTERDAM, like all foreign flag vessels, is not subject to standards of inspection equal to those applied to U.S. flag vessels. Finally, ROTTERDAM is operated by the same company and in the same manner as another famous Alaska maritime disaster, the PRINCENDAM, which would have become an environmental disaster had the owners succeeded in its badgering the Coast Guard for permission to tow the sinking hulk into Sitka Sound.

In my professional opinion, foreign flag cruise vessels carrying thousands of barrels each of heavy fuel and other oils, operated by foreign interests using marginally competent crews, pose a much larger threat to the environment than any of our barges.

In spite of the obvious threat to the environment posed by foreign flag cruise ships, as well as other classes of vessels such as the rapidly growing fleet of unregulated and uninspected large fishing ships using our waters, the state proposes "examining" only tank vessels and oil barges. This targeting of one class of watercraft completely ignores the potential serious threats posed by other types of vessels, and is an obviously short sighted "knee-jerk" reaction to the EXXON VALDEZ disaster.

I would be the last person to trivialize the dangers posed by tank vessels. I have seen enough during my career in the maritime industries to be fully aware of the health, safety, and environmental threats inherent in transportation of oil. However, establishing "examinations of the structural integrity" of tank vessels by state agencies is discriminatory, expensive, impractical, and a needless attempt to usurp the existing responsibilities of other organizations legally charged with establishing standards for maritime safety. I

It makes no sense to me that the state would waste so much time and treasury in order to accomplished only an impediment to one segment of maritime commerce with virtually no reduction in the total threat to the environment posed by the industry as a whole.

In speaking to SB 432, I can't quite comprehend how this measure would be fairly applied in the event of an accident, especially, given the current belligerent attitude of elected and appointed state officials toward those of us transporting oil products by sea.

I believe that if SB 432 were currently law and our company were to suffer an accidental oil spill, the present ~~administration would very quickly move to freeze our assets~~ with little if any justification or logic, and no regard for potential impacts to our customers or our ability to continue in business. This may not be the case under a different administration, but I believe that this proposal would only serve as a weapon to be wielded wildly by the current administration.

Being a realist and recognizing that accidents can happen, I have to assume that our company may eventually experience an accident resulting in a discharge of oil. This being said, I must also state that our company is a good corporate citizen of this state which does not shirk it's obligations. We take precautions to prevent accidents, maintain our vessels in excellent condition, employ the most reliable people we can find, comply with requirements for contingency planning, and impose very conservative operating restrictions on our vessels, with a view toward safety rather than speed.

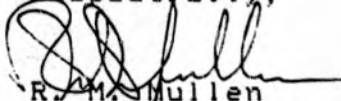
Unfortunately, the political atmosphere in this state is such that if we were to suffer an accidental release of oil, I have no doubt that ~~we would be treated as criminals~~ regardless of any actions we have taken to prevent accidents, from happening or any actions we would take in mitigating the effects of an oil spill.

With all of the other increases in penalties, fines, prohibitions, and insurance levels contained in the other pending legislation I have reviewed, SB 432 conveys the impression that the state is establishing a punishment system which will get the attention of the oil companies. However in it's attempts to send a message to the "big bad oil companies" the state is removing all incentive for a company like ours to continue providing our traditional oil delivery service. Additionally, the state is removing incentives we may have had to upgrade our existing fleet with newer and more sophisticated oil barges.

Simply said, we are receiving the message that the State of Alaska seems to be sending. That anyone engaged in the transportation of oil should automatically be considered as a criminal before the fact so that circumstances surrounding an oil spill will not get in the way of predetermined punishment.

~~I encourage you to seek the removal of the "examination" provision of SB 504 and to work toward the defeat of SB 432.~~

Respectfully,



R. M. Mullen
Marine Superintendent

Cathcart Ltd.

First Interstate Bldg. • 520 5th Ave., Suite 323 • Fairbanks, AK 99701 • Phone: (907) 451-6863 • Fax: (907) 451-7945

March 6, 1990

Bernie Saupe'
Saupe' Enterprises, Inc.
418 Illinois Ave
Fairbanks, AK 99701

Re: Senate Bill 504

Dear Bernie,

I am writing this letter in reference to the above captioned bill. Specifically with reference to the Financial Responsibility language.

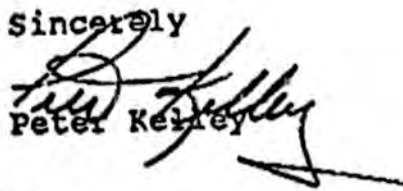
The limit of \$50,000,000 per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."

As you will recall, I had quite a bit of difficulty just obtaining a limit \$1,000,000 for you two years ago.

If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars. (I estimated this by using your premium of \$16,000 for \$1,000,000.

I hope this information can be of help.

Sincerely


Peter Kelley

Precision Insurance For Your Precise Business Needs

Anchorage: P.O. Box 190546 • Anchorage, AK 99519-0546 • Phone: (907) 258-4240 • Telex: 26-648 • Fax: (907) 258-2411



Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No.1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenomena specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.



Alaskan Wilderness Sailing Safaris

Alaska's Oldest and Largest Sailing Charter Company

16th Season

March 29, 1990

Senator Mike Szymanski
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Szymanski,

Alaskan Wilderness Sailing Safaris has been offering week long sailing adventures in Prince William Sound for the past 16 years. The EXXON VALDEZ Oil Spill affected over 60% of the anchorages we normally use. We have four major routes. Two of these, including our two week whale watching trip that circumnavigates Knight Island with stops at Green and Naked Islands had to be abandoned. We still are not able to offer these trips this year because of the oil in and adjacent to our anchorage areas. We do not know how long it will be before we can again re-enter the whale watching trip tourism market. This is a significant loss to us as Alaskan Wilderness Sailing Safari trips are described in several internationally published books on whales and whale watching.

Because of our local knowledge, we were called upon to give help during the early days of the oil spill. We were impressed with and proud of the rapid and professional response by the Alaska Department of Environmental Conservation. We strongly support DEC remaining in charge of response to oil spills and the discharge of hazardous substances.

The Division of Emergency Services complemented DEC's efforts by providing equipment, liaison with communities like Whittier, and logistic support during the early days of the spill. We support this role for the Division of Emergency Services.

We were deeply disturbed by the lack of scientific information on hand concerning the availability, properties and effectiveness of various oil spill containment, skimming, and cleanup equipment. Many of the skimmers turned out to be virtually useless. By contrast, fishermen were able to jury-rig their equipment to make it servicable for picking up oil. This indicates that the oil industry and government have devoted inadequate attention and resources to developing oil spill response and cleanup technology. If fishermen working in the field in remote conditions can put together better equipment than industry has been able to do in fifty years, then it is time for the State to take a more active role.

We appreciate your efforts to solve this problem by introducing SB 421 and support its incorporation into SB 503. Because of its scientific expertise, the Department of Environmental Conservation should be the responsible agency.

We would appreciate it if you could please read these comments into the legislative record for us at the March 29, 1990 Oil and Gas subcommittee hearing. We recognize the importance of the oil industry in Alaska, but believe that it must play a responsible role so that other industries are not injured by its activities. Neither we, nor Prince William Sound, nor the Yukon and Copper Rivers nor any other part of Alaska should be considered dispensible.

Sincerely yours,

Jim Lethcoe

Nancy L. Lethcoe

Jim, Nancy and Athena Lethcoe



Stan Stephens

Dear Senator Drue Pearce,

I'm not in favor of the substitute bill for Governor Cowper's Senate Bill 503.

I feel ADEC must remain in charge of oil spill response. I had the experience of being able to watch ADEC doing this job during the spill. Considering the circumstances, they performed remarkably well. I had contact with ADEC last summer almost around the clock and there was always someone to assist and help no matter what the hour. I think funds must also remain under the control of ADEC and also hazardous substance responsibility.

There seems to be some question as to the ability of ADEC to respond or maybe they respond too well.

I live in a area with many hazards that needs a strong watch dog. I think ADEC is the agency to meet this challenge. They did a great job responding to the EXXON Valdez oil spill. Please help us to keep ADEC working for us in these critical areas.

Sincerely

A handwritten signature in cursive script that reads "Stan Stephens".

Stan Stephens



PRINCE WILLIAM SOUND CONSERVATION ALLIANCE

P.O. Box 1897
Valdez, AK 99686
(907) 835-2799, 8006
Fax 835-5395

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March 29, 1990

Senator Drue Pearce
Oil and Gas Subcommittee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99686

Dear Senator Pearce,

The Prince William Sound Conservation Alliance wishes to thank you for allowing us to present testimony at the Spm teleconference on SB 503 today.

The Prince William Sound Conservation Alliance is a non-profit alliance formed in 1988 of businesses and individuals representing tourism, recreation, fisheries, environmental, local, and conservation interests. We have over 300 members.

PWSCA played an active role from the first hours of the response to the EXXON VALDEZ oil spill and continues to do so. Our response has included placing volunteers in the DEC office during the first weeks of the spill, operating the Volunteer Response Center, attending Science and Operational Committee meetings, serving on the Interagency Shoreline Cleanup Committee (ISCC), and operating a volunteer and paid winter cleanup program under the Governor's Winter Cleanup Program which is administered by DEC. The ISCC advised NOAA and the FOSC on shoreline segments requiring treatment, the appropriate times to provide treatment depending upon resource sensitivities such as herring spawning times, and appropriate treatment techniques.

Because of our unique position, we have had an inside view of DEC's response to the oil spill. PWSCA would like to take this opportunity to thank all the DEC employees and especially Commissioner Dennis Kelso and his staff for their outstanding response and commitment to protecting Alaska's public resources, people and communities from the adverse affects of the spill. We strongly support the Governor's original SB 503 which gives DEC the lead role in response to future oil spills and discharges of hazardous substances. It is essential that the lead agency have the depth of scientific expertise to make the difficult scientific decisions required in responding to spills and discharges.

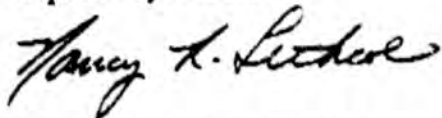
The Volunteer Response Center was established by the Department of Environmental Conservation to respond to calls from around the country from people wanting to volunteer or work on the oil spill cleanup. Because there was no central contact for volunteers, volunteers were calling all the agencies, Exxon, city and Alyeska. This tied up telephone lines. Establishment of the Volunteer Response Center made a significant reduction in the number of incoming calls in Valdez and the amount of time outgoing callers had to wait for a free line. The Division of Emergency services provided much needed assistance in the immediate establishment of the Oil Spill Volunteer Response Center by providing desks, tables, telephones, filing cabinets, computers, etc. We wish to thank DES for this help and express our support for their continued role as an agency providing much needed logistical support to DEC.

The Prince William Sound Conservation Alliance supports the inclusion of SB 421 in SB 503 with the Department of Environmental Conservation in charge of the Oil and Hazardous Substance Spill Technology Review Commission. Our experience serving on the ISCC and discussing problems with on-water cleanup technology with fishermen and others using the equipment has convinced us that mechanical cleanup is the best method. However, availability of state-of-the art equipment for mechanical cleanup lags far behind this country's and the world's ability to design and build such equipment. In addition, too often members of the ISCC have had to make decisions regarding the use of various cleanup methods with insufficient information available on the effects of that method on biological resources. The provisions of SB 421 would address this problem to the benefit of the oil industry (from a liability perspective) and other resource users.

Finally, PWSCA would like to see the committee substitute for SB 503 place DEC in charge of the 470 funds and to continue as chairman of the State Emergency Response Council.

We believe that the Department of Environmental Conservation did such an excellent job in responding to the spill that the oil companies now wish to transfer response authority to a divisional level in an agency that does not have the scientific expertise to or responsibility for protecting vital public resources that are the basis of other segments of Alaska's economy. The Exxon Valdez Oil Spill was an environmental, economic, and social disaster. Removing control and responsibility for oil and hazardous substance response from DEC and assigning it to DES could make the response itself to future spills an additional environmental, economic and social disaster. Affected communities, businesses, and individuals deserve the best the State has to offer in responding to spills. Please continue to place this authority with DEC and to fully fund DEC to fulfill such statutory authority.

Respectfully submitted,



Nancy R. Lethcoe, Director

MEMORANDUM

2/23/90

RE: Alaska Emergency Response Commission Members

The Alaska Emergency Response Commission, set up by Administrative Order 103, is comprised of 13 members. It is seat specific and not open to the public at large. The following is a list of individuals currently serving on the commission, where they are from and the seat they have:

Thomas R. Brooks	Eagle River	Generator
Tom Fink	Anchorage	Local Government
Don Gilman	Soldotna	Local Government
Juanita Helms	Fairbanks	Local Government
Carl Hild	Anchorage	Public Interest
Anne Walker	Nome	Rural
William Shechter	Fairbanks	Fire Chief

The rest of the members are designees of departments:

Mark Johnson	Juneau	HSS
Denny Kelso	Juneau	DEC
Ervin Martin	Palmer	MVA
C. Roger McCoy	Juneau	Public Safety
Jeffery Ottesen	Juneau	DOTPF
Marty Rutherford	Anchorage	CRA

DP:jmj

Alaska Emergency Response Efforts
A Comparison of Organizational Strengths and Weaknesses

Dennis M. Dooley
December, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

The report concludes,

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

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

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

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

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

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

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

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

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

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

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

Further considerations included:

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

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

Seldom is an analysis in the world of preparing a report such as this, allowed to proceed as a rigorous academic exercise in reviewing organizational approaches. This effort was no exception.

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

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

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

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

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

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

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

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

ELEMENTS OF AN INCIDENT COMMAND SYSTEM (ICS)

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

The standard ICS organizational structure identifies positions which are specific to various duties and identifies the job

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

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

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

CONCLUSION

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

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

sector and if necessary can draw upon additional state and private assets quickly and efficiently. Moreover, the Department of Military and Veterans' Affairs has a proven record of dealing effectively with federal command systems.

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

SENATE BILL NO. 503 by the Rules Committee by request of the Governor, entitled:

"An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

was read the first time and referred to the Senate Special Committee on Oil and Gas, the Resources Committee and the Finance Committee.

Fiscal notes published today from Department of Environmental Conservation and Department of Fish and Game.

Governor's transmittal letter dated February 21:

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

/s/
Steve Cowper
Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER NO. 103

Under the authority of Article III of the Alaska Constitution, AS 44.17.060 and AS 44.19.145(c), I hereby establish in the Department of Environmental Conservation, the Alaska State Emergency Response Commission to serve as the state emergency response commission required by Title III of the Superfund Amendments and Reauthorization Act of 1986 or "SARA" (Pub.L. 99-499, Oct. 17, 1986, 100 Stat. 1613).

Section 1. Duties The Commission shall

- (a) recommend any necessary changes to the initial boundaries of emergency planning districts shown on the attached map of "emergency management regions", in order to facilitate preparation and implementation of emergency plans, and using existing boundaries of political subdivisions if appropriate;
- (b) coordinate the activities of local emergency planning committees in those districts;
- (c) recommend procedures for receiving and processing requests from the public for information under sec. 324 of SARA including Tier II information under sec. 312 of SARA;
- (d) perform other coordinating, advisory, or planning tasks at my request, relating to chemical emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, or management of hazardous substances; and
- (e) to the extent consistent with the Alaska Constitution and Alaska Statutes, perform all other functions prescribed for state emergency response commissions in SARA.

Section 2. Composition To the extent practicable, the Commission shall be comprised of individuals with expertise in the emergency response field. The Commission consists of the Commissioners of the Departments of Environmental Conservation, Military and Veterans Affairs, Health and Social Services, Public Safety, and Transportation and Public Facilities, Community and Regional Affairs, or their designees and seven public members I will appoint.

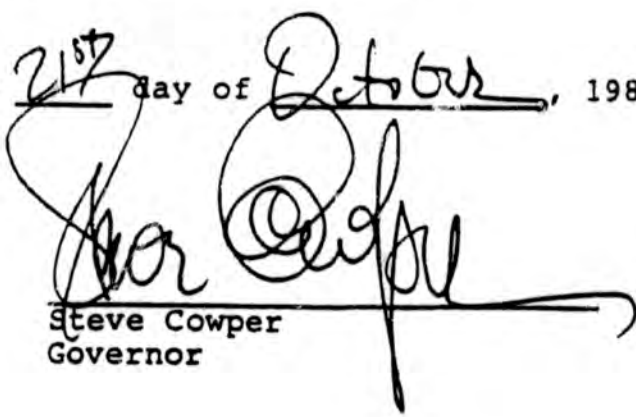
Section 3. Officers and Terms The Commissioner of Environmental Conservation or the commissioner's designee shall chair the Commission. The Commissioner of Military and Veterans Affairs or the commissioner's designee shall serve as a vice-chair. Members of the Commission other than those from the designated state departments shall serve at my pleasure for staggered terms of three years. Members of the Commission shall serve without compensation but are entitled to per diem and travel as authorized by law for members of boards and commissions.

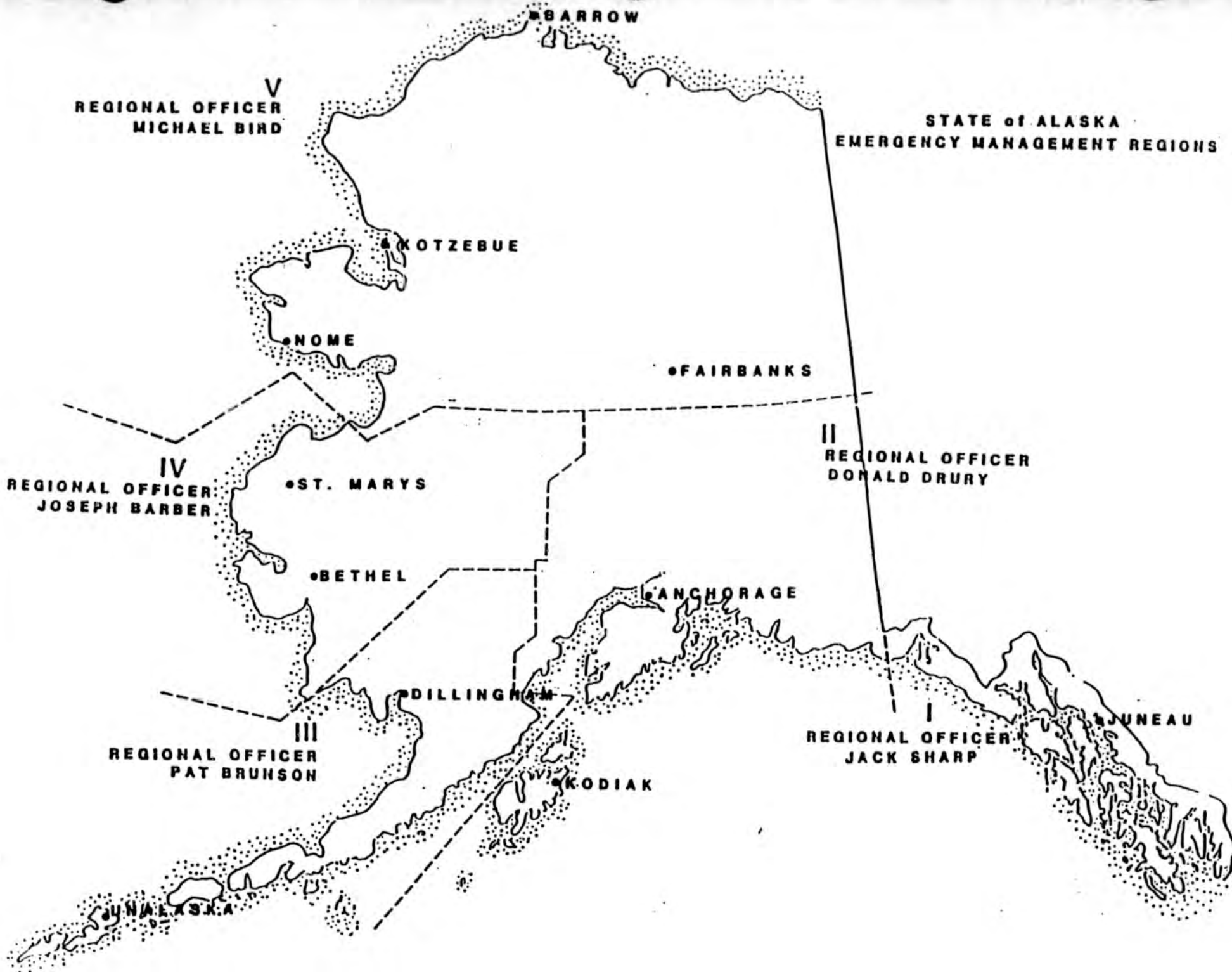
Section 4. Agency Cooperation The Commission may request data, reports, or other information from any state agency. To the extent feasible, every state agency shall cooperate with the Commission and furnish it with the information and assistance necessary to accomplish the purpose of SARA and of this Administrative Order.

Section 5. Planning Boundaries Boundaries for local planning districts shall be the regions designated by the Division of Emergency Services for emergency preparedness planning until otherwise designated by the Commission.

This Order takes effect on October 21, 1987.

DATED at Juneau, Alaska, this 21st day of October, 1987.


Steve Cowper
Governor



STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 503 / HB 566
PUBLISHED DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act concerning Response Fund
expenditures/DES's role in spill disaster/SERC
Sponsor: Rules Committee
Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	115.4	115.4	115.4	115.4	115.4	115.4
TRAVEL	80.4	80.4	80.4	80.4	80.4	80.4
CONTRACTUAL	143.0	143.0	143.0	143.0	143.0	143.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	10.0	10.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	350.8	350.8	350.8	350.8	350.8	350.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	350.8	350.8	350.8	350.8	350.8	350.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	350.8	350.8	350.8	350.8	350.8	350.8

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
The impact for FY 90 will depend upon the effective date of this legislation.

Prepared by: Camille Stephens
Division: Environmental Quality

Phone: 465-2630
Date: 2/12/90

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/12/90

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

Sections 1-5

Sections 1-5 will not require additional resources for the Department of Environmental Conservation.

Section 6

This legislation establishes the State Emergency Response Commission (SERC) in statute, giving the Department authority to request funds for performing its duties under the federal law SARA Title III.

The Department presently funds .5 FTE as technical staff to the SERC. This legislation will require two additional FTE (153.4) to serve as technical support to the SERC, coordinate SERC meetings, coordinate establishment of LEPCs, provide technical information to LEPCs, and other duties as required by the statute. The Department considers it essential that SERC/LEPC plans are coordinated with the State and Regional Oil and Hazardous Substance Discharge Prevention and Contingency Plans.

Travel expenses and per diem for commission members attending quarterly SERC meetings (6-8 persons) and quarterly subcommittee meetings (6-8 persons) are paid by the Department. There are four subcommittees. Based on an air fare of \$360 and one day per diem at \$80/day, travel and per diem amount to \$70.4.

This legislation will require the commission to establish LEPCs for each emergency planning district. Approximately 12 Local Emergency Planning Committees (LEPC) are in the process of being established at an estimated cost of \$20.0 to each community. Contractual services monies in the amount of \$120.0 (\$10 per LEPC) will be necessary to help insure that LEPCs are established, members receive appropriate training, and that the requirements of this proposed statute and SARA Title III are complied with. This cost will recur in subsequent fiscal years as additional LEPCs are established.

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

SUMMARY

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
ECO III	57.7	5.0	8.0	1.0	5.0	\$ 76.7
ECO III	57.7	5.0	8.0	1.0	5.0	\$ 76.7
Travel/per diem		70.4				\$ 70.4
Contractual			127.0			\$127.0
TOTALS	115.4	80.4	143.0	2.0	10.0	\$350.8

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 503 (Oil and Gas)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues
Division: Administrative Services
Phone: 465-3672
Date: April 2, 1990
Approved by Commissioner: Douglas B. Baily
Agency: Department of Law
Date: April 2, 1990

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

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

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

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

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

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

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

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

FISCAL NOTE

REQUEST:

Revision Date: April 2, 1990

Title: Oil and hazardous substance response.

Sponsor: Governor

Requestor: Senate Oil and Gas Committee

Agency Affected: DMVA

BRU: Disaster Planning & Control

Components: Oil & Hazardous Substance Response Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Jeff Morrison, Director

Phone: 465-4600

Division: Administrative & Support Services, DMVA

Date: 4/2/90

Approved by Commissioner: MG John Schaeffer

Date: 4/2/90

Agency: Department of Military & Veterans Affairs

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

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

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

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

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

TRANSFER OF OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE

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

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

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

ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSION (SERC)

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

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

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

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

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

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

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

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

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Fax - (907) 262-1881

TO: L.I.O. June

ATTN: _____ FAX: _____ PHONE: _____

FROM: Soldotna - Shelia Dickson PHONE: _____

INSTRUCTIONS: Please deliver to Senate Oil & Gas
as testimony to be included in tape #
90-02-116.

DATE: 3-16-90 TIME: 7:19 PM
DISCARD ORIGINALS _____ HOLD FOR PICKUP _____

NUMBER OF PAGES (not counting the cover sheet): 1

TRANSMITTED BY: Alyson





Alaska State Legislature

Please enter into the record my testimony to the Senate Oil & Gas
committee name
committee on SB 503, dated 3-6-90
bill/subject

The adoption of S.B. 503 will strengthen
the states emergency response capabilities.
The establishment of the fund is also
a good idea.

I understand our Governor asked for
industry comments prior to introducing
these bills. This is very disappointing.
~~Industry comments should be on some
relevant to the bill~~

Thank you

Signed: Shirley Dickson
Testifier

PACE

Representing (Optional)

100 Trading Bay, Suite 4 Kenai AK 99611
Address

283-7170

Phone No.



Trustees for ALASKA

a nonprofit public interest environmental law firm

Michael M. Wenig
Staff Attorney

725 Christensen Drive, Suite 4, Anchorage, Alaska 99501-2101
(907) 276-4244

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

Recommended Legislative Remedies

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

Mike Wenig, Staff Attorney
Trustees for Alaska

Introduction

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

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

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

Recommendations

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

mandate.

Discussion of Recommendations

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

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

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

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

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

procedure.

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

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

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

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

³ For example, see Washington, RCW 90.48.144.

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

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

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

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

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

§ 1319(c).⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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