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issue evidences of indebtedness, and secure the payment of the indebtedness by mortgage, pledge, or deed of trust of, or any other encumbrance upon its real or personal property, assets, franchises, or revenues;

(7) construct, maintain, and operate electric transmission and distribution lines, or telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways;

(8) exercise the power of eminent domain;

(9) become a member of other cooperatives or corporations or own stock in them;

(10) conduct its business and exercise its powers inside or outside the state;

(11) adopt, amend, and repeal bylaws;

(12) make all contracts necessary, convenient, or appropriate for the full exercise of its powers;

(13) make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

* Sec. 3. AS 10.25.010 is amended by adding a new subsection to read:

(b) An electric or telephone cooperative may not use cooperative funds to promote or oppose the candidacy of a candidate for director of the cooperative.

* Sec. 4. AS 10.25.020 is amended to read:

Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric

cooperative may

(1) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not exceeding 10 percent of the number of its members; however, a cooperative that [WHICH] acquires existing electric facilities may continue service to persons, not in excess of 40 percent of the number of its members, who are already receiving service from these facilities without requiring them to become members, and these persons may become members upon the terms as may be prescribed in the bylaws;

(2) assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by financing them, and in connection with these services wire or have wired the premises, and buy, acquire, lease, sell, distribute, install, and repair electric and plumbing appliances, equipment, fixtures, and apparatus;

(3) assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining, and operating electric cold storage or processing plants by financing them or otherwise;

(4) operate a waste heat distribution system;

(5) operate a heating distribution system that was in existence on the effective date of this Act.

* Sec. 5. AS 10.25.070 is amended to read:

Sec. 10.25.070. BYLAWS. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger, or consolidation. Thereafter the district

delegates in cooperatives having three or more districts that are not connected by a road system to another district of the cooperative may adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the district delegates voting on the adoption, amendment, or repeal at a meeting of the district delegates. In all other cooperatives the members shall adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the members voting on the question [ADOPTION, AMENDMENT, OR REPEAL EITHER AT A MEETING OF THE MEMBERS OR BY MAIL BALLOT WITHOUT A MEETING]. The bylaws shall set out the rights and duties of members, district delegates, and directors and may contain other provisions for the regulation and management of the affairs of the cooperative consistent with this chapter or with the articles of incorporation of the cooperative.

* Sec. 6. AS 10.25.080 is amended to read:

Sec. 10.25.080. MEMBERS. (a) Each incorporator of a cooperative shall be a member of the cooperative or of another cooperative that is a member of it. A person may not become a member unless that person agrees to use electric energy, or telephone service, or other services furnished by the cooperative when they are made available through its facilities.

(b) Membership in a cooperative is not transferrable, except as provided in the bylaws. The bylaws may

(1) prescribe additional qualifications and limitations on membership;

(2) require membership as a condition of obtaining service from the cooperative;

(3) provide for termination or suspension of membership; however, a membership may not be terminated unless procedures for termination are contained in the bylaws.

* Sec. 7. AS 10.25.100 is amended to read:

Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise provided in this chapter, written notice stating the time and place of each meeting of the members or district delegates [AND, IN THE CASE OF A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED,] shall be given to each member or district delegate, either personally or by mail, not less than 15 [20] days or [NOR] more than 60 [40] days before the date of the meeting. Notice of a special meeting of the members, together with notice of the purpose for which the meeting is called, shall be given to each member or district delegate, either personally or by mail, not less than 90 days or more than 120 days before the date of the meeting. If mailed, notice is considered given when it is deposited in the United States mail with postage prepaid addressed to the member or district delegate at the address of the member or delegate as it appears on the records of the cooperative.

* Sec. 8. AS 10.25.120 is amended to read:

Sec. 10.25.120. VOTING. Each member is entitled to one vote on each matter submitted to a vote of the membership [(1) AT A MEETING OF THE MEMBERS OR (2) BY MAIL BALLOT PERMITTED BY AS 10.25.070]. Each member of a district is entitled to one vote on each matter submitted to a vote at a district meeting. A member may not vote by proxy but may vote [VOTING AT A MEETING SHALL BE IN PERSON, BUT], if the bylaws so provide, [MAY ALSO BE] by mail.

* Sec. 9. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.125. RECORD DATE. To determine the members entitled to notice of a meeting of the members or to vote on a matter that is to be submitted to a vote of the members, or for any other proper purpose, the board of directors may fix a date that occurs no more

than 30 days before the date of notice or distribution of mail ballots as the record date for the determination. If a record date is not fixed for the determination of members entitled to notice of a meeting or to vote on a matter, the date on which notice of the meeting or of mail voting is first mailed is the record date. When a determination of members entitled to vote at a meeting is made, the determination applies until the meeting is adjourned sine die.

* Sec. 10. AS 10.25.140 is amended to read:

Sec. 10.25.140. BOARD OF DIRECTORS. The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another cooperative which is a member of it. The bylaws shall prescribe the number of directors, their qualifications other than those prescribed in this chapter, and the manner of holding meetings of the board of directors and of electing successors to directors who resign, die, or are otherwise incapable of acting. The bylaws shall [MAY] provide for the removal of directors from office for cause and for the election of their successors. Directors may not receive salaries for the services as directors and, except in emergencies, shall not receive salaries for their services in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for each day of attendance at a meeting of the board of directors or other meeting while officially representing the cooperative and for each day of necessary travel to and from a meeting of the board of directors or other meeting while officially representing the cooperative [EACH MEETING OF THE BOARD OF DIRECTORS] and may provide for insurance and reimbursement of actual expenses incurred while performing duties as a director [OF ATTENDANCE].

* Sec. 11. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a) A protected person is not individually liable for conduct performed within the scope of the person's duties for the cooperative. However, the protected person may be held individually liable for conduct if it was not reasonable for the person to believe that the conduct was in, or not contrary to, the best interests of the cooperative.

(b) Unless prohibited by the articles of incorporation or by-laws, the cooperative shall indemnify a protected person who is or may be made a party to a contested matter against expenses actually and reasonably incurred in connection with the contested matter. However, the cooperative may not indemnify the protected person if the person did not reasonably believe the conduct to be in, or not opposed to, the best interests of the cooperative. With respect to a criminal action or proceeding, the cooperative shall indemnify a protected person unless the person had reasonable cause to believe that the conduct was unlawful.

(c) A cooperative may purchase and maintain insurance on behalf of a protected person against liability asserted against the protected person and incurred in an official capacity or arising out of the person's status, whether or not the cooperative would have the power to indemnify the person against the liability under this section.

(d) In this section

(1) "conduct" includes action, inaction, and omission;

(2) "contested matter" means a proposed, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;

(3) "expenses" include attorney fees, judgments, fines, and amounts paid in settlement;

(4) "protected person" means a director, officer, employee,

or agent of a cooperative.

* Sec. 12. AS 10.25.150 is amended to read:

Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of a cooperative named in articles of incorporation, consolidation, merger, or conversion hold office until the next annual meeting of the members and until their successors are elected and qualify. [AT EACH ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE, THE MEMBERS SHALL ELECT DIRECTORS TO HOLD OFFICE UNTIL THE NEXT ANNUAL MEETING OF THE MEMBERS, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER.] Each elected director holds office for the term for which elected and until a successor is elected and qualifies.

* Sec. 13. AS 10.25.160 is amended to read:

Sec. 10.25.160. STAGGERED TERMS OF OFFICE FOR DIRECTORS. Instead of electing all directors annually, the bylaws may provide that directors shall be elected for terms not to exceed three years, or until their successors are elected and qualify, and that the terms of directors shall be staggered so that one-third of the directors, or a number as close to one-third as possible, shall be elected [AT] each year [ANNUAL MEETING].

* Sec. 14. AS 10.25.175(a) is amended to read:

(a) A meeting of the board of directors may be attended by members of the cooperative. Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote. The board of directors may conduct a meeting by teleconference or similar communications equipment if the board gives reasonable notice of the meeting and if members of the cooperative are able to attend the meeting sites and hear the meeting. This section applies only to a meeting at which a quorum

of the board participates.

* Sec. 15. AS 10.25.175(e) is repealed and reenacted to read:

(e) A member affected by action taken contrary to this section may bring a suit in the superior court. The court may order appropriate equitable relief after considering the circumstances of the case. Action taken contrary to this section is not void if other equitable relief is available and appropriate.

* Sec. 16. AS 10.25.235 is amended to read:

Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section. The cooperative may withhold books and records concerning specific matters that were prepared for or during an executive session under AS 10.25.175(c) and not subsequently made public by the cooperative. The cooperative may also withhold the identity of public information that was referred to during the executive session.

* Sec. 17. AS 10.25.240 is amended to read:

Sec. 10.25.240. MERGER. Except as provided in (b) of this section, one [ONE] or more cooperatives, each [HEREINAFTER] designated in this section as "merging cooperative," may merge into another cooperative, [HEREINAFTER] designated in this section as "surviving cooperative," by complying with the following requirements.

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger shall be submitted to [A MEETING OF] the members of each merging cooperative and of the surviving cooperative. The notice [OF THE

MEETING] shall have attached to it a copy of the proposed articles of merger.

(2) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each cooperative voting on them [AT THE MEETING], articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its president or vice president and its seal shall be affixed by its secretary.

* Sec. 18. AS 10.25.240 is amended by adding a new subsection to read:

(b) A merger of electric or telephone cooperatives may not take effect unless the surviving cooperative expressly agrees to comply with the terms of each collective bargaining agreement entered into between a merging cooperative and a labor organization representing employees of the cooperative that is in effect on the date of merger.

* Sec. 19. AS 10.25.260 is amended to read:

Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, [HEREINAFTER] designated in this section as "consolidating cooperative," may consolidate into a new cooperative, [HEREINAFTER] designated in this section as the "new cooperative," by complying with the following requirements:

(1) The proposition for the consolidation into the new cooperative and proposed articles of consolidation shall be submitted to [A MEETING OF] the members of each consolidating cooperative. The notice [OF THE MEETING] shall have attached to it a copy of the proposed articles of consolidation.

(2) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less then two-thirds of those members of each

consolidating cooperative voting on them, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed and attested by its secretary.

* Sec. 20. AS 10.25.320 is amended to read:

Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business may be dissolved in the following manner: [.]

(1) The proposition to dissolve shall be submitted to the members of the cooperative [AT AN ANNUAL OR SPECIAL MEETING]. The notice shall state [SET FORTH] the proposition.

(2) The proposition is approved by the affirmative vote of at least two-thirds of the members voting on the proposition if the number of members voting to approve it constitutes [AT THE MEETING THE MEMBERS SHALL APPROVE, BY THE AFFIRMATIVE VOTE OF NOT LESS THAN] a majority of all members of the cooperative [, THE PROPOSITION TO DISSOLVE THE COOPERATIVE].

(3) Upon approval, a certificate of election to dissolve, hereafter designated the "certificate," executed and acknowledged on behalf of the cooperative by its president or vice president under its seal, attested by its secretary, shall be submitted to the commissioner for filing together with an affidavit by the officer executing the certificate stating that the statements in the certificate are true. The certificate shall state the name of the cooperative, the address of its principal office, and that the members of the cooperative have voted to dissolve the cooperative.

* Sec. 21. AS 10.25.400 is amended to read:

Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROPERTY. A cooperative may not otherwise sell, lease, or dispose of more

than 15 percent of the cooperative's total assets, less depreciation, as reflected on the books of the cooperative at the time of the transaction [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the transaction is authorized under this section. The transaction is approved by the affirmative vote of not less than two-thirds of the members voting on the transaction if the number of members voting to approve it constitutes [BY THE AFFIRMATIVE VOTE OF NOT LESS THAN] a majority of all the members of the cooperative. However, notwithstanding a provision of this chapter or any other provision of law, the board of directors may, upon the authorization of a majority of those members of the cooperative voting on the issue in an election in which at least 10 percent of the eligible members return ballots [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or to the state if the sale complies with (d) of this section [HOLDER OF ITS PROPERTY TO ANOTHER COOPERATIVE OR TO THE HOLDER OF AN EVIDENCE OF INDEBTEDNESS ISSUED TO THE UNITED STATES OF AMERICA OR AN AGENCY OR INSTRUMENTALITY OF IT].

* Sec. 22. AS 10.25.400 is amended by adding new subsections to read:

(b) Before a vote to authorize the disposition or sale of more than 15 percent of the total assets of the cooperative, other than a vote to authorize disposition or sale to the state or another cooperative, the board of directors shall

(1) have the tangible and intangible property that is proposed for sale appraised by three appraisers; the appraisers shall be chosen by the board and may not be associated with the cooperative or a proposed buyer of cooperative property; the first proposed buyer shall advance to the cooperative money sufficient to pay for the appraisals; if a buyer other than the first proposed buyer purchases

the assets based on the appraisals, the actual buyer shall reinburse the first proposed buyer for the cost of the appraisals;

(2) notify all cooperative members, at least 90 days in advance, of a vote on disposition of cooperative property; the notice must contain detailed proposals for disposition of the property;

(3) at least 90 days before the vote, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal of the property;

(4) at least 30 days before the vote, mail to all members any alternate proposals made by another cooperative, or by cooperative members if an alternate proposal signed by at least 50 members has been submitted to the board, together with any recommendation that the board has made; and

(5) place each proposal for which notice has been given on the ballot.

(c) This section does not apply to the transfer of cooperative property under AS 10.25.240 - 10.25.300.

(d) The sale of a cooperative may not take effect unless the purchaser expressly agrees to comply with the terms of each collective bargaining agreement entered into between the cooperative being sold and a labor organization representing employees of the cooperative that is in effect on the date of sale.

* Sec. 23. The amendments to AS 10.25.400 made by sec. 22 of this Act do not apply to a sale of cooperative property that was approved by the members before the effective date of this Act.

* Sec. 24. AS 10.25.245 is repealed.

* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

Introduced: 1/25/88
Referred: Labor and Commerce and Resources

5-1554A

STANDARDISK WANTS EXPLANATION OF WHY FOR EACH CHANGE.

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

SENATE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to electric and telephone cooperatives; and providing for an effective date."

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

* Section 1. AS 10.25.010 is amended to read:

Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE. A electric or telephone cooperative may

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter it;

(4) construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, which is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(5) buy, lease, or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses, and easements;

(6) borrow money and otherwise contract indebtedness, and issue evidences of indebtedness, and secure the payment of the indebtedness by mortgage, pledge, or deed of trust of, or any other encumbrance upon its real or personal property, assets, franchises, or revenues;

(7) construct, maintain, and operate electric transmission and distribution lines, or telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways;

(8) exercise the power of eminent domain;

(9) become a member of other cooperatives or corporations or own stock in them;

(10) conduct its business and exercise its powers inside or outside the state;

(11) adopt, amend, and repeal bylaws;

(12) make all contracts necessary, convenient, or appropriate for the full exercise of its powers;

MIKE S. WANTS TO CLARIFY TO TIGHTEN DONATION IT.

(13) make donations for the public welfare or for charitable, scientific, or educational purposes; STRENGTHEN WORDS IN THIS CHAP

(14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

* Sec. 2. AS 10.25.020 is amended to read:

Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric cooperative may

(1) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not exceeding 10 percent of the number of its members; however, a cooperative that [WHICH] acquires existing electric facilities may continue service to persons, not in excess of 40 percent of the number of its members, who are

already receiving service from these facilities without requiring them to become members, and these persons may become members upon the terms as may be prescribed in the bylaws;

(2) assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by financing them, and in connection with these services wire or have wired the premises, and buy, acquire, lease, sell, distribute, install, and repair electric and plumbing appliances, equipment, fixtures, and apparatus;

(3) assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining, and operating electric cold storage or processing plants by financing them or otherwise;

(4) operate a waste heat distribution system;

(5) operate a heating distribution system that was in existence on the effective date of this Act.

* Sec. 3. AS 10.25.070 is amended to read:

Sec. 10.25.070. BYLAWS. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger, or consolidation. Thereafter the district delegates in cooperatives having three or more districts that are not connected by a road system to another district of the cooperative may adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the district delegates voting on the adoption, amendment, or repeal at a meeting of the district delegates. In all other cooperatives the members shall adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the members voting on the question [ADOPTION, AMENDMENT, OR REPEAL EITHER AT A MEETING OF THE MEMBERS OR

BY MAIL BALLOT WITHOUT A MEETING]. The bylaws shall set out the rights and duties of members, district delegates, and directors and may contain other provisions for the regulation and management of the affairs of the cooperative consistent with this chapter or with the articles of incorporation of the cooperative.

* Sec. 4. AS 10.25.080 is amended to read:

Sec. 10.25.080. MEMBERS. (a) Each incorporator of a cooperative shall be a member of the cooperative or of another cooperative that is a member of it. A person may not become a member unless that person agrees to use electric energy, or telephone service, or other services furnished by the cooperative when they are made available through its facilities.

(b) Membership in a cooperative is not transferrable, except as provided in the bylaws. The bylaws may

(1) prescribe additional qualifications and limitations on membership;

(2) require membership as a condition of obtaining service from the cooperative;

(3) provide for termination or suspension of membership; however, a membership may not be terminated unless procedures for termination are contained in the bylaws.

* Sec. 5. AS 10.25.100 is amended to read:

Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise provided in this chapter, written notice stating the time and place of each meeting of the members or district delegates [AND, IN THE CASE OF A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS CALLED,] shall be given to each member or district delegate, either personally or by mail, not less than 20 days nor more than 40 days before the date of the meeting. Notice of a special meeting of the

members, together with notice of the purpose for which the meeting is called, shall be given to each member or district delegate, either personally or by mail, not less than 90 days or more than 120 days before the date of the meeting. If mailed, notice is considered given when it is deposited in the United States mail with postage prepaid addressed to the member or district delegate at the address of the member or delegate as it appears on the records of the cooperative.

* Sec. 6. AS 10.25.120 is amended to read:

Sec. 10.25.120. VOTING. Each member is entitled to one vote on each matter submitted to a vote of the membership [(1) AT A MEETING OF THE MEMBERS OR (2) BY MAIL BALLOT PERMITTED BY AS 10.25.070]. Each member of a district is entitled to one vote on each matter submitted to a vote at a district meeting. A member may not vote by proxy but may vote [VOTING AT A MEETING SHALL BE IN PERSON, BUT], if the bylaws so provide, [MAY ALSO BE] by mail.

* Sec. 7. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.125. RECORD DATE. To determine the members entitled to notice of a meeting of the members or to vote on a matter that is to be submitted to a vote of the members, or for any other proper purpose, the board of directors may fix in advance a date as the record date for the determination. If a record date is not fixed for the determination of members entitled to notice of a meeting or to vote on a matter, the date on which notice of the meeting or of mail voting is first mailed is the record date. When a determination of members entitled to vote at a meeting is made, the determination applies until the meeting is adjourned sine die.

* Sec. 8. AS 10.25.140 is amended to read:

Sec. 10.25.140. BOARD OF DIRECTORS. The business of a cooperative shall be managed by a board of not less than five directors,

each of whom shall be a member of the cooperative or of another cooperative which is a member of it. The bylaws shall prescribe the number of directors, their qualifications other than those prescribed in this chapter, and the manner of holding meetings of the board of directors and of electing successors to directors who resign, die, or are otherwise incapable of acting. The bylaws may provide for the removal of directors from office for cause and for the election of their successors. Directors may not receive salaries for the services as directors and, except in emergencies, shall not receive salaries for their services in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for each day of attendance at a meeting of the board of directors and at a meeting while officially representing the cooperative [EACH MEETING OF THE BOARD OF DIRECTORS] and may provide for insurance and reimbursement of actual expenses incurred while performing duties as a director [OF ATTENDANCE].

* Sec. 9. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a) A protected person is not individually liable for conduct performed within the scope of the person's duties for the cooperative. However, the protected person may be held individually liable for conduct if it was not reasonable for the person to believe that the conduct was in, or not contrary to, the best interests of the cooperative.

(b) Unless prohibited by the articles of incorporation or bylaws, the cooperative shall indemnify a protected person who is or may be made a party to a contested matter against expenses actually and reasonably incurred in connection with the contested matter. However, the cooperative may not indemnify the protected person if the person did not reasonably believe the conduct to be in, or not opposed to,

the best interests of the cooperative. With respect to a criminal action or proceeding, the cooperative shall indemnify a protected person unless the person had reasonable cause to believe that the conduct was unlawful.

(c) A cooperative may purchase and maintain insurance on behalf of a protected person against liability asserted against the protected person and incurred in an official capacity or arising out of the person's status, whether or not the cooperative would have the power to indemnify the person against the liability under this section.

(d) In this section

(1) "conduct" includes action, inaction, and omission;

(2) "contested matter" means a proposed, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;

(3) "expenses" include attorney fees, judgments, fines, and amounts paid in settlement;

(4) "protected person" means a director, officer, employee, or agent of a cooperative.

* Sec. 10. AS 10.25.150 is amended to read:

Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of a cooperative named in articles of incorporation, consolidation, merger, or conversion hold office until the next annual meeting of the members and until their successors are elected and qualify. [AT EACH ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE, THE MEMBERS SHALL ELECT DIRECTORS TO HOLD OFFICE UNTIL THE NEXT ANNUAL MEETING OF THE MEMBERS, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER.] Each elected director holds office for the term for which elected and until a successor is elected and qualifies.

* Sec. 11. AS 10.25.160 is amended to read:

Sec. 10.25.160. STAGGERED TERMS OF OFFICE FOR DIRECTORS. Instead of electing all directors annually, the bylaws may provide that directors shall be elected for terms not to exceed three years, or until their successors are elected and qualify, and that the terms of directors shall be staggered so that one-third of the directors, or a number as close to one-third as possible, shall be elected [AT] each year [ANNUAL MEETING].

* Sec. 12. AS 10.25.175(a) is amended to read:

(a) A meeting of the board of directors may be attended by members of the cooperative. Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote. The board of directors may conduct a meeting by teleconference or similar communications equipment. This section applies only to a meeting at which a quorum of the board participates.

* Sec. 13. AS 10.25.175(c) is amended to read:

(c) The following excepted subjects may be discussed in an executive session:

(1) matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative;

(2) subjects that tend to prejudice the reputation and character of a person, including information concerning a member's financial record; however, the person may request a public discussion;

(3) matters discussed with an attorney for the cooperative, the immediate knowledge of which could have an adverse effect on the legal position of the cooperative;

(4) labor negotiations and personnel matters;

(5) matters specifically exempted from disclosure by law,

the articles of incorporation, or the bylaws;

(6) bids, trade secrets, or other confidential commercial information;

(7) discussion of litigation by or against the cooperative.

* Sec. 14. AS 10.25.175(e) is repealed and reenacted to read:

(e) A member affected by action taken contrary to this section may bring a suit in the superior court. The court may order appropriate equitable relief after considering the circumstances of the case. Action taken contrary to this section is not void if other equitable relief is available and appropriate.

* Sec. 15. AS 10.25.235 is amended to read:

Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section. The cooperative may withhold books and records concerning subjects that may be discussed in executive session under AS 10.25.175(c).

* Sec. 16. AS 10.25.240 is amended to read:

Sec. 10.25.240. MERGER. One or more cooperatives, each [HEREINAFTER] designated in this section as "merging cooperative," may merge into another cooperative, [HEREINAFTER] designated in this section as "surviving cooperative," by complying with the following requirements.

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger shall be submitted to [A MEETING OF] the members of each merging cooperative and of the surviving cooperative. The notice [OF THE

MEETING] shall have attached to it a copy of the proposed articles of merger.

(2) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each cooperative voting on them [AT THE MEETING], articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its president or vice president and its seal shall be affixed by its secretary.

* Sec. 17. AS 10.25.260 is amended to read:

Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, [HEREINAFTER] designated in this section as "consolidating cooperative," may consolidate into a new cooperative, [HEREINAFTER] designated in this section as the "new cooperative," by complying with the following requirements:

(1) The proposition for the consolidation into the new cooperative and proposed articles of consolidation shall be submitted to [A MEETING OF] the members of each consolidating cooperative. The notice [OF THE MEETING] shall have attached to it a copy of the proposed articles of consolidation.

(2) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting on them, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed and attested by its secretary.

* Sec. 18. AS 10.25.320 is amended to read:

Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS

COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business may be dissolved in the following manner.

(1) The proposition to dissolve shall be submitted to the members of the cooperative [AT AN ANNUAL OR SPECIAL MEETING]. The notice shall state [SET FORTH] the proposition.

(2) The [AT THE MEETING THE MEMBERS SHALL APPROVE, BY THE] affirmative vote of not less than two-thirds [A MAJORITY] of all members of the cooperative is required to approve [,] the proposition to dissolve the cooperative.

(3) Upon approval, a certificate of election to dissolve, hereafter designated the "certificate," executed and acknowledged on behalf of the cooperative by its president or vice president under its seal, attested by its secretary, shall be submitted to the commissioner for filing together with an affidavit by the officer executing the certificate stating that the statements in the certificate are true. The certificate shall state the name of the cooperative, the address of its principal office, and that the members of the cooperative have voted to dissolve the cooperative.

* Sec. 19. AS 10.25.400 is amended to read:

Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROPERTY. A cooperative may not otherwise sell, lease, or dispose of more than 15 percent of the cooperative's total assets, less depreciation, as reflected on the books of the cooperative at the time of the transaction [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the transaction is authorized by the affirmative vote of not less than two-thirds [A MAJORITY] of all the members of the cooperative. However, notwithstanding a provision of this chapter or any other provision of law, the board of directors may, upon the authorization of a majority of those members of the cooperative voting on the issue in an

election in which at least 10 percent of the eligible members return ballots [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or to the state [OR TO THE HOLDER OF ITS PROPERTY TO ANOTHER COOPERATIVE OR TO THE HOLDER OF AN EVIDENCE OF INDEBTEDNESS ISSUED TO THE UNITED STATES OF AMERICA OR AN AGENCY OR INSTRUMENTALITY OF IT].

* Sec. 20. AS 10.25.400 is amended by adding new subsections to read:

(b) Before a vote on authorization for the disposition or sale of more than 15 percent of the total assets of the cooperative, the board of directors shall

(1) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property; the first proposed buyer shall advance to the cooperative money sufficient to pay for the appraisals;

(2) notify all cooperative members, at least 90 days in advance, of a vote on disposition of cooperative property; the notice must contain detailed proposals for disposition of the property;

(3) at least 90 days before the vote, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal of the property;

(4) at least 30 days before the vote, mail to all members any alternate proposals made by another cooperative, or by cooperative members if an alternate proposal signed by at least 50 members has been submitted to the board, together with any recommendation that the board has made; and

(5) place each proposal for which notice has been given on the ballot.

(c) This section does not apply to the transfer of cooperative property under AS 10.25.240 - 10.25.300.

* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

R

April 21, 1988

MEMORANDUM

TO: Representative John Sund

ATTN: John Hartle

FROM: Ginny Fay
Legislative Analyst

RE: Electric and Telephone Cooperatives: Sectional Review of House Bill 394
Research Request 88.241

You asked us to identify the effects of House Bill 394-An Act relating to electric and telephone cooperatives (attached). In answering this request, this memorandum briefly discusses each section of the bill.

House Bill 394 has two primary objectives--1) it sets up a procedure for a private corporation to acquire or merge with a cooperative utility, and 2) it clarifies inconsistencies in the Electric and Telephone Cooperative Act and provides the statutory authority for technological advances and activities currently undertaken by cooperatives. In other states, there has been an increasing occurrence of acquisition of cooperative utilities by larger private corporations; much of HB 394 is in response to this perceived threat. House Bill 394 establishes a systematic procedure for mergers or acquisitions that assures that the cooperative membership has an opportunity to vote on the disposition of cooperative assets.

The Electric and Telephone Cooperative Act was established in 1959 and has had numerous amendments. House bill 394 cleans up inconsistencies in the the Act resulting from its long history of changes. In addition, there are technological advances and administrative changes--that the cooperative utilities have instituted and state policy allows--for which the bill provides more explicit statutory authority. The following sections of this memorandum provide information on each section of the bill.

Section 1

Section 1 removes reference to AS 10.25.245 in AS 10.05.376(c). Section 25 of the bill repeals AS 10.25.245.

Section 2

Section 2 amends 10.24.010 to allow cooperatives to make donations for the public welfare or for charitable, scientific, or educational purposes. Cooperatives currently make donations which are recoverable in the rates; one example is electric cooperative donations to the Electric Power Research Institute. This amendment would more clearly establish the statutory authority for these types of donations. The Alaska Public Utilities Commission (APUC) has indicated that they have some concerns regarding the interpretation of the language "public welfare" (page 2, line 18).

Section 3

This section disallows the use of cooperative funds to promote or oppose a candidate being considered as a director of a cooperative. This amendment is in response to the belief that an electric cooperative used funds to promote the candidacy of a director from the cooperative's management.

Section 4

Section 4 provides the statutory authority for electric cooperatives to operate a waste heat distribution system (page 3, line 23). Without the assurance of cost recovery in rates, it is unlikely that cooperatives would invest in this relatively new technology. Section 4 also allows electric cooperatives to operate existing heating distribution systems. This amendment would allow the Golden Valley Electric Association (GVEA) to operate the Fairbanks Municipal Utility System (FMUS) heat distribution system if GVEA were to purchase or merge with FMUS.

Section 5

Section 5 pertains to the bylaws of cooperatives and provides that cooperative members can adopt, amend, or repeal the bylaws by an affirmative vote of a majority of the members on a "question." The broadening of the language to question allows for voting to occur by mail, including votes on the potential sale of a cooperative.

Section 6

Section 6 addresses Internal Revenue Service (IRS) requirements that 85 percent of cooperative sales must be to its membership for the cooperative to have tax exempt st[illegible]. The bill allows cooperative bylaws to require membership as a condition for obtaining service. This change assures that the IRS requirement can be met (page 4, line 25-26). Section 6 also provides for the termination or suspension of membership if termination procedures are contained in the cooperative's bylaws. Termination of membership does not, however, imply termination of service. In order to terminate service, fairly stringent procedures under the APUC statutes must be followed (AS 42.05.261).

Section 7

This section provides for a 90-120 day notice period for special meetings of cooperative boards. The inference to special meetings pertains to Section 23 of the bill, which covers the procedures for the sale of cooperatives.

Section 8

Section 8 authorizes voting by mail on any issue coming before the cooperative membership. While voting by mail is currently allowed, this change to the statute makes the voting process less susceptible to legal challenge. It also removes the provision for voting by proxy; proxy voting is unnecessary under the mail voting procedure.

Section 9

To determine the eligibility of members to vote, Section 9 establishes a record date of 90 days before a vote is submitted to the cooperative membership. This section was added to reduce the ability of special interest groups to add members before an election to influence its outcome.

Section 10

Section 10 requires that cooperative bylaws contain provisions for the recall of members of the board of directors. In addition, this section establishes that cooperative board members be paid per diem for each day of meetings rather than for each meeting. The current statute allows cooperative board members to receive multiple per diem for attending more than one meeting on a given day.

Section 11

Section 11 extends the provisions of the recently passed tort reform package--providing nonprofit board members protection from liability law suits--to cooperative board members. The new section of the Act relieves liability for conduct within the scope of board members' duties where no negligence is involved. This aspect of the tort reform package has made recruitment of board members more successful for nonprofit corporations covered by this provision.

Section 12

Section 12 clarifies that all directors are elected. It also removes unnecessary language and allows for the election of board of director by mail.

Section 13

This section clarifies that a meeting is held each year for the election of members of the board of directors.

Section 14

Section 14 establishes that meetings of cooperative boards of directors can be held by teleconference if a quorum exists and notice has been given.

Section 15

Section 15 expands the conditions for executive sessions of the boards of directors. The new conditions include a member's financial record; status of current labor negotiations and personnel matters; matters specifically exempted from disclosure by law; sealed bids, trade secrets, or other confidential commercial information; and discussion of litigation by or against a cooperative. These grounds for executive sessions are similar to those covered by the Alaska open meetings law (AS 44.62.310-312).

Section 16

Section 16 provides for more court discretion for cooperative meetings that are deemed to have not been held openly or with proper notice. Rather than action taken in the improper meeting being automatically voided, the court can grant equitable relief after considering the circumstances of the case. This provision can potentially save cooperatives considerable funds because lengthy or costly meetings would not have to be repeated in their entirety.

Section 17

This section pertains to a member's right to examine cooperative books and records and provides that the cooperative can withhold information concerning specific matters that were prepared during or for an executive session and not subsequently made public by the cooperative. In addition, a cooperative may withhold the identity of public information that was referred to during an executive session. The language of this section is rather broad and potentially allows an umbrella for withholding information from cooperative members.

Section 18

This section allows for mail voting on cooperative mergers rather than requiring voting to occur at meetings.

Section 19

This section specifies that telephone or electric cooperatives cannot merge unless the surviving cooperative complies with all existing labor agreements of the merging cooperatives. This means that the resultant cooperative cannot collectively bargain for one labor contract but instead must honor the conditions of both the merging and surviving cooperatives' labor agreements. This could be a costly provision for cooperatives.

Section 20

Section 20 clearly establishes that a membership vote on cooperative consolidation can be done by mail.

Section 21

Section 21 pertains to the dissolution of cooperatives. It clarifies language and requires cooperatives with fewer than 10,000 subscribers--which is generally equivalent to meters served rather than individual persons--to have a two-thirds affirmative vote of the members for a dissolution. Cooperatives with over 10,000 subscribers require an affirmative vote of the majority of the membership. The subscriber cutoff covers all electric cooperatives in Alaska except the four Railbelt electric cooperatives. This section also allows for a dissolution vote to be conducted by mail.

Section 22

For the purposes of the disposition of cooperative property, this section clarifies "all or a substantial portion of its property" to be more than 15 percent. The 15 percent figure is based on an Alaska Rural Electric Cooperative Association (ARECA) review of recent legislation in other states. Other states' legislation cite 8-25 percent; 15 percent was used as an average. Voting requirements for disposition of a substantial portion of assets are the same as those set forth in Section 21 for cooperative dissolution. In addition, this section allows the sale of cooperative property to the state or another cooperative to be approved by a vote in which at least ten percent of eligible members return ballots. This sale requirement is not as stringent as that required for the sale of cooperative assets to a private corporation because the former is not perceived as a potentially hostile take-over. This section also requires the labor provision set forth in Section 19 discussed above be a condition for the sale of cooperative property.

Section 23

Section 23 establishes a procedure for the disposition or sale of cooperatives. Generally, it requires that before more than 15 percent of a cooperative's assets can be sold, the board of directors must--1) have the property appraised, 2) provide at least 90 days notice to members, 3) notify other cooperatives of proposals for the disposition of property at least 90 days before the membership vote, 4) at least 30 days before the vote, notify members of any alternative proposals, and 5) place each proposal for which notice has been given on a ballot. Section 23 also provides that these requirements apply only to the selling of a cooperative or its assets and not to the merger or consolidation of cooperatives [illegible]er AS 10.25.240-300. ARECA is proposing that "real and personal [illegible] (page 13, line 11) be amended to say "tangible and intangible property" to assure that existing assets such as contracts be covered.

Section 24

This section clarifies that the conditions established by Section 23 do not apply to sales of cooperative property that were approved by the members before the effective date of this Act.

Section 25

Section 25 repeals AS 10.25.245, which was passed in 1980 for the potential merger of Alaska Electric Light & Power Company and the Glacier Highway Electric Association, Inc. Because this section was never used and section 23 establishes a sale procedure with more stringent membership voting requirements, AS 10.25.245 is being repealed. In addition, the repeal of AS 10.25.245 prevents the possibility of a private utility merging with--rather than purchasing--a cooperative under the less stringent voting requirements of this section.

Section 26

This section establishes the Act's effective date to be immediate upon its passage.

* * *

I hope this information is helpful. Please call if you have additional questions.

Attachment

HB

430

General Background: Neighborhood Reinvestment Corporation

- Public Nonprofit Corporation

  Mission: Assist local communities in revitalizing declining neighborhoods for the benefit of local residents. * Goals achieved through development and support of Neighborhood Housing Services.

May provide grant assistance, training and technical assistance for the following strategies.

- The Apartment Improvement Program (AIP): Utilizes a computerized Real Estate Investment Analysis Model to provide financial analysis of the current and projected operations of each building being studied. The model is individually tailored to improve the economic viability of buildings and to finance improvements via tax assessment reviews, increased investment or restructured mortgages.

  Note: Fannie Mae signed an agreement with NHS allowing a lender to provide financing which is then purchased by FNMA.

  Result: 20 AIPs were at work in 17 communities, rehabilitating 13,000 apartment units and triggered direct reinvestment of $75 million by end of 1984.

- Owner-Built Housing: Families are trained to work as a group, investing about 40 hours/week collectively building new homes with their labor as down payment. Neighborhood Reinvestment provides intensive technical assistance, training the local NHSs to serve as a management unit.

- Problem Property Strategies: Designed to address specific barriers to the revitalization process.

  - Rehabilitation and Sale Program: helps NHSs purchase and fully rehabilitate vacant homes for resale to new homeowners.

  - Homeownership Promotion Program: provides counseling and financial assistance to help local tenants purchase and rehabilitate their current residence or nearby home which is vacant or abandoned.

- Neighborhood Commercial Management Program: Working with commercial property owners, assessment and analysis of the commercial district and its market; partnership organization; strategy development and program implementation. Full-time staff of program can market vacant space, package business expansions and property improvements, implement capital improvements, and promote image and vitality of commercial area.

- NHS Insurance Industry Full Partnership: Designed to strengthen the delivery of standard voluntary residential insurance services to NHS neighborhoods. NHS provides an in-house insurance coordinator who provides counseling and outreach services in cooperation with participating agents and companies.

- Residential Energy Conservation Services: Helps to design and field test energy saving strategies that can be integrated with basic NHS services. Comprehensive homeowner counseling. Aimed at low-moderate income.

- Neighborhood Preservation Projects: Designed to identify and pass onto NHSs strategies for preservation, and may provide a modest demonstration grant for a promising project.

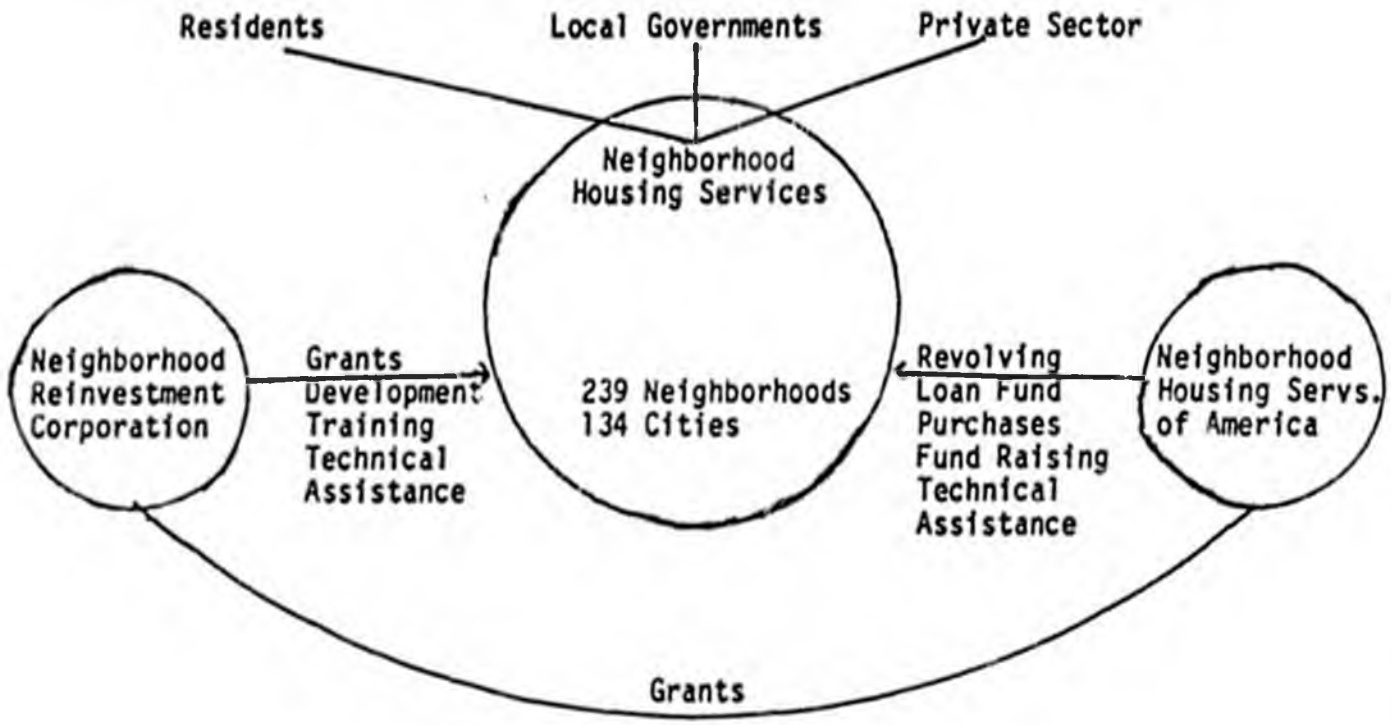
- Mutual Housing Association Demonstration: Patterned after a successful Western European housing form, the association develops, owns, and manages housing in the public interest, offering members a housing option between homeownership and rental and enabling low-moderate income families to acquire a quality home at affordable costs.

National Housing Services of America (NHSA)

A national nonprofit organization created to support establishment of a local NHS. NSA developed and operates a national loan purchase program for local NHS revolving loan funds. RLFs are used for residential and commercial property ownership and/or development. Funds are loaned to those otherwise unable to secure loans. National leverage average: 32 to 1.

Also provides: broad range of organizational development assistance, training and on-site technical services including: (1) executive director orientations; (2) Board of Directors' workshops; and (3) local educational workshops.

THE SYSTEM



Potentially eligible communities: Anchorage, Fairbanks, Nome, Kodiak, Juneau

Others may qualify depending on whether or not they have business districts which can benefit from revitalization efforts.

5478H

Alaska Main Street Program

A program of the National Trust for Historic Preservation.

Provides grants from MAIN STREET Center and from other federal agencies to revitalize downtown.

Provides technical information, design assistance and training to local communities in historic preservation and downtown development techniques.

Central Element: Build public/private partnerships, emphasizing promoters, good design, effective organization and economic reinvesting as tools for downtown revitalization. The program requires a three-year commitment in an incremental approach to produce highly visible, short-term results while creating fundamental changes in downtown's leadership structure and economy.

- Targeted at communities with populations less than 50,000 to spur economic development using historic preservation as a vehicle.

- Mandates cooperation by the public and private sectors.

- Encourages historic preservation or historic compatibility, focusing on a community's unique historic origins. This enables leveraging of state and private monies through federal tax incentives for historic preservation.

- Mainstreet USA then works toward achieving registration of particular structures or area as a historic site; thereby eliminating the need for conformity with the Uniform Building Code.

- Finally, a marketing plan is implemented utilizing public events.

Since 1980, the Mainstreet Center has helped 28 states and almost 350 communities develop downtown revitalization programs.

Potentially eligible communities: Nome, Kotzebue, Seward, Sitka, Ketchikan, Kodiak, Juneau, Fairbanks.

Note: Other communities may be eligible depending upon whether or not they indicate interest and if there is a project for historic preservation around which a downtown revitalization effort can evolve.

HB
450

No. 1

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Bill Version: CSHB 540 (L&C)
Publish Date: HOUSE 3/23/88

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Administration
Title: An act relating to access to an employee personnel file.
BRU: Labor Relations
Sponsor: House Labor & Commerce Committee
Components: Labor Relations
Requestor: House Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Any additional copying required by this bill for this division, or any Executive Branch agency, will either be charged to an employee or absorbed as a nominal increase in copy charges.

Prepared By: Bruce A. Cummings
Phone: 465-4404
Division: Labor Relations
Date: March 21, 1988

Approved by Commissioner: John M. Andrews
Date: 3/21/88
Agency: Department of Administration

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

HB

459

5-1465L
Hein
5/7/88

Original sponsors: Davis, Koponen,
Navarre, et al.

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 459 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

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

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) The following persons are strictly liable for damages to persons or property, public or private, including damage to the natural resources of the state and the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned the hazardous substance and who arranged for disposal or treatment of the substance by another party or entity, or arranged with a transporter to transport the substance for disposal or treatment by another party or entity, at a facility or incineration vessel that contained the substance and that was owned or

operated by the party or entity; and

(4) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by a preponderance of the evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an employee of a third party is in privity of contract with the person who is otherwise liable if the third party or employee and the person

are parties to a land contract, deed, or other instrument transferring title or possession, unless the real property on which the facility in question is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person by a preponderance of the evidence establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes one or more of the following circumstances:

(1) at the time the person acquired the facility the person did not know and had no rational basis for knowing that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a government entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

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

(d) To establish that a person had no reason to know that the hazardous substance was disposed of, on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(e) This section does not diminish the liability of a person who previously owned or operated a facility and who would otherwise be liable; however, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and

a defense under (b)(1)(B) of this section is not available to the person.

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

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

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

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

Sec. 46.03.826. Definitions. In AS 46.03.822 — 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(4) "hazardous substance" means

(A) an element or compound which, when it enters in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; or

(B) oil;

(5) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(6) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(7) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska. (§ 1 ch 122 SLA 1972; am § 22 ch 7 SLA 1986)

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Effect of amendments. — The 1986 amendment in paragraph (3) deleted "owning or" at the beginning of the paragraph and made minor punctuation changes.

Sec. 46.03.828. Other rights of action not affected. The provisions of AS 46.03.822 — 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury. (§ 1 ch 122 SLA 1972)

20 years of drilling

Prudhoe Bay — An environmental gem or lurking problem?

By PATTI EPLER
Daily News reporter

Last 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 file photo

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

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, napthalene 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 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 Alask. 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-8, PRUDHOE

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

wrap 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.

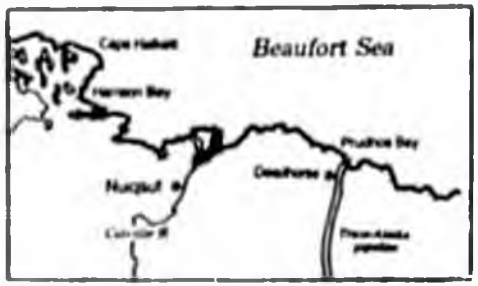
The state has a $25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brossia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has 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 boroughs 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.

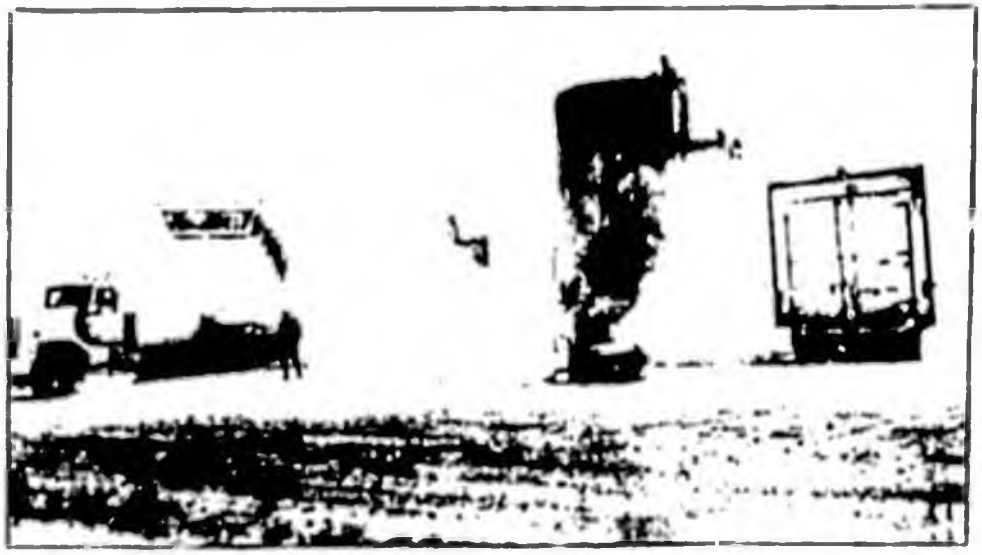
For example, he said, several years ago DEC spent 300 man hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendants were convicted on criminal charges and ordered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

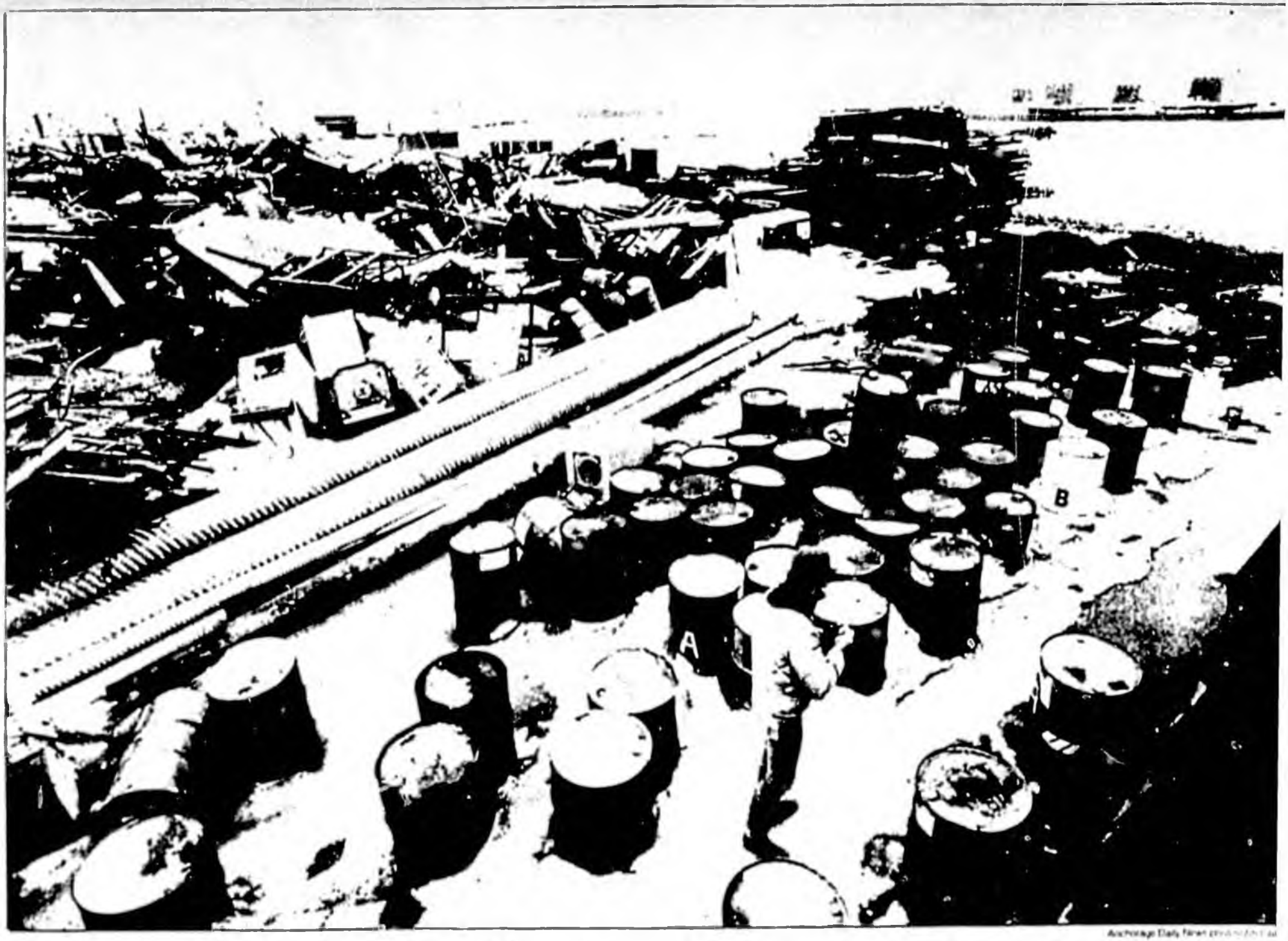
"Everybody is evolving and learning as we go along," said Ben Odom, senior vice president of operations for ARCO Alaska. "This time we do it better. You won't see anything like Deadhorse the next place we go."



At ARCO drilling site 2S, a large vessel is steam cleaned while waste water runs off the pad

before that, they monitored development development is having on fish and wildlife. wastewater and contaminated snow

See Page A-3, PRUDHO



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

DUE FOR A CLEANING IN DEADHORSE

Anchorage Daily News file photo — M. Jarvela

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 Widlife 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.

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]

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[1]Office 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.

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.

---

[2]Ibid., p. 3.

TELECONFERENCE PARTICIPATION

SPONSOR _____

DATE/TIME _____

SUBJECT _____

LIO'S _____
(moderator)

	TESTIFY	OBSERVE
ANCHORAGE		Stephanie Kessler AK Ctr for the Environment
BARROW *		
BETHEL		
DELTA JUNCTION *		
DILLINGHAM *		
FAIRBANKS		
GLENNALLEN *		
JUNEAU		
KETCHIKAN		
KODIAK		
KOTZEBUE		
MAT-SU		
NOME		

	TESTIFY	OBSERVE
PETERSBURG *		
SITKA		
SOLDOTNA		
VALDEZ *		
LTC'S		
HOMER		
WRANGELL		
OFFNETS		
OFF1 Cordova		(Courtney Langdon) Dillingham LCA
OFF2		
OFF3		
OFF4		
OFF5		
OFF6		

VTS'S ON BACK

* SESSION ONLY

VTS'S	U	T	O	TOTAL
AMB - AMBLER				
ANA - ANAKTUVUK PASS				
AND - ANDERSON				
ANG - ANGOON				
CAN - CANTWELL				
CHS - CHISTOCHINA				
CHI - CHITINA				
COP - COPPER CENTER				
COR - CORDOVA				
CRA - CRAIG				
DOT - DOT LAKE				
EAG - EAGLE				
FTY - FT. YUKON				
GAK - GAKONA				
GAL - GALENA				
GAM - GAMBELL				
HNS - HAINES				
HEA - HEALY				
HOO - HOONAH				
HPB - HOOPER BAY				
HYD - HYDABURG				
KAK - KAKE				
KAT - KAKTOVIK				
KEN - KENNY LAKE				
KLA - KLAWOCK				
MEN - MENTASTA				

	U	T	O	TOTAL
MET - METLAKATLA				
MOS - MOSQUITO LAKE				
NAK - NAKNEK				
NEN - NENANA				
NEW - NEWHALEN				
NIK - NIKISKI				
NOR - NOORVIK				
NOT - NORTH TONSINA				
NOW - NORTHWAY				
PEL - PELICAN				
PTH - POINT HOPE				
SAV - SAVOONGA				
SDP - SAND POINT				
SEW - SEWARD				
SLW - SELAWIK				
SHS - SHISHMAREF				
SLA - SLANA				
SKG - SKAGWAY				
STP - ST. PAUL				
TOG - TOGIAK				
TOK - TOK				
OOK - TOOKSOOK				
UAK - UNALASKA				
UNK - UNALAKLEET				
WAI - WAINWRIGHT				
YAK - YAKUTAT				

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* DELIVER TO: LTOGGLE                                    *
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* ORIGINAL                                               *
* SENT:          04/27/88  TIME: 16:04                   *
* FROM:          LTOGGLE                                 *
* SUBJECT:       2ND;S.J.&C.;SR 513,HR 459;4-27          *
* PRINT DATE:    04/27/88  TIME: 16:04                   *
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**** ANCHORAGE PARTICIPANT LIST ****

THE FOLLOWING PEOPLE ARE STANDING
BY TO PARTICIPATE IN TODAYS - TELECONFERENCE:

TO TESTIFY:
1. STEPHANIE KESSLER/ALASKA CENTER FOR THE ENVIROMENT
2. ADRIENNE ANDERSON/NATIONAL CAMPAIGN AGAINST TOXIC HAZARDS
3.
4.

TO OBSERVE:
1.
2.

DRAFT

Site	Election District	Program	Description	Action By	Action Taken	Action Proposed	FY 89 Cost (estimated)
Old Creosote Plant Whittier, AK	HD 6	470	Creosote and waste oil residue beneath this abandoned storage facility	State	AC	CD	
Middleton Island near Cordova	HD 6	DERP	Military station with operational wastes including fuel oil and transformer oil	RP	--	A	
U.S. Army Whittier, AK	HD 6	IRP	Inactive fuel storage site Contamination to soil	RP	A	CDE	
Chitina Cafe Chitina, AK	HD 6	470	Diesel contaminated groundwater	State	AC	CD	
Rainbow Service Station Valdez, AK	HD 6	470	Underground gasoline spill to soil and groundwater	State	--	A	
Cooper Landing Barrel Dumping Cooper Landing, AK	HD 6	470	Barrels of paints and solvents	State	ABC	EF	

Dan Reilly - Chronicle
Considering Elimination of Liability
- problem — imposes strict liability on
response Action contractors —
- Necessary to separate from Liability
1. best interested engineers will provide this required
2. strict liability will not benefit
3 Adopting Standard of fault as a yardstick of negligence.

No. 1

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 459 (RES)
PUBLISH DATE: HOUSE 3/23/88

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:
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

5-1465Ba
Hein

A M E N D M E N T

Offered in the SENATE By Kelly

TO: CSHB 459 (Resources)

Page 4, after line 26:

Insert a new bill section to read:

"* Sec. 2. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.823. CIVIL LIABILITY OF RESPONSE ACTION CONTRACTORS. (a) Notwithstanding other provisions of law, and to the extent not in conflict with federal law, a response action contractor may not be held civilly liable for injuries, costs, damages, or expenses resulting from a release or threatened release of a hazardous substance, except in proportion to the fault of the contractor.

(b) The limitation on liability under (a) of this section does not affect the liability of a person who would otherwise be considered a responsible party under applicable law.

(c) In this section, "response action contractor" means a person, or an employee or subcontractor of a person, who enters into a contract to mitigate or clean up a hazardous substance release."

Renumber following bill section accordingly.

4. LIMITATION OF LIABILITY

SUMMARY AND EXPLANATION

Firms that provide planning and cleanup services at hazardous waste sites (response action contractors or RACs) are often subject to unreasonable and unquantifiable risks in connection with their response action activities. Factors contributing to this liability include the potential imposition of strict, joint and several liability on RACs, current legal trends expanding the rights of individuals to sue for toxic torts, the escalation of toxic tort judgments and the unknown size of the risks at hazardous waste sites. Because of the risks associated with the work, and because many insurance companies are unwilling to provide insurance, the pool of highly qualified and financially responsible RACs who are willing to perform work in the state has been limited.

This Act, entitled "Contractor Limitation of Liability Act" will encourage RACs to use their talents to help cleanup hazardous waste sites in the state by limiting the liability of the RAC with respect to damages resulting from a release or threatened release. This limitation of liability is justified because RACs should not be exposed to unlimited liability for a hazardous waste site when they had no role in and did not benefit from the placement of the waste at the site. By encouraging RACs to perform their services in the state, the law will enable the state to continue its vital role in leading the cleanup of these sites to the highest standard possible.

CONTRACTOR LIMITATION OF LIABILITY ACT

Section 1: Definitions

purposes of this Act:

Response Action Contract. The term "response action contract" means any written ntract or agreement to provide any removal action, remedial action or any valuation, planning, engineering (including surveying and mapping), design, construction, equipment or any ancillary service in connection with the mitigation or cleanup of a hazardous substance or pollutant or contaminant from a facility.

(b) Response Action Contractor. The term "response action contractor" means any person, including the employee or subcontractor of the person, who enters into a response action contract in connection with the mitigation or cleanup of a hazardous substance or pollutant or contaminant from a facility and is carrying out such a contract. This term does not include any person who would otherwise be considered a responsible party under applicable law.

Section 2: Limitation of Liability

No response action contractor shall be liable for any damages, expenses or other liability which results from a release or a threatened release of a hazardous substance or pollutant or contaminant if the release or threatened releases arises out of response action activities, in an amount greater than one million dollars to any person, or three million dollars to all persons for a single occurrence. The limitation of liability of this section shall not:

(a) affect any right of indemnification which such response action contractor has, or may acquire by contract; or

(b) apply to conduct by the response action contractor that was grossly negligent or which constituted intentional misconduct.

Section 3: Effective Date and Applicability

This Act shall take effect immediately and shall apply to:

(a) Response action contracts entered into prior to the effective date of this Act and not completed on the effective date of this Act; and

(b) Response action contracts entered into after the effective date of this Act.

SECTION-BY-SECTION ANALYSIS

Section 1

The term "response action contract" includes any contract for the provisions of services, such as removal or remedial actions, evaluation, planning, engineering (including surveying and mapping), design, construction, equipment or other services, in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance, pollutant or contaminant.

The term "response action contractor" applies to both the prime contractor and the subcontractor performing services pursuant to a response action contract. While the definition of the term "response action contractor" is intentionally broad, this Act does not affect a person's underlying liability. Therefore, this definition explicitly provides that the term does not include any person who would otherwise by considered a responsible party under applicable law.

Section 2

This section places a limit on the liability of response action contractors for damages, expenses or other liability resulting from the release of a hazardous substance or pollutant or contaminant. This limitation of liability is justified for several reasons. First, it will encourage RACs to agree to perform their services in the state without the fear of being exposed to unreasonable liability. Second, it makes clear the difference in liability between the RAC, who is the firm performing a useful public service in helping to clean up the state hazardous waste sites, and the person responsible for creating the hazardous site. The person responsible for the hazardous waste will remain liable for all damages caused by the release or threatened release.

The enactment of this law will not leave persons injured by a release without recourse. While the RAC will only be liable for a certain amount of the total injury, the persons ultimately responsible for the hazardous waste site will be liable for all amounts in excess of the limitation. The limitation of liability only applies to injuries caused by a release or threatened release arising out of response action activities. It does not apply if the RAC has been grossly negligent or engaged in intentional misconduct.

Finally, this section makes clear that the liability limitation does not affect any right of indemnification the RAC may have against any party.

Section 3

The final section of the Act states that the Act becomes effective immediately. It also provides that the limitation of liability established in Section 2 applies to all future response action contracts as well as the existing, ongoing response action contracts.

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: All House Members

FROM: Rep. Mike Davis

RE: HB 459, Liability for hazardous substance releases

DATE: April 11, 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.

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 would 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.

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 250
PUBLISH DATE : 2/23/88

FISCAL NOTE

REQUEST:

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

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
Division : Commissioner's Office
Phone : 465-2600
Date : 2/23/88

Approved by Commissioner :
Agency : DEC
Date : 2/23/88

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

page ____ of ____

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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

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

February 23, 1988

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 substances

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
Douglas K. Mertz
Assistant Attorney General

DKM/dlm
cc: Hon. Dennis Kelso
Commissioner, ADEC

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

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).

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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PHONE: (907) 465-3600

April 28, 1988

Honorable Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB459 (Res), relating to liability for releases of hazardous substances

Dear Senator Kelly:

On behalf of the Department of Environmental Conservation, I would like to comment on the possibly erroneous impression of the effects of HB 459 left by Mr. Ray Plummer after his testimony on the bill yesterday. We would have given you these comments at the time except that the hearing was continued until tomorrow due to the lateness of the hour.

Mr. Plummer stated that HB 459 was not needed due to the existing strict liability provision in AS 46.03.822. The problem is not with the existing strict liability provision, but with the fact that current law lacks detailed provisions on what persons are liable in what situations. Under the existing statute, those details are left almost totally to the courts to construct, rather than being provided by the legislature. We are left in a state of legal uncertainty as to many points, which must be resolved case-by-case in the courts unless the legislature makes the policy decisions through a detailed bill like HB 459.

Mr. Plummer also stated that the bill would change existing law by making liability joint and several. In fact, joint and several liability is the law now under the federal Comprehensive Environmental Response, Compensation, and Liability Act, and has been the law in Alaska until recent changes in the tort laws. HB 459 would merely bring Alaska's law into uniformity with federal laws, so that both state and federal courts would apply the same rules for assessing liability.

Finally, as to Mr. Plummer's assertion that a seller of a hazardous substance in the normal course of business could be liable for a release by the buyer, he is simply in error. Unless the seller is disposing of a waste product, it would not bear continued responsibility for misuse of the product by the buyer. None of the categories of potentially liable persons in the bill would fit the situation you described in your hypothetical. Once again, those categories of liable persons are drawn largely from the federal law and are already applicable in the federal courts here.

Thank you for the opportunity to make these views known.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Douglas K. Mertz
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

Representative Dick Shultz

Alaska State House of Representatives
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4940
Home: P.O. Box 487 • Tok, Alaska 99780

Member
House Resources Committee

M E M O R A N D U M

TO: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee

FROM: Representative Dick Shultz DS

DATE: April 15, 1988

RE: House Bill 459

House Bill 459 "relating to liability for release of hazardous substances" was referred to your committee today. It has a further referral to the Judiciary committee.

I would appreciate it if you would hold this bill until I receive additional information from the Department of Environmental Conservation addressing some concerns that I had. Specifically, there are many questions concerning land fills that have not been answered.

When I receive the information from the Department, I will share it with you and then you can do as you wish with the bill.

Consideration of this request would be most appreciated. Thank you.

DS/spp

HB

523

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: the Senate Labor and Commerce Committee

FROM: Rep. Steve Frank

RE: House Bill 523 - recycled products

DATE: April 6, 1988

House Bill 523 would statutorily recognize recycled products under the state product preference code and extend the recycled preference to include municipalities and municipal school districts.

While recycled products would probably fall under the state's existing Alaska Product Preference Code, I believe it is important to singularly identify them in state law. Presently, the only recycling operation in the state is located in Fairbanks; however, other such businesses would undoubtedly spring up depending on the success of recycling.

A second aspect of this legislation is to include municipalities and municipal school districts in the recycled product preference. Since the state and local governments are major purchasers of goods and services, we think that it is appropriate for them to make an extra effort to purchase Alaska recycled products when those products are " of comparable quality, of equivalent price, and appropriate for the intended use." The preference would statutorily vary from 3% to 7% based on added value of the end product; however, in most cases it should be 7%.

Recycling waste materials is prudent and timely. Currently, approximately 30 states either have existing recycled products preferences or are considering them. This industry can create new jobs for Alaskan workers. For example, the Fairbanks North Star Borough land fill was recently contracted to a private businessman who is recycling municipal garbage. The number of employees at that operation increased from nine, under Borough management, to twenty-five now that the plant is recycling.

Encouraging the use of recycled products through state and local purchase preference will give the industry a boost that will help recycling become a reality throughout Alaska.

Thank you for your consideration.

NSWMA

National Solid Wastes Management Association

March 15, 1988

Dear State Legislator,

Municipal solid waste disposal has become a significant issue for many public officials around the country. As our nation's disposal capacity decreases, these officials face tough choices about how to manage dwindling landfill space and other resources. Increasingly, you and your colleagues in state legislatures elsewhere may be called upon to participate in such discussions and to make important policy decisions.

To assist in this process, NSWMA has prepared a series of bulletins entitled "Facts on File," which focus on waste management and disposal questions. These bulletins, which will be sent to you periodically, are designed to provide unbiased, accurate information about major subjects of public debate. Future topics include:

- Recycling: What does it mean and how does it work?
- Hazardous Waste Disposal--A State Scorecard.
- The Waste-to-Energy Option.

NSWMA is a trade association representing the private waste services industry in the U.S. and Canada. Our 2,800 members include refuse collectors, landfill and resource recovery operators, recyclers, equipment manufacturers, etc. These members are organized into 28 state chapters which play an active role in the legislative process. In addition to our technical and professional staff in Washington, we maintain eight field offices throughout North America.

If you would like additional information about the waste disposal industry, please don't hestitate to contact me.

Sincerely,

Joe Pattok
Deputy Director, State Affairs

NSWMA FACTS: ON FILE

Vol. 1, No. 1
March 1, 1988

National Solid Wastes Management Association

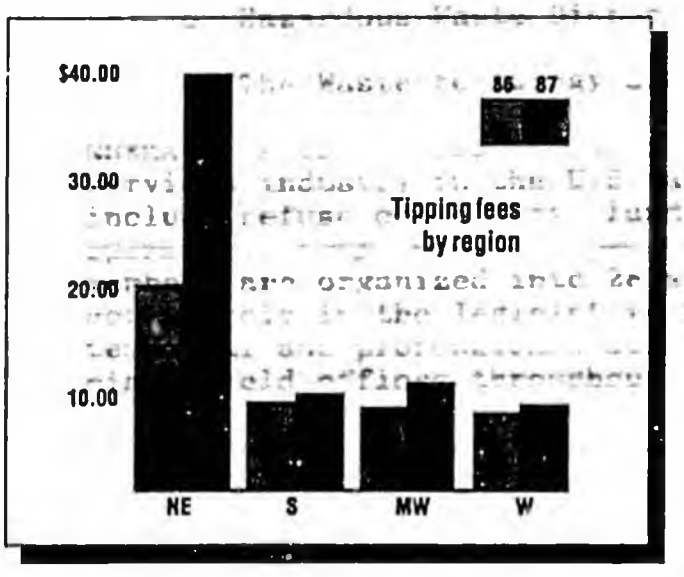
National tipping fee results

The rising cost of refuse disposal

Tipping Fee Survey—Regional Averages for Landfills

	1986	1987
Northeast	$20.59	$39.23
South	$10.95	$12.27
Midwest	$10.66	$12.71
West	$10.01	$10.75
Nation	$13.43	$20.36

- Solid waste disposal costs are higher in the Northeast than in other regions and continue to rise at a faster pace. According to a recent survey of tipping fees conducted by the National Solid Wastes Management Association, northeastern landfills charged an average of $39.23 per ton in 1987 — an increase of 52% over two years.* Around the country, average landfill fees rose by 43% to $20.36/ton. Although some refuse is burned in waste-to-energy plants, landfills still receive about 85% of the nation's total.



- Regional disparities among individual states are significant. Here are some representative examples:

	$/ton		$/ton
California	9.50	Michigan	12.00
Colorado	7.50	Minnesota	26.75
Connecticut	60.00	New Jersey	30.84
Florida	25.00	New York	55.58
Georgia	10.50	Ohio	10.80
Iowa	4.00	Pennsylvania	25.00
Illinois	11.00	Tennessee	6.48
Indiana	13.50	Texas	9.00
Maryland	35.00	Wisconsin	12.50
Massachusetts	65.00		

- **Why are disposal costs rising?**
At present, every man, woman and child in the U.S. produces over half a ton of garbage per year — around 3.5 pounds each day. Unfortunately, as the volume of waste grows, disposal capacity around the country has declined. Faced with intensified concern about groundwater contamination, for example, local officials rarely approve the construction of new or expanded facilities. As a result, according to the U.S. Conference of Mayors, more than half of our cities will have exhausted their landfill capacity within ten years.

One result is that some communities — primarily on Long Island and in northern New Jersey — must now send their wastes to distant disposal sites in other regions. The cost of this procedure, which often requires building transfer stations to collect refuse for shipment, is extremely high: $75 to $125 per ton. Until additional landfills and resource recovery plants are built, such problems are unlikely to be resolved.

- **Are landfills safe?**
Properly designed and maintained facilities safeguard the environment by isolating and containing waste. Such facilities often include protective liners to pre-

* *"Tipping fees" are the price which trash haulers pay to unload at disposal facilities.*