

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5977 HOUSE RESOURCES

381



Anchorage Daily News photo by Rich Cormack

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

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

Continued from Page A-1

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

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

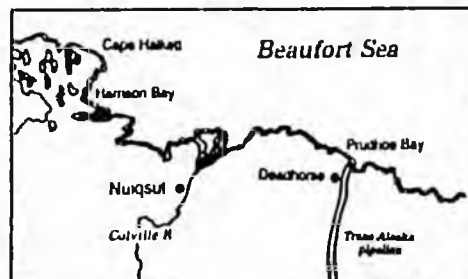
The state has a \$25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brossia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has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

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

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

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

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



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

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

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

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

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

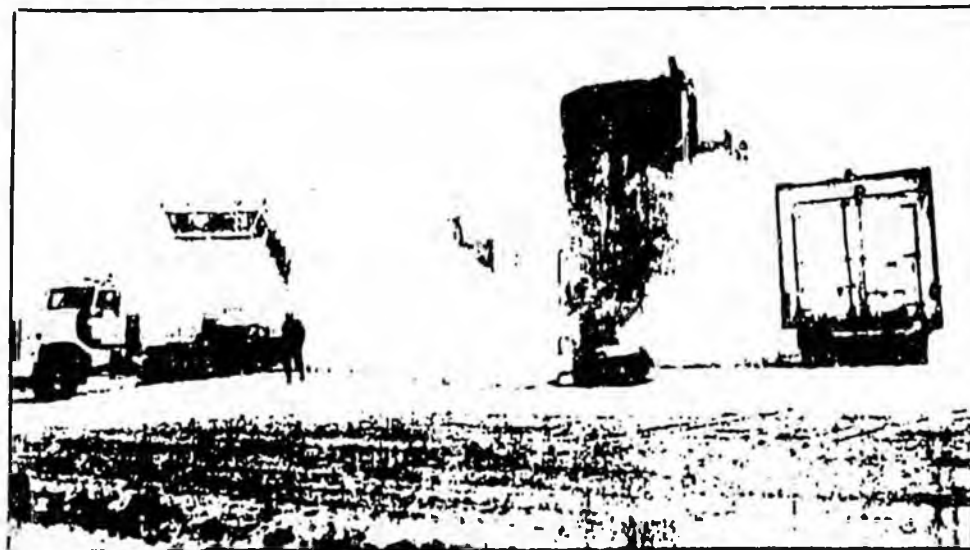
For example, he said, several years ago DEC spent 300 man-hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendant was convicted on criminal charges and ordered 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. "The next time we do it better. You won't see another Deadhorse the next place we go."



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

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

Continued from Page A-1

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

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

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

from offices in Anchorage, Fairbanks and Seattle.

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

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

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

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

OILY WASTES

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

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

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

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

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

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

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

Steve Taylor, head of the environmental division of Standard Alaska Production Co., acknowledges that reserve pit construction has not been adequate to prevent leaking. He said new state regulations requiring 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-2 PRUDHOE



before that the monitored development development is having on fish and wildlife.

on, water pollution, wastewater and contaminated snow.

See Page A 9, PRUDHOE



Anchorage Daily News photo/Jim LaFollette

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 photograph. LAVRAKAS

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

Oil companies prepare for visitors

By PATTI EPLER
Daily News reporter

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

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

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

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

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

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

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

See Back Page, DEADHORSE

It's time to clear the air about the effect of tort reform on the environment.

Trial lawyers opposed to Ballot Measure No. 2 would have you believe that this measure poses a threat to our environment. They maintain that if this measure passes, polluters will escape paying for the environmental damage they cause. That's simply not true.

According to the legislature's own independent lawyer, Ballot Measure No. 2 will have *no impact* on Alaska's environmental protection laws. Similarly, it will have *no impact* on federal environmental protection laws.

The truth of the matter is that since 1986, 39 states have passed

some form of tort reform. And on November 8th, it will be your turn to set the record straight.

Ballot Measure No. 2 will make Alaska's liability law more equitable. At the same time it will protect the right of the victim to receive compensation from those who are responsible.

These are the facts. Don't allow a lot of legal double-talk to cloud the issue.



Support tort reform.
Vote for Ballot Measure No. 2 on November 8th.

ATTACHMENT 1 OF 1 PAGES

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Original sponsor: Rules/Governor

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 58 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liability for the release of threatened release of a hazardous substance; recovery of state costs for an oil or hazardous substance release; liability of response action contractors; and providing for an effective date."

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) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality, and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, 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;

(3) in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at

add (2) refer to 3 and rest re-numbered accordingly

the facility or on the vessel immediately before the abandonment;

(4) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(5) a person who owned, controlled, or possessed the hazardous substance and who arranged for disposal, storage, or treatment of the substance by another party or entity, or arranged with a transporter to transport the substance for disposal, storage, or treatment by another party or entity, if the release occurred or was threatened to occur at a facility or vessel that contained the substance and that was owned or operated by another party or entity; and

(6) a person who transported the hazardous substance, or accepted the hazardous substance for transport, to the facility or vessel from which the release occurred or was threatened to occur, if the person selected the facility or vessel, except that this paragraph does not apply to the transport of uncontaminated crude or refined oil.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from strict liability if the person proves *[by clear and convincing evidence] infer preponderance of 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) except as provided under AS 46.03.823(c), an intentional or negligent act or omission of a third party, other than a party or *[employee]* its agents 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

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

4 (C) an act of God; and

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

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

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

11 (c) For purposes of (b)(1)(B) of this section, a third party or
12 employee an agent of a third party is in privity of contract with the person
13 who is otherwise liable, if the third party or employee its agent and the
14 person are parties to a land contract, deed, or other instrument
15 transferring title or possession of the real property on which the
16 facility in question is located, unless that property was acquired by
17 the person after the disposal or placement of the hazardous substance
18 on, in, or at the facility, and the person establishes that the person
19 has satisfied the requirements of (b)(1)(B) of this section and estab-
20 lishes that

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

25 (2) the person is a governmental entity that acquired the
26 facility by escheat, or through another involuntary transfer or acqui-
27 sition, or through the exercise of eminent domain authority by pur-
28 chase or condemnation; or

29 (3) the person acquired the facility by inheritance or

bequest.

1
2 (d) To establish that a person had no reason to know that the
3 hazardous substance was disposed of on, in, or at the facility, as
4 provided in (c)(1) of this section, the person must have undertaken,
5 at the time of acquisition, all appropriate inquiries into the previ-
6 ous ownership and uses of the property consistent with good commercial
7 or customary practice in an effort to minimize liability. For pur-
8 poses of this subsection a court shall take into account

9 (1) any specialized knowledge or experience the person has;

10 (2) the relationship of the purchase price to the value of
11 the property if it were uncontaminated;

12 (3) commonly known or reasonably ascertainable information
13 about the property;

14 (4) the obviousness of the presence or likely presence of
15 contamination at the property; and

16 (5) the ability to detect contamination by appropriate
17 inspection.

18 (e) This section does not diminish the liability of a person who
19 previously owned or operated a facility or vessel and who would other-
20 wise be liable. If the person obtained actual knowledge of the re-
21 lease or threatened release of a hazardous substance at the facility
22 or vessel and subsequently transferred ownership to another without
23 disclosing that knowledge, the person is liable under (a)(2) of this
24 section, and a defense under (b)(1)(B) of this section is not avail-
25 able to the person.

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

1 (g) An indemnification, hold harmless, or similar agreement, or
2 conveyance of any nature is not effective to transfer liability under
3 this section from the owner or operator of a facility or vessel or
4 from a person who might be liable for a release or substantial threat
5 of a release under this section. This subsection does not bar an
6 agreement to insure, hold harmless, or indemnify a party to the agree-
7 ment for liability under this section. This subsection does not bar a
8 cause of action that an owner or operator or other person subject to
9 liability under this section, or a guarantor, has or would have, by
10 reason of subrogation or otherwise against another person.

11 (h) The state or a municipality is not liable under this section
12 for costs or damages as a result of actions taken in response to an
13 emergency created by a release or threatened release of a hazardous
14 substance generated by or from a facility or vessel owned by another
15 person unless the actions taken by the state or municipality consti-
16 tute gross negligence or intentional misconduct.

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

18 Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

19 (a) A person who is a response action contractor with respect to a
20 release or threatened release of a hazardous substance is not civilly
21 liable for injuries, costs, damages, expenses, or other liability that
22 results from the release or threatened release unless the release or
23 threatened release is caused by an act or omission of the response
24 action contractor that is negligent, grossly negligent, or intention-
25 al. To show negligence by a response action contractor, a claimant
26 must show that the acts or omissions of the contractor under the
27 response action contract were not in accordance with generally
28 accepted professional standards and practices at the time the response
29 action services were performed.

1 (b) The liability limitation under (a) of this section does not
2 apply to a response action contractor who would otherwise be strictly
3 liable under AS 46.03.822(a) or any other provision of this chapter or
4 state law had the response action contractor not carried out response
5 actions with respect to the release or threatened release of a hazard-
6 ous substance.

7 (c) The defense provided in AS 46.03.822(b)(1)(B) is not avail-
8 able to a potentially liable person with respect to costs or damages
9 caused by an act or omission of a response action contractor.

10 (d) Except as provided in (c) of this section, this section does
11 not affect the liability under this chapter or under any other state
12 law of a person other than a response action contractor.

13 (e) This section does not affect the liability of a response
14 action contractor that may arise from the response action contractor's
15 failure to comply with the terms or conditions of a response action
16 contract or a remedial action plan approved by the department.

17 (f) This section does not affect the liability of an employer
18 who is a response action contractor with respect to an employee of the
19 employer under any provision of law, including a law related to
20 workers' compensation.

21 (g) In this section,

22 (1) "response action" means an action taken in connection
23 with the mitigation or cleanup of a hazardous substance release or
24 threatened release, including investigation, evaluation, plan develop-
25 ment, mapping and surveying, engineering, design and construction,
26 removal, and equipment provision;

27 (2) "response action contract" means a written contract or
28 agreement to provide response action with respect to a release or
29 threatened release of a hazardous substance, entered into by a person

with

1 (A) the department; or

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

5 (3) "response action contractor" means

6 (A) a person who enters into a response action con-
7 tract with respect to a release or threatened release of a haz-
8 arduous substance and who is carrying out the contract; and

9 (B) a person who is retained or hired by and is under
10 the control of a person described in (A) of this paragraph to
11 provide services related to the response action contract.

12 * Sec. 3. AS 46.03.826(3) is amended to read:

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

19 * Sec. 4. AS 46.03.826(4) is amended to read:

20 (4) "hazardous substance" means

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

27 (B) oil;

28 * Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

1 (8) "facility" includes a

2 (A) building, structure, installation, equipment,
3 well, pit, pond, lagoon, impoundment, ditch, landfill, storage
4 container, motor vehicle, rolling stock, aircraft, or pipe or
5 pipeline, including a pipe into a sewer or publicly-owned treat-
6 ment works;

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

10 (9) "natural resources" means land, fish, wildlife, biota,
11 air, water, ground water, drinking water supplies, and other such
12 resources belonging to, managed by, held in trust by, appertaining to,
13 or otherwise controlled by the state or a municipality;

14 (10) "vessel" means every description of watercraft or other
15 artificial contrivance that is used, or is capable of being used, as a
16 means of transportation on water, or that carries hazardous substances
17 for the purpose of incineration of the hazardous substances.

18 * Sec. 6. AS 46.08 is amended by adding a new section to read:

19 Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE
20 EXPENDITURES. (a) The state has a lien for expenditures by the state
21 from the oil and hazardous substance release response fund or from any
22 other state fund, for the costs of response, containment, removal, or
23 remedial action resulting from an oil or hazardous substance spill,
24 or, with respect to response, costs, the substantial threat of a
25 release of oil or a hazardous substance against all property owned by
26 a person who is determined by the commissioner to be liable for the
27 expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607,
28 or other state or federal law. The lien includes interest, at the
29 maximum rate allowable under AS 45.45.010(a), from the date of the

1 expenditures. The state may file an action in a court of competent
2 jurisdiction in order to foreclose on the lien.

3 (b) A lien established under this section against real property
4 is not effective until

5 (1) a certificate of lien is recorded in the district
6 recorder's office for the district in which the property is located,
7 describing the property and stating the amount of the lien, the name
8 of the owner as grantor, and, if known, the name of the person causing
9 the oil or hazardous substance release; and

10 (2) the commissioner sends a copy of the certificate of
11 lien, by certified mail, to the persons described in (1) of this
12 subsection and to all other persons of record holding an interest in
13 the property.

14 (c) When any amount with respect to which a lien has been re-
15 corded under this section has been paid or reduced, the commissioner
16 shall, upon request of the property owner, issue a certificate dis-
17 charging or partially releasing the lien. That certificate may be
18 recorded in the office in which the certificate of lien was recorded.

19 (d) A person with an ownership interest in property against
20 which a lien is recorded may bring an action in a court of competent
21 jurisdiction to require that the lien be released. The lien may be
22 released to the extent of that person's ownership interest if the
23 court finds that the person is not liable for the expenses incurred by
24 the state in connection with the costs of response, containment,
25 removal, or remedial action resulting from the oil or hazardous sub-
26 stance release or threat of release of oil or a hazardous substance.

27 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POSITION PAPER

HB 68

CONTACT: AMY D. KYLE
465-2600

JANUARY 23, 1989

Title

An Act relating to liability for the release or threatened release of a hazardous substance and to recovery of state costs for an oil or hazardous substance release; and providing for an effective date.

Effect of the Bill

In Sections 1 and 2, the bill would make the state's requirements for liability for releases of hazardous substances explicit. The current statute refers to a "person owning or having control over a hazardous substance . . ." as being strictly liable for a release of that substance. The bill would explicitly expand the coverage of this provision to include other parties that have responsibility for hazardous substances. This includes:

- Those who generate hazardous wastes;
- Those who have control over sites where hazardous substances are released;
- Those who transport hazardous wastes in cases where the transporter also selects the disposal method.

These parties are currently liable under common law, but the proposed statute would clarify this liability and reduce the need for litigation. This is necessary to ensure that the key parties who manage hazardous substances are liable if the substances are released.

In Section 3, the bill would enable the state to file a lien against assets of a responsible party to recover its costs for cleanup of oil and hazardous waste sites, in cases where the responsible party declares bankruptcy. At present, the Department must first secure a judgement through the court and then participate in a bankruptcy proceeding. The bill would not supercede the claims of secured creditors such as mortgage-holders.

Department Position

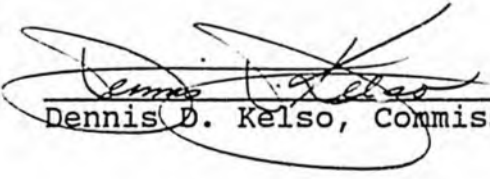
The bill was introduced at the request of the Governor. The Department strongly supports the bill and feels that it is necessary to provide appropriate tools to ensure that hazardous substance releases may be responded to properly. The first two sections of the law incorporate provisions similar to those in the federal "Superfund" law into state law. The third section would implement a recommendation made to the states by the U.S. Supreme Court.

The people of the state are discovering increasing numbers of problems from improper management of hazardous substances. It is imperative that parties who manage these materials take care to keep them out of the state's waters and lands. This will only happen if all the parties who manage hazardous materials are fully responsible for proper management.

This bill would allow the department to ensure that the party responsible for an action such as dumping barrels of hazardous materials on private property or for abandoning a contaminated site and then transferring title, can be held liable. This will provide a powerful incentive for proper management.

Fiscal Effect

There will be no additional costs resulting from this bill. The legislation would reduce State expenditures for cleanup over the long-term, as responsible parties will be footing a greater share of the cleanup bill. The Department has prepared a zero fiscal note.


Dennis D. Kelso, Commissioner

FISCAL NOTE

REQUEST

Revision Date: _____ Agency Affected: DEC
 Title: An Act relating to the liability for BRU: Environmental Quality
the release or threatened release of hazardous substance
 Sponsor: Rules Committee Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Passage of the bill would reduce the demand on the State for funds for cleanup of hazardous substance releases

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: 23 Jan 1989

Approved by Commissioner: [Signature] Date: January 23, 1989
 Agency: Environmental Conservation

Distribution (by preparer):

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

SUMMARY OF PROVISIONS OF HB 68

AN ACT RELATING TO LIABILITY FOR THE RELEASE OR THREATENED
RELEASE OF A HAZARDOUS SUBSTANCE

House Bill 68 has two major provisions:

- * It makes persons who generate hazardous wastes liable for any improper release of these wastes.
- * It allows the state to recover costs for cleanup of hazardous substance releases in cases when parties responsible for the releases declare bankruptcy by filing a lien.

HB 68 combines provisions of two bills that were passed by the House last year. One bill had been introduced by Rep. Davis; the other was introduced at the request of the Governor.

Under current law, a person who owns or has control over a hazardous substance is clearly liable for a release of that substance. The liability of parties who may attempt to escape liability by abandoning, selling or transferring a facility is not clearly stated. The bill would clearly establish the liability of the following entities:

- * The owner or operator of the facility from which the release occurred;
- * A person who abandons a facility at which a release occurred during the time the person owned or controlled the facility;
- * A person who owns a hazardous substance at the time it is delivered to the facility from which a release occurs;
- * A person who owns a hazardous waste and arranges for its disposal;
- * A person who transports a hazardous waste to a disposal site, if that person arranged for the disposal method.

A person may be relieved from liability if the release is caused by a negligent third party or in the event of an act of God or war. There is also an "innocent landowner" provision which relieves liability in cases where a person took steps to ascertain the status of a property and did not identify a spill and in cases of involuntary acquisition of property such as through inheritance.

The second part of the bill (Section 3) gives the state the ability to file a lien against assets of a bankrupt party for the costs of cleanup of a hazardous substance spill. This provision is identical to the one passed by the House last year. The lien would not displace the claim of a secured creditor, but would fall after it.

§ 46.03.820

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§ 46.03.822

WATER, AIR, ENERGY, ETC.

§ 46.03.824

cation. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

(d) After a hearing the department may affirm, modify or set aside the order. An order affirmed, modified or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders. (§ 3 ch 120 SLA 1971)

Sec. 46.03.822. Strict liability for the discharge of hazardous substances. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if the person can prove

(1) that the hazardous substance to which the damages relate entered in or upon the water, surface or subsurface land of the state solely as a result of

(A) an act of war,

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

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that the person discovered the entry of the hazardous substance in or upon the waters, surface or subsurface land of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time. (§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976)

Cross references. — For provision or other persons providing evidence of financial responsibility, see AS 46.04.040(e).
that actions brought under this section may be brought directly against insurers

Sec. 46.03.824. Damages. Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit. (§ 1 ch 122 SLA 1972)

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 "owning or" at the beginning of the paragraph and made minor punctuation changes.

Effect of amendments. — The 1986 amendment in paragraph (3) deleted

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)

§ 46
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HOUSE COMMITTEE REPORT

(9)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-2-89

The RESOURCES Committee recommends that:

HOUSE BILL NO. 68 [RELEASE OF HAZARDOUS SUBSTANCES]

"An Act relating to liability for the release or threatened release of a hazardous substance and to recovery of state costs for an oil or hazardous substance release; and providing for an effective date."

[] be replaced with CS HB 68 (RES) [] the same title
[] a new title

[] have attached amendment(s)

- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- ~~[]~~ zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published: _____
- [] zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[Signature]

[Signature]
Chairman's signature

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 68 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for the release or
7 threatened release of a hazardous substance; recovery
8 of state costs for an oil or hazardous substance
9 release; liability of response action contractors;
10 and providing for an effective date."

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

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

13 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
14 SUBSTANCES. (a) Notwithstanding any other provision or rule of law
15 and subject only to the defenses set out in (b) of this section, the
16 following persons are strictly liable, jointly and severally, for
17 damages to persons or property, whether public or private, including
18 damage to the natural resources of the state or a municipality, and
19 for the costs of response, containment, removal, or remedial action
20 incurred by the state or a municipality, resulting from an unpermitted
21 release of a hazardous substance or, with respect to response costs,
22 the substantial threat of an unpermitted release of a hazardous sub-
23 stance:

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

26 (2) the owner, and the operator, of the facility or vessel
27 from which the release occurred or was threatened to occur;

28 (3) in the case of an abandoned facility or vessel, the
29 owner, the operator, and any other person who controlled activities at

1 the facility or on the vessel immediately before the abandonment;

2 (4) a person who owned or operated the facility or vessel
3 from which the release occurred or was threatened to occur at the time
4 the hazardous substance was received by the facility or vessel;

5 (5) a person who owned, controlled, or possessed the haz-
6 ardous substance and who arranged for disposal, storage, or treatment
7 of the substance by another party or entity, or arranged with a trans-
8 porter to transport the substance for disposal, storage, or treatment
9 by another party or entity, if the release occurred or was threatened
10 to occur at a facility or vessel that contained the substance and that
11 was owned or operated by another party or entity; and

12 (6) a person who transported the hazardous substance, or
13 accepted the hazardous substance for transport, to the facility or
14 vessel from which the release occurred or was threatened to occur, if
15 the person selected the facility or vessel, except that this paragraph
16 does not apply to the transport of uncontaminated crude or refined
17 oil.

18 (b) In an action to recover damages or costs, a person otherwise
19 liable under this section is relieved from strict liability if the
20 person proves

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

23 (A) an act of war;

24 (B) except as provided under AS 46.03.823(c), an
25 intentional or negligent act or omission of a third party, other
26 than a party or its agents in privity of contract with, or em-
27 ployed by, the person, and that the person

28 (i) exercised due care with respect to the haz-
29 ardous substance; and

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

4 (C) an act of God; and

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

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

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

11 (c) For purposes of (b)(1)(B) of this section, a third party or
12 an agent of a third party is in privity of contract with the person
13 who is otherwise liable, if the third party or its agent and the
14 person are parties to a land contract, deed, or other instrument
15 transferring title or possession of the real property on which the
16 facility in question is located, unless that property was acquired by
17 the person after the disposal or placement of the hazardous substance
18 on, in, or at the facility, and the person establishes that the person
19 has satisfied the requirements of (b)(1)(B) of this section and estab-
20 lishes that

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

25 (2) the person is a governmental entity that acquired the
26 facility by escheat, or through another involuntary transfer or acqui-
27 sition, or through the exercise of eminent domain authority by pur-
28 chase or condemnation; or

29 (3) the person acquired the facility by inheritance or

1 bequest.

2 (d) To establish that a person had no reason to know that the
3 hazardous substance was disposed of on, in, or at the facility, as
4 provided in (c)(1) of this section, the person must have undertaken,
5 at the time of acquisition, all appropriate inquiries into the previ-
6 ous ownership and uses of the property consistent with good commercial
7 or customary practice in an effort to minimize liability. For pur-
8 poses of this subsection a court shall take into account

9 (1) any specialized knowledge or experience the person has;

10 (2) the relationship of the purchase price to the value of
11 the property if it were uncontaminated;

12 (3) commonly known or reasonably ascertainable information
13 about the property;

14 (4) the obviousness of the presence or likely presence of
15 contamination at the property; and

16 (5) the ability to detect contamination by appropriate
17 inspection.

18 (e) This section does not diminish the liability of a person who
19 previously owned or operated a facility or vessel and who would other-
20 wise be liable. If the person obtained actual knowledge of the re-
21 lease or threatened release of a hazardous substance at the facility
22 or vessel and subsequently transferred ownership to another without
23 disclosing that knowledge, the person is liable under (a)(2) of this
24 section, and a defense under (b)(1)(B) of this section is not avail-
25 able to the person.

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

1 (g) An indemnification, hold harmless, or similar agreement, or
2 conveyance of any nature is not effective to transfer liability under
3 this section from the owner or operator of a facility or vessel or
4 from a person who might be liable for a release or substantial threat
5 of a release under this section. This subsection does not bar an
6 agreement to insure, hold harmless, or indemnify a party to the agree-
7 ment for liability under this section. This subsection does not bar a
8 cause of action that an owner or operator or other person subject to
9 liability under this section, or a guarantor, has or would have, by
10 reason of subrogation or otherwise against another person.

11 (h) The state or a municipality is not liable under this section
12 for costs or damages as a result of actions taken in response to an
13 emergency created by a release or threatened release of a hazardous
14 substance generated by or from a facility or vessel owned by another
15 person unless the actions taken by the state or municipality consti-
16 tute gross negligence or intentional misconduct.

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

18 Sec. 46.03.8.3. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

19 (a) A person who is a response action contractor with respect to a
20 release or threatened release of a hazardous substance is not civilly
21 liable for injuries, costs, damages, expenses, or other liability that
22 results from the release or threatened release unless the release or
23 threatened release is caused by an act or omission of the response
24 action contractor that is negligent or grossly negligent or consti-
25 tutes intentional misconduct. To show negligence by a response action
26 contractor, claimant must show that the acts or omissions of the
27 contractor under the response action contract were not in accordance
28 with generally accepted professional standards and practices at the
29 time the response action services were performed.

1 (b) The liability limitation under (a) of this section does not
2 apply to a response action contractor who would otherwise be strictly
3 liable under AS 46.03.822(a) or any other provision of this chapter or
4 state law had the response action contractor not carried out response
5 actions with respect to the release or threatened release of a hazard-
6 ous substance.

7 (c) The defense provided in AS 46.03.822(b)(1)(B) is not avail-
8 able to a potentially liable person with respect to costs or damages
9 caused by an act or omission of a response action contractor.

10 (d) Except as provided in (c) of this section, this section does
11 not affect the liability under this chapter or under any other state
12 law of a person other than a response action contractor.

13 (e) This section does not affect the liability of a response
14 action contractor that may arise from the response action contractor's
15 failure to comply with the terms or conditions of a response action
16 contract or a remedial action plan approved by the department.

17 (f) This section does not affect the liability of an employer
18 who is a response action contractor with respect to an employee of the
19 employer under any provision of law, including a law related to
20 workers' compensation.

21 (g) In this section,

22 (1) "response action" means an action taken in connection
23 with the mitigation or cleanup of a hazardous substance release or
24 threatened release, including investigation, evaluation, plan develop-
25 ment, mapping and surveying, engineering, design and construction,
26 removal, and equipment provision;

27 (2) "response action contract" means a written contract or
28 agreement to provide response action with respect to a release or
29 threatened release of a hazardous substance, entered into by a person

1 with

2 (A) the department; or

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

6 (3) "response action contractor" means

7 (A) a person who enters into a response action con-
8 tract with respect to a release or threatened release of a haz-
9 ardous substance and who is carrying out the contract; and

10 (B) a person who is retained or hired by and is under
11 the control of a person described in (A) of this paragraph to
12 provide services related to the response action contract.

13 * Sec. 3. AS 46.03.826(3) is amended to read:

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

20 * Sec. 4. AS 46.03.826(4) is amended to read:

21 (4) "hazardous substance" means

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

28 (B) oil;

29 * Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

1 (8) "facility" includes a

2 (A) building, structure, installation, equipment,
3 well, pit, pond, lagoon, impoundment, ditch, landfill, storage
4 container, motor vehicle, rolling stock, aircraft, or pipe or
5 pipeline, including a pipe into a sewer or publicly-owned treat-
6 ment works;

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

10 (9) "natural resources" means land, fish, wildlife, biota,
11 air, water, ground water, drinking water supplies, and other such
12 resources belonging to, managed by, held in trust by, appertaining to,
13 or otherwise controlled by the state or a municipality;

14 (10) "vessel" means every description of watercraft or other
15 artificial contrivance that is used, or is capable of being used, as a
16 means of transportation on water, or that carries hazardous substances
17 for the purpose of incineration of the hazardous substances.

18 * Sec. 6. AS 46.08 is amended by adding a new section to read:

19 Sec. 46.08.075. LIENS AGAINST PROPERTY AS SECURITY FOR STATE
20 EXPENDITURES. (a) The state has a lien for expenditures by the state
21 from the oil and hazardous substance release response fund or from any
22 other state fund, for the costs of response, containment, removal, or
23 remedial action resulting from an oil or hazardous substance spill,
24 or, with respect to response, costs, the substantial threat of a
25 release of oil or a hazardous substance against all property owned by
26 a person who is determined by the commissioner to be liable for the
27 expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607,
28 or other state or federal law. The lien includes interest, at the
29 maximum rate allowable under AS 45.45.010(a), from the date of the

1 expenditures. The state may file an action in a court of competent
2 jurisdiction in order to foreclose on the lien.

3 (b) A lien established under this section against real property
4 is not effective until

5 (1) a certificate of lien is recorded in the district
6 recorder's office for the district in which the property is located,
7 describing the property and stating the amount of the lien, the name
8 of the owner as grantor, and, if known, the name of the person causing
9 the oil or hazardous substance release; and

10 (2) the commissioner sends a copy of the certificate of
11 lien, by certified mail, to the persons described in (1) of this
12 subsection and to all other persons of record holding an interest in
13 the property.

14 (c) When any amount with respect to which a lien has been re-
15 corded under this section has been paid or reduced, the commissioner
16 shall, upon request of the property owner, issue a certificate dis-
17 charging or partially releasing the lien. That certificate may be
18 recorded in the office in which the certificate of lien was recorded.

19 (d) A person with an ownership interest in property against
20 which a lien is recorded may bring an action in a court of competent
21 jurisdiction to require that the lien be released. The lien may be
22 released to the extent of that person's ownership interest if the
23 court finds that the person is not liable for the expenses incurred by
24 the state in connection with the costs of response, containment,
25 removal, or remedial action resulting from the oil or hazardous sub-
26 stance release or threat of release of oil or a hazardous substance.

27 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
28
29

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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

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

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3600

January 24, 1989

The Honorable Curt Menard
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: HB 68 and Ballot Measure No. 2
Our File No. 661-89-0302

Dear Representative Menard:

You have asked for our opinion on whether HB 68, which concerns strict and joint and several liability for hazardous substances releases, would conflict with the intent of Ballot Measure No. 2 adopted by the voters during the most recent general election. You have also made a generic inquiry regarding legislative repeal or amendment of laws enacted by initiative.

The short answer to your first question is no. The summary response to your second inquiry is that an initiative may not be repealed by the legislature for a period of two years after its effective date, but it may be amended at any time. Our analysis follows.

First, Ballot Measure No. 2 effected two very specific and discrete changes in the manner in which liability and damages for traditional personal injury torts will be assessed: it limits a party's liability to its actual percentage of fault and it repeals a statutory right of contribution among two or more persons who were jointly and severally liable for the tort. ^{1/} Ballot Measure No. 2 did not expressly repeal any other statutory provision concerning strict and joint and several liability. Most pointedly, it is silent on the strict and joint and several liability provisions of AS 46.03.758(e) and other statutes set forth in AS. 46.03 and AS 46.04 concerning oil and hazardous substance releases. For this reason, we do not believe that HB 68 would infringe upon Ballot Measure No. 2.

^{1/} The precise language of Ballot Measure No. 2 amends a portion of AS 09.17.080(d) and repeals AS 09.16.

The Honorable Curt Menard

January 24, 1989

Page 2

Furthermore, the intent of the voters in approving Ballot Measure No. 2 can be ascertained from the arguments made in support of the initiative. In Re Lance W., 694 P. 2d 744, 753 (Cal. 1985). See also Carman v. Alford, 644 P. 2d 192 (Cal. 1982) (election materials helpful in discerning voters' intent); Los Angeles County Transp. Comm. v. Richmond, 643 P. 2d 941 (Cal. 1982) (ambiguities in initiative resolved by referring to arguments in support). In this case, that it a relatively easy task.

The attached advertisement paid for by the coalition supporting Ballot Measure No. 2 unequivocally states that:

Ballot Measure No. 2 will have no impact on Alaska's environmental protection laws.

(emphasis in original). See Attachment 1. In addition, the coalition supporting Ballot Measure No. 2 explicitly agreed with legislative counsel that it would have no effect on state environmental laws. Id. This advertisement is direct evidence of the voters' intent not to affect the liability provisions, including strict and joint and several liability, of state environmental laws. Enactment of HB 68, amending the provisions of AS. 46.03.822, will thus not violate the intent of the voters in approving Ballot Measure No. 2.

As to your second question, section 6 of article XI of the state constitution provides that the legislature may amend a law enacted by initiative, but may not repeal the initiative within two years of its effective date. "[T]he legislature has broad powers to amend an initiative." Warren v. Thomas, 568 P.2d 400, 402 (Alaska 1977)(fn. omitted). There could be a point at which amendment and repeal tend to converge where, for example, "the legislature has exceeded that broad power by passing an amendment which so vitiates the initiative as to 'constitute its repeal'". Supra, 568 P.2d at 402 (citation omitted). 2/ The passage of HB 68, however, does not raise this spectre.

"[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and

2/ The Alaska Supreme Court has reserved judgment on the precise question of when an amendment might constitute a repeal of an initiative. Warren v. Thomas, supra, 568 P. 2d at 404.

The Honorable Curt Menard

January 24, 1989
Page 3

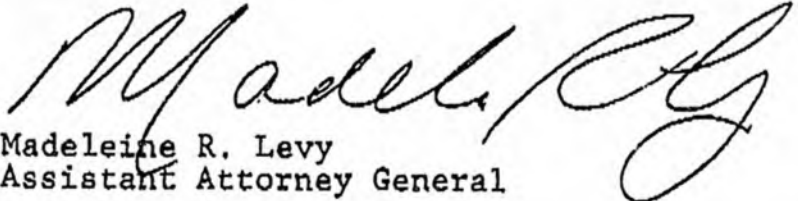
rendered repugnant to, the amendatory act." Id. (citation omitted). Nothing in HB 68 is repugnant to Ballot Measure No. 2. Nothing in Ballot Measure No. 2 is materially changed by HB 68. Ballot Measure No. 2 simply did not address the liability provisions of environmental laws, which is precisely what HB 68 does. Since the subject matter of HB 68 was not even contemplated in the adoption of Ballot Measure No. 2, it can hardly be said to materially change or be repugnant to the ballot measure.

We hope that this adequately responds to your questions. Please feel free to contact us for further information.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Madeleine R. Levy
Assistant Attorney General

MRL:jem

Attachment

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1989

SUBJECT: HB 68 and repeal or amendment of
an initiative (HB 68)

TO: Representative Curt Menard, Co-chair
House Resources Committee

FROM: Terri Lauterbach *TL*
Legislative Counsel

You have asked whether HB 68's amendment of AS 46.03.822(a) to provide for joint and several liability for the release or threatened release of a hazardous substance violates constitutional restrictions on amendment and repeal of initiatives. You have also asked for a general discussion of the extent to which the legislature may amend or repeal a law that has been enacted by initiative.

With regard to HB 68, it is my opinion that its amendment of AS 46.03.822(a) to provide for joint and several liability for damages described by that section does not violate constitutional restrictions on amendment and repeal of initiatives. It has the effect of amending Initiative 87-02 in a permissibly narrow way.

The constitutional provision governing this question is sec. 6, art. XI, Constitution of the State of Alaska, which provides:

SECTION 6. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty

Representative Curt Menard
Page 2
January 18, 1989

days after certification. Additional procedures for the initiative and referendum may be prescribed by law. (Emphasis added.)

The Alaska Supreme Court has addressed the question whether a law may be amended and has shown a tendency to approve amendments quite broadly. Thus a reduction in penalties in an initiated law was approved in Warren v. Thomas, 568 P.2d 400 (Alaska 1977). And, in Warren v. Boucher, 543 P.2d 731 (Alaska 1975), the Alaska Supreme Court acknowledged that the power to amend an initiative was an explicit "check or balance" against the initiative process.

Furthermore, an Attorney General's opinion concluded that the legislature could alter or delete an initiative's requirement that the capital site contain no less than 100 square miles of state land as well as the requirement that the site selected be more than 30 miles from either Anchorage or Fairbanks. Op. Att'y Gen., August 19, 1975.

In my view, the Constitution asks the legislature to give deference to the wishes of the people as expressed in an initiative, at the same time recognizing that an initiative may present policy problems that the legislature may need to resolve. Because the people may not themselves address the difficulties in a particular initiative by amending it but rather must vote it up or down, the constitution permits the legislature to amend it at any time.

The Thomas court suggested that there could be situations in which an amendment so vitiates an act passed by initiative that it constitutes its repeal. In my opinion, that issue is not raised by the amendment in HB 68. The amendment in HB 68 changes the initiative's general rule of several liability with respect to only a limited type of tort action. In being so narrow, the amendment could not be said to vitiate the initiative.

In discussing HB 68, I hope the general parameters of legislative power to amend or repeal an initiative have been clear. The legislature may amend an initiative at any time as long as that amendment does not change the law passed by the initiative so much that it amounts to a repeal of that law. The legislature may repeal an initiative within two years of its effective date.

Representative Curt Menard
Page 3
January 18, 1989

I hope this discussion is helpful to you. If I may be of further assistance, please let me know.

TL:gc
WKG5/105



KENAI PENINSULA BOROUGH

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

DON GILMAN
MAYOR

POSITION PAPER

HB 68 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 68. 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.

The Fifteenth Legislature appropriated \$955,000 in 1988 for identification and clean-up of hazardous waste sites on the Kenai Peninsula. A comprehensive inventory was done to determine the extent of the hazardous waste problem. The first draft includes approximately 200 sites with others still being explored. A few of these are in varying stages of clean-up, others have just been identified.

In many 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 many of these instances, the state or local governments have to bear that cost and responsibility. Of the new sites identified in the inventory, at least three large sites have no responsible party to pay the cost of clean-up, which will begin next summer. The state will pay between \$1,000,000 and \$2,000,000 for those three projects alone.

A specific example of the problem with liability can be found with the Sterling Special Waste Site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned by the Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. The site was not well managed and eventually the company filed bankruptcy

and abandoned it. The borough was then left responsible for clean-up and closure of the site because clear responsibility and liability could not be attached to those companies who generated the waste. That project has so far cost the state and borough taxpayers \$1,108,922 with anticipated future costs of at least \$134,000 for a water monitoring plan.

In order to deal with the increasing occurrences of hazardous waste problems in Alaska, and to ensure proper disposal of future wastes, it is critical that the Sixteenth Alaska State Legislature pass this bill.

HB

76

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: 1-30-89

The RESOURCES Committee recommends that:

HOUSE BILL NO. 76 [FISH & GAME LICENSE AGENTS]

"An Act relating to compensation for, penalties against, and proceeds, fees, forms, and reports transmitted by agents who sell or collect fees for certain licenses, tags, and permits; and providing for an effective date."

[] be replaced with _____ [] the same title
[] a new title

[] have attached amendment(s)

-] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

[] fiscal impact

~~[] zero fiscal note 1-19-89~~

~~[] zero with analysis 1-19-89~~

APPROVES PREVIOUS:

[] fiscal note(s) published:

] zero fiscal notes(s) published:
2 sub - 1-9-89

SIGNING DO PASS:

[Signature]

[Signature]

Richard (Tony)

(Bert) Sharp

Mike Davis

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

[Signature]

Bill Hulse NO REC

[Signature]
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: An act relating to compensation
for, penalties against, proceeds... BRU: _____
 Sponsor: Rules Components: _____
 Requestor: Steve Cowper

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Bill Analysis. Changes in funding due to this transfer are included in the Fish and Game operating budget.

Prepared by: Beverly Reaume *Beverly Reaume* Phone: 465-4120
 Division: Administration Date: 12-16-88
 Approved by Commissioner: Donna Coleman *Donna Coleman* Date: 12-19-88
 Agency: Department of Fish and Game

Distribution (by preparer):

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 76 & EX ORDER 73
PUBLISH DATE: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act transferring issuance of
fishing, hunting, trapping licenses..."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income and Excise Audit
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: See attached analysis.

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: December 19, 1988

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: December 19, 1988

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

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
December 19, 1988

At the time of drafting this fiscal note an executive order was being drafted for Governor Cowper's signature transferring the Fish and Game Licensing Program from Department of Revenue to Department of Fish and Game. To effect the transfer, legislation amending the statutory responsibility is also necessary.

The Department of Revenue supports this legislation transferring the fish and game licensing program to the Department of Fish and Game.

This program consists of the following features:

- 1) coordination of statewide sales of fish and game licenses, tags, permits and duck stamps through over 900 private vendors;
- 2) design and mailout of licenses and forms;
- 3) data capture of monthly, quarterly, and annual sales reports from the vendors;
- 4) processing and deposit of cash receipts;
- 5) reconciliation of vendor reports to cash receipts; and
- 6) paying additional compensation to vendors based upon the number of licenses sold.

To effect the transfer, the Department of Revenue will give the Department of Fish and Game the resources it has allocated to the program. Funding for the resources is being transferred through the Department's budget as a C-4 Transfer within Adjusted Base. Transferred resources include:

- 1) Data processing software and documentation including file layouts, flow chart, program listing, data file tapes, etc., assuring that Fish and Game would convert the data from a Wang file structure to an IBM file structure and the Wang COBOL programs to IBM COBOL programs.
- 2) Transfer of funding will include:

A) Personal Services

The following positions will transfer from the Income and Excise Audit Division with associated funding of \$188.1:

<u>Position</u>	<u>Range/Step</u>	<u>FY 89 Budget</u>
Revenue Licensing Supervisor	16K	\$54.8
Accounting Supervisor I	14J	\$46.7
Clerk Typist II	7B	\$26.9
Accounting Clerk II	9D	\$31.4
Clerk Typist III	8B	\$28.3
		<u>\$188.1</u>

The following position will transfer from the Administrative Services Division with associated funding of \$38.7:

<u>Position</u>	<u>Range/Step</u>	<u>FY 89 Budget</u>
Data Entry Center Supervisor	14A	\$38.7

B) Contractual

The following associated funds will transfer from the Income and Excise Audit Division:

Vendor Compensation:	\$356.6
Printing, Postage, Telephone:	\$36.8
	<u>\$393.4</u>

C) Supplies

The transfer of associated supply funds from the Income and Excise Audit Division Will be \$2.5.

The transfer of associated supply funds from the Administrative Services Division will be: \$.1

SUMMARY OF TRANSFERS:

Personal Services	\$226.8
Contractual	\$393.4
Supplies	\$2.6
Total Transfer:	<u>\$622.8</u>

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

January 26, 1989

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Davidson and Menard:

House Bill 76 and Executive Order 73 are the two final steps necessary to complete the transfer of the responsibility for hunting and fishing license sales from the Department of Revenue to the Department of Fish and Game. Administrative Order 11 issued in July 1988 began the transfer. At present the Department of Fish and Game is selling and accounting for hunting, fishing, and trapping licenses. The transfer from the Department of Revenue to the Department of Fish and Game included the transfer to the Department of Fish and Game of Revenue's FY 89 budget for this program and the transfer of five positions. Unfortunately, funding for the program as operated by the Department of Revenue was never adequate and that remains the case to the present.

The following paragraphs will discuss both the Executive Order and HB 76. The bill is primarily designed to clarify compensation paid to vendors and to enable the department to effectively collect the amounts due from those selling licenses. There apparently have been cases in the past where license vendors have sold hunting and fishing licenses but have not transmitted in a timely manner--and sometimes not at all--proceeds due the state. The bill clearly sets forth the time frame in which such remittances are due to the state and penalties which the department may exact to ensure compliance.

The Executive Order will make the operation of state government more efficient because the transfer of the fish and game licensing function places the function in the department that is responsible for the resource management programs that are partially funded by the license revenue. Also, that department (the Department of Fish and Game) can more efficiently gather the most appropriate information

The Honorable Cliff
Davidson
The Honorable Curt Menard

-2-

January 26, 1989

during the license issuance process to assist in its management functions. The transfer will reduce the number of departments an individual must contact if the individual intends to take fish or game. At the same time, because the Department of Fish and Game has more field offices than does the Department of Revenue, the transfer will probably make the contact more convenient.

In addition, the transfer will enable the Department of Revenue to focus more of its attention and resources on its primary responsibility--collecting revenue owed to our state government.

Sections 1-12 of the Executive Order delete references in AS 16.05.335-16.05.826 to the Commissioner of Revenue and to the Department of Revenue, leaving only references to the "commissioner" and the "department." Those terms are then defined in AS 16.05.940(6) and (7), respectively, as the Commissioner of Fish and Game and the Department of Fish and Game.

Sections 13 and 14, respectively, of the Order delete the power to issue fish and game licenses from the Department of Revenue powers listed in AS 44.25.020 and add it to the Department of Fish and Game powers set out in AS 44.39.020. Section 15 of the Order sets out transition provisions regarding regulations relating to the transferred function.

The only other changes made by the Executive Order are a few housekeeping clarifications in AS 16.05.390 and 16.05.470, and in AS 44.25.020 (Sections 6, 11, and 13 of the Order). No substantive changes, other than the transfer itself, are made by this Order.

Sections 1, 2, and 4 of the related bill amend AS 16.05.390 (concerning vendors of all licenses but commercial fishing licenses) and 16.05.470 (concerning vendors of commercial fishing licenses), to allow penalties to be assessed against license vendors or agents who do not transmit to the Department of Fish and Game, in a timely manner, the license fees that they collect.

Sections 2 and 4 of the related bill also specify that the monthly reports and fee transmittals that are already required from vendors must be made by the last day of the month after fees are collected, unless an alternative schedule is set by contract for vendors covered by AS 16.05.390, or unless an extension is granted for vendors covered by AS 16.05.470.

Finally, Sections 3 and 5 of the related bill delete reference in AS 16.05.460 and 16.05.470 to issuance of

The Honorable Cliff
Davidson
The Honorable Curt Menard

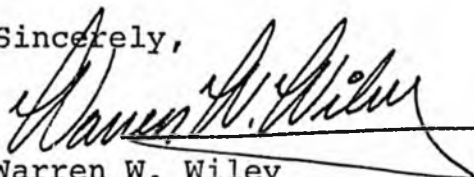
-3-

January 26, 1989

interim-use and entry permits by vendors. This deletion merely eliminates possible confusion and conforms the statute to the reality that private vendors have not issued limited entry permits since 1979.

Representatives from the Department of Fish and Game will be on hand for the Committee's hearing on both the Executive Order and HB 76. We will be prepared to answer any questions at that time. If there is further detailed information the Committee desires before the hearing, I will be happy to provide it.

Sincerely,



Warren W. Wiley
Assistant Commissioner

cc: House Resources Committee Members

HB

78

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 11, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 1-30-90

The RESOURCES Committee recommends that:

HOUSE BILL NO. 78 [CARIBOU CREEK RECREATIONAL MINING AREA]
"An Act establishing the Caribou Creek Recreational Mining Area."

be replaced with CS HB-78 (Resources) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact DNR
- zero fiscal note F+G
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]

[Signature]

Mike Davis

Richard Storey

[Signature]

[Signature]

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Bill Hudson No Rec.

[Signature] No Rec.

[Signature] No Rec.

[Signature]
Chairman's signature



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER CS HB 78	SPONSOR Reps. Larson and Menard
SHORT TITLE OF BILL Caribou Creek Recreational Mining Area			
DEPARTMENT POSITION Support			
PREPARED BY Frank Røe <i>Frank Røe</i>	DATE 1-12-90	COMMISSIONER'S SIGNATURE <i>James H. W. Kelly</i>	DATE 1/22/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Natural Resources Dept. of Environmental Conservation	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial and Sport Fishermen
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL . Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Caribou Creek Recreational Mining Area is proposed to designate an area for recreational placer mining for the public.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill would establish the Caribou Creek Recreational Mining Area on the lower reach of Caribou Creek and a portion of the Matanuska River. These streams have been specified as being important for the spawning, rearing or migration of anadromous fisheries by the commissioner of the ADF&G pursuant to AS 16.05.870(a). The proposed legislation requires that the commissioner of ADNR adopt a management plan and regulations for the management, use and development of the recreational mining area in consultation with the ADF&G. The plan and regulations may address methods of mining permitted, the types of mining equipment that may be used, the protection of habitat, and other restrictions consistent with the purposes stated in AS 41.23.600. The bill further recognizes that the commissioner of the ADF&G is responsible for the management of fish and game within the proposed area and that the commissioner may require seasonal restrictions on operations within the area to maintain fishery resources. The ADF&G has worked with the sponsors on

AMENDMENTS PROPOSED

We recommend the following revisions to the language of the bill.
 Page 1, line 26: "The management plan, including any revisions, and..."
 Page 1, line 29: "The management plan and regulations MAY shall address, but not be limited to..."
 Page 2, line 8: reference to AS 42.23.600 should be changed to AS 41.23.600.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: 1-12-90
Title: Caribou Creek Recreational
Mining Area
Sponsor: Larson and Menard
Requestor: _____

Agency Affected: Dept. of Fish and Game
BRU: Habitat
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	15.8	4.5				
TRAVEL	1.0	1.0				
CONTRACTUAL	1.2	1.2				
SUPPLIES	0.1	0.1				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	18.1	6.8				

CAPITAL	18.1	6.8				
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

There is not expected to be any impact on the department's FY 90 budget. Beginning in FY 91, however, issuance of a general fish habitat permit, monitoring fish returns and mining activities to determine the need for seasonal restriction, and participation in the department of Natural Resources' (DNR) development of a

Prepared by: Frank Ruel Phone: 465-4105
Division: HABITAT Date: 1/26/90

Approved by Commissioner: Harold W. Wilby Date: 1/26/90
Agency: Department of Fish and Game

Distribution (by preparer):

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

Analysis of Bill/Program Effects Cont'd

Location-specific land management plan will require the expenses identified below.

To the extent that DNR's schedule for developing areawide and location-specific land management plans requires that a plan for the Caribou Creek Recreational Mining Area be forestalled, the need for the planning portion of our fiscal note will be delayed commensurately.

Attachment Bill Analysis CS HB 78

FY 91Personnel

Habitat Biologist	(18c)	3 mo.	4.5/mo.	13.5
Clerk Typist	(8a)	1 mo.	2.3/mo.	<u>2.3</u>
				15.8

Travel

Staff Travel to Caribou Creek				1.0
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Contractual

Telephone		75/mo. x 3 mo.		0.2
Charter for Fish Surveys				1.0

Supples

				<u>0.1</u>
		TOTAL		18.1

FY 92-Monitoring Fish Returns and Placer MiningPersonnel

Habitat Biologist	(18c)	1mo.	4.5	4.5
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Travel

Staff Travel to Caribou Creek				1.0
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Contractual

Telephone and Photocopy				.2
Charter for Fish Surveys				1.0

Supplies

				<u>0.1</u>
		TOTAL		6.8

The following amendments are requested:

Pg. 1, line 21:

Delete - "...consistent with AS 41.23.600."

Add - ...necessary to carry out the purposes of this
this act. Regulations may be included, but
not limited to;

1. type of equipment
2. mining methods
3. other restrictions that may benefit the
Caribou Creek Recreational Mining Area.

Pg. 1, line 28:

Delete - "...regulations of the Board of Fisheries
applicable to the area of the Caribou Creek Recreational
Mining Area, the area is open generally to recreational mining
under AS 41.23.600 - 41.23.620."

Add - seasonal regulations by the Department of Fish
& Game restricting activities on these water bodies, the
Caribou Creek Recreational Mining Area is open to recreational
mining.

Pg. 2, line 15:

Delete - "NW 1/4, SW 1/4"

Add - W 1/2

Pg. 2, line 16:

Delete - "SW 1/4"

Add - SE 1/4

Pg. 2, line 24:

Delete -- "...board"

Add - commissioner, under authority granted in
16.05.870,

6-0386H
Bradley
1/29/90

Original sponsor(s): REP. LARSON, Menard

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 78 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Caribou Creek Recreational
7 Mining Area."

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

9 * Section 1. AS 41.23 is amended by adding new sections to read:

10 ARTICLE 3. RECREATIONAL MINING.

11 Sec. 41.23.600. PURPOSE. The purpose of AS 41.23.600 - 41.23.-
12 620 is to establish the area described in AS 41.23.620 as the Caribou
13 Creek Recreational Mining Area. The Caribou Creek Recreational Mining
14 Area is established to provide for a public recreational mining area
15 to permit public recreational activities and to allow other multiple-
16 use activities to continue as long as the activities do not detract
17 from the primary purpose for the establishment of the Caribou Creek
18 Recreational Mining Area.

19 Sec. 41.23.610. MANAGEMENT AND REGULATIONS. (a) The commis-
20 sioner is responsible for the management of the surface and subsurface
21 estate within the Caribou Creek Recreational Mining Area necessary to
22 carry out the purposes of AS 41.23.600. The commissioner shall adopt
23 and may revise a management plan and shall adopt regulations for the
24 management, use, and development of the Caribou Creek Recreational
25 Mining Area.

26 (b) The management plan and regulations adopted by the commis-
27 sioner shall be developed in consultation with the commissioner of
28 fish and game and the commissioner of transportation and public facil-
29 ities. The management plan and regulations may address

1 (1) the methods of mining permitted within the Caribou
2 Creek Recreational Mining Area;

3 (2) the types of mining equipment that may be used within
4 the Caribou Creek Recreational Mining Area;

5 (3) the protection of habitat within the Caribou Creek
6 Recreational Mining Area; and

7 (4) other restrictions consistent with the purposes stated
8 in AS 42.23.600.

9 (c) Except as provided in this subsection, the Caribou Creek
10 Recreational Mining Area is open to recreational mining under AS 41.-
11 23.600 - 41.23.620. The commissioner of fish and game is responsible
12 for the management of the fish and game resources and the public use
13 of fish and wildlife resources within the Caribou Creek Recreational
14 Mining Area consistent with the purposes stated in AS 41.23.600. The
15 commissioner of fish and game may establish seasonal restrictions on
16 mining activities within specified waterbody areas necessary to main-
17 tain fishery resources within the Caribou Creek Recreational Mining
18 Area.

19 (d) The Caribou Creek Recreational Mining Area is closed to
20 mineral entry under AS 38.05.175 - 38.05.275.

21 Sec. 41.23.620. CARIBOU CREEK RECREATIONAL MINING AREA. The
22 vacant and unappropriated state-owned land and water and the state
23 land and water acquired in the future that lie within 100 feet of
24 either ordinary high water or mean high tide of the banks of the
25 creeks or rivers described in this section are designated as the
26 Caribou Creek Recreational Mining Area, are reserved from all uses
27 incompatible with the purposes of AS 41.23.600, and are assigned to
28 the commissioner for control and management:

29 Township 20 North, Range 10 East, Seward Meridian

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- (1) That portion of Caribou Creek located in
 - Section 28: W1/2
 - Section 29: E1/2
- (2) That portion of the Matanuska River located in
 - Section 32: SE1/4
 - Section 33: NE1/4, NW1/4, SW1/4

FISCAL NOTE

REQUEST:

Revision Date: 30-Jan-90 Agency Affected: Natural Resources
 Title: An Act establishing the Caribou BRU: Land & Water
Creek Recreational Mining Area.
 Sponsor: Larson & Menard Components: Land & Water
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	25.5	3.0	3.0	3.0	3.0	3.0
TRAVEL	0.5	0.5	0.5	0.5	0.5	0.5
CONTRACTUAL	53.2	5.5	5.5	5.5	5.5	5.5
SUPPLIES	5.0					
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	84.2	9.0	9.0	9.0	9.0	9.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	84.2	9.0	9.0	9.0	9.0	9.0
FEDERAL FUNDS						
OTHER						
TOTAL	84.2	9.0	9.0	9.0	9.0	9.0

POSITIONS:

FULL-TIME						
PART-TIME		1.0	1.0	1.0	1.0	1.0
TEMPORARY		1.0				

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioners Office Date: 30-Jan-90
 Approved by Commissioner: Lennie Gorsuch Date: 30-Jan-90
 Agency: Department of Natural Resources

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

This fiscal note provides in the first year for six months of a Natural Resource Officer II and 1 month of a temporary Natural Resource Technician II to develop a management plan for the Caribou creek Recreational Mining area. The plan will involve at least two rounds of public meetings in Glacier View, Sutton/Chickaloon, Palmer and Anchorage. The public meetings will be to identify issues and to review the draft plan. The entire plan will be completed in one year. The capital money will be used to build a road pull-off and parking area and appropriate signing.

After the first year the fiscal note provides for three months of a Natural Resource Officer II to provide on the ground management and processing of necessary permits and enforcement of activities.

Caribou Creek Recreational Mining Area Management Plan

Staff	6 months x NRO II (16)	=	\$ 22,500
	1 month x NRT II (12)	=	<u>\$ 3,000</u>
	Personal Services Sub-Total		\$ 25,500
Travel	2 x 1-day field trips =	\$ 200	(mileage + perdiem)
	2 x 3 public meetings =	<u>\$ 300</u>	(mileage and meals)
	Travel Sub-Total	\$ 500	
Public Meetings	2 x 4 communities =	\$ 300	rental in Anchorage, Sutton and Glacier View School
Draft brochure	200 cys @ 8 1/2" x 11", 4pp Xerox BTW	\$ 150	
Final Plan	300 cys, 25pp, BTW Xerox, 8 1/2" x 11"	\$ 750	
Misc. (especially Xerox)		\$ 500	
Ads x 2		<u>\$ 1,500</u>	
	Contractual Sub-Total	<u>\$ 3,000</u>	
	Project Sub-Total	\$29,000	

Assumptions

1. Range 16's time is spread over 8 - 10 month
2. Planing team = DLWM, DM, DFG, DOT, DEC
3. No formal advisory group (I don't know the constituency if one is needed, add \$1,000 for extra meetings and xeroxing)
4. Meetings in Glacier View, Sutton/Chickaloon, Palmer, Anchorage (this may be overkill -- if no interest after 1st round, it could be shortened)
5. 2 sets meetings: Issues and rudimentary alternates draft plan
6. Assumes legal access exists (i.e., no lengthy negotiations w/landowners)
7. This does not include implementation (i.e., vehicle pullout, nice signs, field checks, trails, etc.)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

January 23, 1988

The Honorable Curt Menard
The Honorable Cliff Davidson
Co-Chairs, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representatives Menard and Davidson:

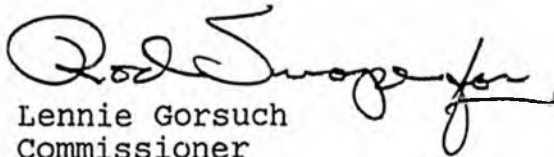
Subject: HB 78, An act establishing the Caribou Creek
Recreational Mining Area.

Background: A recreational mining area will provide a location for recreational gold panners and suction dredges to mine as a recreation activity rather than as a commercial operation. Creation of this type of area would meet a public need. Each summer, the Mining Information Offices receive numerous inquiries about locations for such activities.

Position: The department supports the concept of recreational mining areas. However, the land ownership pattern in this particular area is very complex, and there are federal and state mining claims which would complicate the operation of recreation mining activities.

We look forward to working with the sponsor on this or an equally or more suitable site.

Sincerely,


Lennie Gorsuch
Commissioner

- cc: Committee Members
- Bill Sponsors
- Bob Evans
- Denby Lloyd
- Gary Gustafson
- Jerry Gallagher
- Neil Johannsen

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 78
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 23-Jan-89 Agency Affected: Natural Resources
 Title: An Act establishing the Caribou BRU: Land & Water
Creek Recreational Mining Area.
 Sponsor: Larson & Menard Components: Land & Water
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

AKK

Prepared by: ¹⁵ Larry Ostrovsky Phone: 465-2400
 Division: Commissioners Office Date: 23-Jan-89

Approved by Commissioner: Lennie Gorsuch *GA* Date: 23-Jan-89
 Agency: Department of Natural Resources

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

Alaska State Legislature



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3826 - Palmer
(907) 376-8628 - Wasilla

Representative Ronald L. Larson
District 16B

TO: House Resource Committee members
FROM: Ronald L. Larson *R.L.*
DATE: January 25, 1989
RE: HB 78, Caribou Creek Recreational Mining Area

The Caribou Creek Recreational Mining Area is proposed to establish a designated recreational gold-panning location in the Matanuska Valley. Such a tourist destination could offer a historical activity to occur on state land.

The proposed legislation sets forth the primary purpose of recreational gold mining, yet maintains other compatible multiple-use activities within the area.

The Department of Natural Resources and the Department of Fish & Game are instructed to manage the land, fish, and wildlife resources within the Caribou Creek Recreational Mining Area.

I encourage your suggestions and support of HB 78. Thank you for your time and consideration.

The following amendments are requested:

Pg. 1, line 21:

Delete - "...consistent with AS 41.23.600."

Add - ...necessary to carry out the purposes of this
this act. Regulations may be included, but
not limited to;

1. type of equipment
2. mining methods
3. other restrictions that may benefit the
Caribou Creek Recreational Mining Area.

Pg. 1, line 28:

Delete - "...regulations of the Board of Fisheries
applicable to the area of the Caribou Creek Recreational
Mining Area, the area is open generally to recreational mining
under AS 41.23.600 - 41.23.620."

Add - seasonal regulations by the Department of Fish
& Game restricting activities on these water bodies, the
Caribou Creek Recreational Mining Area is open to recreational
mining.

Pg. 2, line 15:

Delete - "NW 1/4, SW 1/4"

Add - W 1/2

Pg. 2, line 16:

Delete - "SW 1/4"

Add - SE 1/4

Pg. 2, line 24:

Delete - "...board"

Add - commissioner, under authority granted in
16.05.870,

The Anchorage Times

OUTDOOR

Recreational panning pays off in fun, gold

by Mark Stook
Times Writer

Pack a gold pan with your picnic lunch if you're heading out of Anchorage today — or anytime.

It provides an excuse to stop at some waysides you would otherwise cruise past. It's also a cheap way to become part of Alaska's heritage.

Gold can be found in many of the streams accessible by the state highway system, says a man who has prospected for 30 years in Alaska. The recreational panner won't get rich, or even pay for his inexpensive equipment. But he can hope to bring home a few of the glinting flecks that drew thousands to the north country during the past 80 years, says James Madonna, owner of Alaskan Pros-

pectors and Geologists, an Anchorage mining equipment shop.

Madonna has a simple answer for those who wonder where they should pan. "The entire state, with the exception of the North Slope, is considered the gold province of Alaska."

Finding color, or gold flecks, is as simple as pulling over at a wayside and panning the gravel, he said. If the wayside is near a stream where it boils out of the mountains, the likelihood of finding gold is relatively good. The water's force can carry the heavy metal only a certain distance. Where streams slow as they cross flatlands, gold is dropped.

Robert Hoekzema, a geologist with the U.S. Bureau of Mines, suggested panners hike upstream of highways to get away from roadway

gravel washed downstream. Gold would be deposited just downstream of rapids, where the water first begins to slow. Gravel bars are good places to look, as are the gravel deposits around boulders.

Many streams do not carry noticeable amounts of gold. But, say both Madonna and Hoekzema, any areas in mountainous terrain are worth a try.

The National Park Service announced last week that recreational panning is allowed in all national parks in Alaska. Gold claim owners at Crow Creek near Girdwood, and at the Hubbard Mining Museum near Cooper Landing on the Kenai Peninsula, provide the opportunity to pan proven gold ground for a price.

"Gold panning is open everywhere but on a man's claim," Madonna said. When leaving a roadside area to pan, be aware that claims might have been staked along it. Miners can be touchy about recreational panners. The gold they take isn't a problem. Vandalism of equipment, liability and interruption of professional mining operations are problems. If you're interested in panning on a staked claim, talk to the claim holder first.

Certain basic equipment is needed to find any flecks. Pans are either dark-colored plastic or steel. Madonna recommends 14- or 16-inch steel pans. "If you throw your spare tire on top of a plastic pan, it breaks."

The dark plastic often is popular with miners because bright gold shows up more readily in it. A shiny steel pan can be blued by baking it in the oven for an hour at 350 degrees.

The edges of the pan should be rippled to keep gold flecks from sliding out when the gravel is swished by over-exuberant miners.

Recreational Mining Fun, Adventure... and GOLD!

Recreational mining is one of the more unusual outdoor activities available to Alaska residents and visitors. Many areas are open to recreational miners, but there are restrictions. You will need to do some research before you go out into the field. The section on Recreational Mining in the Chugach National Forest (page 3) will give you some practical information about where to pursue recreational mining locally but it is still a starting point.

The best way to determine if any area is open for recreational mining is to contact the appropriate agencies. You must determine: 1) who handles the land management in the area; 2) what is the status of the land; and 3) if permits are needed from the Department of Fish and Game.

One place to go for information is the U.S. Bureau of Mines. The local office is located at 201 E. 9th Avenue, Suite 101, Anchorage, AK 99501. The phone number is 907/271-2458. Other agencies to contact include the U.S. Forest Service, the Bureau of Land Management and the Division of Geological & Geophysical Survey.

Information can also be obtained by attending prospecting classes. Steve Henschbach, manager of the Mining Department at AMOS, is currently planning some mining classes for the spring. Contact AMOS for more information. Excellent classes are also offered by the University of Alaska, through the Cooperative Extension Service.

About Lode Deposits, Placer Deposits, and Gold Panning Gold is concentrated by geologic processes to form deposits of two principal types: lode (primary) deposits and placer (secondary) deposits.

Lode deposits are targets of "hard-rock" prospectors. They occur within solid rock. The deposit was formed when minerals were

precipitated from mineralizing solutions. One hypothesis suggests the source of the solutions was molten rocks or magma. As the magma cooled along fractures in country rock, local temperatures cooled and the minerals crystallized, including gold precipitated forming veins.

Most areas likely to contain valuable lode deposits have been thoroughly explored. The inexperienced prospector with little capital doesn't have much of a chance to locate new lode deposits worth discovering. Gold may be present in lode deposits, but it is not visible. Hard-rock prospectors send samples of material from the deposit to commercial analytical labs or assay offices.

The most common type of assay is the fire assay. A weighed sample of pulverized material is melted in a mixture of flux, lead oxide, borax and silica. The lead attracts the gold and the resulting lead-gold mass forms a button. The button is remelted in a bone-ash cupel which absorbs the lead, leaving behind a bead of gold. When the gold is weighed, a gold to rock ratio is obtained for the hard-rock prospector.

Recreational miners are usually more interested in the second type of gold deposit, the placer deposit. A placer deposit is a concentration of natural material that has accumulated in the sediments of a stream bed or beach. Gold, freed from lode deposits by erosion, denaturation, or decomposition of the enclosing rock, is carried downstream

as metallic particles—our "fakes" grains of "sluggers"—and caught in the placer deposit. The gold can be the basic equipment used by recreational miners in their exploration of placer deposits. Gold panning, although a simple method, is not easy. Some say good panning comes from correct application. Others say it just takes hours of practice. Panning involves digging material from the stream bed and sliding the pan. The contents of the pan are then washed. The material is sieved while the pan is submerged. The lighter material is washed away, and the stones and pebbles are picked out by hand. Theoretically, the heavy gold will concentrate at the edge of the bottom of the pan. But giving step-by-step instructions for gold panning is like giving step-by-step instructions to a child learning to tie his shoes. In both cases, the only way to learn is by hands-on experience.

Practice, and eventually you will get it right. Other prospecting methods include using sluiceways, rockers, dredges and other placer mining equipment. Much more gravel can be worked with some of these methods. And, contrary to popular belief, there are some easy accessible areas where dredging and similar operations are allowed. Visit AMOS for information about mining equipment available and contact the agencies discussed above to find out where you can use the equipment.

The reason you find where pursuing recreational mining is more likely to be in terms

of the gold deposit and the knowledge of an "old-time" prospector. But you can't know where the "old-time" prospector has been looking for gold. The only way to find out is to go out and look for it.



ADVENTURE is published by Alaska Mining and Diving Supply Inc. 3222 Commercial Drive, Anchorage, Alaska 99501 (907) 279-6113

Editor: USA FORD FOCUS

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The USGS map, MF-8808, shows placer streams in the Forest.

Recreational Mining in the Chugach National Forest

(Editor's Note: This information was compiled from a report put together by the United States Department of Agriculture for use by the public.)

Mining Impacts
Before you take your pan in hand or decide to dredge STOP consider the impact of recreational mining.

Mining can affect plants, animals, humans, and soil. The impact on streams is the most serious of all. Sediment into streams and rivers during the process of separating soil and minerals, restricts the life of fish. When fish eggs are dug from spawning gravels or left out of the oxygen supply to fish eggs, the eggs can't hatch. Adult fish and aquatic insects that fish eat have difficulty living in streams that have large amounts of silt. You, the "recreational" miner, can take a part in reducing silt on by not washing soil and vegetative matter into the stream flow.

- Guidelines**
1. Panning and manual-lifted sluice boxes are permitted on all streams in the Forest. If you are on a legal claim, check with the claimant.
 2. Use of 4-wheel drive vehicles, trail scooters, motorcycles, and all terrain vehicles is limited to existing roads, some trails and certain river outwash plains. (Obtain copies of "ORV Zoning" from Forest Service Offices.)
 3. Hydraulicizing is not permitted.
 4. Earthmoving equipment such as backhoes, bulldozers, excavators, or similar machines are not permitted.

Suction dredging is allowed, but not deeper than 300 feet (91 meters) from confluences, or at road inlets, public lot, or as indicated by the District Ranger.

Note: Before using a dredge check the Alaska Department of Fish and Game catalog of streams used by fish for migration, spawning, or rearing. A free ADF&G fish protection permit is required to dredge streams designated as important or anadromous (seagoing) fish. For additional information on permit requirements, please contact the ADF&G, Habitat Division, 333 Raspberry Road, Anchorage, Alaska 99502. Restrictions and time constraints for mining are imposed on some streams by ADF&G. Also, Chugach National Forest District Rangers may restrict certain areas to dredging or the sale of dredging equipment if it is necessary to protect other natural resources. If operating a suction dredge with a diameter greater than 4 inches (102 millimeters) you should file a "Notice of Intent" with the appropriate District Ranger.

5. Permanent structures such as cabins or roads cannot be built.
6. Cut only dead or downed trees in an area.
7. Work only stream channel, including unimpacted gravel bars.
8. Do not dig in excavated debris, destroy or remove archaeological, paleontological, or historical objects from the Forest.

Mining Rights
All of the "mines" you are concerned about access, land status, and most of all—where to prospect? Your primary concern is—What land is open for recreational mining?
Basically any area of the Chugach National Forest not staked by someone for mining or other purposes is open to recreational mining. But remember, as a recreational miner you have a legal claim, you do not have the right to prevent others from looking for gold anywhere within the Forest. You have the right to work high claim on the claim and to use the mining claim on public land, but you must respect the claimant's operations and equipment. You do not have the right to pan on another's claim unless the claimant grants you that privilege.

Staking a Claim
You desire to file a mining claim or want to know the location of legal claims, check with the Bureau of Land Management, Public Room, 301 C Street, Suite 103, Anchorage, AK 99503.
Why Not Mine?
There's some "do's" on where to search for the gold.
Private Concessions
Note: These are historical sites with unique remnants of earlier gold mining days. Open mining is permitted for a fee.
Craw Creek Mine, located near Grib Creek, under local use permit with the Forest Service.
Mudbarre Mining Museum, near Cooper Landing, under local use permit with the Forest Service.

- Creeks of Interest:**
- Tincan, Lyon, Bertha, Pines and Spokane Sluiceway (1/4 mile to 1/2 mile) of Seward Anchorage Highway.
 - Sherbro Sluiceway (1/2 mile to 1/2 mile) upstream from highway.
 - Summit Sluiceway (1/2 mile to 1/2 mile) of Hood Road to S 1/2 (89 km) of Hood Road, stay on road side.
 - State and Summit Sluiceway (1/2 mile to 1/2 mile) of the main highway.
 - Recreation Sluiceway (with area between Forest Service bridge for Reclamation of Fish Trail and downstream from Day Street) mining claim.
 - Griffin Sluiceway (1/2 mile to 1/2 mile) anywhere except 300 feet (91 meters) from Campground.
 - Butcher and Tenderfoot, Ernie Shalagans Creeks, Sluiceway (with area downstream from bridge on the Old Sluiceway Highway) dredging possible.
 - Copper Sluiceway (1/2 mile to 1/2 mile) of the Seward Highway and dredging possible.

Stream: Caribou Creek, South Fork Matanuska River

Location: Eastern portion of the Matanuska Susitna Borough, Township 20N, Range 10E, Seward Meridian, Sec. 28, 32, 3.

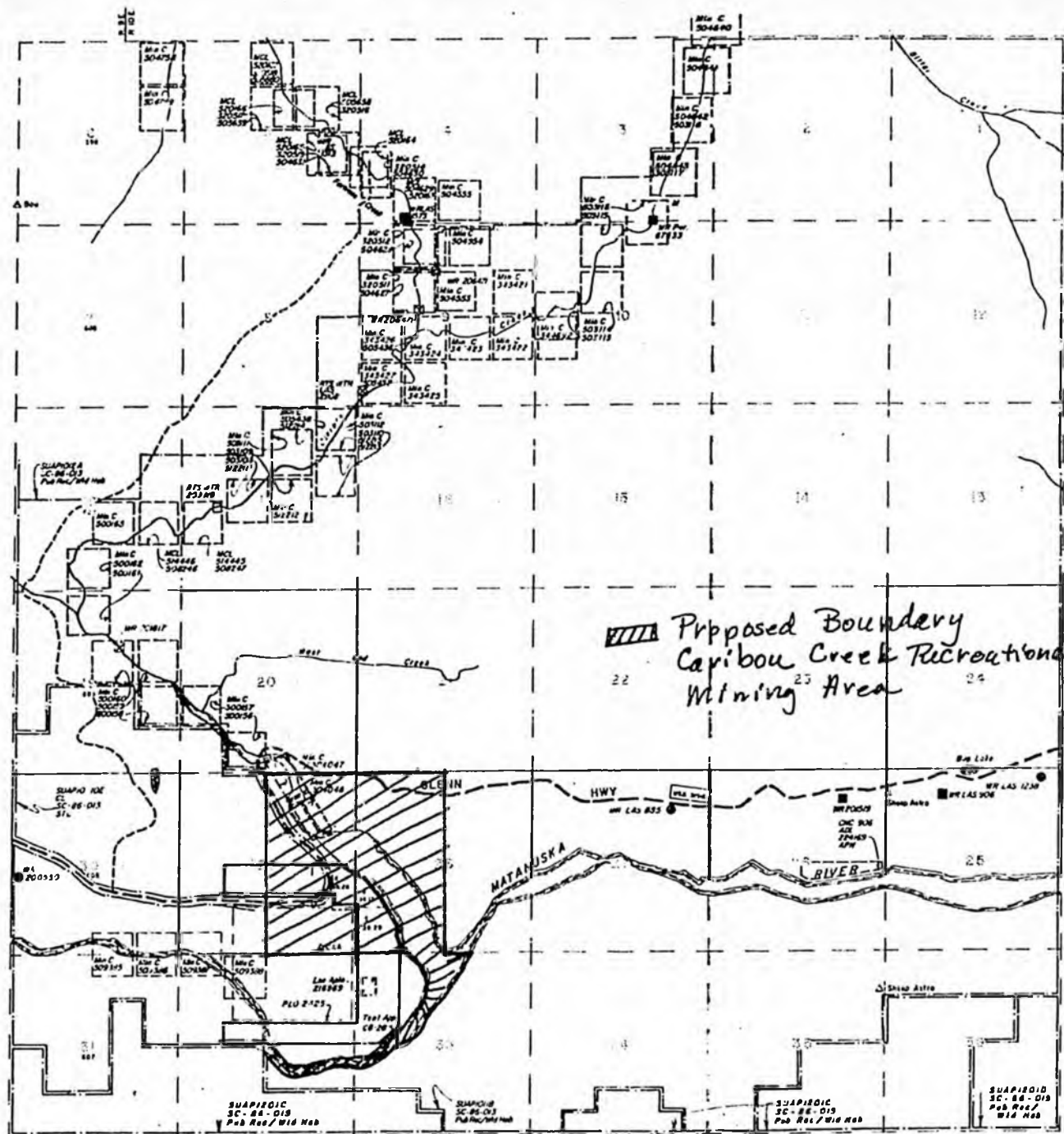
Access Point: Glenn Highway, south side near Caribou Creek bridge.

Discussion: Caribou Creek flows southerly from the Talkeetna Mountains to its confluence with the South Fork of the Matanuska River on the south side of the Glenn Highway. Caribou Creek is one of several streams draining the western portion of the Nelchina Mining district. Caribou Creek from the Glenn Highway bridge northward into the Talkeetna Mountains is heavily staked with mining claims.

The section of stream proposed here lies south of the Glenn Highway bridge and is approximately a mile in length to its confluence with the South Fork of the Matanuska River. South of the confluence, approximately a mile and one-half of stream on the South Fork is also proposed.

Below the highway bridge, Caribou Creek forms a broad flood plain with numerous gravel bars. Large amounts of sediment is flushed through the canyon above the bridge during spring runoff replenishing the gravel bars each year. Gold is present in this drainage, although probably not in commercial quantity. Access would be off the south side of the Glenn Highway down a one lane gravel road along the east bank of Caribou Creek.

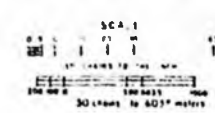
Land Status: This township is presently state selected.



ORDER ACC. VS. APPLICABLE ...
 USE OF STATE LASSES
 USE 278
 ...
 SUBJECT TO 2747

DATE: 7-6-98
 BASED ON:
 ...
 1982

DATE: 7-6-98
 CHECKED BY: DJT



STATE OF ALASKA
 DEPT. OF NATURAL RESOURCES
 DIVISION OF LANDS

T 20 N
 R 10 E
 S 4

MS



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER HB78	SPONSOR Larson and Henard
SHORT TITLE OF BILL Caribou Creek Recreational Mining Area			
DEPARTMENT POSITION Oppose			
PREPARED BY Bruce H. Baker	DATE 1/20/89	COMMISSIONER'S SIGNATURE <i>Don Williams</i>	DATE 1-23-89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources Department of Environmental Conservation	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial fishing industry in Cook Inlet Recreational miners Private property owners on Caribou Creek
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Caribou Creek Recreational Mining Area is proposed to designate an area for recreational placer mining for the public.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill would establish the Caribou Creek recreational mining area on portions of Caribou Creek and the Matanuska River that are specified by the Commissioner of the Department of Fish and Game as important for the spawning, rearing, or migration of anadromous fishes. The portions of these streams within the proposed recreational mining area provide spawning habitat for chum salmon. Establishment of this recreational mining area would require that the ADF&G issue Fish Habitat Permits under AS 16 to miners prior to their use of the area. ADF&G permits would have to restrict mining to occur only between May 15 and July 15 to avoid unacceptable conflicts with spawning salmon. Instream recreational mining would not be authorized for the remainder of the year.

(Continued on Page 2)

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

BILL ANALYSIS
(Supplemental Sheet)

Page 2 of 2

HB78

January 20, 1989

Analysis of Bill/Program Effects (continued)

Because of potential conflicts with salmon spawning and the cost of additional permitting, monitoring, and enforcement, we recommend that a stream that does not support anadromous fish, such as Hicks or Cascade creeks, be selected. Hicks and Cascade creeks both contain non-commercial gold deposits, are on state land, and cross the Glenn Highway in the vicinity of Caribou Creek.

Page 1, lines 25-29: The Commissioner of the Department of Fish and Game is responsible for the management of fish and game resources and public uses of those resources independent of the purposes of AS 41.23.500. Therefore, the wording on lines 28 and 29 should be revised to read ". . . Area [consistent with the purposes of AS 41.23.500]."

Page 1, lines 28 and 29: Regulations specifying Caribou Creek as anadromous and procedural regulations for permitting have been adopted by the Commissioner of the Department of Fish and Game. Therefore, the language on lines 28 and 29 should be revised accordingly "Notwithstanding regulations of the [Board of Fisheries] Alaska Department of Fish and Game"

Page 2, line 8: This area is above tidal influence. Therefore, revise line 8 to read ". . . [either] ordinary high water [or mean high tide]"

Page 2, line 16: We believe this was intended to read "section 29: [NE $\frac{1}{4}$, SW $\frac{1}{4}$] SE $\frac{1}{4}$, NE $\frac{1}{4}$."

Page 2, lines 23-25: The waters of Caribou Creek and the Matanuska River have already been specified as important to anadromous fishes. Therefore, revise to read ". . . under regulation of the [Board of Fisheries] Alaska Department of Fish and Game. [if the board determines before January 1, 1989, that an area contains anadromous fish]."

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Caribou Creek Recreational
Mining Area
 Sponsor: Larson and Menard
 Requestor: _____

Agency Affected: Dept. of Fish and Game
 BRU: Habitat
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	11.3	11.3	11.3	11.3	11.3	
TRAVEL	1.0	1.0	1.0	1.0	1.0	
CONTRACTUAL	0.4	0.4	0.4	0.4	0.4	
SUPPLIES	0.1	0.1	0.1	0.1	0.1	
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.8	12.8	12.8	12.8	12.8	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	12.8	12.8	12.8	12.8	12.8	
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Issuance of Title 16 permits for recreational mining and monitoring and enforcement of permit stipulations for recreational mining activities in Caribou Creek, a designated anadromous stream.

Prepared by: Bruce H. Baker, Deputy Director
 Division: Habitat

Phone: 465-4105
 Date: 1/23/89

Approved by Commissioner: *Orville Nelson*
 Agency: Department of Fish and Game

Date: 1.23.89

Distribution (by preparer):

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

Caribou Creek Recreational Mining Area

Issuance of Title 16 permits and monitoring and enforcement for recreational mining activities in Caribou Creek, a designated anadromous stream, will require the following expenses:

Personnel

Habitat Biologist	(18c)	2 months	4.5/month	9.0
Clerk Typist	(8a)	1 month	2.3/month	<u>2.3</u>
				\$11.3

Travel

staff travel to Caribou Creek				1.0
-------------------------------	--	--	--	-----

Contractual

telephone		75/month x 2 months		0.2
photocopy		10/month x 2 months		
advertising/public notices				<u>0.2</u>
				\$ 0.4

Supplies

office supplies				0.1
-----------------	--	--	--	-----

TOTAL				\$12.8
-------	--	--	--	--------

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

February 6, 1989

The Honorable Ronald Larson
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Larson:

I appreciate your January 23 letter to Bruce Baker regarding our bill analysis for HB 78, establishing a Caribou Creek Recreational Mining Area. As Bruce emphasized to the House Resources Committee, we support the concept of providing recreational mining opportunities.

Our analysis of HB 78 offers language changes that clarify this department's statutory responsibilities for cataloging waters important for anadromous fish. It also indicates our central concern that recreational placer mining is proposed in a reach of Caribou Creek that is a documented cnum salmon spawning area. This activity would require an ADF&G permit and likely would be restricted to the period from about mid-May to mid-July when salmon are not present.

We appreciate your interest in considering alternative areas for legislative designation, and we and the Department of Natural Resources have identified two options for your consideration. I propose that our staff get together with yours and Representative Menard's to further discuss the various options.

Sincerely,



Norman A. Cohen
Deputy Commissioner

cc: Governor Steve Cowper
Representative Curt Menard
House Resources Committee Members

REP. SHARP

FEB 8 1989

RECEIVED

```

*****
*
* DELIVER TO: LHSCRES
*
* ORIGINAL
* SENT: 01/12/90 TIME: 10:42
* FROM: LIOCINE
* SUBJECT: 90-01-102;FS;MINING;1-11-90
* PRINT DATE: 01/12/90 TIME: 10:42
*
*****

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TC NO: 90-01-102

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DATE: 1-11-90
SPONSOR: HOUSE RESOURCES
SUBJECT: CARIBOU CREEK REC. MINING
MODERATOR: INEZ WEBB
SITE: ANCHORAGE

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FINAL STATS

TESTIFIED:

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NAME\REPRESENTING ADDRESS PHONE BILL NO.
1. DAVID M. DALL 1011 E TUDOR RD. ANCH., 786-3403
2. CHIP DENNERLEIN\SELF 1627 W 14TH AVE., ANCH
4.
5.

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OBSERVED:

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NAME\REPRESENTING ADDRESS PHONE BILL NO.
1. HAL WEEKS, NPFMC P01031 ANCH. 271-2809
2.
3.
4.
5.

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TESTIFIED:
UNABLE:
OBSERVED:

TOTAL:

START TIME:
END TIME:

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* DELIVER TO: LHSCRES
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* ORIGINAL
* SENT: 01/12/90 TIME: 10:53
* FROM: LIOCINE
* SUBJECT: 90-01-102;FS;MINING;1-11-90
* PRINT DATE: 01/12/90 TIME: 10:54
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TC NO: 90-01-102

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DATE: 1-11-90
SPONSOR: HOUSE RESOURCES
SUBJECT: CARIBOU CREEK REC. MINING
MODERATOR: INEZ WEBB
SITE: ANCHORAGE

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FINAL STATS

TESTIFIED:

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NAME\REPRESENTING ADDRESS PHONE BILL NO.
1. DAVID M. DALL 1011 E TUDOR RD. ANCH., 786-3403
2. CHIP DENNERLEIN\SELF 1627 W 14TH AVE., ANCH

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OBSERVED:

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NAME\REPRESENTING ADDRESS PHONE BILL NO.
1. HAL WEEKS, NPFMC P01031 ANCH. 271-2809

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TESTIFIED: 2
UNABLE: 0
OBSERVED: 1

TOTAL: 3

START TIME: 3:00 PM

END TIME: 5:00 PM

HB

99

(File 1)

STATE OF ALASKA
THE LEGISLATURE

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

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

Mary Van Nimwegen

HOUSE RESOURCES	3:00p.m	1-26-89
HOUSE RESOURCES	3:00p.m	2-2-89

Table of contents - HB 99

- 1) HB 99
- 2) Letter of Transmittal/Fiscal Note
- 3) House Research Report - Taxation of Hardrock Mining Operations, April 22, 1988
- 4) House Research Report - Ak Mining Issues, September 2, 1987
- 5) House Research Report - State Revenue/Secondary Benefits from Mining operations, October 19, 1984
- 6) Mineral Title Examination by Terry S. Maley
- 7) Policies and Procedures on Ownership and Management on Navigable and Public Waters
- 8) Testimony - Earl Beistline, AK Minerals Commission
- 9) AK Minerals Commission Report
- 10) AK Environmental Lobby - Position Paper
- 11) Letter from Sitnasuak Native Corporation
- 12) AK Legislative Digest, "Minerals Briefing: Legislative and Policy Issues"
- 13) Supreme Court of U.S., October 1987
- 14) Spread Sheets submitted by Neil Mckinnon, Miner from Juneau Area
- 15) Letter from Kent Dawson and Attachments by the Alaska Miners Association
- 16) Testimony by James Hansen of Nome
- 17) Testimony by Marilyn and Jerry Pushcar of Nome
- 18) Testimony by Curtis Freeman, President of Fairbanks Exploration Inc.
- 19) Testimony by Kevin Alder, minera's consultant
- 20) Letter to Rep. Hudson from the Environmental Lobby re: reclamation
- 21) Testimony by Roger Burggraf

- 22) Testimony by Rex Blazer, Executive Director Northern Alaska Environmental Center
- 23) Testimony by Del Ackels, miner from Circle Mining District
- 24) Testimony by Terry Burrell, P.O. Box 8, Anchorage, 99510
- 25) Testimony by Randall Weiner, Trustees for Alaska
- 26) Letter from Mitch Demientieff, President, Tanana Chiefs Conference
- 27) Testimony by Anna Phillip, P.O. Box 1312, Bethel Alaska 99559
- 28) Editorial in Anchorage Times by Dave Cline, National Audubon Society
- 29) Letter from Nunam Kitlutsisti, Protectors of the Land Inc., Bethel Alaska

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
2/13/99

January 19, 1989

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

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making certain changes in the laws regarding state mining claims, leasehold locations, and mining leases. The main purpose of the bill is to resolve the long-standing "6(i)" issue, which has cast a legal cloud over the state's mining laws since statehood. The bill achieves that purpose by imposing rent and royalty requirements on state mining claims, leasehold locations, and mining leases. Those in the mineral industry will benefit from the added legal security of their mining interests, while all the people of the state will benefit from the rent and royalty income to the state.

Under existing state law, rights to "locatable" minerals (those minerals subject to location under the federal mining law at the time of statehood, including such minerals as gold, silver, and zinc) may be acquired, except in offshore areas, by staking a mining-claim under AS 38.05.195, or by staking a leasehold location and converting it to a mining lease under AS 38.05.205. Present state law imposes no rent or royalty upon a mining claim under AS 38.05.195 or leasehold location under AS 38.05.205, and allows the rental requirement for a mining lease to be discharged through the performance of annual labor. AS 38.05.205(b).

In Trustees for Alaska v. State of Alaska, 736 P.2d 324 (Alaska 1987), cert. denied ___ U.S. ___, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988), the Alaska Supreme Court found that the state's mining law fails to comply with the minimum requirements in sec. 6(i) of the Alaska Statehood Act. In particular, the court found that cash rents or royalties are required for mining rights in mineral land granted under sec. 6 of the Statehood Act.

This bill conclusively resolves the "6(i)" issue within the context of existing law. The bill will minimize administrative burdens for the Department of Natural Resources and

will generate significantly more in general fund revenue than it will cost to administer. Passage this session will remove the threat of an injunction against mining during this upcoming season. The balance of this letter discusses the particular changes proposed.

The bill amends AS 38.05.210 to make the annual labor requirement applicable to all mining claims, leasehold locations, and mining leases, while reducing the amount from \$200 to \$100. Cash payment in place of the annual labor will also be allowed. In addition, the current dollar limit on the application of excess work to future years is being converted to a durational limit of four years, and an unnecessary reference to AS 38.05.240 and 38.05.242 is also deleted. Section 2 of the bill.

Section 3 of the bill adds two new sections. Proposed AS 38.05.211 provides for a minimum annual rental on each mining claim, leasehold location, and mining lease. The minimum annual rental will be on a sliding scale ranging from a minimum of \$.50 per acre for a mining interest up to five years old, to a minimum of \$5 per acre for mining interests held for more than 20 years.

Proposed AS 38.05.212 provides for a minimum production royalty on all minerals produced from land subject to a claim, leasehold location, or mining lease. The production royalty will be determined on a sliding scale measured on gross income. At each level of gross income, the higher of a minimum royalty or a specified percentage of net income will be payable. The details for computing gross and net income will be established by regulations.

Section 5 of the bill amends AS 38.05.265 to provide that a mining interest is considered abandoned if no annual rental or production royalty is paid by the deadline, which will be set by regulation.

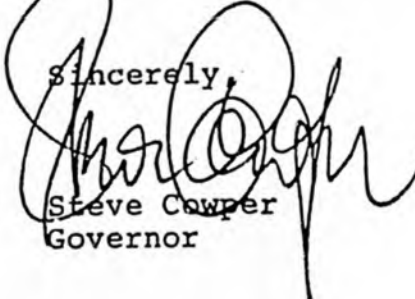
Section 6 of the bill amends AS 43.05.230 to require the commissioner of revenue to provide tax returns, reports, and documents relating to the mining license tax to the Department of Natural Resources, on the condition that confidential information be protected.

The bill includes a transition section that provides for commencement dates for the annual rental and royalty requirements. These dates will allow sufficient time for the Department of Natural Resources to adopt regulations implementing the bill.

The bill also includes technical revisions, a repealer section, and other conforming amendments, to make changes necessary to achieve the purposes generally described above.

Passage of this bill will end a long and troubled period of uncertainty under the state mining laws. It will give holders of interests in mining claims greater legal security, and the people of the State of Alaska a fair return on the public's mineral resources. I urge your early and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor