

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4735 HJUD HB 459 - HB 461

307

Exemptions:

1 (c) For purposes of (b)(1)(B) of this section, a third party or
2 an employee of a third party is in privity of contract with the person
3 who is otherwise liable if the third party or employee and the person
4 are parties to a land contract, deed, or other instrument transferring
5 title or possession, unless the real property on which the facility in
6 question is located was acquired by the person after the disposal or
7 placement of the hazardous substance on, in, or at the facility, and
8 the person by a preponderance of the evidence establishes that the
9 person has satisfied the requirements of (b)(1)(B) of this section and
10 establishes one or more of the following circumstances:

11 (1) at the time the person acquired the facility the person
12 did not know and had no reason to know that a hazardous substance that
13 is the subject of the release or threatened release was disposed of
14 on, in, or at the facility;

15 (2) the person is a government entity that acquired the
16 facility by escheat, or through another involuntary transfer or acqui-
17 sition, or through the exercise of eminent domain authority by pur-
18 chase or condemnation;

19 (3) the person acquired the facility by inheritance or
20 bequest.

21 (d) To establish that a person had no reason to know that the
22 hazardous substance was disposed of, on, in, or at the facility, as
23 provided in (c)(1) of this section, the person must have undertaken,
24 at the time of acquisition, all appropriate inquiries into the previ-
25 ous ownership and uses of the property consistent with good commercial
26 or customary practice in an effort to minimize liability. For pur-
27 poses of this subsection the court shall take into account any spe-
28 cialized knowledge or experience the person has; the relationship of
29 the purchase price to the value of the property if uncontaminated;

1 commonly known or reasonably ascertainable information about the
2 property; the obviousness of the presence or likely presence of con-
3 tamination at the property; and the ability to detect contamination by
4 appropriate inspection.

5 (e) This section does not diminish the liability of a person who
6 previously owned or operated a facility and who would otherwise be
7 liable; however, if the person obtained actual knowledge of the re-
8 lease or threatened release of a hazardous substance at the facility
9 and subsequently transferred ownership to another without disclosing
10 that knowledge, the person is liable under (a)(2) of this section, and
11 a defense under (b)(1)(B) of this section is not available to the
12 person.

13 (f) This section does not affect the liability of a person who,
14 by an act or omission, caused or contributed to the release or threat-
15 ened release of a hazardous substance that is the subject of the
16 action relating to the facility.

17 (g) An indemnification, hold harmless, or similar agreement or
18 conveyance is not effective to transfer liability under this section
19 from the owner or operator of a vessel or facility or from a person
20 who may be liable for a release or substantial threat of a release
21 under this section. This subsection does not bar an agreement to
22 insure, hold harmless, or indemnify a party to the agreement for
23 liability under this section. This subsection does not bar a cause of
24 action that an owner or operator or other person subject to liability
25 under this section, or a guarantor, has or would have, by reason of
26 subrogation or otherwise against a person.

27 * Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

28 (8) "facility" includes a

29 (A) building; structure; installation; equipment; pipe

1 or pipeline, including a pipe into a sewer or publicly owned
2 treatment works; well; pit; pond; lagoon; impoundment; ditch;
3 landfill; storage container; motor vehicle; rolling stock; or
4 aircraft; or

5 (B) site or area at which a hazardous substance has
6 been deposited, stored, disposed of, placed, or otherwise locat-
7 ed.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 455-3600

RE: HB 459 -- liability for
release of hazardous sub-
stances

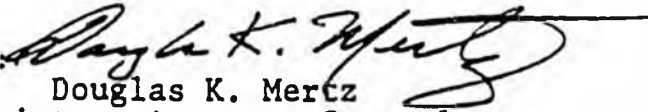
Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally receive the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By 
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Kelso
Commissioner, ADEC

Hon. Mike Davis

February 23, 1988
Page 2

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1988

SUBJECT: Sectional analysis of CSHB 459()
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459() expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the person who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459() also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Representative Mike Davis
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March 21, 1988

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031



Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

TO: All members of the press
From: Rep. Mike Davis
Date: February 11, 1988

PRESS RELEASE

FOR IMMEDIATE RELEASE

Today, Rep. Mike Davis (Fairbanks) will introduce HB 459, legislation to strengthen the Alaska statutes and more clearly define the responsibility for hazardous substance releases.

"I'm introducing this bill to assure that producers of hazardous substances handle and dispose of substances properly. If producers are strictly liable it will encourage proper disposal of waste," said Mike Davis the bill's sponsor.

"Last spring the Department of Environmental Conservation discovered solid and hazardous waste on property leased from the state on the North Slope. The contractor had declared bankruptcy and the state had essentially no recourse for recovering the clean up costs of almost a half million dollars. HB 459 would tie the clean up responsibility to the producers of the waste."

In many instances the state and local communities end up paying the cost of clean up because the state statutes in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release.

Under existing law, if the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape liability.

HB 459 mirrors the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. The bill will allow the same laws to be used in state court as are used in federal court.

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Alaska State Legislature

Representative Mike Davis

District 19

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MEMORANDUM

TO: All House Members *MD*
FROM: Rep. Mike Davis *MD*
RE: HB 459 Liability for hazardous substance releases
DATE: April 1, 1988

Attached is a packet describing HB 459 which will be up on the House Floor this week. The bill is fairly complicated and I wanted to give you an opportunity to review the bill before it comes up on the floor.

HB 459 strengthens the Alaska statutes in regard to liability and more clearly defines the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal Superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

CS HB 459 (Res) Strict Liability for Hazardous Substance Release

This bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows past operators, generators, and transporters of the waste to escape responsibility. In these cases, and in the case of abandoned sites, the state or local community would then bear the cost of cleanup. The intent of this bill is to more directly connect the responsible parties to the cost of cleanup of a release. In doing so, the bill's greatest benefit is to act as an incentive to properly handle or dispose of hazardous substances.

The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal Superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

The Resources Committee substitute added language that clarified that the bill relates to hazardous wastes, not products. It was strengthened by adding joint and several liability, as does federal law. It also added defenses for previous property owners.

The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and laws necessary for preventative solutions.

Issue paper prepared by Kristine Benson 4/11/88

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KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
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KNIK KANOERS AND KAYAKERS



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DON GILMAN
MAYOR

POSITION PAPER

HB 459 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 459. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

As you are aware, the occurrence of hazardous waste problems on the Kenai Peninsula is rapidly increasing, as evidenced by the Governor's recent request for \$955,000 in his supplemental appropriation bill.

In many of those cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In these instances, the state or local governments many times have to bear that cost and responsibility.

A specific example is the Sterling special waste site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned by the Kenai Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. After a number of years of operation, the contractor filed bankruptcy and abandoned the pit. The Kenai Peninsula Borough now bears total cost and responsibility for closure and clean-up of the site. It is uncertain exactly what has been disposed of in the pits, and now must be treated and closed as a hazardous waste site.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 9, 1988

MEMORANDUM

TO: Representative Mike Davis

ATTN: Marilyn Heiman

FROM: Heidi Borson-Paine ^{HBP}
Legislative Analyst

RE: Other States' Liability Statutes for Hazardous Substance Releases
Research Request 88.191

You requested this agency to determine how many states have strict liability or joint and several liability statutes for hazardous substance releases. As we agreed in a recent conversation, this memorandum provides the information we have collected to date concerning strict liability statutes for hazardous substance releases. A follow-up memorandum will provide copies of other states' strict liability and joint and several liability statutes for hazardous substance releases.

Strict liability in tort and criminal law can be defined as "liability without regard to fault." Under a strict liability standard, the plaintiff is not required to prove negligence on the part of the defendant but must prove that the injury was proximately caused by the defendant. According to Black's Law Dictionary, proximate cause is defined as the "primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened." Defenses against strict liability are usually limited to: 1) foreseeability, 2) acts of God, 3) governmental immunity, 4) governmental privilege, and 5) the assumption of risks.

Strict liability principles have been developed in response to situations in tort law where persons or legal entities engage in activities that have inherent risks of injury to the public. The rationale behind the development of the tort law of strict liability is that it discourages dangerous activities while not completely prohibiting any social benefit they may produce.¹

¹Office of Waste Programs Enforcement, "Current Status of State Liability Standards for Superfund Response Action Contractors," December 1987, United States Environmental Protection Agency, Washington, D.C., p. 2.

Representative Davis
March 9, 1988
Page 2

According to a July 1987 survey conducted by the Office of Waste Programs Enforcement of the Environmental Protection Agency (EPA), 24 states have hazardous waste management statutes that may hold generators, transporters, and disposers of hazardous waste strictly liable. The 24 states are: Alaska, California, Connecticut, Florida, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, and Wisconsin.

In addition, states without strict liability statutes for hazardous waste releases may apply the strict liability standard through common law. Under common law, strict liability may be imposed for injury resulting from activities that fall under the following three categories: 1) dangerous instrumentality principle; 2) inherently dangerous operations or ultra-hazardous operations principle; or 3) strict product liability principle.

Under the dangerous instrumentality principle, an owner or occupier of land who possesses, maintains, or stores a dangerous instrumentality, such as gasoline, toxic chemicals, and explosives, on their premises is strictly liable for injuries caused by its presence. The ultra-hazardous operations principle imposes strict liability for any injury or property damage that results from operations conducted by the owner or occupier which are unreasonably dangerous to others in the proximity of their property. These operations could include oil well drilling, mining, blasting, or the production of dangerous chemicals.²

Under the strict product liability principle, strict liability is imposed on a vendor who sells any defective product that is unreasonably dangerous to users or consumers, or their property. In product liability cases, the strict liability standard applies even if the vendor has exercised all possible care in the preparation and sale of the product. The plaintiff must simply prove the product was in fact defective and that damages resulted.

* * *

I hope this memorandum meets your immediate needs. You will receive a follow-up memorandum containing copies of state strict liability statutes and joint and several liability statutes within two weeks.

²Ibid., p. 3.

20 years of drilling

Prudhoe Bay — An environmental gem or lurking problem?

By PATTI EPLER
Daily News reporter

First of two parts

PRUDHOE BAY — The midnight sun is
hazy red above a silvery skyline that
stretches forever across the horizon. In the
distance, the lights of Prudhoe Bay lie at peace.

Towering oil rigs are still at work pump-
ing black crude from deep within the earth.
From a distance, they seem in harmony with
the greens and browns of an arctic summer.

Suddenly, the vista is twisted by fire.
Flames shoot from huge pipes as natural gas,
pressurized by the ages, escapes skyward,
burning. The flares slowly subside, leaving
clouds of black smoke to hang in the cool
June air until, finally, a fog creeps in and
hides the changing scene.

Nearly two decades after North America's
largest oil field began production, Prudhoe
Bay is still somewhat of an environmental
puzzle. Is it possible to extract one resource
from within the earth while leaving an
equally valuable one mostly intact on its
surface?

The question is being asked with more
urgency these days, as congress wrestles
with whether to allow oil development in a
part of Alaska still relatively untouched —
the coastal plain of the Arctic National
Wildlife Refuge.

Some say the North Slope fields are
environmental marvels, direct evidence that
oil production leaves little lasting mark on
the arctic ecosystem.

Environmental groups, who believe any
intrusion on ANWR is unacceptable, say
that's not true. "Contrary to oil industry
claims," says a new report by the pro-environment
Alaska Coalition, "pollution problems plague
the oil and gas development that has taken
place in Alaska's arctic region."

Who's right? A week of touring North
Slope oil fields, numerous interviews and the
review of dozens of technical reports indicate
that the answer, predictably, lies somewhere
between.

See Page A-8, PRUDHOE



Anchorage Daily News/Eric Hill

One question being asked now is what effect further arctic development will have on the caribou herd, and other arctic wildlife.

Deadhorse gives industry black eye

By PATTI EPLER
Daily News reporter

DEADHORSE — The state will likely pay
tens of thousands of dollars to clean up
leaking drums of oily waste abandoned on a
gravel pad here, state environmental officials say.

Several weeks ago, the Alaska Department
of Environmental Conservation discovered more than 500 drums of petroleum
liquids on a pad leased to Child's Equipment

Services, a company that had filed for
protection from creditors in U.S. Bankruptcy
Court.

Since then, DEC has found several more
dump sites in this haphazard community on
the edge of the Prudhoe Bay oil fields. The
public burden is likely to grow as an
economic slump in Alaska's oil patch
squeezes service companies off the Slope,
leaving their messes conveniently left behind.

Deadhorse is giving the oil industry an

environmental black eye, and at a most
inopportune time. Oil companies are struggling
to convince Congress to allow development
in the Arctic National Wildlife Refuge east of here.
But environmentalists have found much anti-development ammunition
in the mess that is Deadhorse.

The Child's pad is a prime example. It
appears that the barrels, as well as tons of

See Page A-8, DEADHORSE

DEADHORSE: Prudhoe Bay staging area gives the oil industry black eye

Continued from Page A-1

scrap metal, old wood, tires and other junk, came from a variety of sources. DEC talked to a number of companies that had once used the pad, but no one would accept responsibility, said Rich Cormack, a DEC field officer on the North Slope.

When officials contacted Child's, which had leased the gravel pad from the state, they found the company in Bankruptcy Court and unable to pay for the cleanup, he said.

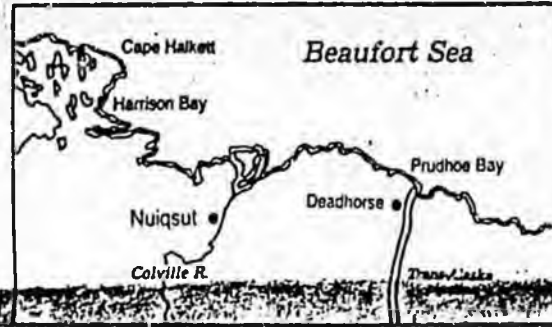
The state has a \$25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brossia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has not cashed a single leaseholder's bond to pay for a problem.

Even if the money were claimed, Brossia said, it would go to the state's general fund and would need legislative approval before it could be earmarked for cleanup of the Child's pad.

So, it looks like the state of Alaska will foot the bill. Cormack estimated it will cost \$20,000 initially, just to stop the leaking and do the first phase of cleanup. DEC already has put containment booms around the site and shoveled out an area of the pad to slow runoff onto the tundra.

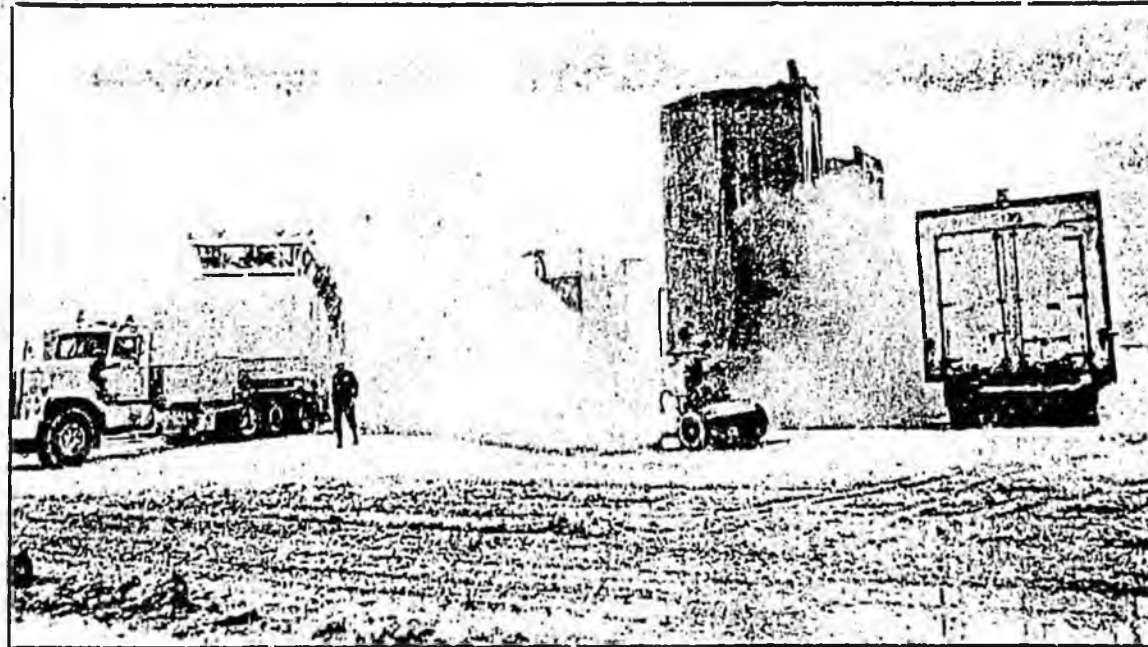
Deadhorse is a more difficult environmental problem than the oil fields themselves. The major oil companies, which operate the fields, keep a tight rein on contractors working in them, but Deadhorse is a patchwork of gravel pads leased in the mid-1970s by the state.

Individual leaseholders hauled in gravel — much of it purchased from the state — and built their own pads along a road that runs from the airport to the oil fields. The pads are three to 60 acres, with troughs between



them. Various lease stipulations and restrictions are aimed at keeping the pads clean and orderly, Brossia said.

DNR and other regulatory agencies conduct annual inspections to make sure companies comply with the rules. This year,



At ARCO drilling site #6, a large vessel is steam cleaned while waste water runs off the pad.

mindful of the economic slump, DNR is stepping up inspections and trying to work with companies that might otherwise walk away, Brossia said.

"About three out of four pads are disgusting for one reason or another," Cormack said.

On a day in early June, just around the corner from the Child's pad, water drained from large mounds of oily snow on a pad used by Kodiak Oil Field Haulers. The water flowed down one trough and toward the Saganavirktok River.

It happens year after year, said Brad Fristoe, who heads DEC's North Slope office, because the company cleans its oily trucks outside and just pushes the contaminated snow to one side. The company should have an indoor shop so the oily waste could be

contained, drummed up and sent to a waste facility, he said.

But all that involves considerable expense, Fristoe said, so the oil flows to the tundra again and again.

Jim Taylor, president of Kodiak Oil Field Haulers, declined to discuss the waste problem, except to say it has been resolved.

DEC hasn't taken legal action against the company, Fristoe said, because it costs too much money and manpower to prosecute such cases.

"The department's philosophy is to work with the companies rather than take them to court," Fristoe said.

For example, he said, several years ago DEC spent 300 man-hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendants were convicted on criminal charges and ordered to perform community service, rather than to pay fines or go to jail.

In the end, the major oil companies that originally owned the barrels of waste spent more than \$1 million to complete the cleanup the salvage company had been paid to perform.

DEC and oil industry officials agree that a Deadhorse-type staging center must not be allowed to happen again, especially in an area like ANWR.

About six years ago, when ARCO Alaska Inc. developed its Kuparuk River field to the west of Prudhoe Bay, the service area was designed much differently. Called the Kuparuk Industrial Center, it has a single large gravel pad, with a central housing facility shared by all companies. Service companies lease shop space from the borough.

"Everybody is evolving and learning as we go along," said Ben Odom, senior vice president of operations for ARCO. "Each time we do it better. You won't see another Deadhorse the next place we go."

regular field inspections, only four years ago; before that, they monitored development

massive turbines that run production facilities, and what effect expanding oil field development is having on fish and wildlife.

drilling easier. Cuttings are chips of rock.

But sometimes the pits also contain crude oil that has leaked along with the crude.

through annual injection," a process by which muds are pumped into the part of the well that doesn't carry oil. In 1986, more

and would need legislative approval before it could be earmarked for cleanup of the Child's pad.

So, it looks like the state of Alaska will foot the bill. Cormack estimated it will cost \$20,000 initially.

In the end, the major oil companies that originally owned the barrels of waste spent more than \$1 million.

PRUDHOE: After 20 years of drilling, area remains environmental puzzle

Continued from Page A-1

"I'd be hesitant to say one way or the other," said Brad Fristoe, an environmental engineer who heads the Alaska Department of Environmental Conservation's North Slope office. "There are things up there that have been impacted that are going to take a long time to recover. But (the area) still produces a lot of the things that it used to and still supports caribou populations and waterfowl populations. The long-term effects haven't really been determined."

Upcoming congressional hearings will focus on the environmental consequences of developing ANWR's coastal plain, about 100 miles east of Prudhoe Bay. The oil industry's record in the Arctic promises to be central to the debate. Pro-development interests wave pictures of caribou frolicking in front of oil rigs, while conservationists display photos of huge pits of oily black waste on fire.

No one knows yet what effects the development of Prudhoe Bay will have 50 or 100 years from now. Prudhoe Bay began in the late 1960s, without the benefit of today's knowledge of the Arctic and before most of the country's environmental laws were in force. Government watchdog agencies began regular field inspections only four years ago; before that, they monitored development

from offices in Anchorage, Fairbanks and Seattle.

It's obvious that development has improved with new technology and greater experience by industry and environmental regulators. It's also clear that increasing oversight by state and federal agencies has brought about more sound environmental practices. Lawsuits by conservation groups also have forced government agencies to enforce previously ignored environmental rules.

Regulatory officials say they now have a good understanding of problems at North Slope fields. They say they have learned many things that will help guide environmentally sound development at ANWR.

For the most part, state and federal officials believe that oil development in Alaska's Arctic can proceed with minimal environmental harm. As long as there are tough controls, careful planning and enough money for regulatory agencies to do their jobs.

Chief among the concerns is the way oil companies dispose of hundreds of millions of gallons of oily waste. Officials also question whether the air is being polluted by the massive turbines that run production facilities, and what effect expanding oil field development is having on fish and wildlife.

OILY WASTES

By far the most serious environmental problem identified by watchdog agencies involves hundreds of huge pits that hold hundreds of millions of gallons of toxic waste produced during the drilling of oil wells. Some of the pits, especially those built in the early years of Prudhoe Bay, are thousands of feet long.

The pits sometimes leak, allowing poisonous heavy metals and hydrocarbons to seep onto the tundra. In addition, oil companies can legally discharge millions of gallons of water from the pits onto roads or the tundra directly — if the water meets standards set out in state permits.

State and federal officials worry that enough pollutants could accumulate in the tundra to kill plants and destroy important waterfowl habitat or work their way into the food chain.

The structures are called reserve pits. Mostly they contain drilling muds and cuttings. Muds are basically clay mixed with chemicals. They are used to control pressure in wells, preventing blowouts and making drilling easier. Cuttings are chips of rock.

But sometimes the pits also contain crude oil, water produced along with the crude, rig wastewater and contaminated snow.

Tests of the pits show a wide range of contaminants, including arsenic, cadmium, chromium, lead, benzene, toluene, naphthalene and paraformaldehyde. While these can be highly toxic in large concentrations, environmental officials say the biggest problem is salt, which is present in high levels and kills plants.

The contents of many pits have accidentally leaked through the gravel walls or spill over the top in summer as accumulated snow melts. In 1985, the contents of one pit poured through a breach in a dike into a nearby lake used for drinking water.

Steve Taylor, head of the environmental division of Standard Alaska Production Co. acknowledges that reserve pit construction has not been adequate to prevent leaking. He said new state regulations requiring strict control over the pits will force North Slope operators to improve or close many pits. Standard is looking for ways to install impermeable liners into the walls of the pits.

Oil companies are allowed to reduce the contents of the pits in several ways. Some used muds are pumped back into nearby wells through "annular injection," a process by which muds are pumped into the part of the well that doesn't carry oil. In 1986, mo

See Page A-9, PRUDHOE



PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: JOHN JACOBSON
 TITLE:
 ADDRESS: BOX 3356
 CITY: HOMER ZIP: 99603
 PHONE: 235-6783
 BILL NO: SB 32
 SUBJECT: PENALTY FOR POSSESSION OF MARIJUANA
 MESSAGE: VOTE YES ON SB-32.

POMID: 18105234
 DATE: 02/24/88
 TIME: 10:52:34
 LIONAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES REPRESENTATIVES

ADAMS	BARNES
BOUCHER	BOYER
BROWN	CATO
COLLINS	COTTEN
DAVIDSON	DAVIS
DONLEY	ELLIS
FRANK	FURNACE
GOLL	GRUENBERG
GRUSSENDORF	HANLEY
HERRMANN	HOFFMAN
HUDSON	KOPONEN
LARSON	MARTIN
MENARD	MILLER
NAVARRE	PEARCE
PETTYJOHN	PHILLIPS
POURCHOT	RIEGER
SHULTZ	SPRINGER
SWACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: PATTI SAUNDERS
 TITLE:
 ADDRESS: 505 W. 2ND
 CITY: ANCHORAGE ZIP: 99501
 PHONE: 276-4244
 BILL NO: HB 459
 SUBJECT: HAZARDOUS SUBSTANCE CLEANUP LIABILITY
 MESSAGE: PLEASE NOTIFY ME OF THE NEXT HEARING ON THIS BILL. ALSO, I REQUEST THAT THE HEARING BE TELECONFERENCED WITH THE OPPORTUNITY FOR PUBLIC TESTIMONY. I SAT THROUGH THE FIRST HEARING, BUT NO TIME WAS AVAILABLE FOR PUBLIC COMMENTS.

POMID: 03105232
 DATE: 02/24/88
 TIME: 10:52:32
 LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES

COTTEN
 DAVIDSON
 HERRMANN
 HOFFMAN
 NAVARRE
 PEARCE
 SHULTZ
 SPRINGER

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: EILEEN BECKER
TITLE:
ADDRESS: BOX 103
CITY: HOMER ZIP: 99603
PHONE: 235-7526
BILL NO: SB 32
SUBJECT: PENALTY FOR POSSESSION OF MARIJUANA
MESSAGE: PLEASE CAREFULLY CONSIDER PASSING SB-32 TO RECRIMINALIZE THE USE OF MA
RIJUANA. IT'S A STEP IN THE RIGHT DIRECTION FOR OUR STATE.

POMID: 18105501
DATE: 02/24/88
TIME: 10:55:01
LIONAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES REPRESENTATIVES

ADAMS	BARNES
BOUCHER	BOYER
BROWN	CATO
COLLINS	COTTEN
DAVIDSON	DAVIS
DONLEY	ELLIS
FRANK	FURNACE
GOLL	GRUENBERG
GRUSSENDORF	HANLEY
HERRMANN	HOFFMAN
HUDSON	KOPONEN
LARSON	MARTIN
MENARD	MILLER
NAVARRE	PEARCE
PETTYJOHN	PHILLIPS
POURCHOT	RIEGER
SHULTZ	SPRINGER
SWACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: KRISTINE BENSON
TITLE: AK CENTER FOR THE ENVIRONMENT
ADDRESS: 4340 RASPBERRY
CITY: ANCHORAGE ZIP: 99501
PHONE: 274-3621
BILL NO: HB 459
SUBJECT: HAZARDOUS SUBSTANCE CLEANUP LIABILITY
MESSAGE: I LISTENED TO THE DISCUSSION ON 2/24 ON THIS BILL. I WOULD STILL
LIKE THE OPPORTUNITY TO TESTIFY. PLEASE NOTIFY ME OF THE NEXT TELECONFERENCE
ON HB 459. THANK YOU.

POMID: 03105621
DATE: 02/24/88
TIME: 10:56:21
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES

COTTEN
DAVIDSON
HERRMANN
HOFFMAN
NAVARRE
PEARCE
SHULTZ
SPRINGER

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: PHIL STRICKLAND
TITLE:
ADDRESS: BOX 1882
CITY: SITKA, AK ZIP: 99835
PHONE: 747-8372
BILL NO: SB 322
SUBJECT: REVISION OF WORKER'S COMP LAWS
MESSAGE: IT IS MY FEELING THAT THIS LEGISLATION REDUCES ALL THE WRONG THINGS IT
REDUCES MEDICAL BENEFITS, TIME LOSS BENEFITS & VOCATIONAL REHABILITATION
BENEFITS. THIS LEGISLATION DAMAGES THE ALREADY INJURED ALASKAN WORKER. I
URGE YOU TO PLEASE WITHDRAW ANY & ALL SUPPORT FROM THIS LEGISLATION.

POMID: 12093722
DATE: 02/24/88
TIME: 09:37:22
LIONAME: SITKA LIO

COPIES: REPRESENTATIVES SENATORS

BOUCHER	BINKLEY
DAVIDSON	ELIASON
DONLEY	FAIKS
ELLIS	HENSLEY
FURNACE	JONES
KOPONEN	
MENARD	
BARNES	
COTTEN	
GRUENBERG	
NAVARRE	
TAYLOR	
ULMER	
GRUSSENDORF	
HOFFMAN	
MARTIN	
PETTYJOHN	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: ANN ROSER
TITLE:
ADDRESS: BOX 172
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-4232
BILL NO: HB 459
SUBJECT: HAZARDOUS SUBSTANCE CLEANUP LIABILITY
MESSAGE: I SUPPORT HB459. THIS HOUSE BILL IS NEEDED TO PROTECT THE PEOPLE OF
ALASKA. IT IS ABOUT TIME THE PEOPLE WHO HANDLE HAZARDOUS SUBSTANCES SHOULD BE
MADE ACCOUNTABLE FOR THEIR ACTIONS.

POMID: 13095055
DATE: 02/24/88
TIME: 09:50:55
LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES

COTTEN
DAVIDSON
HERRMANN
HOFFMAN
NAVARRE
PEARCE
SHULTZ
SPRINGER
BARNES
GRUENBERG
TAYLOR
ULMER

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: VICKY ENGLEMAN
TITLE:
ADDRESS: P.O. BOX 576
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-4330
BILL NO: HB 459
SUBJECT: HAZARDOUS SUBSTANCE CLEANUP LIABILITY
MESSAGE: I AM GREATLY IN FAVOR OF HB459. I LIVE ON WEST POPPY LANE AND NOTHING IS BEING CLEANED UP IN THE GRAVEL PIT. ALL THE PEOPLE CONCERNED ARE TRYING TO SHIFT THE RESPONSIBILITY OF CLEAN UP AND I THINK IF ONE GROUP WAS HELD LIABLE THE PIT WOULD HAVE BEEN CLEANED UP BY NOW.

POHID: 13081311
DATE: 02/24/88
TIME: 08:13:11
LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES SENATOR

NAVARRE FISCHER
SWACKHAMMER
COTTEN
DAVIDSON
HERRMANN
HOFFMAN
PEARCE
SHULTZ
SPRINGER

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUNO

NAME: JIM COBIS
TITLE:
ADDRESS: SR 9320
CITY: KODIAK ZIP: 99615
PHONE: 487-2572
BILL NO: HB 55
SUBJECT: PENALTY FOR POSSESSION OF MARIJUANA
MESSAGE: ABSOLUTELY "NO" ON HB 55. DO NOT PLAY POLITICS WITH THE PERSONAL LIBRARY OF ALASKANS. DO NOT BE FOOLED BY TRUMPED UP REPORTS. MARIJUANA IS HARMLESS WHEN COMPARED TO ALCOHOL, WHICH IS LEGAL. THANK YOU.

POHID: 09081911
DATE: 02/24/88
TIME: 08:19:11
LIONAME: KODIAK LIO

COPIES: REPRESENTATIVES SENATOR

DAVIS ZHAROFF
DONLEY
ELLIS
GRUENBERG
HANLEY
HUDSON
KOPONEN
PHILLIPS
BARNES
COTTEN
NAVARRE
TAYLOR
ULMER

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: BECKY WILBANKS
 TITLE:
 ADDRESS: 1194 HOLMES RD.
 CITY: NORTH POLE ZIP: 99705
 PHONE: 479-4221
 BILL NO: HB 170
 SUBJECT: COLL. BARGAINING; MUNICIPALITIES/SCHOOLS
 MESSAGE: PLEASE GET HB 170 TO THE FLOOR QUICKLY AND VOTE IN FAVOR OF IT.
 FOR TOO LONG NON-CERTIFIED EMPLOYEES OF THE SCHOOL DISTRICT HAVE BEEN
 WITHOUT RIGHTS. PLEASE PASS THIS BILL. THANK YOU FOR YOUR SUPPORT.
 EOM/MJO

POMID: 07124543
 DATE: 02/25/88
 TIME: 12:45:43
 LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES

CAIO	COLLINS
HERRMANN	SPRINGER
ZAWACKI	ADAMS
BOYER	BROWN
DAVIS	FRANK
GOLL	LARSON
POURCHOT	RIEGER
SWACKHAMMER	WALLIS
DONLEY	ELLIS
GRUENBERG	HANLEY
HUDSON	KOPONEN
PHILLIPS	BARNES
COTTEN	NAVARRE
TAYLOR	ULMER
BOUCHER	DAVIDSON
FURNACE	MENARD
HOFFMAN	PEARCE
SHULTZ	GRUSSENDORF
MARTIN	PETTYJOHN
MILLER	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: CHARLES DICKSON
 TITLE:
 ADDRESS: BOX 2018
 CITY: SOLDOTNA ZIP: 99669
 PHONE: 262-6020
 BILL NO: HB 459
 SUBJECT: HAZARDOUS SUBSTANCE CLEANUP LIABILITY
 MESSAGE: REQUEST PASSAGE OF HB459. RECOMMEND THE FOLLOWING WORDAGE CHANGE TO
 COVER ALL MATERIALS NOT LISTED AS EPA HAZARDOUS WASTE, BUT IN FACT ARE. CHANGE
 (HAZARDOUS SUBSTANCES) TO (SUBSTANCES HAZARDOUS TO HUMAN HEALTH). REQUIRE ADE-
 QUATE INSURANCE OR BONDING FOR THE TYPE OF MATTER BEING HANDLED UNDER WORSE
 CASE SCENARIO.

POMID: J3125851
 DATE: 02/25/88
 TIME: 12:58:51
 LIONAME: SOLDOTNA LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATOR

NAVARRE	SWACKHAMMER	FISCHER
ADAMS	BOYER	
BROWN	DAVIS	
FRANK	GOLL	
LARSON	POURCHOT	
RIEGER	WALLIS	
COTTEN	DAVIDSON	
HERRMANN	HOFFMAN	
PEARCE	SHULTZ	
SPRINGER	BARNES	
GRUENBERG	TAYLOR	
ULMER	BARNES	

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 459
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to liability for releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Cotten

Agency Affected: DEC
BRU: Environmental Quality
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
Division: Commissioner's Office Date: 2/23/88

Approved by Commissioner: [Signature] Date: 2/23/88
Agency: DEC

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

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner





KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

POSITION PAPER

HB 459 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 459. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

As you are aware, the occurrence of hazardous waste problems on the Kenai Peninsula is rapidly increasing, as evidenced by the Governor's recent request for \$955,000 in his supplemental appropriation bill.

In many of those cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In these instances, the state or local governments many times have to bear that cost and responsibility.

A specific example is the Sterling special waste site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned the the Kenai Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. After a number of years of operation, the contractor filed bankruptcy and abandoned the pit. The Kenai Peninsula Borough now bears total cost and responsibility for closure and clean-up of the site. It is uncertain exactly what has been disposed of in the pits, and now must be treated and closed as a hazardous waste site.

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION
AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

✓ ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition

1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.

1987 - Except for economic damages.

DELAWARE

No changes

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

CORRECTION

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

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION
AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

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No changes

CALIFORNIA

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1986 - Total abolition

1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.

1987 - Except for economic damages.

DELAWARE

No changes

✓ FLORIDA

1986 - Abolished except for:

1. cases less than \$25,000 worth of total damages
2. intentional torts
3. fault free plaintiffs
4. land sale practices
5. pollution control cases
6. security transactions
7. anti-trust
8. RICO Act cases

GEORGIA

1987 - Abolished, however, a jury may specify particular damages and award a jury verdict severally.

✓ HAWAII

1986 - Abolished in non-economic damages cases except for:

1. a defendant is more than 25 % at fault
2. intentional torts
3. environmental pollution
4. toxic cases
5. aircraft accidents
6. strict liability cases
7. product liability cases
8. motor vehicle accidents

✓ IDAHO

1987 - Abolished except for:

1. intentional torts
2. hazardous wastes

✓ ILLINOIS

1986 - Abolished except for:

1. defendants more than 25 % at fault
2. medical expenses
3. medical malpractice cases
4. environmental cases

INDIANA

1984 - Total abolition

IOWA

1984 - Limited the doctrine so it would not apply to defendants found to bear less than 50 percent of total fault assigned to all parties, leaving them liable for their several amount. Iowa 1984 Act, Secs. 668.1-668.3, 619.17.

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ **OREGON**

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

✓ TEXAS

1987 - In order to be held jointly liable, a defendant's percentage of responsibility must reach certain thresholds:

1. In negligence and malpractice cases:
 - a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
 - b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendant must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

UTAH

1986 - Total abolition.

VERMONT

1981 - Abolished the doctrine in favor of several liability. Vt. Stat. Ann. Tit. 12, Sec. 1036.

VIRGINIA

Contributory no changes

✓ WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

WEST VIRGINIA

1980 - Abolition except in cases where defendants are more than 25 % at fault.

WISCONSIN

No changes

WYOMING

1986 - Total abolition

4

T.G. Gottstein

4 March 1988

TO: Members of the House Resources Committee
RE: HB 459

Since your subcommittee hearing tomorrow will not be teleconferenced, I have elected this format to comment on this crucial piece of legislation.

The importance of strict liability for toxic substances as an incentive for safety cannot be overemphasized. Too often, in the area of toxics, we find ourselves in the position of "playing catch-up", having to spend literally millions of dollars on clean-up, which, in the end, may be only partially effective at reversing the devastating results of toxic disasters. With this legislation, you, as legislators, have the unique opportunity to make giant strides in the area of PREVENTION. Not only is this a more cost-effective approach to the management of hazardous substances, but it can spare the often irreversible damage to the public health, subsistence habitats, commercial fishing, and the environment in general which is frequently the result of mis-handling toxics.

Following are my specific comments on the bill:

1) The bill makes reference several times to the responsibilities of the "owner," "operator", and "person having control over the hazardous substance. While these references are, indeed, necessary, there is one serious omission in these references to those who should bear the responsibility for a toxic disaster: the GENERATOR of the substance. Who better than the person who creates/generates the substance, to be responsible for any damage it might later cause? This would help to create an incentive to find other, less hazardous alternate methods/processes for dealing with hazardous substances. And who would be more familiar with a substance's hazardous properties and potential for damage than the person who generates it?

At a minimum, the bill should include some language about the responsibility of the GENERATOR to at least WARN others who may end up being responsible for a substance about the toxic nature of a hazardous substance, and its potential for damage.

2) In the section of the bill which relieves someone of strict liability, you, once again, have a golden opportunity to provide

a very simple incentive for safety [Sec. 46.03.822 (b)(2)]. Many times, some of the devastation caused by toxics could be minimized if an incident were merely reported in a more timely manner, but this isn't done for fear of liability. With this bill, you have a chance to reverse that.

If, on Page 2, Line 29, you were to add a letter (2) (C), to read:

(B)....;and

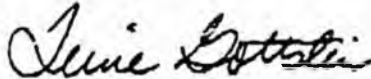
(C) upon discovery of the release or threatened release, immediately reported it to the Alaska Department of Environmental Conservation.

3) On Page 2, Line 18, the words "due care" should be strengthened, perhaps to "preventive care".

4) On Page 2, Line 20, the word "reasonable" should be changed to "necessary", to eliminate some of the ambiguity.

Thank you for this opportunity to comment on the bill. I will be watching its progress with interest.

Sincerely,



Terrie Gottstein

6201 West Tree Drive
Anchorage, Alaska 99516
(907) 258-4040

20 years of drilling

Prudhoe Bay — An environmental gem or lurking problem?

By PATTI EPLER

Daily News reporter

First of two parts

PRUDHOE BAY — The midnight sun is hazy red above a silvery skyline that stretches forever across the horizon. In the softening light, Prudhoe Bay is at peace.

Towering oil rigs are still at work, pumping black crude from deep within the earth. From a distance, they seem in harmony with the greens and browns of an arctic summer.

Suddenly, the vista is twisted by fire — flames shoot from huge pipes as natural gas, pressurized by the ages, escapes skyward, burning. The flares slowly subside, leaving clouds of black smoke to hang in the cool June air until, finally, a fog creeps in and hides the changing scene.

Nearly two decades after North America's largest oil field began production, Prudhoe Bay is still somewhat of an environmental puzzle. Is it possible to extract one resource from within the earth while leaving an equally valuable one mostly intact on its surface?

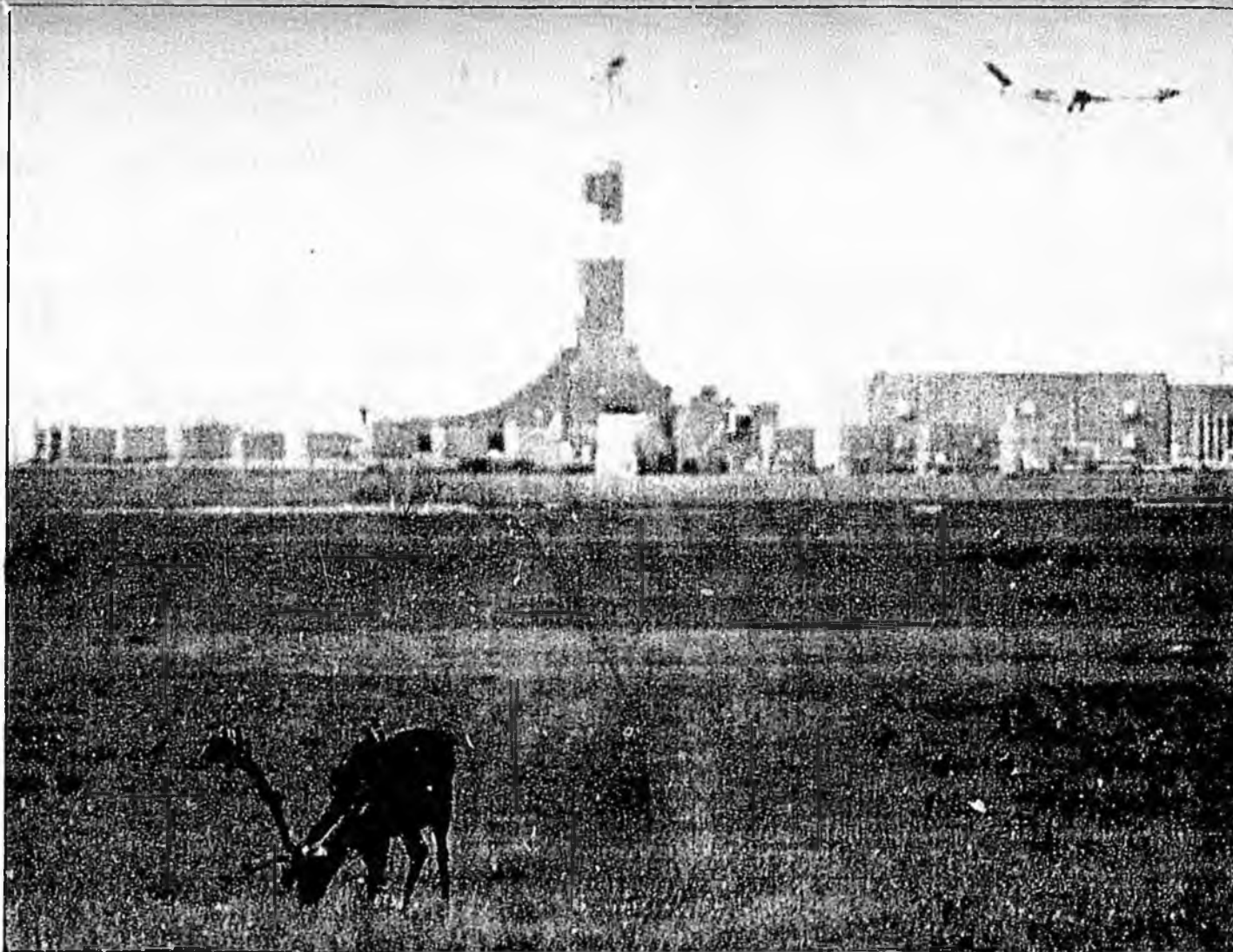
The question is being asked with more urgency these days, as congress wrestles with whether to allow oil development in a part of Alaska still relatively untouched — the coastal plain of the Arctic National Wildlife Refuge.

Some say the North Slope fields are environmental marvels, direct evidence that oil production leaves little lasting mark on the arctic ecosystem.

Environmental groups, who believe any intrusion on ANWR is unacceptable, say that's not true. "Contrary to oil industry claims," says a new report by the pro-environment Alaska Coalition, "pollution problems plague the oil and gas development that has taken place in Alaska's arctic region."

Who's right? A week of touring North Slope oil fields, numerous interviews and the review of dozens of technical reports indicate that the answer, predictably, lies somewhere between.

See Page A-8, PRUDHOE



Anchorage Daily News/ERIC HALL

One question being asked now is what effect further arctic development will have on the caribou herds and other arctic wildlife.

Deadhorse gives industry black eye

By PATTI EPLER

Daily News reporter

DEADHORSE — The state will likely pay tens of thousands of dollars to clean up leaking drums of oily waste abandoned on a gravel pad here, state environmental officials say.

Several weeks ago, the Alaska Department of Environmental Conservation discovered more than 500 drums of petroleum liquids on a pad leased to Child's Equipment

Services, a company that had filed for protection from creditors in U.S. Bankruptcy Court.

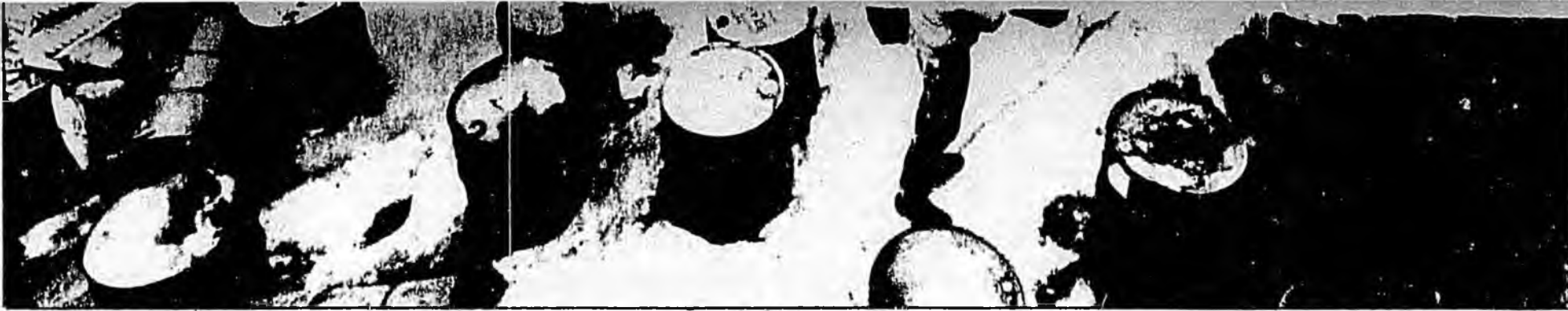
Since then, DEC has found several more dump sites in this haphazard community on the edge of the Prudhoe Bay oil fields. The public burden is likely to grow as an economic slump in Alaska's oil patch squeezes service companies off the Slope, their messes conveniently left behind.

Deadhorse is giving the oil industry an

environmental black eye, and at a most inopportune time. Oil companies are struggling to convince Congress to allow development in the Arctic National Wildlife Refuge east of here. But environmentalists have found much anti-development ammunition in the mess that is Deadhorse.

The Child's pad is a prime example. It appears that the barrels, as well as tons of

See Page A-8, DEADHORSE



Anchorage Daily News photos/Jerry ...

DEC investigator Rich Cormack takes photos of dumped construction debris at a pad leased by Child's Equipment Services, a company that has filed for protection under bankruptcy laws.

DEADHORSE: Prudhoe Bay staging area gives the oil industry black eye

Continued from Page A-1

scrap metal, old wood, tires and other junk, came from a variety of sources. DEC talked to a number of companies that had once used the pad, but no one would accept responsibility, said Rich Cormack, a DEC field officer on the North Slope.

When officials contacted Child's, which had leased the gravel pad from the state, they found the company in Bankruptcy Court and unable to pay for the cleanup, he said.

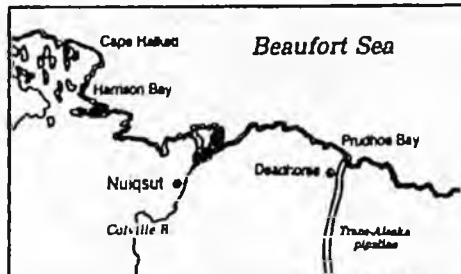
The state has a \$25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brossia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has not cashed a single leaseholder's bond to pay for a problem.

Even if the money were claimed, Brossia said, it would go to the state's general fund and would need legislative approval before it could be earmarked for cleanup of the Child's pad.

So, it looks like the state of Alaska will foot the bill. Cormack estimated it will cost \$20,000 initially, just to stop the leaking and do the first phase of cleanup. DEC already has put containment booms around the site and shoveled out an area of the pad to slow runoff onto the tundra.

Deadhorse is a more difficult environmental problem than the oil fields themselves. The major oil companies, which operate the fields, keep a tight rein on contractors working in them, but Deadhorse is a patchwork of gravel pads leased in the mid-1970s by the state.

Individual leaseholders hauled in gravel — much of it purchased from the state — and built their own pads along a road that runs from the airport to the oil fields. The pads are three to 60 acres, with troughs between



them. Various lease stipulations and restrictions are aimed at keeping the pads clean and orderly, Brossia said.

DNR and other regulatory agencies conduct annual inspections to make sure companies comply with the rules. This year,

mindful of the economic slump, DNR is stepping up inspections and trying to work with companies that might otherwise walk away, Brossia said.

"About three out of four pads are disgusting for one reason or another," Cormack said.

On a day in early June, just around the corner from the Child's pad, water drained from large mounds of oily snow on a pad leased by Kodiak Oil Field Haulers. The water flowed down one trough and toward the Saganavirktok River.

It happens year after year, said Brad Fristoe, who heads DEC's North Slope office, because the company cleans its oily trucks outside and just pushes the contaminated snow to one side. The company should have an indoor shop so the oily waste could be

contained, drummed up and sent to a waste facility, he said.

But all that involves considerable expense, Fristoe said, so the oil flows to the tundra again and again.

Jim Taylor, president of Kodiak Oil Field Haulers, declined to discuss the waste problem, except to say it has been resolved.

DEC hasn't taken legal action against the company, Fristoe said, because it costs too much money and manpower to prosecute such cases.

"The department's philosophy is to work with the companies rather than take them to court," Fristoe said.

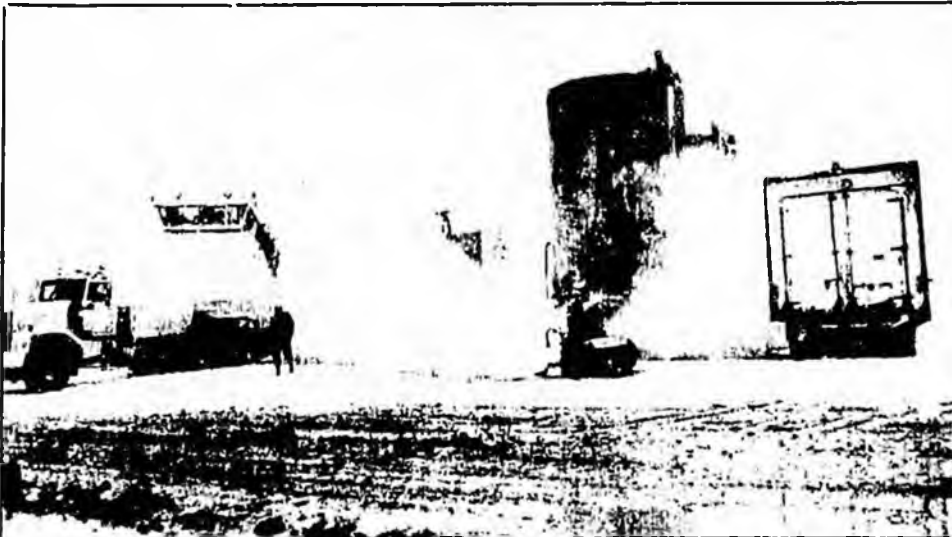
For example, he said, several years ago DEC spent 300 man-hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendants were convicted on criminal charges and ordered to perform community service, rather than to pay fines or go to jail.

In the end, the major oil companies that originally owned the barrels of waste spent more than \$1 million to complete the cleanup; the salvage company had been paid to perform.

DEC and oil industry officials agree that a Deadhorse-type staging center must not be allowed to happen again, especially in an area like ANWR.

About six years ago, when ARCO Alaska Inc. developed its Kuparuk River field to the west of Prudhoe Bay, the service area was designed much differently. Called the Kuparuk Industrial Center, it has a single large gravel pad, with a central housing facility shared by all companies. Service companies lease shop space from the borough.

"Everybody is evolving and learning as we go along," said Ben Odom, senior vice president of operations for ARCO. "Each time we do it better. You won't see another Deadhorse the next place we go."



At ARCO drilling site #6, a large vessel is steam cleaned while waste water runs off the pad.

PRUDHOE: After 20 years of drilling, area remains environmental puzzle

Continued from Page A-1

"I'd be hesitant to say one way or the other," said Brad Fristoe, an environmental engineer who heads the Alaska Department of Environmental Conservation's North Slope office. "There are things up there that have been impacted that are going to take a long time to recover. But (the area) still produces a lot of the things that it used to and still supports caribou populations and waterfowl populations. The long-term effects haven't really been determined."

Upcoming congressional hearings will focus on the environmental consequences of developing ANWR's coastal plain, about 100 miles east of Prudhoe Bay. The oil industry's record in the Arctic promises to be central to the debate. Pro-development interests wave pictures of caribou frolicking in front of oil rigs, while conservationists display photos of huge pits of oily black waste on fire.

No one knows yet what effects the development of Prudhoe Bay will have 50 or 100 years from now. Prudhoe Bay began in the late 1960s, without the benefit of today's knowledge of the Arctic and before most of the country's environmental laws were in force. Government watchdog agencies began regular field inspections only four years ago; before that, they monitored development

from offices in Anchorage, Fairbanks and Seattle.

It's obvious that development has improved with new technology and greater experience by industry and environmental regulators. It's also clear that increasing oversight by state and federal agencies has brought about more sound environmental practices. Lawsuits by conservation groups also have forced government agencies to enforce previously ignored environmental rules.

Regulatory officials say they now have a good understanding of problems at North Slope fields. They say they have learned many things that will help guide environmentally sound development at ANWR.

For the most part, state and federal officials believe that oil development in Alaska's Arctic can proceed with minimal environmental harm — as long as there are tough controls, careful planning and enough money for regulatory agencies to do their jobs.

Chief among the concerns is the way oil companies dispose of hundreds of millions of gallons of oily waste. Officials also question whether the air is being polluted by the massive turbines that run production facilities, and what effect expanding oil field development is having on fish and wildlife.

OILY WASTES

By far the most serious environmental problem identified by watchdog agencies involves hundreds of huge pits that hold hundreds of millions of gallons of toxic waste produced during the drilling of oil wells. Some of the pits, especially those built in the early years of Prudhoe Bay, are thousands of feet long.

The pits sometimes leak, allowing poisonous heavy metals and hydrocarbons to seep onto the tundra. In addition, oil companies can legally discharge millions of gallons of water from the pits onto roads or the tundra directly — if the water meets standards set out in state permits.

State and federal officials worry that enough pollutants could accumulate in the tundra to kill plants and destroy important waterfowl habitat or work their way into the food chain.

The structures are called reserve pits. Mostly they contain drilling muds and cuttings. Muds are basically clay mixed with chemicals. They are used to control pressure in wells, preventing blowouts and making drilling easier. Cuttings are chips of rock.

But sometimes the pits also contain crude oil, water produced along with the crude, rig wastewater and contaminated snow.

Tests of the pits show a wide range of contaminants, including arsenic, cadmium, chromium, lead, benzene, toluene, naphthalene and paraformaldehyde. While these can be highly toxic in large concentrations, environmental officials say the biggest problem is salt, which is present in high levels and kills plants.

The contents of many pits have accidentally leaked through the gravel walls or spilled over the top in summer as accumulated snow melts. In 1983, the contents of one pit poured through a breach in a dike into a nearby lake used for drinking water.

Steve Taylor, head of the environmental division of Standard Alaska Production Co., acknowledges that reserve pit construction has not been adequate to prevent leaking. He said new state regulations requiring stricter control over the pits will force North Slope operators to improve or close many pits. Standard is looking for ways to insert impermeable liners into the walls of the pits.

Oil companies are allowed to reduce the contents of the pits in several ways. Some used muds are pumped back into nearby wells through "annular injection," a process by which muds are pumped into the part of the well that doesn't carry oil. In 1986, more

See Page A-9, PRUDHOE



regular field inspections only four years ago, before that, they monitored development

development is having on fish and wildlife.

oil, water pollution, wastewater and contaminated snow.

See Page A-9, P



Anchorage Daily News photos

DEC Investigator Rich Cormack takes photos of dumped construction debris at a pad leased by Child's Equipment Services, a company that has filed for protection under bankruptcy law.

DEADHORSE: Prudhoe Bay staging area gives the oil industry black eye

DUE FOR A CLEANING IN DEADHORSE



Anchorage Daily News file photograph Lavrakas

Rich Cormack of the Department of Environmental Conservation takes photos of barrels of oily waste at a gravel pad.

Oil companies prepare for visitors

By PATTI EPLER
Daily News reporter

Deadhorse, the eclectic operations base for North Slope oil-field service companies, is getting a "long overdue" house-cleaning this week.

The belated spring cleaning is being spurred in part, oil industry officials admit, because dozens of congressmen and other VIPs will soon be dropping by.

The congressional delegations will begin arriving late next week on fact-

finding missions to help them decide whether the coastal plain of the Arctic National Wildlife Refuge, a hundred miles to the east, should be opened to oil development.

Today is a free day at the dump, compliments of the North Slope Borough. And officials were expecting record-breaking crowds, thanks to strong suggestions from Alaska's two largest oil producers that companies who want to continue doing business with them take advantage of the borough's generosity.

The special offer is just one part of an overall effort to spruce up the Slope. The oil industry wants to prove to Congress that it can operate arctic oil fields in an environmentally sound fashion.

The community of Deadhorse is actually a collection of gravel pads that in 20 years has spread out along a road leading from the airport to the Prudhoe Bay oil field. Piles of scrap metal, rusted equipment and other debris —

See Back Page, **DEADHORSE**

DEADHORSE: Cleaning up the pads before company arrives

Continued from Page A-1

even leaking drums of oily waste — have collected in various locations around the community, making Deadhorse an easy target for environmentalists who hope to convince Congress that oil development will devastate the pristine ANWR coastal plain.

But Standard Alaska Production Co. and ARCO Alaska Inc., the two largest North Slope operators, recently turned up the heat on Deadhorse contractors who depend on them for competitive oil patch jobs.

And the two companies themselves are paying thousands of dollars to clean up areas of the community that no one else will take responsibility for.

Doug Webb, Standard's vice president of operations, said Thursday ARCO and Standard sent letters to about 60 contractors strongly urging them to take advantage of the free dump day and clean up their operations.

"We are absolutely delighted because we are getting excellent response from almost all of them," said Webb.

Normally, the borough charges \$25 a cubic yard for

waste material that can't be burned and must be buried in the landfill, said John Davis, the borough manager for the Deadhorse area.

But the borough wanted "to help provide a service for everybody on the Slope to clean up areas that have been ignored in prior years."

On Thursday, Davis said, many companies were already hard at work, cleaning out their shops and stacking scrap metal and other debris to be hauled away. Some companies have offered to haul other people's trash for free, too, he said.

"Everybody is pleased with (the cleanup program)," he said. "Everybody is working real well together."

Davis said this year is the first all-out cleanup effort, although individual companies have undertaken their own house-cleanings in the past.

"I think it was just something that was long overdue," he said.

ARCO and Standard, who in the past have been tapped to clean up messes left behind by their contractors, are stepping in again.

ARCO this week hauled off about 75 dumpster-loads —

about 1,000 cubic yards — of scrap metal and other debris that had been neglected for more than 10 years. The discarded materials had been left in an area near an old landfill, the Mukluk dump, that had closed down in 1976, said Larry Dietrich of the Alaska Department of Environmental Conservation.

The landfill had been used "by virtually everybody on the Slope" for many years, Dietrich said, and it was never clear who was responsible for the adjacent mess.

The material was left on unleased state land in the flood plain of the Sagavanirktok River. The state eventually had the debris condemned — to resolve liability questions — and became the legal owner, he said.

ARCO agreed to clean up the eyesore; and recently spent about \$15,000 to have the debris hauled the five miles to the borough landfill under the free disposal offer, said ARCO spokeswoman Susan Andrews.

Davis said the borough program saved ARCO about \$25,000 in dump fees.

"We did it in the spirit of general cleanup cooperation and to set a good example,"

Andrews said Thursday, adding: "It would seem to me a good time to do it. It seems like when you're having company that's the time to clean up."

ARCO and Standard also are negotiating with the state to take over the cleanup of another Deadhorse site where the state recently discovered more than 500 abandoned drums of oily waste. The illegal dump site is on a pad leased to Child's Equipment Services, a company that has filed for protection from creditors under bankruptcy laws.

State environmental officials have said many people have dumped trash there, making it virtually impossible to force any one company to clean it up.

Some of the drums are leaking petroleum products onto the surrounding tundra. DEC has tried to contain as much of the oily waste as possible, and had planned to seek bids to clean up the pad. DEC has estimated the first phase of the cleanup will cost at least \$20,000.

But Webb said ARCO and Standard are discussing doing the cleanup themselves, if the question of liability can be resolved.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

February 23, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 459 -- liability for
release of hazardous sub-
stances

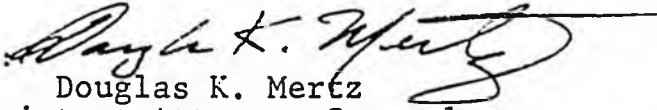
Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Kelso
Commissioner, ADEC

Hon. Mike Davis

February 23, 1988
Page 2

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1988

SUBJECT: Sectional analysis of CSHB 459()
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459() expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the person who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459() also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Representative Mike Davis
Page 3
March 21, 1988

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 459
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to liability for
releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Cotten

Agency Affected: DEC
BRU: Environmental Quality
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
Division: Commissioner's Office Date: 2/23/88

Approved by Commissioner: [Signature] Date: 2/23/88
Agency: DEC

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Dept. of Law

HOUSE COMMITTEE REPORT

(9)

Date referred: 2/11/88

FURTHER REFERRALS: Judiciary

DATE: 3-22-88

The Resources Committee has considered HB 459

"An Act relating to liability for releases of hazardous substances."

RECOMMENDS:

- replace with CS HB 459 (Res) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Jan C. [Signature]

Adelheid Herrmann

[Signature]

Mike [Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Jan C. [Signature]

Chairman's signature

H B

4 6 1

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-30-88	1:30 p.m.
H. JUD	3-23-88	1:30 p.m.
H. JUD	3-1-88	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/11/88

FURTHER REFERRALS:

Finance

DATE: March 30, 1988

The Judiciary Committee has considered HB 461

"An Act increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise."

RECOMMENDS:

- replace with CS HB 461 (Jud) the same title
 attached amendment(s) a new title
- do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
 zero fiscal note same as previous zero fiscal note published _____
 zero with analysis

SIGNING DO PASS:

[Signature]
Sen. Coste
[Signature]
Edwin L. Taylor
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
Chairman's signature

5-1625X
Chenoweth
3/24/88

Original sponsor: Cotten

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 461 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) the value of the property or services is \$500 or more
16 but less than \$25,000 and within the preceding five years the person
17 has been convicted and sentenced on two or more separate occasions in
18 this or another jurisdiction of a crime set out in (1) of this sub-
19 section or AS 11.46.120(a)(1) - (3) or an offense under another law or
20 ordinance with similar elements.

21 * Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if
23 the person commits theft as defined in AS 11.46.100 and

24 (1) the value of the property or services is \$500 or more
25 but less than \$25,000;

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another
2 jurisdiction of a crime set out in (1) - (3) of this subsection or
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance
4 with similar elements.

5 * Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within
12 the past five years the person has been convicted and sentenced on two
13 or more separate occasions in this or another jurisdiction of theft or
14 an offense under another law or ordinance with similar elements.

15 * Sec. 4. AS 11.46.220(c) is amended to read:

16 (c) Concealment of merchandise is

17 (1) a class C felony if

18 (A) the merchandise is a firearm;

19 (B) [OR] the value of the merchandise is \$500 or more;

20 or

21 (C) the value of the merchandise is \$50 or more but
22 less than \$500 and within the preceding five years the person has
23 been convicted and sentenced on two or more separate occasions in
24 this or another jurisdiction of the offense of concealment of
25 merchandise that has a value of \$50 or more or an offense under
26 another law or ordinance with similar elements;

27 (2) a class A misdemeanor if

28 (A) the value of the merchandise is \$50 or more but
29 less than \$500; or

1 (B) the value of the merchandise is less than \$50 and
2 within the preceding five years the person has been convicted and
3 sentenced on two or more separate occasions of the offense of
4 concealment of merchandise in any degree or an offense under
5 another law or ordinance with similar elements;

6 (3) a class B misdemeanor if the value of the merchandise
7 is less than \$50.

8 * Sec. 5. AS 11.46 is amended by adding a new section to article 1 to
9 read:

10 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering
11 prior convictions in prosecuting a crime of theft under AS 11.46.-
12 120(a)(2), 11.46.130(a)(4), or 11.46.140(a)(3), or in prosecuting the
13 crime of concealment of merchandise under AS 11.46.220(c), a convic-
14 tion for an offense under another law or ordinance with similar ele-
15 ments is a conviction of an offense having elements similar to those
16 of an offense defined as such under Alaska law at the time the offense
17 was committed.

5-1625X
Chenoweth
3/17/88

Original sponsor: Cotten

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 461 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con
7 victions for the crimes of theft and concealment o
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) the value of the property or services is \$500 or more
16 but less than \$25,000 and within the preceding five years the person
17 has been convicted and sentenced on two or more separate occasions in
18 this or another jurisdiction of a crime set out in (1) of this sub-
19 section or AS 11.46.130(a)(1) - (3) or an offense under another law or
20 ordinance with (substantially) similar elements.

21 * Sec. 2. AS 11.46.130(a) is amended to read:

22 (a) A person commits the crime of theft in the second degree if
23 the person commits theft as defined in AS 11.46.100 and

24 (1) the value of the property or services is \$500 or more
25 but less than \$25,000;

26 (2) the property is a firearm or explosive; [OR]

27 (3) the property is taken from the person of another; or

28 (4) the value of the property is \$50 or more but less than
29 \$500 and within the preceding five years the person has been convicted

1 and sentenced on two or more separate occasions in this or another
2 jurisdiction of a crime set out in (1) - (3) of this subsection or
3 AS 11.46.140(a)(1) or (2) or an offense under another law or ordinance
4 with (substantially) similar elements.

5 * Sec. 3. AS 11.46.140(a) is amended to read:

6 (a) A person commits the crime of theft in the third degree if
7 the person commits theft as defined in AS 11.46.100 and

8 (1) the value of the property or services is \$50 or more
9 but less than \$500; [OR]

10 (2) the property is a credit card; or

11 (3) the value of the property is less than \$50 and within
12 the past five years the person has been convicted and sentenced on two
13 or more separate occasions in this or another jurisdiction of theft or
14 an offense under another law or ordinance with (substantially) similar
15 elements.

16 * Sec. 4. AS 11.46.220(c) is amended to read:

17 (c) Concealment of merchandise is

18 (1) a class C felony if

19 (A) the merchandise is a firearm;

20 (B) [OR] the value of the merchandise is \$500 or more;

21 or

22 (C) the value of the merchandise is \$50 or more but
23 less than \$500 and within the preceding five years the person has
24 been convicted and sentenced on two or more separate occasions in
25 this or another jurisdiction of the offense of concealment of
26 merchandise that has a value of \$50 or more or an offense under
27 another law or ordinance with (substantially) similar elements;

28 (2) a class A misdemeanor if

29 (A) the value of the merchandise is \$50 or more but

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less than \$500; or

(B) the value of the merchandise is less than \$50 and within the preceding five years the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of the offense of concealment of merchandise in any degree;

(3) a class B misdemeanor if the value of the merchandise is less than \$50.

Introduced: 2/11/88
Referred: Judiciary and
Finance

5-1625A

Demer: Good concept

*But be careful of the
priors causing to big of a jump.*

1 IN THE HOUSE

BY COTTEN

2 HOUSE BILL NO. 461

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) within the preceding five years,

16 (A) the person has been convicted three or more times
17 in this or another jurisdiction of a crime set out in AS 11.46.-
18 120 - 11.46.210 or an offense under another law or ordinance with
19 substantially similar elements; and

20 (B) *Demer* [at least one of] the convictions under (A) of this
21 paragraph was for theft as defined in (1) of this subsection, or
22 for theft as defined in AS 11.46.130(a)(1) - (3), or an offense
23 under another law or ordinance with substantially similar ele-
24 ments.

25 * Sec. 2. AS 11.46.130(a) is amended to read:

26 (a) A person commits the crime of theft in the second degree if
27 the person commits theft as defined in AS 11.46.100 and

28 (1) the value of the property or services is \$500 or more
29 but less than \$5,000;

*within last
5 years
3 or more times*

3 or more Class B being to Class A

- 1 (2) the property is a firearm or explosive; [OR]
- 2 (3) the property is taken from the person of another; or
- 3 (4) within the preceding five years.

4 (A) the person has been convicted three or more times
 5 in this or another jurisdiction of a crime set out in AS 11.46.-
 6 120 - 11.46.210 or an offense under another law or ordinance with
 7 substantially similar elements; and

8 (B) none of the convictions under (A) of this para-
 9 graph was for theft as defined in AS 11.46.120(a)(1), or for
 10 theft as defined in (1) - (3) of this subsection, or an offense
 11 under another law or ordinance with substantially similar ele-
 12 ments.

13 * Sec. 3. AS 11.46.220(c) is amended to read:

14 (c) Concealment of merchandise is

15 (1) a class C felony if

16 (A) the merchandise is a firearm;

17 (B) [OR] the value of the merchandise is \$500 or more;

18 or

19 -(C) within the preceding five years, the person has
 20 been convicted three or more times in this or another jurisdic-
 21 tion of the offense of concealment of merchandise or an offense
 22 under another law or ordinance with substantially similar ele-
 23 ments;

24 (2) a class A misdemeanor if the value of the merchandise
 25 is \$50 or more but less than \$500;

26 (3) a class B misdemeanor if the value of the merchandise
 27 is less than \$50;

1 IN THE HOUSE

BY COTTEN

2

HOUSE BILL NO. 461

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

9

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

10

* Section 1. AS 11.46.120(a) is amended to read:

11

(a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13

(1) the value of the property or services is \$25,000 or
14 more; or

15

(2) within the preceding five years,

16

(A) the person has been convicted three or more times

17

in this or another jurisdiction of a crime set out in AS 11.46.-

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120 - 11.46.210 or an offense under another law or ordinance with

19

substantially similar elements; and

20

(B) at least one of the convictions under (A) of this

21

paragraph was for theft as defined in (1) of this subsection, or

22

for theft as defined in AS 11.46.130(a)(1) - (3), or an offense

23

under another law or ordinance with substantially similar ele-

24

ments.

25

* Sec. 2. AS 11.46.130(a) is amended to read:

26

(a) A person commits the crime of theft in the second degree if
27 the person commits theft as defined in AS 11.46.100 and

28

(1) the value of the property or services is \$500 or more

29

but less than \$25,000;

- 1 (2) the property is a firearm or explosive; [OR]
- 2 (3) the property is taken from the person of another; or
- 3 (4) within the preceding five years,

4 (A) the person has been convicted three or more times
5 in this or another jurisdiction of a crime set out in AS 11.46.-
6 120 - 11.46.210 or an offense under another law or ordinance with
7 substantially similar elements; and

8 (B) none of the convictions under (A) of this para-
9 graph was for theft as defined in AS 11.46.120(a)(1), or for
10 theft as defined in (1) - (3) of this subsection, or an offense
11 under another law or ordinance with substantially similar ele-
12 ments.

13 * Sec. 3. AS 11.46.220(c) is amended to read:

14 (c) Concealment of merchandise is

- 15 (1) a class C felony if
- 16 (A) the merchandise is a firearm;
- 17 (B) [OR] the value of the merchandise is \$500 or more;
- 18 or

19 - (C) within the preceding five years, the person has
20 been convicted three or more times in this or another jurisdic-
21 tion of the offense of concealment of merchandise or an offense
22 under another law or ordinance with substantially similar ele-
23 ments;

24 (2) a class A misdemeanor if the value of the merchandise
25 is \$50 or more but less than \$500;

26 (3) a class B misdemeanor if the value of the merchandise
27 is less than \$50.

becomes
Class B Misdemeanor

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 29, 1988

SUBJECT: Draft CSHB 461 (Judiciary)

TO: Representative John Sund, Chairman
House Judiciary Committee
ATTN: John Hartle

FROM: Jack Chenoweth
Legislative Counsel

The enclosed draft bill increases the penalties for the fourth and subsequent convictions during a five year period for certain thefts and for concealment of merchandise.

As offered, with respect to theft, the bill

In bill section 1, makes the fourth conviction a "class B felony" if at least one of the three previous convictions was for theft in the first or second degree (crimes which are themselves defined as class "B" and "C" felonies).

In bill section 2, makes the fourth conviction a "class C felony" if

-- at least one of the three previous convictions was for theft in the third degree (a crime which is itself defined as a class "A" misdemeanor);

-- none of the three previous convictions was for theft in the first or second degree.

In bill section 3, makes the fourth conviction a "class A misdemeanor" if all of the three previous convictions were for theft in the fourth degree (a crime which is itself defined as a "class B misdemeanor"); theft in the fourth degree involves thefts of property with a value of less than \$50.

With respect to concealment of merchandise, the bill

Representative John Sund
Page 2
February 29, 1988

In subsection (d) added by bill section 5, makes the fourth conviction a "class C felony" if at least one of the three previous convictions was for concealment of merchandise involving a firearm or of a value of \$50 or more; these are, generally, crimes for which a previous conviction would have been treated as a class C felony or class A misdemeanor.

In subsection (e) added by bill section 5, makes the fourth conviction a "class A misdemeanor" if none of the three previous convictions was for concealment of merchandise involving a firearm or of a value of \$50 or more; these are, generally, crimes for which a previous conviction would have been treated as a class B misdemeanor.

These distinctions are based on distinctions already made by law at AS 11.46.220(c).

Enclosure

JBC:bb
wkb3/050

5-1625L
Chenoweth
2/29/88

Original sponsor: Cotten

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 461 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the penalties for repeat con-
7 victions for the crimes of theft and concealment of
8 merchandise."

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

10 * Section 1. AS 11.46.120(a) is amended to read:

11 (a) A person commits the crime of theft in the first degree if
12 the person commits theft as defined in AS 11.46.100 and

13 (1) the value of the property or services is \$25,000 or
14 more; or

15 (2) within the preceding five years,

16 (A) the person has been convicted three or more times
17 in this or another jurisdiction of a crime set out in AS 11.46.-
18 120 - 11.46.210 or an offense under another law or ordinance with
19 substantially similar elements; and

20 (B) at least one of the convictions under (A) of this
21 paragraph was for theft as defined in (1) of this subsection, or
22 for theft as defined in AS 11.46.130(a)(1) - (3), or an offense
23 under another law or ordinance with substantially similar ele-
24 ments.

25 * Sec. 2. AS 11.46.130(a) is amended to read:

26 (a) A person commits the crime of theft in the second degree if
27 the person commits theft as defined in AS 11.46.100 and

28 (1) the value of the property or services is \$500 or more
29 but less than \$25,000;

- 1 (2) the property is a firearm or explosive; [OR]
2 (3) the property is taken from the person of another; or
3 (4) within the preceding five years,

4 (A) the person has been convicted three or more times
5 in this or another jurisdiction of a crime set out in AS 11.46.-
6 120 - 11.46.210 or an offense under another law or ordinance with
7 substantially similar elements;

8 (B) at least one of the convictions under (A) of this
9 paragraph was for theft as defined in AS 11.46.140(a)(1) or
10 11.46.140(a)(2), or an offense under another law or ordinance
11 with substantially similar elements; and

12 (C) none of the convictions under (A) of this para-
13 graph was for theft as defined in AS 11.46.120(a)(1), or for
14 theft as defined in (1) - (3) of this subsection, or an offense
15 under another law or ordinance with substantially similar ele-
16 ments.

17 * Sec. 3. AS 11.46.140(a) is amended to read:

18 (a) A person commits the crime of theft in the third degree if
19 the person commits theft as defined in AS 11.46.100 and

20 (1) the value of the property or services is \$50 or more
21 but less than \$500; [OR]

22 (2) the property is a credit card; or

23 (3) within the preceding five years,

24 (A) the person has been convicted three or more times
25 in this or another jurisdiction of a crime set out in AS 11.46.-
26 120 - 11.46.210 or an offense under another law or ordinance with
27 substantially similar elements; and

28 (B) all of the convictions under (A) of this paragraph
29 were for theft as defined in AS 11.46.150 or an offense under

1 another law or ordinance with substantially similar elements.

2 * Sec. 4. AS 11.46.220(c) is amended to read:

3 (c) Except as provided in (d) and (e) of this section, conceal-
4 ment [CONCEALMENT] of merchandise is

5 (1) a class C felony if the merchandise is a firearm or the
6 value of the merchandise is \$500 or more;

7 (2) a class A misdemeanor if the value of the merchandise
8 is \$50 or more but less than \$500;

9 (3) a class B misdemeanor if the value of the merchandise
10 is less than \$50.

11 * Sec. 5. AS 11.46.220 is amended by adding new subsections to read:

12 (d) A person who has been convicted under (a) of this section is
13 guilty of a class C felony if

14 (1) within the preceding five years the person has been
15 convicted three or more times in this or another jurisdiction of the
16 crime of concealment of merchandise or an offense under another law or
17 ordinance with substantially similar elements; and

18 (2) at least one of the convictions under (1) of this
19 subsection was for concealment of merchandise that is a firearm or
20 that is of a value of \$50 or more.

21 (e) A person who has been convicted under (a) of this section is
22 guilty of a class A misdemeanor if

23 (1) within the preceding five years the person has been
24 convicted three or more times in this or another jurisdiction of the
25 crime of concealment of merchandise or an offense under another law or
26 ordinance with substantially similar elements; and

27 (2) none of the convictions under (1) of this subsection
28 was for concealment of merchandise that is a firearm or that is of a
29 value of \$50 or more.

IN THE HOUSE

BY COTTEN

CS HOUSE BILL NO. 461 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act increasing the penalties for repeat convictions for the crimes of theft and concealment of merchandise."

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

* Section 1. AS 11.46.120(a) is amended to read:

(a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$25,000 or more; or

(2) the value of the property or services is more than \$500 but less than \$25,000 and within the past five years the person has been convicted and sentenced on ^{TWO}~~three~~ or more separate occasions in this or another jurisdiction of a felony theft offense as defined in AS 11.46.120(a)(1) or AS 11.46.130(a)(1) - (3), or an offense under another law or ordinance with substantially similar elements.

* Section 2. AS 11.46.130(a) is amended to read:

(a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; [OR]

(3) the property is taken from the person of another; or
(4) the value of the property is more than \$50 and less
\$500 and within the past five years the person has been convicted
and sentenced on ^{two} ~~three~~ or more separate occasions in this or another
jurisdiction of a felony theft offense defined in AS 11.46.120(a)(1)
or AS 11.46.130(a)(1) - (3) or theft in the third degree as defined
in AS 11.46.140(a)(1) - (2) or an offense under another law or
ordinance having substantially similar elements.

* Section 3. AS 11.46.140(a) is amended to read:

(a) A person commits the crime of theft in the third degree if the
person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but
less than \$500; or

(2) the property is a credit card; or

(3) the value of the property is less than \$50 and within the
past five years the person has been convicted and sentenced on ^{two}
~~three~~ or more separate occasions in this or another jurisdiction of theft in
any degree as defined in AS 11.46.120 - 150.

* Section 4. AS 11.46.220(c) is amended to read:

(c) Concealment of merchandise is

(1) a class C felony if

(A) the merchandise is a firearm;

(B) [OR] the value of the merchandise is \$500 or more;

or

(C) the value of the merchandise is \$50 or more but less
than \$500 and within the preceding five years the person has been

convicted and sentenced on ^{TWO} three or more separate occasions in this or another jurisdiction of the offense of concealment of merchandise involving merchandise which has a value of \$50 or more or an offense under another law or ordinance with substantially similar elements;

(2) a class A misdemeanor if

(A) the value of the merchandise is \$50 or more but less than \$500; or

(B) the value of the merchandise is less than \$50 and within the preceding five years the person has been convicted and sentenced on three or more separate occasions in this or another jurisdiction of the offense of concealment of merchandise in any degree.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing the penalties for repeat convictions ... theft ..."
Sponsor: House Judiciary
Requestor: House Finance

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: April 6, 1988
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: April 6, 1988
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461 (Jud.)

The committee substitute for HB 461 amends AS 11.46 to provide stiffer penalties for third-time theft offenders. For instance, a person convicted of theft of property or services with a value of \$500 or more but less than \$25,000, normally theft in the second degree, would be guilty of theft in the first degree if the person had been convicted and sentenced on two or more separate occasions within the preceding five years for the crime of theft in the second degree. Likewise, a third conviction for a crime normally constituting theft in the third degree or a third conviction for a crime normally constituting theft in the fourth degree would result in conviction at the next higher level. As a consequence, the penalty for a third conviction normally resulting in a class C felony would be raised to a class B felony. A third conviction normally resulting in a class A misdemeanor would be raised to a class C felony. A third conviction normally resulting in a class B misdemeanor would be raised to a class A misdemeanor. Repeat offenses for the crime of concealment of merchandise would be treated in a similar manner.

Because this legislation is primarily a sentencing bill it is not expected to have a fiscal impact on the Department of Law sufficient enough to warrant fiscal note costs. Some additional prosecutor time may be required to prove the repeat status of some offenders. And because of the increased penalties, prosecutors may face a more spirited defense in some cases. For the most part, however, these are cases that the department is already handling, and an appreciable additional expense is not anticipated.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act increasing the penalties for repeat convictions for the crimes..."
 Sponsor: Judiciary Committee
 Requestor: _____
 Agency Affected: Department of Corrections
 BRU: Statewide Operations
 Components: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	848.6	848.5	848.6	848.6	848.6	848.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	848.6	848.6	848.6	848.6	848.6	848.6
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	848.6	848.6	848.6	848.6	848.6	848.6
FEDERAL FUNDS						
OTHER						
TOTAL	848.6	848.6	848.6	848.6	848.6	848.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 4-5-88
 Approved by Commissioner: Susan Humphrey Barnett Date: 4-5-88
 Agency: Department of Corrections

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 461

ANALYSIS

This proposed legislation would increase the penalties imposed on persons who are repeatedly convicted for the crimes of theft. It would have a fiscal impact on the Department of Corrections.

To determine the effect, we have analyzed recidivism data for the State of Alaska, the number of offenders in the theft categories who are being placed in the custody of the Department, the amount of jail time currently being served and the amount of jail time proposed in this legislation.

The recidivism rates are as follows:

Theft II	33%
Theft III	39%
Theft IV	74%
Concealment	68%

This fiscal note is based upon the yearly incarceration of repeat theft offenders in Restitution Centers or Community Residential Centers. They would serve 77.5 man-years more than is currently served.

Using the Anchorage daily soft bed cost of \$30.00 per day, the estimated yearly fiscal impact is \$848,625. Using the statewide average cost of \$45.00 per day, the estimated yearly fiscal impact is \$1,272,937.

RECOMMENDED CHANGE TO HB 461

PRIOR CONVICTIONS	NEW OFFENSE AND SENTENCE	ELEVATED OFFENSE AND SENTENCE
3 theft/concealment C felonies or above	C felony involving theft/ concealment 3-year presumptive for third offense/maximum 5 years	B felony 6-year presumptive for third offense/ maximum 10 years
3 theft/concealment A misdemeanors or above	A misdemeanor involving theft/concealment 0 - 1 year	C felony 0 - 2 years first offense 2 years presumptive second offense 3 years presumptive third offense maximum 5 years
3 theft/concealment B misdemeanors or above	B misdemeanor involving theft/concealment 0 - 90 days	A misdemeanor 0 - 1 year

1 IN THE HOUSE

2 HOUSE BILL NO. 461

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTIES FOR REPEAT CON-
7 VICTIONS FOR THE CRIMES OF THEFT AND CONCEALMENT OF
8 MERCHANDISE."

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

10 * SECTION 1. AS 11.46.120(A) IS AMENDED TO READ:

11 (A) A PERSON COMMITS THE CRIME OF THEFT IN THE FIRST DEGREE IF

12 THE PERSON COMMITS THEFT AS DEFINED IN AS 11.46.100 AND

13 (1) THE VALUE OF THE PROPERTY OR SERVICES IS \$25,000 OR
14 MORE; OR

15 (2) WITHIN THE PRECEDING FIVE YEARS,

16 (A) THE PERSON HAS BEEN CONVICTED THREE OR MORE TIMES
17 IN THIS OR ANOTHER JURISDICTION OF A CRIME SET OUT IN AS 11.46.-
18 120 - 11.46.210 OR AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE WITH
19 SUBSTANTIALLY SIMILAR ELEMENTS; AND

20 (B) AT LEAST ONE OF THE CONVICTIONS UNDER (A) OF THIS
21 PARAGRAPH WAS FOR THEFT AS DEFINED IN (1) OF THIS SUBSECTION, OR
22 FOR THEFT AS DEFINED IN AS 11.46.130(A)(1) - (3), OR AN OFFENSE
23 UNDER ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELE-
24 MENTS.

13 7 ALL. S. HS 11.45.229(C) IS AMENDED TO READ:
14 (C) CONCEALMENT OF MERCHANDISE IS

15 (1) A CLASS C FELONY IF

16 (A) THE MERCHANDISE IS A FIREARM; _

17 (B) [OR] THE VALUE OF THE MERCHANDISE IS \$500 OR MORE

18 _OR_

19 (C) WITHIN THE PRECEDING FIVE YEARS, THE PERSON HAS
20 BEEN CONVICTED THREE OR MORE TIMES IN THIS OR ANOTHER JURISDIC-
21 TION OF THE OFFENSE OF CONCEALMENT OF MERCHANDISE OR AN OFFENSE
22 UNDER ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELE-
23 MENTS; _

24 (2) A CLASS A MISDEMEANOR IF THE VALUE OF THE MERCHANDISE
25 IS \$50 OR MORE BUT LESS THAN \$500;

26 (3) A CLASS B MISDEMEANOR IF THE VALUE OF THE MERCHANDISE
27 IS LESS THAN \$50.

AS 11.46.130(A) IS AMENDED TO READ

(A) A PERSON COMMITS THE CRIME OF THEFT IN THE SECOND DEGREE IF THE PERSON COMMITS THEFT AS DEFINED IN AS 11.46.100 AND

(1) THE VALUE OF THE PROPERTY OR SERVICES IS \$500 OR MORE BUT LESS THAN \$25,000;

(2) THE PROPERTY IS A FIREARM OR EXPLOSIVE; OR

(3) THE PROPERTY IS TAKEN FROM THE PERSON OF ANOTHER; OR

(4) WITHIN THE PRECEDING FIVE YEARS,

(A) THE PERSON HAS BEEN CONVICTED THREE OR MORE TIMES IN THIS OR ANOTHER JURISDICTION OF A CRIME SET OUT IN AS 11.46.120 - 11.46.210 OR AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS; AND

(B) NONE OF THE CONVICTIONS UNDER (A) OF THIS PARAGRAPH WAS FOR THEFT AS DEFINED IN AS 11.46.120(A)(1), OR FOR THEFT AS DEFINED IN (1) - (3) OF THIS SUBSECTION, OR AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS.

TO: REP. JOHN SUND
FROM: PETE TOMLINSON - CARRS QUALITY CENTER'S
DATE: MARCH 1, 1988
SUBJ: SHOPLIFT DOLLAR LOSS

ESTIMATED \$1,000,000 ANNUAL LOSS

① STORE DETECTIVES SPENT 5165 HOURS ON DUTY IN CARRS STORES IN 1987. 75% OF THAT TIME OR 3874 HOURS (APPROX) WERE SPENT ON THE FLOOR.

WE HAVE 13 CARRS STORES OPEN 24 HRS PER DAY 364 DAYS A YEAR. THIS EQUALS 113,568 STORE HOURS/YR.

ASSUMING OUR SUCCESS RATE IS AVERAGE FOR ALL STORE HOURS AND STORE DETECTIVES APPREHEND 50% OFF ALL SHOPLIFTERS WHILE WORKING ON THE FLOOR THEN,

3874 HOURS = 3.4% OF STORE OPEN HOURS

3.4% = 1/29

29 X 2 (50% SUCCESS RATE) X (1987 LOSS) \$16,576.50 = \$961,437

② ESTIMATED MINIMUM OF 15 SHOPLIFTERS PER DAY PER STORE.

AVERAGE ARREST = \$15.42

15 X \$15.42 X 13 STORES X 364 DAYS = \$1,094,511

③ THIS METHOD GIVES REAL CREDENCE TO 1 AND 2 ABOVE. I AM SOMEWHAT LIMITED IN DIVULGING INFORMATION WITHOUT AUTHORIZATION FROM A CORPORATE OFFICER HOWEVER, IN THAT PROPRIETARY INFORMATION INVOLVING GROSS SALES AND SHRINK PERCENTAGE AND COMPANY POLICY ARE NOT TO BE DISCLOSED.

SUFFICE IT TO SAY THAT SUPERMARKETS OPERATE ON A 1 TO 3% PROFIT MARGIN. SHRINK PERCENTAGES OF 1 TO 2% ARE COMMONPLACE.

WE AT CARRS KNOW WHAT OUR SHRINK PERCENTAGE AMOUNTS TO IN DOLLAR LOSS. SHRINK IS ATTRIBUTED TO INTERNAL THEFT, EXTERNAL THEFT (SHOPLIFT) AND PAPERWORK AND INVENTORY ERRORS. COMMONLY ATTRIBUTED PERCENTAGES ARE:

- 50% - PAPERWORK / INV. ERRORS
- 25% - INTERNAL THEFT
- 25% - EXTERNAL THEFT

USING THOSE PERCENTAGES, CARRS LOSSES DUE TO SHOPLIFT ARE IN EXCESS OF ONE MILLION DOLLARS.

MEMORANDUM

State of Alaska

TO: Lisa Weissler
Legislative Aide
Representative Sam Cotten

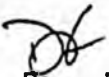
DATE: March 7, 1988

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: CS HB 461

FROM: 
Dana Fabe
Public Defender

Attached please find suggested language for a Committee Substitute for HB 461. I am also enclosing a chart which will delineate the ramifications of this language. I attempted a diagram of the original language of HB 461 but it involved so many possible permutations that I found it difficult to design a clear schematic diagram.

DF:sh

Attachments

✓ cc: John Hartle, Legislative Aide
Office of Representative John Sund

RECOMMENDED CHANGE TO HB 461

PRIOR CONVICTIONS	NEW OFFENSE AND SENTENCE	ELEVATED OFFENSE AND SENTENCE
3 theft/concealment C felonies or above	C felony involving theft/concealment 3-year presumptive for third offense/maximum 5 years	B felony 6-year presumptive for third offense/maximum 10 years
3 theft/concealment A misdemeanors or above	A misdemeanor involving theft/concealment 0 - 1 year	C felony 0 - 2 years first offense 2 years presumptive second offense 3 years presumptive third offense maximum 5 years
3 theft/concealment B misdemeanors or above	B misdemeanor involving theft/concealment 0 - 90 days	A misdemeanor 0 - 1 year

HABITUAL
THEFT OFFENDER
STATUTE



TONY KNOWLES
MAYOR

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET • ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500



RONALD L OTTE
CHIEF

DATE: December 8, 1987
TO: State Representative Sam Cotten
FROM: Sgt. John Grohol
Misdemeanor Crimes Investigation Unit
Anchorage Police Department
SUBJECT: Habitual misdemeanor theft offender statute

The revised Alaska Criminal Code which took effect January 1, 1980, which I understand you had a hand in revising, was a vast improvement over the old criminal code.

However, at the same time this revised code was enacted we saw the abolishment of Alaska Statutes; Sec. 12.55.050, Increased punishment for persons convicted of more than one felony, and Sec. 12.55.040, Increased punishment for the habitual criminal after conviction of petty larceny or misdemeanors involving fraud. These Statutes, as are similar statutes in other states, are commonly referred to as "Habitual Criminal" statutes and designed as a deterrent for the repeat offender.

As I understand it, these statutes were repealed or abolished as they were in essence to be replaced by presumptive sentencing. I can understand the repeal of Sec. 12.55.050, but I fail to understand why section 12.55.040 was thrown into the same category. This section referred to only misdemeanor crimes and presumptive sentencing pertains only to felony crimes.

Within the past year Officer L. T. Johnson, from my unit, developed his own computerized data file for the crime analysis of misdemeanor thefts. It wasn't until this time with his continuing investigation concerning the actions of repeat theft offenders and his attendance of monthly meetings with loss prevention officers from retail chain stores, that we began to fully realize what effect the abolishment of Sec. 12.55.040 has had on the business community. As it now stands the citizens of Alaska in general are being asked to pay for the abolishment of Sec. 12.55.040.

Having worked with the victims of misdemeanor crimes and street officers on a daily basis for the past four years, I have sensed the total frustration when the same offenders are arrested day in and day out for essentially the same crimes. All too often we are told by these same repeat offenders that this is the best way to make a living.

It is clearly apparent that current penalties are not a deterrent to the repetitive offender. These same repeat offenders find it is more profitable and less risky to; shoplift, steal an unattended purse for the money, credit cards or automated bank card, or to break into an unattended automobile to steal what ever is available, than it is to burglarize a home or rob a convenience store.

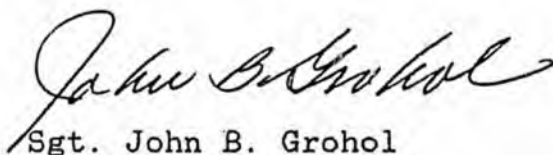
Granted, there are repeat felony offenders, however they are being dealt with under presumptive sentencing.

I believe we are long overdue in doing something positive to protect the victims of repeat misdemeanor crime offenders. I also feel the re-enactment of the "Habitual Criminal" statute, or the enactment of a similar statute, is a step in the proper direction and a must for the law enforcement community.

I have spoken with; Anchorage Police Chief Ron Otte, Anchorage Police Captain Kevin O'Leary, Anchorage Municipal Prosecutor Jim Wolf, Assistant District Attorney Steve Branchflower, The Legislative Committee of the Anchorage Police Department Employees Association and Terry Marquart, President of the Anchorage Chapter of the Alaska Peace Officers Association. All have voiced their support.

I am now soliciting your support in introducing legislation on this matter.

Respectfully,



Sgt. John B. Grohol
Misdemeanor Crimes Investigation Unit
Anchorage Police Department

Attachments

- #1. Report by Officer L. T. Johnson
- #2. Memo from Legislative Counsel Jack Chenoweth