

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2085 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

103

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 4, 1990

RECEIVED
DEPT. OF LAW
Legis/Reg Section

JUNE
MAY 04 1990

6 7 8 9 10 11 12 1 2 3 4 5 6
↑

Amendola/Baily/
Mertz/McDonagh
(Gov's bill)

6/12/90

The Honorable Doug Baily
Attorney General
Department of Law
P.O. Box K
Juneau, AK 99811

Dear Attorney General Baily:

I am transmitting the following bill passed by the Second Session of the Sixteenth Legislature to your office for review:

SENATE COMMITTEE SUBSTITUTE
FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
(Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.)

Under the authority of art. II, sec. 17 of the Alaska Constitution, the last day for the Governor to take action on this bill is June 27, 1990. It will become law without the Governor's signature on June 28, 1990. We would appreciate your review by June 14, 1990, so that appropriate action can be taken.

John

We'll need a
diskette with your
letter on H. Carroll's
PC uses the 5 1/4"
diskettes. Call
if you have
questions.
Thanks B.J.

Sincerely,

Kari Repplinger

Kari Repplinger
Legislative Staff Assistant

B2

VIEW THE NOTE

E20

From: WPFC AHP --JDCVM1
To: WPFC JDL --JDCVM1

Date and time 06/04/90 18:21:30

From: Arthur H. Peterson (WPFC AHP)
Legislation/Regulations Attorney
Subject: Review of oil spill bills

TO: JOHN MCDONAGH.URGENT!!!

We just received the following from the gov's. office:

SCS CSHB 566(Fin) (efd fld H) -- oil spill response;
SCS CSHB 567(Fin) -- oil spill prevention, etc.

Carroll will not be here tomorrow, but B. J. and I will try to get these two bill-review assignment files opened for you tomorrow. You probably won't receive them until Wednesday or Thursday, but you could begin your review letters now. They'll have a short deadline. PLEASE keep the letters SHORT (but don't fail to deal with ESSENTIAL issues). You should already have my February and May 1990 memos on the subject of bill reviews. Call if you have a question.
Ant

PF1 Alternate PFs PF2 Copy to PF3 Keep PF4 Erase PF5 Forward Note
PF6 Reply PF7 Resend PF8 Print PF9 Help PF10 Next PF11 Previous PF12 Return

B3

June 12, 1990

The Honorable Steve Cowper
Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 567(Fin) -- oil spill
contingency plan requirements
Our file no.: 883-90-0183

Dear Governor Cowper;

Kari Reppinger's on your behalf
At ~~your~~ request, we have reviewed SCS CSHB 567(Fin),

which strengthens the contingency planning and financial
responsibility requirements for oil and hazardous substance spills.

The bill, originally introduced ~~by you~~ *at your request* underwent close scrutiny
during the legislative process. The final version is the result
of extensive negotiation between the Administration, the oil
industry, environmental groups, and the legislature.

Nevertheless, the final version retains the three main components
of the original bill in an acceptable form. First, the bill
strengthens the Department of Environmental Conservation's
("DEC's") authority to require and enforce oil discharge
contingency plans. Second, the bill strengthens the financial
responsibility requirements for shippers of oil and hazardous
substances. Third, the bill authorizes DEC to inspect the
structural integrity of tank vessels and oil barges. These
components are discussed below.

(Our file
773-90-
0053;
see your
February
22, 1990
transmittal
letter, at
1990 House
Jour. 2515
and
2513.)

Oil Spill Contingency Plans.

The bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has a DEC-approved contingency plan and is in compliance with the plan.

The bill broadens DEC's authority to revoke its approval of a contingency plan. Under the bill, DEC may revoke its approval if the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

spec *levels* *stet*
The bill requires a contingency plan holder to plan to clean up the following discharges: *at certain levels the bill is clear that there are planning requirements, and a plan holder is not to be under the bill for failure to actually clean up a spill at these levels. Failure to implement the plan and failure to conduct as cleanup are already offenses under current law. The specific planning levels are:*

* Oil terminal facilities: The plan holder must plan to clean up a discharge equal to the largest tank at the facility, within 72 hours,

* Oil exploration facilities, production facilities, and pipelines: The plan holder must plan to clean up a realistic

maximum discharge within 72 hours.

—* Crude oil tank vessels and barges: For tank vessels and barges with a cargo volume of less than 500,000 barrels, the plan holder must plan to clean up a 50,000-barrel discharge within 72 hours. For tank vessels and barges with a cargo capacity equal to or greater than 500,000 barrels, the plan holder must plan to clean up a 300,000-barrel discharge within 72 hours.

—* Non-crude oil tank vessels and barges: The plan holder must plan to contain or control 15 percent of the maximum capacity of the vessel or barge, within 48 hours, and to clean up the discharge within the shortest possible time consistent with minimizing danger to the environment.

Financial responsibility.

The bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has furnished to DEC, and DEC has approved, proof of financial responsibility. The bill sets the financial responsibility requirements at the following levels:

*~~✓~~
^ Crude oil terminals

\$50,000,000

Offshore exploration facilities

Offshore production facilities

Pipelines

*~~✓~~
^ Crude oil tank vessels

\$100,000,000 or \$300

Crude oil barges

per bbl. of storage
capacity, whichever
is greater

*~~✓~~
^ Non-crude oil tankers

\$1,000,000 or \$100 per

Non-crude oil barges

bbl., whichever is
greater, up to a maximum
of \$35,000,000

*~~✓~~
^ Non-crude oil terminals

\$1,000,000 or \$25 per

bbl., whichever is
greater, up to a maximum
of \$50,000,000.

*~~✓~~
^ Onshore production

\$20,000,000

facilities

Hon. Steve Cowper
Our file: 883-90-0183

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g
* Onshore exploration
^ facilities

\$5,000,000

For the first time, the bill would link
✓ The financial responsibility levels ~~are linked~~ to the United States Department of Labor Consumer Price Index for Anchorage. The amounts will be adjusted every three years. The applicant may demonstrate financial responsibility by a wide variety of methods, all of which are subject to DEC's approval. DEC will acknowledge its approval of the proof by issuing the applicant a certificate of approval.

Inspection authority.

The bill authorizes DEC to participate in state and federal agencies' inspections of oil terminal facilities, pipelines, exploration facilities, production facilities, tank vessels, and oil barges. If DEC determines that no state or federal agency is performing timely and adequate inspections, DEC may conduct the inspection on its own. *It is important to note that this authority is in addition to existing authority, and DEC already has broad powers to inspect regulated facilities.*

As noted above, the legislation is a result of compromise. Hence, its contingency planning, financial responsibility, and inspection provisions are not as stringent as in the original version. Nevertheless, the bill contains important

"any action taken by the Department of Environmental Conservation to accept or reject an application for a permit to construct or reconstruct a facility shall be subject to the review and approval of the Department of Environmental Conservation."

Hon. Steve Cowper
Our file: 883-90-0183

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improvements over the existing law in these areas. In addition, the bill presents no ~~serious~~ constitutional problems or other legal difficulties. We therefore recommend that you sign the bill into law.

↑
are there ~~non-~~
serious ones?
None are mentioned
in the letter.

Sincerely,

Douglas B. Baily
Attorney General

JAM:jah

B4

June 15, 1990

The Honorable Steve Cowper
Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 567(Fin) -- oil spill
contingency plan requirements
Our file no.: 883-90-0183

Dear Governor Cowper:

At Kari Reppinger's request on your behalf, we have reviewed SCS CSHB 567(Fin), which strengthens the contingency planning and financial responsibility requirements for oil and hazardous substance spills. The bill, originally introduced by you, underwent close scrutiny during the legislative process. (Our file 773-90-0053; see your February 22, 1990 transmittal letter, at 1990 House Jour. 2515 and 2513.)

The final version is the result of extensive negotiation between the Administration, the oil industry, environmental groups, and the legislature. Nevertheless, the final version retains the three main components of the original bill in an acceptable form. First, the bill strengthens the Department of Environmental Conservation's ("DEC's") authority to require and enforce oil discharge contingency plans. Second, the bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Third, the bill authorizes DEC to inspect the structural integrity of tank vessels and oil barges. These components are discussed below.

Oil Spill Contingency Plans.

The bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has a DEC-approved contingency plan and is in compliance with the plan.

The bill broadens DEC's authority to revoke its approval of a contingency plan. Under the bill, DEC may revoke its approval

if the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

The bill requires a contingency plan holder to plan to clean up discharges at certain levels. The bill is clear, however, that these are planning requirements, and a plan holder is not liable under this bill for failure to actually clean up a spill at these levels. Failure to implement the plan and failure to conduct a cleanup are already offenses under current law. The specified planning levels are:

- Oil terminal facilities: The plan holder must plan to clean up, within 72 hours, a discharge equal to the largest tank at the facility.

- Oil exploration facilities, production facilities, and pipelines: The plan holder must plan to clean up a realistic maximum discharge within 72 hours.

- Crude oil tank vessels and barges: For tank vessels and barges with a cargo volume of less than 500,000 barrels, the plan holder must plan to clean up a 50,000-barrel discharge within 72 hours. For tank vessels and barges with a cargo capacity equal to or greater than 500,000 barrels, the plan holder must plan to clean up a 300,000-barrel discharge within 72 hours.

- Non-crude oil tank vessels and barges: The plan holder must plan to contain or control, within 48 hours, 15 percent of the maximum capacity of the vessel or barge, and to clean up the discharge within the shortest possible time consistent with minimizing danger to the environment.

Financial responsibility.

The bill strengthens the financial responsibility requirements for shippers of oil and hazardous substances. Under the bill, a person may not operate an oil terminal facility, a tank vessel or oil barge, a pipeline, or an oil exploration or production facility unless the person has furnished to DEC, and DEC has approved, proof of financial responsibility. The bill sets the financial responsibility requirements at the following levels:

- Crude oil terminals	\$50,000,000
Offshore exploration facilities	
Offshore production facilities	
Pipelines	

- Crude oil tank vessels
Crude oil barges \$100,000,000 or \$300
per bbl. of storage
capacity, whichever
is greater
- Non-crude oil tankers
Non-crude oil barges \$1,000,000 or \$100 per
bbl., whichever is
greater, up to a maximum
of \$35,000,000
- Non-crude oil terminals \$1,000,000 or \$25 per
bbl., whichever is
greater, up to a maximum
of \$50,000,000.
- Onshore production
facilities \$20,000,000
- Onshore exploration
facilities \$5,000,000

For the first time, the bill would link the financial responsibility levels to the United States Department of Labor Consumer Price Index for Anchorage. The amounts will be adjusted every three years. The applicant may demonstrate financial responsibility by a wide variety of methods, all of which are subject to DEC's approval. In response to industry requests, the bill makes letters of credit and "any other proof . . . approved by the department" an acceptable means of proving financial responsibility. DEC will acknowledge its approval of the proof by issuing the applicant a certificate of approval.

Inspection authority.

The bill authorizes DEC to participate in state and federal agencies' inspections of oil terminal facilities, pipelines, exploration facilities, production facilities, tank vessels, and oil barges. If DEC determines that no state or federal agency is performing timely and adequate inspections, DEC may conduct the inspection on its own. It is important to note that this authority is in addition to existing authority, and DEC already has broad powers to inspect regulated facilities.

As noted above, the legislation is a result of compromise. Hence, its contingency planning, financial responsibility, and inspection provisions are not as stringent as in the original version. Nevertheless, the bill contains important improvements over the existing law in these areas. In addition,

Hon. Steve Cowper
Our file: 383-90-0183

June 15, 1990
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the bill presents no constitutional problems or other legal difficulties. We therefore recommend that you sign the bill into law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur H. Peterson".

for Douglas E. Baily
Attorney General

JAM:jah

B5



LAWS OF ALASKA

1990

Source

Chapter No.

SCS CSHB 567(Fin)

AN ACT

Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 18

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

1
2
3
4
5
6 AN ACT

7 Relating to oil discharge prevention and contingency plan
8 requirements, financial responsibility requirements related
9 to oil, penalties, and inspection authority of the Depart-
10 ment of Environmental Conservation; relating to the oil and
11 hazardous substance release response fund and responses to
12 oil and hazardous substance emergencies; authorizing the
13 Department of Environmental Conservation and municipalities
14 to enter into agreements pertaining to vessel traffic con-
15 trol and monitoring systems; and providing for an effective
16 date.

17
18 * Section 1. AS 29.35.020 is amended by adding a new subsection to
19 read:

20 (d) A municipality may enter into agreements with the United
21 States Coast Guard, the United States Environmental Protection Agency,
22 and other persons relating to development and enforcement of vessel
23 traffic control and monitoring systems for oil barges and tank vessels
24 carrying oil operating in or near the waters of the state.

25 * Sec. 2. AS 46.03.759(c) is amended to read:

26 (c) Subject to the \$500,000,000 maximum set under (a) of this
27 section the court shall assess four times the penalty set out in (a)
28 of this section if the court finds

29 (1) the discharge was caused by the gross negligence or

1 intentional act of the defendant;

2 (2) the defendant did not take reasonable measures to
3 contain and clean up the discharged oil; or

4 (3) the defendant did not act or respond in accordance with
5 an approved oil discharge prevention and contingency plan.

6 * Sec. 3. AS 46.03.823(a) is amended to read:

7 (a) A person who is a response action contractor with respect to
8 a release or threatened release of a hazardous substance whose acts or
9 omissions are not contrary to a response plan or order by a state or
10 federal agency having jurisdiction over the release or threatened
11 release is not civilly liable for injuries, costs, damages, expenses,
12 or other liability that results from the release or threatened release
13 unless the release or threatened release is caused by an act or omis-
14 sion of the response action contractor that is negligent or grossly
15 negligent or constitutes intentional misconduct. To show negligence by
16 a response action contractor, a claimant must show that the acts or
17 omissions of the contractor under the response action contract were
18 not in accordance with generally accepted professional standards and
19 practices at the time the response action services were performed.

20 * Sec. 4. AS 46.03.823(b) is amended to read:

21 (b) The liability limitation under (a) of this section

22 (1) does not apply to a response action contractor who
23 would otherwise be liable for the release or threatened release under
24 state or federal law if that person had not carried out a re-
25 sponse action with respect to the release or threatened release; and

26 (2) does apply only to releases for which notification to
27 the department was provided and received in the manner prescribed
28 under state law [STRICTLY LIABLE UNDER THIS SECTION].

29 * Sec. 5. AS 46.03.823(e) is amended to read:

1 (e) This section does not affect the liability of a response
2 action contractor that may arise from the response action contractor's
3 failure to comply with the terms or conditions of a

4 (1) response action contract or a remedial action plan if
5 one has been approved by the department; or

6 (2) contingency plan approved by the department where the
7 response action contractor is the plan holder.

8 * Sec. 6. AS 46.03.823(g)(2) is amended to read:

9 (2) "response action contract" means a written contract or
10 agreement to provide response action with respect to a release or
11 threatened release of a hazardous substance, entered into by a person
12 with

(A) the department; [OR]

15 (B) another person who has entered into an agreement
16 with the department that provides for response action subject to
the department's oversight and control;

17 (C) a federal agency with jurisdiction over the re-
18 lease or threatened release; or

19 (D) another person potentially liable for the release
20 or threatened release under state or federal law;

21 * Sec. 7. AS 46.03.823(g)(3) is amended to read:

22 (3) "response action contractor" means

23 (A) a person who enters into a response action con-
24 tract with respect to a release or threatened release of a haz-
25 ardous substance and who is carrying out the contract, including
26 a cooperative organization formed to maintain and supply response
27 equipment and materials that enters into a response action con-
28 tract relating to a release or threatened release; and

29 (B) a person who is retained or hired by and is under

1 the control of a person described in (A) of this paragraph to
2 provide services related to the response action contract.

3 * Sec. 8. AS 46.04.020(e) is amended to read:

4 (e) The department shall enter into negotiations ~~for~~ memoranda
5 of understanding or cooperative agreements with the United States
6 Coast Guard, the United States Environmental Protection Agency, and
7 other persons in order to

8 (1) facilitate coordinated and effective oil discharge
9 prevention and response in the state, including agreements relating to
10 development and enforcement of vessel traffic control and monitoring
11 systems for tank vessels and oil barges operating in or near the
12 waters of the state;

13 (2) provide for cooperative review of oil discharge preven-
14 tion and contingency plans submitted to the department under AS 46.-
15 04.030;

16 (3) provide for cooperative inspections of oil terminal
17 facilities ~~by~~ the department and the United States Coast Guard or
18 United States Environmental Protection Agency; and

19 (4) provide for cooperative oil discharge notification
20 procedures.

21 * Sec. 9. AS 46.04.030 is amended to read:

22 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

23 (a) A person may not cause or permit the operation of an oil terminal
24 facility in the state unless an oil discharge prevention and contin-
25 gency plan for the facility has been approved by the department and
26 the person is in compliance with the plan [. THE DEPARTMENT IS THE
27 ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE
28 CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

29 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit

1 the operation of a pipeline or an [OFFSHORE] exploration or production
2 facility in the state unless an oil discharge prevention and contin-
3 gency plan for the pipeline or facility has been approved by the
4 department and the person is in compliance with the plan.

5 (c) Except as provided in (n) of this section, a [A] person may
6 not operate a tank vessel or an oil barge within the waters of the
7 state, or cause or permit the transfer of oil to or from a tank vessel
8 on or after January 1, 1981, to or from an oil barge, unless an
9 oil discharge prevention and contingency plan for the tank vessel or
10 oil barge has been approved by the department and the person is in
11 compliance with the plan [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.-
12 790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS
13 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DIS-
14 CHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
15 APPROVED BY THE DEPARTMENT].

16 (d) Upon approval of a contingency plan, the department shall
17 issue to the plan holder a certificate stating that the contingency
18 plan has been approved by the department. The certificate must in-
19 clude the name of the facility, pipeline, tank vessel, or oil barge
20 for which it is issued, the effective date of the contingency plan,
21 and the date by which the contingency plan must be submitted for
22 renewal. A [AN OIL DISCHARGE] contingency plan must be submitted for
23 renewal [RENEWED AT LEAST] every three years.

24 (e) The department may attach reasonable terms and conditions to
25 its approval or modification of a [AN OIL DISCHARGE] contingency plan
26 that the department [WHICH IT] determines are necessary to ensure
27 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan
28 has access to sufficient resources to protect environmentally sensi-
29 tive areas and to contain, clean up, and mitigate potential oil

1 discharges from the facility or vessel as provided in (k) of this sec-
2 tion, and to ensure that the applicant complies with the contingency
3 plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contin-
4 gency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY]
5 by the applicant of the best technology that was available at the time
6 the contingency plan was submitted or renewed. The department may
7 require an applicant or holder of an approved contingency plan to take
8 steps necessary to demonstrate its ability to carry out the contingen-
9 cy plan, including

- 10 (1) periodic training;
11 (2) response team exercises; and
12 (3) verifying access to inventories of [AVAILABLE] equip-
13 ment, supplies, and personnel identified as available in the approved
14 contingency plan.

15 (f) Upon request of a plan holder or on the department's own
16 initiative, the [THE] department, after notice and opportunity for
17 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
18 plan if the department [IT] determines that a change has occurred in
19 the operation of a facility [, MARINA] or vessel necessitating an
20 amended or supplemented plan, or the operator's discharge experience
21 demonstrates a necessity for modification. The department, after
22 notice and opportunity for hearing, may revoke its approval of a [AN
23 OIL DISCHARGE] contingency plan if the department [IT] determines that

- 24 (1) approval was obtained by fraud or misrepresentation;
25 (2) the operator does not have access to the quality or
26 quantity of resources identified in the plan; [OR]
27 (3) a term or condition of approval or modification has
28 been violated; or
29 (4) the person is not in compliance with the contingency

1 plan and the deficiency materially affects the plan holder's response
2 capability.

3 (g) Failure of a holder of an approved or modified [OIL DIS-
4 CHARGE] contingency plan to comply with the plan, or to have access to
5 the quality or quantity of resources identified in the plan or [AND,
6 IN THE EVENT OF A SPILL,] to respond with those resources within the
7 shortest possible [FEASIBLE] time in the event of a spill is a vio-
8 lation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
9 46.03.790, and any other applicable law. If the holder of an approved
10 or modified [OIL DISCHARGE] contingency plan fails to respond to and
11 conduct cleanup operations of an unpermitted discharge of crude oil
12 with the quality and quantity of resources identified in the plan and
13 in a manner required under the plan, the holder is strictly liable,
14 jointly and severally, for the civil penalty assessed under AS 46.03.-
15 758, 46.03.759, or 46.03.760 against any other person for that dis-
16 charge.

17 * Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

18 (h) The department is the only state agency that has the power
19 to approve, modify, or revoke a contingency plan for the purposes of
20 this section. The department shall exercise its power under this
21 section in a timely manner. Except for prosecutions under AS 46.03.-
22 790(b) and except as provided in (i) of this section, it is not a
23 defense to an action brought for a violation of (a) - (c) of this
24 section that the person charged believed that a current contingency
25 plan had been approved by the department.

26 (i) It is a defense to an action brought for a violation of
27 (a) - (c) of this section that the person charged relied on a certifi-
28 cate of approval issued by the department under (d) of this section
29 unless the person knew or had reason to know at the time of the

1 alleged violation that approval of the plan had been revoked or that
2 the holder of the plan was not capable of carrying out the plan.

3 (j) Before the department approves or modifies a contingency
4 plan under this section, the department shall provide a copy of the
5 contingency plan to the Department of Fish and Game and to the Depart-
6 ment of Natural Resources for their review. The department shall by
7 regulation establish the procedures and time limits applicable to
8 agency review of contingency plans.

9 (k) Except as provided in (m) and (o) of this section, the
10 holder of an approved contingency plan required under this section
11 shall maintain, or have available under contract, in its region of
12 operation or in another region of operation approved by the depart-
13 ment, singly or in conjunction with other operators, sufficient oil
14 discharge containment, storage, transfer, and cleanup equipment,
15 personnel, and resources to meet the following response planning
16 standards:

17 (1) for a discharge from an oil terminal facility, the plan
18 holder shall plan to be able to contain or control, and clean up a
19 discharge equal to the capacity of the largest oil storage tank at the
20 facility within 72 hours, except that if the department determines
21 that the facility is located in an area of high risk because of natu-
22 ral or man-made conditions outside of the facility, it may increase
23 the volume requirement under this paragraph so that the contingency
24 plan must be designed for a response that is greater in amount than
25 the capacity of the largest oil storage tank at the facility;

26 (2) for a discharge from an exploration or production
27 facility or a pipeline, the plan holder shall plan to be able to
28 contain or control, and clean up the realistic maximum oil discharge
29 within 72 hours;

1 (3) for a discharge of crude oil from a tank vessel or oil
2 barge, the plan holder shall plan to be able to contain or control,
3 and clean up a realistic maximum oil discharge as provided in (A),
4 (B), and (C) of this paragraph:

5 (A) for tank vessels and oil barges having a cargo
6 volume of less than 500,000 barrels, the plan holder shall main-
7 tain at a minimum in the region of operation, equipment, person-
8 nel, and other resources sufficient to contain or control, and
9 clean up a 50,000 barrel discharge within 72 hours;

10 (B) for tank vessels and oil barges having a cargo
11 volume of 500,000 barrels or more, the plan holder shall maintain
12 at a minimum in its region of operation, equipment, personnel,
13 and other resources sufficient to contain or control, and clean
14 up a 300,000 barrel discharge within 72 hours;

15 (C) in addition to the minimum equipment, personnel,
16 and other resources required to be maintained within the region
17 of operation by (A) or (B) of this paragraph, a plan holder shall
18 maintain, either within or outside of the plan holder's region of
19 operation, additional equipment, personnel, and other resources
20 sufficient to contain or control, and clean up a realistic maxi-
21 mum discharge within the shortest possible time; the plan holder
22 must demonstrate that the equipment, personnel, and other re-
23 sources maintained outside the plan holder's region of operation
24 are accessible to the plan holder and will be deployed and op-
25 erating at the discharge site within 72 hours;

26 (4) for a discharge from a tank vessel or oil barge carry-
27 ing noncrude oil in bulk as cargo, the plan holder shall plan to be
28 able to contain or control 15 percent of the maximum capacity of the
29 vessel or barge or the realistic maximum oil discharge, whichever is

1 greater, within 48 hours and clean up the discharge within the short-
2 est possible time consistent with minimizing damage to the environ-
3 ment;

4 (5) for a discharge subject to the provisions of (1) - (3)
5 of this subsection that enters a receiving environment other than open
6 water, the time requirement for clean up of the portion of the dis-
7 charge that enters the receiving environment may, in the department's
8 discretion, be within the shortest possible time consistent with
9 minimizing damage to the environment.

10 (1) The provisions of (k) of this section do not constitute
11 cleanup standards that must be met by the holder of a contingency
12 plan. Notwithstanding (k) of this section, failure to remove a dis-
13 charge within the time periods set out in (k) of this section does not
14 constitute failure to comply with a contingency plan for purposes of
15 (g) of this section or for the purpose of imposing administrative,
16 civil, or criminal penalties under any other law.

17 (m) When considering whether to approve or modify a contingency
18 plan, the department may consider evidence that oil discharge preven-
19 tion measures such as double hulls or double bottoms on vessels or
20 barges, secondary containment systems, hydrostatic testing, enhanced
21 vessel traffic systems, or enhanced crew or staffing levels have been
22 implemented, and, in its discretion, may make exceptions to the re-
23 quirements of (k) of this section to reflect the reduced risk of oil
24 discharges from the facility, pipeline, vessel, or barge for which the
25 plan is submitted or being modified.

26 (n) A tank vessel or oil barge that is conducting, or is avail-
27 able only for conducting, oil discharge response operations is exempt
28 from the requirements of (c) of this section if the tank vessel or oil
29 barge has received prior approval of the department. The department

1 may approve exemptions under this subsection upon application and
2 presentation of information required by the department.

3 (o) A holder of an approved contingency plan does not violate
4 the terms of the contingency plan by furnishing to another plan hold-
5 er, with the approval of the department, equipment, materials, or
6 personnel to assist the other plan holder in a response to an oil
7 discharge. The plan holder shall replace or return the transferred
8 equipment, materials, and personnel as soon as feasible. The depart-
9 ment shall by regulation determine the maximum amount of equipment,
10 materials, or personnel and the maximum amount of time for which it
11 will approve a transfer.

12 (p) The department shall approve or disapprove a proposed con-
13 tingency plan within 65 days after it receives a complete application
14 for approval under this section.

15 (q) In this section,

16 (1) "contingency plan" means an oil discharge prevention
17 and contingency plan required under this section;

18 (2) "in compliance with the plan" means, with respect to a
19 contingency plan, to

20 (A) establish and carry out procedures identified in
21 the plan as being the responsibility of the holder of the plan;

22 (B) have access to and have on hand the quantity and
23 quality of equipment, personnel, and other resources identified
24 as being accessible or on hand in the plan;

25 (C) fulfill the assurances espoused in the plan in the
26 manner described in the plan;

27 (D) comply with terms and conditions attached to the
28 plan by the department under the authority of (e) of this sec-
29 tion; and

1 (E) successfully demonstrate the ability to carry out
2 the plan when required by the department under (e) of this sec-
3 tion;

4 (3) "realistic maximum oil discharge" means the maximum and
5 most damaging oil discharge that the department estimates could occur
6 during the lifetime of the tank vessel, oil barge, facility, or pipe-
7 line based on the size, location, and capacity of the tank vessel, oil
8 barge, facility, or pipeline; on the department's knowledge and expe-
9 rience with the tank vessel, oil barge, facility, or pipeline or with
10 similar tank vessels, oil barges, facilities, or pipelines; and on the
11 department's analysis of possible mishaps to the tank vessel or oil
12 barge or at the facility or pipeline or to similar tank vessels or oil
13 barges or at similar facilities or pipelines;

14 (4) "region of operation," with respect to the holder of a
15 contingency plan, means the area where the operations of the holder
16 that require a contingency plan are located, the boundaries of which
17 correspond to the regional boundaries established by the commissioner
for regional master planning purposes under AS 46.04.210.

18 * Sec. 11. AS 46.04.040(a) is amended to read:

19 (a) A person may not cause or permit the operation of an oil
20 terminal facility in the state unless the person has furnished to the
21 department, and the department has approved, proof of financial abil-
22 ity to respond in damages. Proof of financial responsibility required
23 for a crude oil terminal is \$50,000,000 per incident. Proof of finan-
24 cial responsibility required for a noncrude oil terminal is \$25, per
25 incident, for each barrel of total noncrude oil storage capacity at
26 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY
27 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN
28 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE
29

1 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2) \$1,000,000, whichever
2 is greater, subject to a maximum of \$50,000,000. For purposes of this
3 subsection, an oil terminal facility that stores both crude oil and
4 noncrude oil is subject to the financial responsibility requirements
5 applicable to the type of facility that corresponds to the type of oil
6 storage that predominates at the facility. However, if the facility
7 stores more noncrude oil than crude oil, the \$25 per incident, per
8 barrel requirement of this subsection applies to each barrel of oil
9 storage capacity at the facility.

10 * Sec. 12. AS 46.04.040(b) is amended to read:

11 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
12 operation of a pipeline or an [OFFSHORE] exploration or production
13 facility in the state unless the person has furnished to the depart-
14 ment, and the department has approved, proof of financial ability to
15 respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of
16 financial responsibility required for a pipeline or an offshore explo-
17 ration or production facility is \$50,000,000 [MAY NOT BE LESS THAN
18 \$35,000,000] per incident. Proof of financial responsibility required
19 for an onshore production facility is \$20,000,000 per incident. Proof
20 of financial responsibility required for an onshore exploration facil-
21 ity is \$5,000,000 per incident.

22 * Sec. 13. AS 46.04.040(c) is amended to read:

23 (c) Except as provided in (m) of this section, a [A] person may
24 not operate a tank vessel or an oil barge within the waters of the
25 state, or cause or permit the transfer of oil to or from a tank vessel
26 [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the
27 person operating the tank vessel or oil barge has furnished to the
28 department, and the department has approved, proof of financial abil-
29 ity to respond in damages. Proof of financial responsibility required

1 under this subsection is

2 (1) \$300, per incident, for each barrel of storage capacity
3 or \$100,000,000, whichever is greater, for a tank vessel or barge
4 carrying crude oil;

5 (2) \$100, per incident, for each barrel of storage capacity
6 or \$1,000,000, whichever is greater, subject to a maximum of
7 \$35,000,000, for a tank vessel or barge carrying noncrude oil [RESPON-
8 SIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART-
9 MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE
10 FOLLOWING AMOUNTS:

11 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-
12 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE
13 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204
14 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

15 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC. -
16 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

17 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY
18 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
19 GREATER].

20 * Sec. 14. AS 46.04.040(d) is amended to read:

21 (d) Except for prosecutions under AS 46.03.790(b) and except as
22 provided in (k) of this section, it is not a defense to an action
23 brought for violation of (a) - (c) [(c)] of this section that the
24 person charged believed in good faith that proof of financial ability
25 to respond in damages had been furnished to, and approved by, the
26 department [THE VESSEL OPERATOR POSSESSED PROOF OF FINANCIAL RESPON-
27 SIBILITY ACCEPTED BY THE DEPARTMENT].

28 * Sec. 15. AS 46.04.040(e) is amended to read:

29 (e) Financial responsibility may be demonstrated by (1) self-
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1 insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter
2 of credit approved by the department, or (6) other proof of financial
3 responsibility approved by the department, including proof of finan-
4 cial responsibility provided by a group of insureds who have agreed to
5 cover pollution risks of members of the group under terms the depart-
6 ment may prescribe. An action brought under AS 46.03.758, 46.03.759,
7 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) [OR TO COLLECT
8 PENALTIES IMPOSED UNDER AS 46.03.759] may be brought in a state court
9 directly against the insurer, the group, or another person providing
10 evidence of financial responsibility. The applicant, and an insurer,
11 surety, [OR] guarantor, person furnishing an approved letter of cred-
12 it, or other group or person providing proof of financial respon-
13 sibility approved by the department shall appoint an agent for service
14 of process in the state. For purposes of this subsection, an [AN]
15 insurer, other than a group of insureds whose agreement has been
16 approved by the department, must either be authorized by the Depart-
17 ment of Commerce and Economic Development to sell insurance in the
18 state or be an unauthorized insurer listed by the Department of Com-
19 merce and Economic Development as not disapproved for use in the
20 state.

21 * Sec. 16. AS 46.04.040(f) is amended to read:

22 (f) Acceptance of proof of financial responsibility expires

23 (1) one year from its issuance for self-insurance;

24 (2) on the effective date of a change in the surety bond,
25 guarantee, [OR] insurance agreement, letter of credit, or other proof
26 of financial responsibility; or

27 (3) on the expiration or cancellation of the surety bond,
28 guarantee, [OR] insurance agreement, letter of credit, or other proof
29 of financial responsibility.

1 * Sec. 17. AS 46.04.040(g) is amended to read:

2 (g) The person whose proof of financial responsibility is ac-
3 cepted by the department under this section shall notify the depart-
4 ment at least 30 days before the effective date of a change, expira-
5 tion or cancellation in the surety bond, guarantee, [OR] insurance
6 agreement, letter of credit, or other proof of financial responsibil-
7 ity. Application for renewal of acceptance of proof of financial
8 responsibility under this section must be filed at least 30 days
9 before the date of expiration.

10 * Sec. 18. AS 46.04.040 is amended by adding new subsections to read:

11 (j) Upon acceptance and approval of proof of financial responsi-
12 bility under this section, the department shall issue to the applicant
13 a certificate stating that the state's financial responsibility re-
14 quirements have been satisfied. The certificate must include the name
15 of the facility, pipeline, tank vessel, or oil barge for which it is
16 issued and the expiration date of the certificate.

17 (k) It is a defense to an action brought for violation of (a) -
18 (c) of this section that the person charged relied on a certificate of
19 approval issued under (j) of this section unless the person knew or
20 had reason to know at the time of the alleged violation that the
21 approval had been revoked or was expired.

22 (l) Notwithstanding the requirements of (e) of this section, the
23 applicant may provide evidence of financial responsibility provided by
24 an insurer or other person who does not agree to be subject to direct
25 action in state courts or to appoint an agent for service of process
26 if

27 (1) the department is satisfied that the insurance or other
28 form of financial responsibility covers judgments under the statutes
29 listed in (e) of this section;

1 (2) the applicant provides proof of \$50,000,000, or the
2 amount required by (a) - (c) of this section, whichever is less, in
3 insurance or other form of financial responsibility that meets the
4 requirements of (e) of this section; and

5 (3) the applicant provides a sworn statement or affidavit
6 that insurance or other form of financial responsibility that meets
7 the requirements of (e) of this section is not available in greater
8 amounts.

9 (m) A tank vessel or oil barge that is conducting, or is avail-
10 able only for conducting, oil discharge response operations is exempt
11 from the requirements of (c) of this section if the tank vessel or oil
12 barge has received prior approval of the department. The department
13 may approve an exemption under this subsection upon application and
14 presentation of information required by the department.

15 * Sec. 19. AS 46.04 is amended by adding a new section to read:

16 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
17 amounts in AS 46.04.040 change, as provided in this section, according
18 to and to the extent of changes in the Consumer Price Index for all
19 urban consumers for the Anchorage metropolitan area compiled by the
20 Bureau of Labor Statistics, United States Department of Labor (the
21 index). The index for January of the year in which this section
22 becomes effective is the reference base index.

23 (b) The dollar amounts change on October 1 of each third year
24 according to the percentage change between the index for January of
25 that year and the most recent index used to determine whether to
26 change the dollar amounts. After calculation of the new amounts, the
27 resulting amounts shall be rounded to the nearest cent.

28 (c) If the index is revised, the percentage of change is cal-
29 culated on the basis of the revised index. If a revision of the index

1 changes the reference base index, a revised reference base index is
2 determined by multiplying the reference base index applicable by the
3 rebasing factor furnished by the United States Bureau of Labor Statis-
4 tics. If the index is superseded, the index referred to in this sec-
5 tion is the one represented by the Bureau of Labor Statistics as
6 reflecting most accurately changes in the purchasing power of the
7 dollar for Alaskan consumers.

8 (d) The department shall adopt a regulation announcing

9 (1) on or before June 30 of each third year, the changes in
10 dollar amounts required by (b) of this section; and

11 (2) promptly after the changes occur, changes in the index
12 required by (c) of this section, including, if applicable, the numer-
13 ical equivalent of the reference base index under a revised reference
14 base index and the designation or title of any index superseding the
15 index.

16 (e) The department shall also provide notification of a change
17 in dollar amounts required under (b) of this section to the clerks of
18 court in each judicial district of the state.

19 * Sec. 20. AS 46.04.050 is amended to read:

20 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE
21 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE
22 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and
23 46.04.060 do not apply to an oil terminal facility that has an effec-
24 tive storage capacity of less than 5,000 [10,000] barrels of crude oil
25 or less than 10,000 barrels of noncrude oil.

26 * Sec. 21. AS 46.04.060 is amended to read:

27 Sec. 46.04.060. INSPECTIONS. In addition to other rights of
28 access or inspection conferred upon the department by law or other-
29 wise, the department may at reasonable times and in a safe manner

1 enter and inspect oil [OIL] terminal facilities, pipelines, [OFFSHORE]
2 exploration and production facilities, tank vessels, and oil barges in
3 order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

4 (1) ensure compliance with the provisions of this chapter;

5 or

6 (2) participate in an examination of the structural integ-
7 ritv and the operating and mechanical systems of those vessels,
8 barges, pipelines, and facilities by federal and state agencies with
9 jurisdiction.

10 * Sec. 22. AS 46.04.060 is amended by adding a new subsection to read:

11 (b) When the department determines that no federal or state
12 agencies with jurisdiction are performing timely and adequate inspec-
13 tions of an oil terminal facility, pipeline, exploration or production
14 facility, tank vessel, or oil barge, it may perform its own inspection
15 of the structural integrity and operating and mechanical systems of a
16 facility, pipeline, tank vessel, or oil barge by using personnel with
17 qualifications in the areas being inspected.

18 * Sec. 23. AS 46.04.200 is amended to read:

19 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall
20 prepare and annually review and revise a statewide master oil and
21 hazardous substance discharge [AND] prevention and contingency plan.

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

23 (1) take into consideration the elements of an oil dis-
24 charge prevention and contingency plan approved or submitted for
25 approval under AS 46.04.030;

26 (2) clarify and specify the respective responsibilities of
27 each of the following in the assessment, containment, and cleanup of a
28 catastrophic oil discharge or of a significant discharge of a hazard-
29 ous substance into the environment of the state:

- 1 (A) agencies of the state;
2 (B) municipalities of the state;
3 (C) appropriate federal agencies;
4 (D) operators of facilities;
5 (E) private parties whose land and other property may
6 be affected by the oil or hazardous substance discharge; and
7 (F) other parties identified by the commissioner as
8 having an interest in or the resources to assist in the contain-
9 ment and cleanup of an oil or hazardous substance discharge;
10 (3) specify the respective responsibilities of parties
11 identified in (2) of this subsection in an emergency response; and
12 (4) identify actions necessary to reduce the likelihood of
13 catastrophic oil discharges and significant discharges of hazardous
14 substances.
- 15 (c) In preparing and annually reviewing the state master plan,
16 the commissioner shall
- 17 (1) consult with municipal and community officials, and
18 with representatives of affected regional organizations;
19 (2) submit the draft plan to the public for review and
20 comment;
21 (3) submit to the legislature for review, not later than
22 the 10th day following the convening of each regular session, the plan
23 and any annual revision of the plan; and
24 (4) require or schedule unannounced oil spill drills to
25 test the sufficiency of an oil discharge prevention and contingency
26 plan approved under AS 46.04.030 or of the cleanup plans of a party
27 identified under (b)(2) of this section.

28 * Sec. 24. AS 46.04.210(a) is amended to read:

- 29 (a) For any region of the state, the boundaries of which are

1 determined by the commissioner by regulation, in which the department
2 is required to review and approve an oil discharge prevention and
3 contingency plan submitted by a person under AS 46.04.030, the depart-
4 ment shall prepare and annually review and revise a regional master
5 oil and hazardous substance discharge [AND] prevention and contingency
6 plan.

7 * Sec. 25. AS 46.04.900(8) is amended to read:

8 (8) "[OFFSHORE] exploration [OR PRODUCTION] facility" means
9 a platform, vessel, or other facility used to explore for [OR PRODUCE]
10 hydrocarbons in or on the waters of the state or in or on land in the
11 state; the term does not include platforms or vessels used for strati-
12 graphic drilling or other operations that [WHICH] are not authorized
13 or intended to drill to a producing formation;

14 * Sec. 26. AS 46.04.900(15) is amended to read:

15 (15) "tank vessel" means a self-propelled waterborne vessel
16 that is constructed or converted to carry liquid bulk cargo in tanks
17 and includes tankers, tankships, and combination carriers when carry-
18 ing oil; the term does not include vessels carrying oil in drums,
19 barrels, or other packages, or vessels carrying oil as fuel or stores
20 for that vessel;

21 * Sec. 27. AS 46.04.900 is amended by adding new paragraphs to read:

22 (18) "pipeline" means the facilities, including piping,
23 compressors, pump stations, and storage tanks, used to transport crude
24 oil and associated hydrocarbons between production facilities or from
25 one or more production facilities to marine vessels;

26 (19) "production facility" means a drilling rig, drill site,
27 flow station, gathering center, pump station, storage tank, well, and
28 related appurtenances on other facilities to produce, gather, clean,
29 dehydrate, condition, or store crude oil and associated hydrocarbons

1 in or on the water of the state or on land in the state, and gathering
2 and flow lines used to transport crude oil and associated hydrocarbons
3 to the inlet of a pipeline system for delivery to a marine facility,
4 refinery, or other production facility.

5 * Sec. 28. AS 46.08.040 is amended to read:

6 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
7 money from the fund to

8 (1) investigate and evaluate the release or threatened
9 release of oil or a hazardous substance, and contain, clean up, and
10 take other necessary action, such as monitoring and assessing, to
11 address a release or threatened release of oil or a hazardous sub-
12 stance that poses an imminent and substantial threat to the public
13 health or welfare, or to the environment;

14 (2) pay all costs incurred

15 (A) to establish and maintain the oil and hazardous
16 substance response office and for the expenses of the oil and
17 hazardous substance response corps and the oil and hazardous
18 substance response depots established by that office;

19 (B) to review oil discharge prevention and contingency
20 plans submitted under AS 46.04.030;

21 (C) to conduct training, response exercises, inspec-
22 tions, and tests, in order to verify equipment inventories and
23 ability to prevent and respond to oil and hazardous substance
24 release emergencies, and to undertake other activities intended
25 to verify or establish the preparedness of the state, a munic-
26 ipality, or a party required by AS 46.04.030 to have an approved
27 contingency plan to act in accordance with that plan; and

28 (D) to verify or establish proof of financial respon-
29 sibility required by AS 46.04.040;

1 (3) provide matching funds for participation in federal oil
2 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
3 hensive Environmental Response, Compensation, and Liability Act of
4 1980); [AND]

5 (4) recover the costs to the state or to a municipality of
6 a containment and cleanup resulting from the release or the threatened
7 release of oil or a hazardous substance; [.]

8 (5) prepare, review, and revise

9 (A) the state's master oil and hazardous substance
10 discharge [AND] prevention and contingency plan required by
11 AS 46.04.200; and

12 (B) a regional master oil and hazardous substance
13 discharge [AND] prevention and contingency plan required by
14 AS 46.04.210; and

15 (6) restore the environment by addressing the effects of an
16 oil or hazardous substance release.

17 * Sec. 29. AS 46.08.060(a) is amended to read:

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

22 (1) the amount of money expended under AS 46.08.040 during
23 the preceding fiscal year;

24 (2) the amount and source of money received and money
25 recovered during the preceding fiscal year as specified in AS 46.08.-
26 020;

27 (3) a summary of municipal participation in responses
28 funded by the fund;

29 (4) a detailed summary of department activities in

1 responses funded by the fund during the preceding fiscal year, includ-
2 ing response descriptions and statements outlining the nature of the
3 threat; in this paragraph, "detailed" includes information describing
4 each personal services position and total compensation for that posi-
5 tion, each contract in excess of \$20,000, and each purchase in excess
6 of \$10,000; and

7 (5) the projected cost for the next fiscal year of monitor-
8 ing, operating, and maintaining sites where response has been com-
9 pleted or is expected to be continued during the fiscal year.

10 * Sec. 30. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By
11 January 31, 1992, the Department of Environmental Conservation shall sur-
12 vey, inspect, and prepare an inventory of noncrude oil terminal facilities
13 in the state with an effective storage capacity of 5,000 to 10,000 barrels
14 in order to determine for each facility

- 15 (1) its actual storage capacity;
16 (2) the type of noncrude oil products stored;
17 (3) its age, design, construction, and general condition;
18 (4) the design and construction standards applicable or rele-
19 vant;
20 (5) the presence or absence of containment structures and equip-
21 ment;
22 (6) its ability to respond to a release or threatened release;
23 (7) the environmental sensitivity of the surrounding area and
24 the potential risk to the environment if a release occurs;
25 (8) the presence or absence of surface and subsurface pipelines
26 and storage tanks; and
27 (9) other appropriate information.

28 (b) By January 31, 1992, the Department of Environmental Conservation
29 shall report to the legislature the results of the survey required under
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1 (a) of this section and its written recommendations concerning discharge
2 prevention and contingency requirements or design review requirements that
3 should be enacted for noncrude oil terminal facilities with storage capac-
4 ities of less than 10,000 barrels.

5 (c) Upon completion of the survey required under (a) of this section,
6 the Department of Environmental Conservation may

7 (1) notify each facility of the results of the facility's in-
8 spection; and

9 (2) provide each facility with recommendations and technical
10 assistance concerning identified deficiencies.

11 (d) The Department of Environmental Conservation may conduct the
12 inspections required under this section notwithstanding the provisions of
13 AS 46.04.050. The department shall conduct the inspections at reasonable
14 times.

15 * Sec. 31. STUDY RELATING TO NONCRUDE OIL TANKERS AND BARGES. By
16 July 1, 1991, the Department of Environmental Conservation shall conduct a
17 study and report to the legislature its recommendations concerning the
18 following issues related to oil discharge prevention and contingency plan-
19 ning for tank vessels and oil barges carrying noncrude oil in bulk as
20 cargo:

21 (1) appropriate locations for regional response depots, based on
22 an assessment of historical evidence of where noncrude oil discharges are
23 most likely to occur and the needs of remote areas of the state such as
24 western and northern Alaska and the Aleutians;

25 (2) appropriate discharge response times;

26 (3) requirements for personnel and equipment that should be
27 imposed on contingency plan holders;

28 (4) appropriate roles for industry and state and local govern-
29 ments in the purchase, ownership, and positioning of discharge response

1 efforts.

2 * Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), en-
3 acted by sec. 10 of this Act, do not apply to oil discharge prevention and
4 contingency plans until June 1, 1991. On and after June 1, 1991, a contin-
5 gency plan must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of
6 this Act, regardless of whether the contingency plan is due for renewal
7 under AS 46.04.030(d), as amended by sec. 9 of this Act.

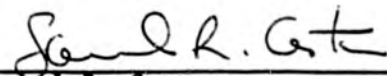
8 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this
9 Act, do not apply to persons required to show proof of financial respon-
10 sibility until June 1, 1991. On and after June 1, 1991, proof of financial
11 responsibility must comply with AS 46.04.040, as amended by secs. 11 - 18
12 of this Act, regardless of whether acceptance of proof of financial respon-
13 sibility has expired under AS 46.04.040(f), as amended by sec. 16 of this
14 Act.

15 * Sec. 33. This Act takes effect immediately under AS 01.10.070 c).
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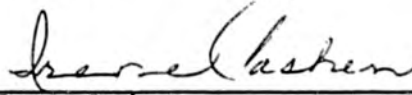
AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, Senate CS for Committee Substitute for House Bill No. 567 (Finance), consisting of 26 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the House May 8, 1990


Samuel R. Cotten
Speaker of the House

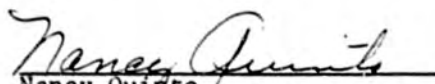
ATTEST:


Irene Cashen
Chief Clerk of the House

Passed by the Senate May 8, 1990


Tim Kelly
President of the Senate

ATTEST:


Nancy Quigley
Secretary of the Senate

ACTION BY GOVERNOR

Approved by the Governor _____ 19 _____

Governor of Alaska

B6

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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Comp

Log

June 26, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

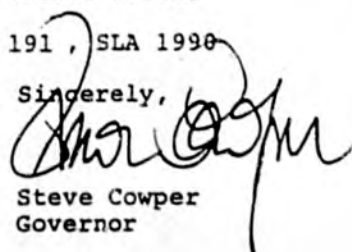
Dear Representative Cotten:

On this date I have signed the following bill and am transmitting the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE COMMITTEE SUBSTITUTE
FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
(Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.)

Chapter No. 191, SLA 1990

Sincerely,


Steve Cowper
Governor

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 26, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

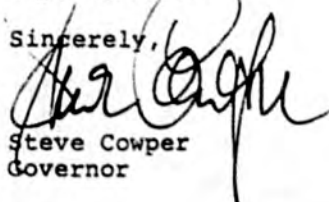
Dear Senator Kelly:

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FOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 567 (Finance)
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contingency plan requirements, financial
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the Department of Environmental Conservation;
relating to the oil and hazardous substance
release response fund and responses to oil
and hazardous substance emergencies;
authorizing the Department of Environmental
Conservation and municipalities to enter
into agreements pertaining to vessel traffic
control and monitoring systems; and providing
for an effective date.)

Chapter No. 191, SLA 1990

Sincerely,


Steve Cowper
Governor



LAWS OF ALASKA

1990

Source

SCS CSHB 567(Fin)

Chapter No.

191

AN ACT

Relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date.

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

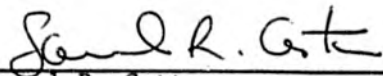
THE ACT FOLLOWS ON PAGE 1, LINE 18

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

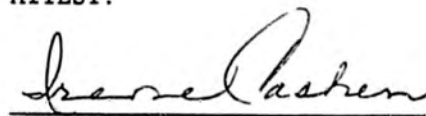
AUTHENTICATION

The following officers of the Legislature certify that the attached enrolled bill, Senate CS for Committee Substitute for House Bill No. 567 (Finance), consisting of 26 pages, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

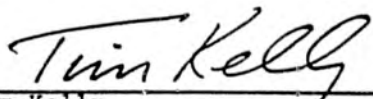
Passed by the House May 8, 1990


Samuel R. Cotten
Speaker of the House

ATTEST:


Irene Cashen
Chief Clerk of the House

Passed by the Senate May 8, 1990

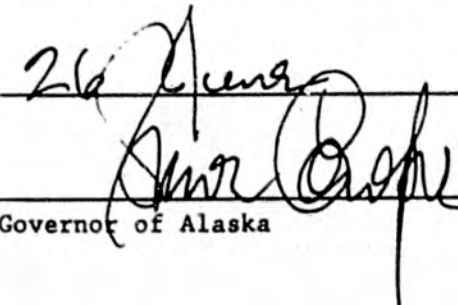

Tim Kelly
President of the Senate

ATTEST:


Nancy Quinto
Secretary of the Senate

ACTION BY GOVERNOR

Approved by the Governor


Governor of Alaska

26 June 19 90

SCOMM

78:44

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 448

Revision Date: _____ Department Affected: Natural Resources
 Title: Petro Star Royalty Oil Contract BRU: Petroleum Management
 Component: Petroleum Management
 Sponsor: Senate Rules for Governor
 Requestor: Senate Oil and Gas COMPONENT SERIAL NO.

	4	3	9
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Division of Oil and Gas staff handles a number of royalty-in-kind contracts. Existing staff will handle the proposed contract with Petro Star Valdez Refinery Joint Venture.

Prepared By: Bob Loeffler Phone: 762-2578
 Division: Division of Oil and Gas Date: 2-27-92
 Approved by Commissioner: Harold C. Heinze *CJW*
 Agency: Department of Natural Resources Date: 3/12/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 559
(H) Publish Date: 3-11-92

Revision Date: _____ Department Affected: Natural Resources
Title: Petro Star Royalty Oil Contract BRU: Petroleum Management
Component: Petroleum Management
Sponsor: Rules Committee for Governor
Requestor: _____ COMPONENT SERIAL NO.

4	3	9
---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	0	0	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Division of Oil and Gas staff handles a number of royalty-in-kind contracts. Existing staff will handle the proposed contract with Petro Star Valdez Refinery Joint Venture.

Prepared By: Bob Loeffler Phone: 762-2578
Division: Oil and Gas Date: 2-27-92
Approved by Commissioner: Harold C. Heinze
Agency: Natural Resources Date: 2-27-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Page 1 of 1

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 559
(H) Publish Date: 3-11-92

Revision Date: _____
Title: Approving the Sale of Kuparuk River Unit Royalty
Oil by the State of Alaska to Petro Star Valdez Refinery

Department Affected: Revenue
BRU: Revenue Operations
Component: Oil & Gas Audit

Sponsor: _____
Requestor: _____

Component Serial No.

0	1	1	5
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE						
---------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS:

Prepared by: Robert L. Doss, Director

Phone: 276-1363 ext. 225

Division: Oil & Gas Audit Division

Date: Feb. 27, 1992

Approved by Commissioner: *David Axel*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/7/91

COMMITTEE COPY

Page ____ of ____

Alaska State Legislature

Senator Sam Cotten Chairman
Senator Drue Pearce, Vice-Chairman
Senator Shirley Craft
Senator Lyman F. Hoffman
Senator Dick Shultz



State Capitol
Juneau, AK 99801-1182
(907) 465-3711

Senate Committee on Oil and Gas

March 19, 1992

SB 448 - An Act approving the sale of Kuparuk River Unit royalty oil...

Available for testimony:

1. Petro Star (?)
2. Department of Natural Resources, Division of Oil and Gas - Jim Eason
3. Department of Environmental Conservation - Sven Brandt-Ericksen, regional administrator, Southcentral Region and Bill MacClarence, head of Southcentral Air Quality Program (available for any questions related to permitting and contingency plans)
4. Alyeska Pipeline Service Company - Paul Richards (?), provided written testimony regarding oil spill response
5. (British Petroleum) - available for questions related to resubmitting refinery residual into the pipeline

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WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for legislative approval of a royalty oil contract between the state and Petro Star Valdez Refinery Joint Venture for the sale of Kuparuk River Unit royalty oil. Also transmitted with this bill is a copy of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending approval of that contract in accordance with AS 38.06.040(a)(3) and 38.06.050(a), and providing the report required by AS 38.06.070(c).

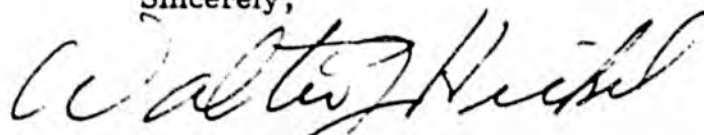
The contract is also described in the finding issued by the Commissioner of Department of Natural Resources on March 4, 1992. Copies of the Commissioner's preliminary finding and the draft contract have been sent to the Legislature and made available to the public for review. The Commissioner's final finding and the signed contract are attached.

A bill approving the contract is being introduced for legislative approval for two reasons. First, as a matter of comity, I respect the Legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, although this and previous Administrations have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts (AS 38.06.055) is unconstitutional, the contract itself contains provisions requiring approval by the Legislature before it takes effect.

Second, this legislation would ratify the royalty oil contract. This ratification would cure any procedural defect that might have occurred in the process of entering into this contract.

I urge your prompt consideration and passage of this bill.

Sincerely,



Walter J. Hickel
Governor

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

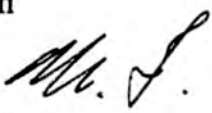
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 18, 1992

SUBJECT: Oil spill response action contractors - (Work Order No. 7-LS2106/A)

TO: Senator Sam Cotten

FROM: Michael F. Ford 
Legislative Counsel

The attached draft contains a provision that will require some amendment in order to accomplish the intended purpose. In sec. 10, a new provision of law is enacted that provides for A.P.U.C. review concerning certain charges or financial responsibility requirements imposed on tank vessels. This review process does not fit the normal utility rate review structure of existing law. Therefore, if A.P.U.C. review is necessary, additional amendment of the rate review provisions of AS 42.05 will be necessary.

Please contact me if you have further questions.

MFF:gc
92-245.glc

Attachment

The Alaska Royalty Oil and Gas Development Advisory Board

Resolution 92-1

On January 23, 1992, the director of the division of oil and gas ("director") provided the Alaska Royalty Oil and Gas Development Advisory Board ("board") with preliminary findings and proposed contract for a long-term sale of up to about 30,000 barrels per day of Kuparuk River Unit royalty oil to Petro Star Valdez Refinery Joint Venture, a joint venture comprised of Petro Star Valdez, Inc., (a subsidiary of Arctic Slope Regional Corporation), Harbor Enterprises, Inc., and Alaska Refining, Inc. (collectively "joint venture"). The joint venture will process the oil in a refinery proposed for Valdez.

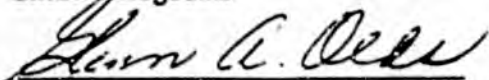
The proposed contract was discussed between representatives of the division of oil and gas (DOG) and the joint venture over the past year culminating in a draft contract. On January 23, 1992, the director made public the proposed contract and the Preliminary Finding and determination of the Commissioner of the Department of Natural Resources. The director notified the public that the proposed sale would be discussed at the board's meeting on February 6, 1992 and invited them to attend.

On February 6, 1992, the board met to discuss the sale and to take public comment on it. The meeting was attended by representatives of the DOG, representatives of the joint venture, and members of the public. The board received a presentation from the DOG staff regarding the proposed sale and contract, questioned the staff about them, and made several suggestions. The staff will implement those suggestions. At the conclusion of the discussion, the voting members of the board, who attended the meeting, unanimously approved the proposed sale and recommended that the proposed contract be approved by the legislature.

Based on the board's review of the contract for the sale and purchase of royalty oil between the State of Alaska and the joint venture, the Commissioner's findings and determinations regarding the proposed sale, and the information presented at public meeting of the board, the board is of the opinion that the proposed disposition of Kuparuk River Unit royalty oil to the joint venture meets the requirements of AS 38.06 and 11 AAC 26. The board adopts the Commissioner's finding and determinations, and recommends that the Seventeenth Alaska Legislature approve the agreement for the sale and purchase of royalty oil from the Kuparuk River Unit to Petro Star Valdez Refinery Joint Venture.

L. Frank DeLong

Charles Logsdon



Glenn A. Olds

The Alaska Royalty Oil and Gas Development Advisory Board

Resolution 92-1

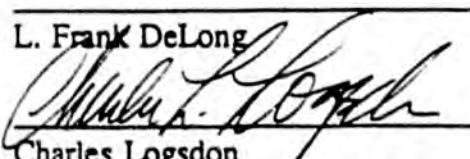
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L. Frank DeLong



Charles Logsdon

Glenn A. Olds

The Alaska Royalty Oil and Gas Development Advisory Board

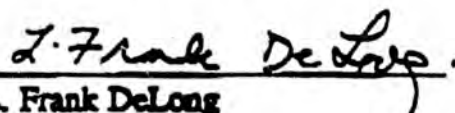
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L. Frank DeLong

Charles Logsdon

Glenn A. Olds

Final Finding and Determination
To Sell Royalty Oil
to
Petro Star Valdez Refinery Joint Venture



Division of Oil and Gas
3601 "C" Street; Suite 1380
Box 107034
Anchorage, Alaska 99510-7034

March 4, 1992

**Final Finding and Determination
To Sell Royalty Oil
to
Petro Star Valdez Refinery Joint Venture**
March 4, 1992

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Appendices

Appendix A: AS 38.05.183(e) and AS 38.06.070(a)

Appendix B: Comments and Responses on the Preliminary Finding and Draft Contract

Appendix C: Changes to the Preliminary Finding and Draft Contract

Summary

The Commissioner of the Department of Natural Resources, on behalf of the state, proposes a long-term sale of 30,000 barrels per day of the state's royalty oil to Petro Star Valdez Refinery Joint Venture ("Petro Star JV"). Petro Star JV proposes to build and operate a refinery in Valdez. This document provides the finding and recommendation required under AS 38.05.183 for the proposed sale.

The department distributed the preliminary finding and draft contract on January 23, 1992. The public comment period ended one month later on February 24, 1992. The department advertised the finding and contract by sending a notice or copies to a 450-person mailing list, and through display advertisements in the Anchorage Times, Anchorage Daily News, Juneau Empire, Fairbanks News-Miner, and the Valdez Vanguard. The mailing and advertisements also notified the public of the Alaska Royalty Oil and Gas Development Advisory Board meeting on February 6, 1992 in Anchorage which discussed the proposed sale.

Though approximately 50 people attended the Alaska Royalty Oil and Gas Development Advisory Board meeting, no one chose to testify. The department received four letters commenting on the finding and contract. The letters and the department's responses are included as Appendix C to this finding.

This finding and the signed contract are being forwarded to the legislature. The sale will not take effect unless it is approved by the legislature; nor will oil be delivered to Petro Star JV before the refinery is ready to process the oil.

Background

The State of Alaska receives as royalty 12-1/2% of the oil and gas sold from the Kuparuk River oil field. The state may take its royalty either in-kind or in-value. When the state takes its royalty share of oil production in-kind, it takes ownership of the oil, and the commissioner acting on behalf of the state, disposes of the oil through either competitive or non-competitive sales. When royalties are taken in money (in-value), the state's lessees that produce the oil also market the state's share of production, and they are obligated to pay the state the value of its royalty share. The commissioner administers the state's oil and gas lands and royalty program.

In mid-1991, Petro Star JV contacted the Department of Natural Resources with a request to purchase a portion of the state's royalty production. In response to that request and after negotiation with the company, the department proposes the contract which accompanies this finding.

Petro Star JV is a joint venture of three Alaskan companies: Petro Star Valdez, Inc., a subsidiary of the Arctic Slope Regional Corporation; Alaska Refinery, wholly-owned subsidiary of Neil Bergt Trust; and Harbor Enterprises. The joint venture proposes to build a facility to refine

30,000 barrels per day of north slope crude oil into jet fuel, marine diesel, and heating fuel. The refinery will be constructed on private land purchased by Petro Star JV. The land is located adjacent to Dayville Road east of the Trans Alaska Pipeline terminal in Valdez.

The refinery expects to produce approximately 110 million gallons per year of the products listed in Table 1. One hundred and ten million gallons per year is equal to 7,200 barrels per day, or approximately one-quarter of the amount being delivered. The remaining three-fourths will be returned to the Trans-Alaska Pipeline System and sold by Petro Star JV.

Table 1. Expected Refinery Products

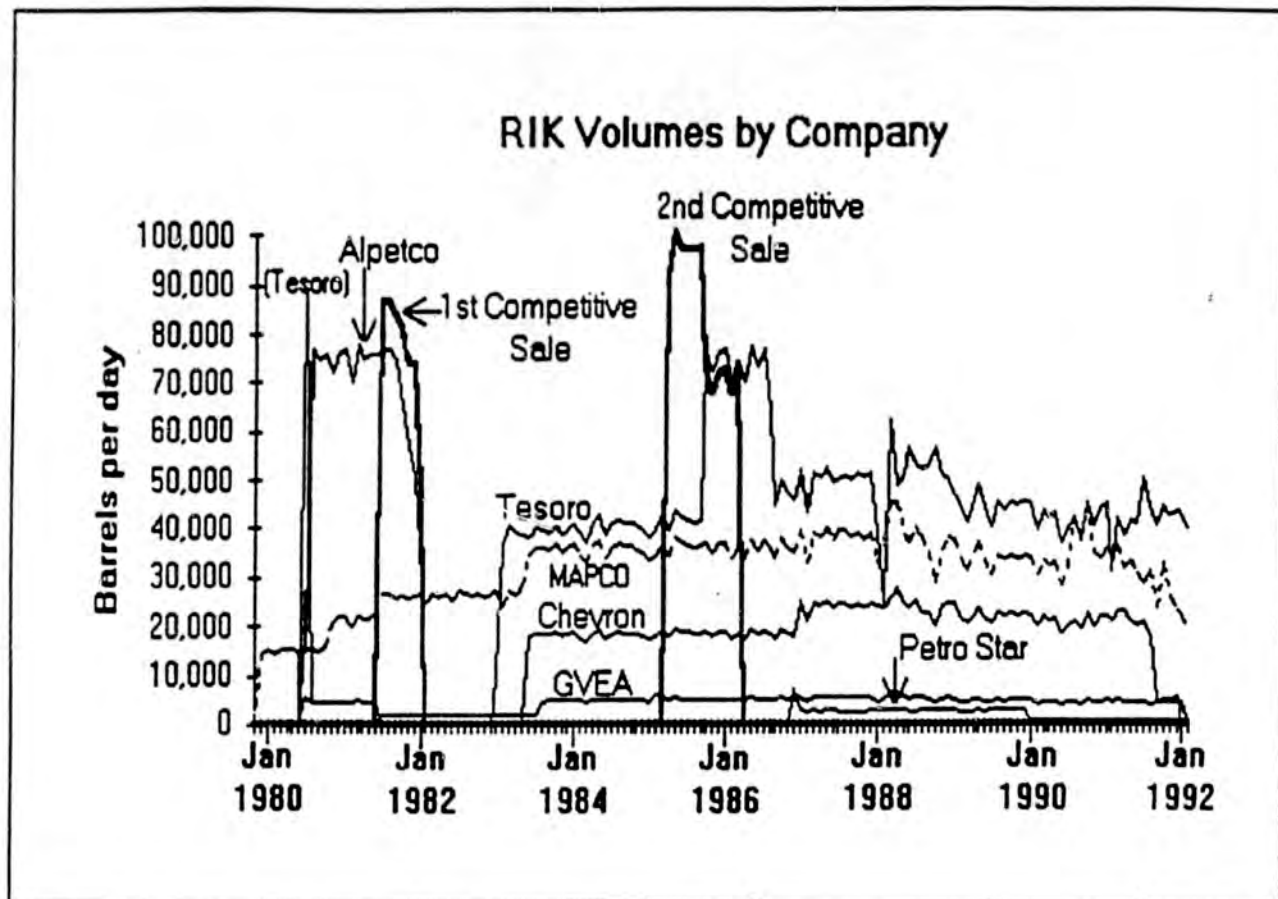
<u>Product</u>	<u>Approximate Volume</u>
Jet A	105,00 gallons per day
Heating Fuel #1	20,000 gallons per day
Marine Diesel (summer weight)	130,000 gallons per day
Marine Diesel (winter weight)	45,000 gallons per day
Total (approximate)	300 thousand gallons per day (110 million gallons per year)

The product mix outlined in Table 1 is expected to change after the refinery begins operation and the demand becomes clear. Petro Star JV has executed two sales contracts for its products. The joint venture will sell jet fuel to MarkAir Inc., an Alaska-based airline. It will sell 20 - 40 million gallons per year of jet fuel, depending on the outcome of the airline's current expansion. Approximately 10 million gallons per year of heating and marine diesel fuels will be available locally in Valdez for Prince William Sound communities. The balance of the products will be sold to Petro Marine Services, a subsidiary of Harbor Enterprises and a marine fuel distributor servicing southcentral Alaska. Petro Marine Services is expected to use most of the purchased fuel in Seward, Kodiak, and Dutch Harbor.

Petro Star JV has purchased private land for the facility, has received a conditional use permit from the City of Valdez, and has initiated the required air quality permitting process. Construction may begin as early as April 1992, and the refinery may be ready to begin operation as early as October 1992.

This finding and best interest determination *does not* decide whether construction and operation of the proposed refinery is in the best interests of the state. The refinery is a private facility built on private land. The refinery is not dependent on this proposed royalty oil sale. The proposed refinery, like others operating in the state, has the option of purchasing north slope crude oil directly from the north slope producers. While the proposed royalty oil sale may help the financial viability of the refinery by providing a long-term source of crude oil at a competitive price, the decision on whether to construct the proposed refinery is rightly made by the private owners, and not by the state. This best interest determination decides whether the proposed royalty oil sale is in the state's best interest.

Summary of Previous North Slope Royalty Oil Sales

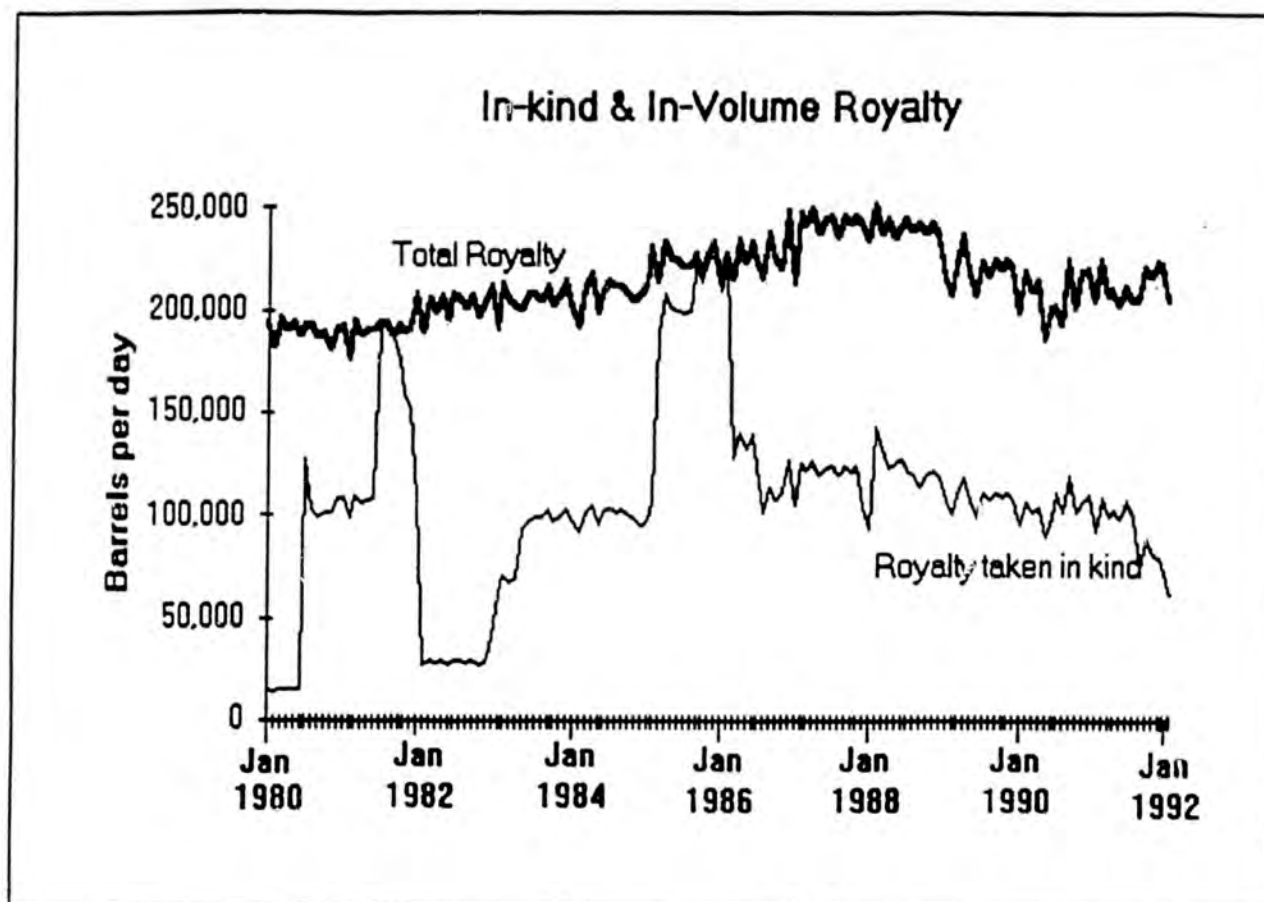


Volumes. Beginning in November 1979 and continuing to the present, the state has delivered royalty-in-kind north slope crude oil to fourteen companies in sixteen negotiated contracts, two competitive sales, and one quasi-competitive sale. Through September 1991, the state had delivered 475 million barrels or approximately 50% of its north slope royalty oil in these sales.

Figure 1 shows the amount of royalty oil sold to each company since the north slope production began. The graph shows that the amount of oil sold to each company has varied over the years, but that Tesoro and MAPCO have been the state's two most consistent customers. Most crude purchased by Tesoro is refined at its facility in Nikiski (capacity 80,000 barrels per day). Chevron's in-state refining was at its 18,000 barrel-per-day plant in Kenai, which ceased production in June 1991. The MAPCO and GVEA purchases are refined at the MAPCO refinery in North Pole (capacity 113,000 barrels per day). The Petro Star purchase is refined at its 7,000 barrel-per-day plant in North Pole. (Capacity figures are taken from *Historical and Projected Oil and Gas Consumption, June 1991* published by DNR, Division of Oil and Gas.)

The competitive and quasi-competitive sales were purchased by a mixture of companies. Some of the crude purchased in these sales was refined at the in-state refiners, some was exported from Alaska. The Alpetco purchases were also exported.

Figure 2 shows the total amount of royalty oil due the state, and the amount of that oil taken in-kind and sold by the state. The volumes of royalty sales have remained approximately constant since 1986 until the recent decline.



Price. Since the first royalty oil sale, the state's policy has been that it would not necessarily maximize revenues from royalty in-kind sales, but that it would not receive less for the people's royalty when taken in-kind and sold than the state would otherwise have received had it left the oil with the lessees and taken its royalty in-value. Consistent with this policy, each of the state's previous non-competitive royalty contracts have had a similar conceptual price: the value that the state would have received if it had left the oil in-value (plus field costs, and in some cases plus a premium). However, the value that the state receives for its in-value royalty has been in litigation as part of the ANS Royalty Litigation (1-JU-77-847 Civil, Superior Court for the State of Alaska, First Judicial District at Juneau)¹. Thus, the price term for former royalty in-kind contracts have included interim pricing formulae to be used until the final monthly values are known, and a mechanism for retroactive adjustment of the interim price based on the outcome

¹ This case was originally titled State of Alaska, et al v. Amerada Hess Corp., et al and has been frequently been referred to as the Amerada Hess litigation.

of the litigation. The price term for every former negotiated state royalty-in-kind contract has had essentially this form. The substantive differences have been in the interim payment method, and sometimes the addition of a premium.

During the last two years, seven companies representing approximately 80% of north slope oil production have settled their ANS Royalty Litigation obligations with the state. Two of these companies, ARCO and BP, own leases in the Kuparuk River Unit. These two companies represent 94.5% of production from the Kuparuk River Unit. These settlements provide an agreed-upon valuation method that did not exist when any of the previous royalty oil contracts were signed. As a result, the price term in the proposed contract to Petro Star JV differs from previous royalty in-kind contracts. This contract relies upon the agreed-upon valuation methods in the ARCO and BP settlements to establish a contract price. Except for certain related adjustments contemplated under the settlement agreements with ARCO and BP, the Petro Star JV contract will not require a retroactive adjustment or an interim pricing method.

Competitive and quasi-competitive contracts have been priced differently. The department felt that strong bidder aversion to retroactive ANS Royalty Litigation adjustments would depress bids, and the competitive sales have required bidders to offer premiums over a base price without retroactive ANS Royalty Litigation adjustments.

Recent Development - Canceled Contracts. In the first half of 1991, the state's in-kind deliveries of north slope crude averaged approximately half of the state's total royalties, or approximately 103,000 barrels per day. The state delivered north slope crude to five companies under six contracts. Recently, however, the state's purchasers have canceled four of the six contracts. By March 1992, in-kind deliveries of north slope crude are expected to decline to less than 60,000 barrels per day (less than 30% of the state's royalty share of north slope production). Table 2 shows the average volume delivered from January through June 1991 to each company. It also shows the last delivery date for the four canceled contracts.

Table 2. Current Royalty Contracts

<u>Company</u>	<u>Average Deliver Volume</u> (barrels per day) <u>January -- June, 1991</u>	<u>Date of Last Delivery</u>
GVEA ¹	4,730	January 31, 1992
Chevron ²	22,148	December 31, 1991
Petro Star ³	1,104	December 31, 1991
MAPCO	34,283	Continuing
Tesoro	40,567	Continuing

¹ GVEA will continue to pay the state its 30¢ per barrel premium through June 30, 1992.

² Chevron had two contracts. The last delivery under the larger contract occurred August 31, 1991.

³ Petro Star continued to pay its 35¢ per barrel premium through February 29, 1992.

As a result of the cancellations, the state is taking less of its oil in-kind than it has at any time since early 1983. Beginning in February 1992, the state will be taking less than 29% of its royalty in-kind. Except for Chevron which shut down its Kenai refinery last June, the state's former in-kind customers are still refining north slope oil, but they are buying less oil from the state. While the crude supplier(s) for each company is confidential (and not known by the department), it appears that the companies are now purchasing more of their oil directly from north slope producers.

Summary of Proposed Contract Terms

1. **Price.** The state will receive a total price per barrel that is the sum of two components: netback value and field cost.
 - (a) *Netback Component.* The netback component is the volume-weighted-average netback value at the delivery point (the inlet of the Kuparuk Pipeline) of royalty barrels produced by ARCO and BP from the Kuparuk River Unit. These two lessees have settled their ANS Royalty Litigation obligation with the state, and together they produce 94.5% of the oil from Kuparuk. Production volumes of companies for which the state is still in litigation under ANS Royalty Litigation will not be included in the volume-weighted average netback.
 - (b) *Field Cost Component.* Per barrel Kuparuk River field costs as described in the agreement that is Appendix I to the December 1981 Kuparuk River Unit Agreement.
2. **Point of Delivery.** The state will deliver the oil to Petro Star JV at the time and place when it receives its royalty oil from its lessees. At present, that is the custody transfer meters into the Kuparuk Pipeline at the Kuparuk Central Production Facility.
3. **Purchase-price Reopener.** At any time after two years following the date oil is first delivered under the contract, the state or Petro Star JV may reopen the contract to begin negotiations to establish a new purchase price. If, after negotiating, the state and Petro Star JV do not reach agreement, either party may cancel the contract, subject to notice requirements. If agreement is reached, either party may re-open after a further two years.
4. **Quantity and Source.** The contract allows Petro Star JV to purchase a maximum quantity of 30,000 barrels per day expressed as a percentage of daily royalty oil from the Kuparuk River Unit. Because the maximum quantity is expressed as a percentage of the Kuparuk River Unit production, it will decline as production from the Kuparuk River Unit declines. Petro Star JV may elect to purchase less oil, subject to notice requirements (required by the Kuparuk River Unit Agreement). Petro Star JV may make a permanent decrease in the maximum quantity (subject to notice requirements) before the first delivery of oil, and at one time after that date. Petro Star may also elect to purchase less than the maximum quantity, but it must pay a per-barrel reservation fee on each barrel less than the maximum quantity that it elects not to purchase. The per-barrel reservation

fee is 0.75% of the full purchase price.

5. **Term.** Delivery of the oil will begin the first day of the first month that is the later of:
1) seven months after the contract is approved by the Legislature and the Governor, or
2) seven months after Petro Star Valdez Refinery certifies that within seven months it will be ready to accept oil. The contract terminates on December 31, 2003. The contract is expected to be approved during the 1992 legislative session, and the first oil delivery is expected to occur at the end of 1992 or the beginning of 1993. Thus, the contract term is expected to be approximately 10 years.
6. **In-state Processing.** Petro Star JV agrees to process at least 80% of the royalty oil delivered under this contract at the proposed refinery in Valdez. The state may waive this requirement if it is satisfied that Petro Star JV is using its best efforts to process the royalty oil and that the waiver would not be contrary to the underlying intent of other provisions of the contract.
7. **Security.** Beginning 190 days before oil is first delivered, Petro Star JV will provide an irrevocable letter of credit equal to the Commissioner's estimate of the value of 90-days delivery of oil. The term of the letter of credit must be renewed 90-days before it expires (so that the letter of credit is continuously valid for 90-days beyond any date oil is delivered). In addition, Arctic Slope Regional Corporation, an Alaskan Native corporation with significant in-state assets, is a signatory to the contract.

Discussion of Specific Contract Provisions

This section of the finding explains differences between this and typical provisions in recent royalty-in-kind contracts. The most recent contract was signed in December 1985. That was a two-company sale from the state to Petro Star, Inc. and Chevron (differences due to the unique two-company sale of that contract are not discussed). The most recent one-company contract, the GVEA-3 contract, was signed in October 1985.

Price: *No Retro Active ANS Royalty Litigation price readjustment; no escrow.* Previous non-competitive contracts have been designed to net the state no less than the value it would have received had it left the oil with the lessees and taken its royalty in value. (Sometimes with the addition of a premium). However, implementing this design has had a practical problem. Until the recent settlements, the state and the north slope lessees have not agreed on how to compute the lessees' royalty in-value liability, and there has been no accepted methodology to compute a dollars-and-cents price-per-barrel for a royalty in-kind sale. Thus, every negotiated contract has included provisions for retroactive price adjustments based on the outcome of the ANS Royalty Litigation.

The requirement for ANS Royalty Litigation retroactive price adjustments provided significant problems both for the purchaser and for the state. It meant the purchaser is buying oil (and must

price its refined oil) based on an alternative purchase price for the crude that may not be known for years. The state is only now nearing completion of its first ANS Royalty Litigation adjustment for royalty-in-kind oil though. The first oil was delivered in 1979.

The amount of the price readjustment and the potentially long time lag may result in a large liability. The state's first ANS Royalty Litigation rebilling will total significantly more than \$100 million to five companies. The large rebillings also provide problems for the state. The delay in providing a final bill means that disputes over the final bill may not be identified until long after the oil is delivered. It may be difficult for some companies to pay a potentially large amount long after the refined products have been sold. And at least one in-kind purchaser, Alpetco, has gone bankrupt.

To avoid these problems, the 1985 Petro Star contract required the company to escrow \$1.12 per barrel of royalty oil purchased as a deposit against its ultimate ANS Royalty Litigation liability. Although Petro Star's ultimate liability has not been determined, Petro Star has assured the department it will pay its retroactive ANS Royalty Litigation obligation.

As mentioned previously, based on recent settlements of ANS Royalty Litigation price litigation with seven companies, there is now an agreed-upon price method for 94.5% of the state's royalty production from Kuparuk River. Agreed-to methods for valuing the vast majority of the state's in-value production from the Kuparuk River Unit now exist.

The proposed contract requires Petro Star JV to pay the volume-weighted average netback value for those Kuparuk lessees that have settled: ARCO and BP. As 94.5% of Kuparuk's production is accounted for by the ARCO and BP ANS Royalty Litigation settlements, there is no need for a retroactive price adjustment based on royalty settlement for the remaining production. The value of the 94.5% should be an adequate proxy for the remaining 5.5%.

By establishing a firm value based on agreed-to methodologies, there is no need for an escrow, and no need for retroactive ANS Royalty Litigation adjustments. Petro Star JV has a firm purchase price, subject to certain subsequent adjustments which may be occasioned by the mechanics of the settlement agreements between the state, and ARCO and BP, and the state is certain of being paid the final value.

Price Premium. Many of the previous royalty-in-kind contracts have included a premium above the average netback value for in-value royalty oil. This premium was intended to compensate the state for the so-called "displacement effect" and "competitive effect."

The "displacement effect" theorizes that in-kind sales by the state replace west-coast sales by the lessees. For example, once the sale is in place, a west-coast refiner in California or Washington may no longer purchase crude to make jet fuel to sell in Alaska. While the amount of west-coast sales (including Alaska) would remain the same, some of these sales would be state in-kind sales and less would be made by the lessees. If this occurs, the lessees' average monthly netback value would reflect a lower proportion of west-coast sales and a higher proportion of gulf-coast

sales. The effect is diminished by the fact that the state's royalty share is only one-eighth of the lessees' production. Therefore, only one-eighth of the displacement effect is borne by the state. The displacement effect was much larger a few years ago when half of Alaska's crude oil was transported to the U.S. Gulf Coast.

In 1985, almost half of the state's royalty in-value oil was sold to refiners in the US Gulf (including the Virgin Islands). That amount has been decreasing. Between May and August of this year, it had decreased to 11%, and according to the Department of Revenue's Spring 1991 Revenue Forecast, it will continue to decrease until 1996, when the last gulf sale is projected to occur.

The "competitive effect" is more difficult to explain than the "displacement effect." At the risk of oversimplification, one can maintain that the actual market price on the west coast is above the competitive market-price due to the decision of producers, primarily BP, to transport oil to the gulf coast that might be sold on the west coast, but at a lower price. If the state were to sell significant oil in competitive sales, it might undermine the market power of the producers and lower the market price.

This effect was a larger concern during 1985 and 1986 than it has been after that time because of the large negotiated and competitive in-kind sales that were then occurring. Between May 1985 and April 1986, the state sold approximately 90% of its royalty oil in-kind, up to an average of approximately 210,000 barrels per day during January 1986. There was some concern that this amount of state sales would affect the west-coast market power of the lessees.

The proposed sale to Petro Star JV will not generate this effect. Thirty thousand barrels per day is less than 2% of the north slope production and will not affect operation of the west-coast oil markets.

The small and decreasing proportion of gulf sales, and the small volume proposed to be sold to Petro Star JV mean that the proposed contract will not noticeably displace the lessees' west-coast sales nor generate competitive effects on the west-coast oil markets. For these reasons, and to encourage the jobs, income, tax, and consumption benefits from in-state refining, the proposed contract does not include a premium.

Purchase-price Reopener. The two-year purchase-price reopener is a standard component of most in-kind royalty contracts. Day-to-day fluctuations in the netback value are built into the state's royalty oil settlements and are a part of the contract price to Petro Star JV. The reopener provides additional flexibility to respond to unforeseen changes.

Field Cost. Previous royalty-in-kind contracts do not specify a separate field cost for Natural Gas Liquids (NGLs). While the field cost for crude oil was established in a 1980 field cost agreement (that was made part of the Kuparuk River Unit Agreement), the NGL field cost is still in dispute with the lessees of the Kuparuk River and Prudhoe Bay Units.

NGLs are approximately 3% of the total oil volume produced from the north slope. Some lessees recognize NGLs as part of the crude oil stream and report the agreed-upon crude-oil field cost. Others report a separate field cost for NGLs. That cost varies considerably by lessee and by field -- up to \$13.60 per barrel from one Prudhoe Bay lessee.

Between April 1985 and March 1988, lessees from Kuparuk River oil field sold NGLs with the remainder of Kuparuk's crude oil stream. The field cost for those NGLs is still in dispute. Since March 1988, the lessees have re-injected all NGLs as part of Kuparuk's enhanced oil recovery program. At present, Kuparuk lessees do not take a field cost deduction for NGLs, and disputed NGL field costs are not a problem for the proposed contract. However, NGLs may be sold from the field in the future, and the proposed contract provides a method for resolving the problem, should it occur.

The contract requires that if NGLs are sold from the Kuparuk River Unit, Petro Star JV will pay the full producer-reported field cost for NGLs (or for any other field cost in dispute). It also requires a retroactive adjustment for over- or underpayment after a final, field cost has been determined. Specifically, the contract provides that if a field cost different from the existing field cost agreement is established, the state will rebill (or provide a credit) for field costs not covered by the existing agreement. This provision was added to ensure that Petro Star JV would pay the state's liability for the full NGL field costs if the Kuparuk River lessees begin selling NGLs, and if NGLs are ultimately determined to have a different field cost than that of the remaining crude.

Quality. The 1985 contracts did not distinguish between crude oil, condensate, or natural gas liquids. In the proposed contract, Petro Star JV waives any claim that either condensate or NGLs blended with the crude by the lessees and tendered to the state as royalty oil is not oil for the purpose of the contract. If NGLs are once again sold from the Kuparuk River Unit, this waiver will protect the state against a future claim that Petro Star JV did not receive its full volume of crude oil or more oil than it contracted for by asserting that condensate or NGLs are not crude oil under the contract.

Best Efforts. In its 1985 contract, Petro Star agreed to use its "best efforts" to market its refined products in Alaska. It agreed to its "best efforts" to market a volume of at least 23% of the royalty oil sold under the contract.

This "best efforts" provision is not included in the draft contract. The contract requires that 80% of the royalty oil be processed at the proposed Valdez refinery; it no longer requires "best efforts" in-state marketing of the product.

The provision is omitted because assessing "best efforts" is difficult if not impossible to enforce. In addition, given the incentives to market refined product in Alaska, the history of in-state refiners marketing in Alaska, and contractual provisions of the joint-venture owners of the refinery to market the refined product to MarkAir and to Petro Marine Services, the "best efforts" requirement is unnecessary.

Late Payment Penalty. The 1985 Petro Star contract required a monthly 1% penalty fee to all late royalty payments except for those caused by unintentional clerical errors. This contract changes the fee to 5% per month to be more in line with current commercial practices.

Interest. This contract uses a different interest rate for under- and over-payments than previous contracts. It uses the statutory rate that the legislature established during its last session. Chapter 23 SLA 91 establishes the interest rate to be "five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, compounded quarterly as of the last day of that quarter." It is important to recognize that if Petro Star JV overpays, the state will have to credit back the amount of the overpayment plus interest to Petro Star JV, just as Petro Star JV will have to pay the amount of any underpayment plus interest to the state.

Security. The proposed contract requires an irrevocable letter of credit equal to 90 days' worth of oil deliveries. The letter of credit is intended to protect the state from any inability of Petro Star JV to pay its bills to the state or to take delivery of the oil. The 90-day requirement has been a feature of all royalty oil disposals since the competitive sale of December 11, 1984 with two exceptions. The Prudhoe Bay royalty oil offered in that competitive sale included a "put call" option which enabled the letter of credit requirement of that oil to be reduced to 60 days (see The Findings and Determination to Conduct a Competitive Sale of Prudhoe Bay and Kuparuk River Royalty Oil, of October 17, 1984). In addition, in the 1985 Petro Star-Chevron sale, Chevron agreed to a "backup" arrangement to accept delivery of any volume of royalty oil upon which Petro Star might default. That "backup" agreement allowed Petro Star's letter of credit requirement to be reduced to 60 days.

The 90-day requirement provides protection for the state. Understanding the risk, however, requires an understanding of the "denomination" process.

The Kuparuk River Unit Agreement and the recent ANS Royalty Litigation settlements effectively give the state the ability to "denominate" most of its oil (change its take of royalty oil from in-kind to in-value) with specified notice to the producers. In the Kuparuk River Unit, there is what amounts to a 90-day notice requirement for 95% of production, and a six-month notice requirement for the remaining 5%. Thus, if the state were notified that Petro Star JV was unable to meet its obligations under the contract -- either that the joint venture was unable to process the oil or unable to pay for it -- the state would have to dispose of the equivalent of 93½-days worth of in-kind deliveries before it could return to taking its royalty in-value. (The 93½ days equals 95% of in-kind deliveries with 90-days notice plus 5% with a six month notice.)

In the unlikely event that Petro Star JV were to become bankrupt, the state may not receive notice until it fails to receive timely payment. By that time, the joint venture may have received approximately 70 days worth of oil:

- 30 days for the production month
- + 10 days for billing (the state bills 10 days after the end of each month)
- + 7 days for Petro Star to receive the bill
- + 10 days for payment (payment is required 10 days day after the bill is received)
- + 13 days for decision (a decision to declare the contract in default and denominate the oil would undoubtedly take some time)

70 days of oil

The letter of credit would have to make the state whole for non-payment for 70-days worth of oil, and to make up the discount in selling the additional 93½-days worth of oil that would be the state's responsibility before the state's royalty reverted to in-value production. The 90-day letter of credit would make up the difference to the state as long as the state received 80% of its royalty-in-value revenue for the 93½-days of in-kind oil it was forced to sell. That is, neglecting fluctuations in oil prices, the value of a 90-day letter of credit is approximately equal to the value of 70-days in-kind deliveries plus 80% of the value of 93½-days of in-kind oil.

In the two cases where the state was forced to dispose of in-kind production because of bankruptcy, it sold the oil to ARCO and Sohio for only a slight discount from the full price. These experiences and knowledge of the oil markets indicate that the state would be able to sell as an "emergency sale" three months of production at more than 80% of the in-value revenue.

In addition to the 90-day letter of credit, additional security is provided by the fact that Arctic Slope Regional Corporation is a signatory to the contract. Arctic Slope Regional Corporation is a regional Native Corporation representing the north slope. The corporation is and will remain an Alaska corporation with significant assets in Alaska. The corporation's assets provide security for the state in case of bankruptcy by Petro Star JV, and if retroactive billings exceed the value of the 90-day letter of credit or if billings occur after the last delivery of oil. The corporation's commitment to the contract along with the 90-day letter of credit should provide adequate protection for the state.

Local Hire. Like the state's other long-term royalty oil contracts with in-state refiners, the proposed contract contains a provision concerning local hire. The preferential hiring clause states in part that Petro Star JV "agrees to employ Alaska residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska in connection with the Agreement." An "Alaska resident" is defined as an "individual who has resided in the state for one year at the time of employment." If this provision is determined to be unconstitutional, then, Petro Star JV agrees to employ Alaskan residents and Alaska companies to the extent such preferential hiring is determined to be constitutional.

In-state Benefit Analysis

The primary bases for this long-term negotiated sale are: 1) to receive a fair market value for royalty oil; and 2) to encourage in-state processing of royalty oil and the attendant benefits (primarily jobs, taxes, and competition between refined product suppliers that may lead to lower product prices for consumers.)

Construction and Operation Benefits. Even without this contract, the Petro Star Valdez Refinery may build and operate the refinery with crude oil purchased from the north slope lessees rather than from the state. Therefore, most or all of the benefits of constructing and operating the refinery cannot be ascribed to the proposed contract. It is possible, however, that this proposed royalty oil contract may increase the financial viability of the refinery. If so, an unknown portion of these benefits should be ascribed to the contract.

The direct benefits from refinery construction and operation occur through payroll, property taxes, state corporate taxes, and profits if held in-state. All of the joint venture profits are expected to be held in state. These cash infusions are multiplied as they are spent and recycled throughout the economy. However, actual project specific multiplier effects can only be ascertained by extensive surveys or actual development.

Table 3. Direct Construction and Operation Benefits
(thousand dollars; figures are approximate)

<u>Construction Benefits</u>		<u>Operation Benefits</u>	
Capital Investment	\$30,000	Payroll	\$1,700 (16-20 jobs)
Capital Investment in Alaska	\$25,000	Property Taxes	\$ 400
		Profits	Unknown
		State Income Tax	Unknown

		Known Total	\$2,100

Table 3 provides some measures of in-state benefits for the Petro Star JV. The table shows estimates of potential direct benefits from operation and construction of the refinery. The direct operation-benefits to the state are approximately \$2.1 million dollars per year plus whatever benefits exist from in-state profits and state income taxes and from multiplier effects. The facility will also provide approximately 100 construction jobs and 16-20 permanent jobs once the refinery begins operation. In addition, it will pay approximately \$400,000 in taxes to the City of Valdez. (The jobs and taxes do not include any created by downstream employment such as additional dock workers.)

The addition of another in-state refinery might have the effect of decreasing a small proportion of production at an existing refinery -- either the existing Tesoro facility at Nikiski (capacity of 80,000 barrels per day), or at MAPCO facility at North Pole (capacity of 113,000 barrels per day). If this decrease occurs, then the tables may overstate the operation benefits of the refinery.

All of the products that Petro Star Valdez Refinery expects to produce are also produced in-state by other refiners. The current in-state refining output does not provide all of Alaska's needs for these products. A portion of Alaska's supply of these fuels is imported from outside the state, and that proportion appears to be larger than the expected output of the refinery. While pricing and supply patterns may change in the state, there appears to be in-state demand to accommodate the proposed production from Valdez without provoking idle refining capacity elsewhere in Alaska.

According to the Army Corps of Engineers publication "Waterborne Commerce of the United States, 1989" (the most recent year published), approximately 52 million gallons of jet fuel and 60 million gallons of kerosene was imported into Anchorage from outside the region. It appears that the amount of jet fuel imported by Alaskans is in excess of the amount that the Valdez refinery will produce. Similar figures are not easily available for marine diesel, but it is expected that the proposed refinery output will not displace all marine diesel imports into Alaska.

Consumption Benefits. Consumers may benefit from the proposed sale through lower product prices. Oil products refined in Alaska may be priced lower than those imported from outside the state. In addition, an increase in competition resulting from the addition of another refinery may result in lower product prices. If either of these situations occur, consumers will benefit through lower prices. There is certainly no reason to believe that construction or operation of the refinery could have the effect of increasing overall consumer prices.

The proposed Petro Star JV has sales agreement to sell most of its Jet Fuel to MarkAir Inc., and most of the remaining product to Petro Marine Services. MarkAir Inc., is an airline company based and operated in Alaska. Presumably, MarkAir will purchase the fuel for less than its current cost. The extent to which the lower prices result in lower airline fares is unknown.

Petro Marine Services, is a fuel distributor which markets its products throughout coastal southcentral Alaska, though mostly in Kodiak, Dutch Harbor, and Seward. Presumably, it has signed the purchase agreement to decrease costs, though the extent, if any, to which consumer fuel prices will be lowered in those communities is unknown.

Environmental Impacts. The impacts of the royalty sale itself are expected to be minimal. The impacts of constructing and operating the refinery may be somewhat greater. Previous analysis indicated that the economic benefits of constructing and operating the refinery cannot be ascribed to the state's royalty sale. The same is true of the environmental impacts.

The Petro Star JV has received a conditional use permit from the City of Valdez. The City of Valdez is the appropriate authority to consider whether such a facility is compatible with the land use requirements of the city. Approval by the City of Valdez indicates that the conversion of the vacant land to a refinery will cause no unacceptable land-use impacts. Similarly, the refinery has begun the process to apply for an air quality permit from the Department of Environmental Conservation. Air quality impacts are best considered by the Department of Environmental Conservation in that process. Operation of the refinery requires compliance with the applicable

permits. That compliance will be evidence of acceptable environmental impacts.

Social Impact. The refinery will pay property taxes to the City of Valdez, and its employees will use city services. The tax base in the City of Valdez is decreasing approximately \$90 million per year (as depreciation lowers the assessed value of the Trans Alaska Pipeline System). This decrease has severe impacts on the city's tax receipts. This year's property tax rate is expected to increase by three mills to make up for the smaller tax base. The \$30-million refinery is expected to pay approximately \$400,000 in property taxes. It will be a welcome addition to the city's tax base.

The additional employment may also affect services in the City of Valdez. The Community Development Director for the City of Valdez reports that while vacancy rates in Valdez are currently low, there is an ample supply of vacant land suitable for residential housing. In addition, he reports that the addition of children to the Valdez school system brought by new employment is unlikely to overtax the school system; in any case it will not cause any unacceptable social impacts.

Findings and Determinations

Competitive Bidding is Waived. I have determined in accordance with AS 38.05.183(a) and 11 AAC 03.030 that the best interest of the state does not require competitive bidding, and that competition does not exist for state in-kind royalty oil. During the last few years, the state has been delivering royalty oil to in-state refiners under six contracts. Four of the six contracts have been canceled over the last few months. Contracts were canceled by Chevron (two contracts), GVEA, and Petro Star. Once all of the deliveries under the canceled contracts cease, the state will be taking less than 30% of its royalty oil as in-kind deliveries. This is the lowest percentage of royalty oil taken in-kind since February 1983. The only in-state refiners who are being supplied with royalty oil are MAPCO and Tesoro, both of which purchase additional fuel from north slope producers. As the state has more royalty oil available than it has purchasers, a competitive bid would not result in a higher value to the state. The state retains enough royalty oil to be able to sell to future in-state purchasers should they become interested.

The Sale is in the Best Interest of the State. Under AS 38.05.183(e), a non-competitive sale, exchange, or other disposal of royalty oil or gas taken in-kind by the state may be awarded by the commissioner to the prospective buyer whose proposal offers maximum benefits to the citizens of the state.

In accordance with AS 38.05.183(a),(c), and (e), and 11 AAC 03.010(b) and (d), I find that taking royalty oil in-kind and selling that oil to Petro Star Valdez Refinery Joint Venture ("Petro Star JV") for use at the proposed refinery in Valdez is in the best interests of the state and that it will maximize benefits to state citizens. According to AS 38.05.183(e) and AS 38.06.070(a), before making a non-competitive sale of state royalty oil, the commissioner must consider the criteria listed in AS 38.05.183(e) and AS 38.06.070(a) and listed in the appendix to this finding.

1. The state is now highly dependent on oil revenues and will continue to depend on oil revenues in the future. The price term of the sale protects the state's interest by ensuring that revenues from this sale will equal the in-value alternative.
2. Petro Star JV will make an initial investment of approximately \$25 million dollars within Alaska. The direct annual benefits to local payroll and to the purchase of local goods and services is more than \$2.1 million. While the proposed sale may increase the financial viability of the refinery, the extent to which these benefits can be ascribed to the proposed contract is unknown.
3. The existence of the refinery may increase competition in fuel sales in the state and may provide for lower consumer product prices. A one cent decrease in the price of each gallon of refined product that could be made from 1,000 barrels per day translates to an annual consumer saving of approximately \$153,000. The two companies that will purchase most of the refinery's products are MarkAir Inc., and Petro Marine Services which will almost certainly benefit from lower prices.

4. The proposed refinery would add 16-20 permanent, new jobs in the City of Valdez, and pay property taxes of approximately \$400,000 per year to the city. The addition of new employment and a larger tax base for Valdez are expected to be welcome benefits to that city's declining property tax revenues and outweigh whatever additional social costs and responsibilities, if any, that they impose. As with construction and operation benefits, however, the extent to which these benefits can be ascribed to the proposed sale contract is unknown.
5. Any environmental effects will result from construction and operation of the refinery, not from the proposed royalty sale. The sale itself has little or no environmental effects. The major permanent construction and operation impacts are the land-use and air-quality impacts. The fact that the refinery has received a conditional use permit from the City of Valdez and is consistent with that city's coastal zone plan shows that the land-use impacts are acceptable. Similarly, the proposed refinery will not operate without receiving an air quality permit from DEC. Those impacts are best considered by the Department of Environmental Conservation during that process.
6. To the extent that the sale helps provide a long-term crude oil supply to the proposed Petro Star JV, the sale will help provide new in-state investments. It will provide increased competition for existing in-state refineries.

Criteria Weights. According to 11 AAC 03.060(b), "In considering the criteria described in AS 38.05.183(e), the commissioner will state which criteria apply to the proposed disposition, and discuss the weight given to the applicable criteria in determining the maximum benefit to the state..."

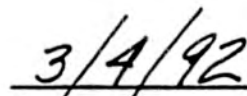
In making this finding, the department first determined that the state would not lower the total royalty oil revenue due the state by making a disposal to Petro Star JV. The department next looked at whether the disposal would increase the amount of in-state refining and has the potential to lower product prices. Finally, the department examined the criteria to determine that the sale would not create any unacceptable environmental or social impacts.

Contract Prices Are Acceptable. Under 11 AAC 03.091(b), I find that in establishing the price of this royalty oil contract, the department has obtained a price that is equal to the volume-weighted average of settled royalty netback value applicable to the oil that is being sold, plus field costs incurred by the royalty share. The 94.5% of Kuparuk production that is based on settled claims with the state under ANS Royalty Litigation provide the agreed-upon values and methodology for the in-kind sale of Kuparuk River oil. A price based on the volume-weighted average netback of that production is an acceptable benchmark for final value due the state. Therefore, I find there is no need for a retroactive adjustment upon resolution of further ANS Royalty Litigation claims.

Conclusion. Under the terms of the proposed contract, the state would receive a market price for the royalty oil, while fostering in-state processing, potentially lowering product prices, and providing attendant benefits. The satisfactory price terms, coupled with the associated direct and secondary benefits for Alaska citizens, supports the decision to waive competitive bidding.

The foregoing facts and analysis support the finding that this disposal is in the best interest of the state and that it maximizes the benefits to Alaska citizens.


Harold C. Heinze, Commissioner


Date

Appendix A: AS 38.05.183(e) and AS 38.06.070(a)

AS 38.05.183(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider:

- (1) the cash value offered;
- (2) the projected effects of the sale, exchange or other disposal on the economy of the state;
- (3) the projected benefits of refining or processing the oil or gas in the state;
- (4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and
- (5) the criteria listed in AS 38.06.070(a).

AS 38.06.070. Criteria. (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050 the board shall consider

- (1) the revenue needs and projected fiscal condition of the state;
- (2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state of federal commodity allocation requirements which might be applicable to those products and by-products, and the priorities among competing needs;
- (3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;
- (4) the projected social impacts of the transaction;
- (5) the projected additional costs and responsibilities which could be imposed on the state and affected political subdivisions by development related to the transaction;
- (6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;
- (7) the projected positive and negative environmental effects related to the transaction; and
- (8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

Appendix B: Comments and Responses on the Preliminary Finding and Draft Contract

The department sent either a copy of the preliminary finding and draft contract, or a notice announcing its availability to a 450-person mailing list. In addition, display advertisements were published in the Anchorage Times, Anchorage Daily News, Juneau Empire, Fairbanks News-Miner, and the Valdez Vanguard.

The department received four letters commenting on the proposed sale. Two letters were received from one respondent (Prince William Sound Conservation Alliance). These two letters are answered together. The letters and responses follow.

ALASKA LEGAL RESEARCH

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Director
Division of Oil & Gas
Box 107034
Anchorage, AK 99510

February 15, 1992

Dear Director Eason:

re: Royalty Oil Sales

Here are my comments on the proposed sale of royalty oil to Petro Star Valdez Refinery [or to anyone else, for that matter].

1. During the ALPETCO [a Hammond-era refinery project] days, I was a cab driver and once took to their private jet a trio of ALPETCO executives or lawyers or lobbyists [one was Cathy Chandler, now Sen. Stevens' wife]. They talked about their legislative game plan en route: it was to delay and do nothing. Nothing is what they did. ALPETCO built no refinery, but I think ALPETCO did make substantial profits off the State's royalty oil until its contract was finally cancelled.

2. Therefore, in any other royalty oil sale:

- a. The refinery must be built BEFORE the oil is sold to it!
(OR, ~~REVENUE~~ BY REFINERY)
- b. There must be a COMPLETION BOND to ensure that the refinery is indeed built.

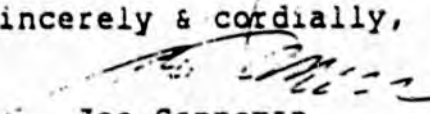
3. Refineries--and their following petrochemical industries--are wonderful examples of value-added processing that Alaska should do much more of. Great!

4. However, the State of Alaska should keep at least 50% of the oil that is run through such a refinery and petrochemical plant, just BECAUSE of the value added by that processing. At the time of ALPETCO, the value of plastics from one barrel of oil was said to be about \$3500. I don't know what it is now, but if Alaska sells the oil for \$15-20 and the products made from that oil sell for \$3500 or more, Alaska is getting the short end of the stick!

Much better for Alaska to CONTRACT with Petro Star or other refineries and petrochemical operators to PROCESS State of Alaska oil, than for Alaska to SELL the oil outright and let other folks make all the profit off resources that belong to all Alaskans. In other words, **THE STATE OF ALASKA SHOULD SELL PETROCHEMICAL PRODUCTS, NOT CRUDE OIL.** The terms of trade favor producers of manufactured goods, not extractors of natural resources.

Thank you for your attention.

Sincerely & cordially,


Joe Sonneman

RECEIVED

FEB 22 1992

DIV. OF OIL & GAS

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 782-2553

March 3, 1992

Joseph A. Sonneman
324 Willoughby
Juneau, Alaska 99801

Dear Mr. Sonneman:

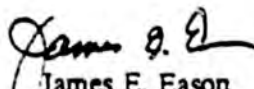
Thank you for your letter concerning the proposed royalty oil sale to Petro Star Valdez Refinery Joint Venture. We received only four comments on the proposed sale and so we have the luxury to respond to the comments individually.

Your letter asked that we ensure that the refinery is built before the state sells its oil. The proposed contract has this insurance. The contract does not take effect until Petro Star certifies that the refinery will be ready to accept and process oil within seven months. The seven month lead time is included because under the Kuparuk River Unit agreement, the state is required to give lead time to alert the producers that it wishes to take its oil in-kind rather than leave it for the producers to market. In addition, the proposed contract includes an 80% in-state processing requirement. Thus, Petro Star is not permitted to take the oil with building a refinery.

Your letter also suggests that the state retain title to half of the produced high-value petrochemical products such as plastics. You mention that some chemicals made from one-barrel of oil may sell for \$3,500. The proposed refinery does not produce these products. Rather, it will produce lower-value fuels such as jet-fuel, and marine diesel. The large profits that you foresee are unlikely to exist. During the last year, the Chevron refinery in Kenai closed and three other companies canceled their royalty oil contracts with the state. Rather than the possibility of large profits, there is now lower demand for in-state royalty oil purchases than at any time since 1983.

Under separate cover we will be sending you a copy of the Final Finding and Determination and the final contract for the royalty oil sale. The contract will not take effect unless approved by the legislature (and unless the Petro Star builds the refinery). Thank you for your comments. If you have questions, please let me know.

Sincerely,


James E. Eason
Director