

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6502 SENATE RESOURCES

906

Alaska State Legislature

Senator Druz Pearce, Chair
Senator Tim Kelly
Senator Rick Hallford
Senator Paul Fischer
Senator Al Adams



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SENATE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

To: Senator Bettye Fahrenkamp, Chair
Senate Committee on Resources

From: Senator Druz Pearce, Chair
Senate Special Committee
on Oil and Gas

A handwritten signature in cursive script that reads "Druz Pearce".

Re: Senate Bill 261

Date: April 17, 1989

CSSB 261 is a combination of the original SB 261, requiring DEC to prepare master and regional plans; SB 264, authorizing DEC to establish a response office and corp and SB 266, which sets up a funding mechanism and a fund to be used in discharge emergencies.

The committee did not adopt an amendment by Senator Duncan which would add language from the original SB 261. The amendment would allow investigation, monitoring and assessment costs to be paid from the new Oil and Hazardous Substance Emergency Containment Fund. The committee was uncomfortable using the fund for investigating and monitoring actions since they are not of an emergency nature. The committee's intent is to fund a system that can react quickly when other cleanup plans have failed. The committee intends that the governor, in his discretion can use the fund for other types of substance emergencies such as one similar to the Crowne Point incident.

There is also a problem with funding for the state and regional plans. It was not our intent to have this program subject to legislative appropriation. Since the statewide and regional plans will entail considerable technical expertise, the commissioner should have the authority to prudently spend the funds necessary to get the job done in an expeditious manner.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3830

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1989

SUBJECT: Relating to oil and hazardous substance discharges, and imposing a fee on crude oil (CSSB 261 (Oil & Gas))

TO: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Legislative Counsel

This is legislation intended to comprehensively address oil and hazardous discharge situations and to provide a source of revenue for their abatement. The legislation

-- creates an oil and hazardous substance emergency containment fund as a source of money to mitigate the effects of damages from discharges of oil and hazardous substances, and sets limitations on use of money from that fund;

-- establishes a state oil and hazardous substance response office;

-- directs preparation of a state master plan and certain regional master plans for oil and hazardous substance contingencies, and provides for their annual review and revision; and

-- imposes a 5 cent per barrel fee on oil delivered to an Alaska port for transportation from the state by marine vessel as a mechanism to provide money to carry out each of the above.

Bill section 1, amending AS 43, imposes the fee. In essence:

-- AS 43.59.010 levies the nickel-per-barrel fee and defines its application.

-- AS 43.59.020 sets out the process of administration and collection of the fee. Patterned after similar provisions of AS 43.55, the fee is made payable quarterly, 20 days after the close of the calendar quarter, and is due and payable by the party delivering the oil for vessel transportation.

-- AS 43.59.030 requires deposit of the fee proceeds into the general fund and requires a separate accounting of them.

-- AS 43.59.040 authorizes the legislature to appropriate the annual estimated balance of revenue obtained from payment of the fee to the oil and hazardous substance emergency containment fund established later in the legislation.

-- AS 43.59.050 prescribes circumstances under which the fee may be suspended and reimposed. Payment of the fee is suspended commencing the first day of the second calendar quarter following a determination that the difference between the cumulative deposits of the fee made through the calendar quarter and amounts expended from the contingency fund equal or exceed \$20,000,000. Payment of the fee is reimposed commencing the first day of the second calendar quarter following a determination that the difference between the cumulative deposits of the fee made through the calendar quarter and amounts expended from the contingency fund are less than \$20,000,000. The section sets out a process by which these determinations are to be made.

-- AS 43.59.060 authorizes a year-long suspension of the fee payable during a state fiscal year if the legislature fails to appropriate an amount of money from the general fund to restore the contingency fund to at least \$20,000,000.

-- Definitions pertinent to the fee are collected and set out in AS 43.59.100.

Bill section 2 amends existing AS 46.08.090(a) to require the commissioner of environmental conservation to establish and maintain, at state ports and harbors "from which crude oil is regularly transported by vessel," the necessary personnel and equipment to be able to properly address oil discharges. The commissioner is given discretionary authority to establish and maintain these personnel and equipment at other ports and locations, and authority that is provided in current law by which the commissioner may meet this responsibility by contract or agreement is continued.

Senator Bettye Fahrenkamp

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The material in article 2, added by bill section 4, adds a section (AS 46.04.200) that requires preparation of a state master oil and hazardous substance discharge and prevention contingency plan and specifies the contents of that plan. The same section assigns responsibilities for duties incurred under that plan by various agencies and other parties. Preparation of the plan should take into consideration the content of oil discharge contingency plans filed by the companies that are required to develop and obtain approval of those plans under existing AS 46.04.030. The section also directs that, in the preparation and annual revision of the master plan, the commissioner shall consult with parties designated and may submit the proposed dra^t for public review and comment.

In the same bill section, proposed AS 46.04.210 adds parallel provisions for the development, revision, and review of regional master plans. Under AS 46.04.210(a), the commissioner is to develop a regional master plan for a region whose boundaries are set by the commissioner "in which the department is required to review and approve an oil discharge contingency plan submitted . . . under AS 46.04.030."

The material in article 3, added by bill section 4, establishes the oil and hazardous substance emergency containment fund and defines the duties of the commissioner of environmental conservation with respect to that fund. The requirement of submission of an annual report should serve to keep the legislature apprised of the fund's ability to address oil and hazardous substance discharge cleanup efforts. The commissioner may draw on the fund to pay costs of emergency evaluation, containment, and cleanup efforts incurred by the state in the event of a discharge into the navigable waters of the state. The commissioner may draw from the fund if the discharge is catastrophic, if the discharge is declared to be an emergency under AS 26.23 or AS 46.03.865, or if the commissioner reasonably believes that there has been a discharge that would qualify under one of the two preceding categories.

Since bill section 4 introduces the term "navigable waters of the state," a definition is provided by bill section 3.

Bill section 5 specifies that the commissioner is to establish an oil and hazardous substance response office, and indicates how that office is to be staffed and how it

Senator Bettye Fahrenkamp

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may be maintained. The bill also authorizes establishment of a response corps, trained paid volunteers who would be available on short notice to assist in containment and cleanup efforts. The office is charged with the duty to "be prepared to respond promptly to a discharge of oil or a hazardous substance into the navigable waters of the state," and may respond if the discharge is a catastrophic discharge or an emergency, or if the commissioner reasonably believes that there has been an oil or hazardous substance discharge that would so qualify. Under those circumstances, expenditure of money from the fund for operations of the office and response corps is authorized, but otherwise money for the operations of the office and response corps is subject to legislative appropriation.

Bill section 6, an uncodified section, directs the commissioner of environmental conservation to prepare the initial state master plan and any initial regional master plans by July 1, 1990.

The bill is given an immediate effective date by bill section 7.

JBC:kb
wkk4/023

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1989

SUBJECT: Export fee on transported oil
(CSSB 261(O&G))

TO: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

In an April 6 memo, with reference to an earlier version of Senate Bill 266 than what was eventually introduced, I noted to the bill sponsor:

I think it arguable that revision of the tax into an "export" fee applicable to oil leaving an Alaska port (whether to another Alaska port or to any other port) would be found to constitute an "export tax" or "export duty" levy and collection of which is explicitly prohibited by article I, section 10 of the United States Constitution:

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; . . .

There is some authority suggesting that article I, section 10 applies only as to goods entering into foreign commerce, and does not relate to goods going from one state to another state, Hooven v. Allison Co. v. Evatt, 324 U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252 (1944), reh. den. 325 U.S. 892, 65 S.Ct. 1198, 89 L.Ed. 2004 (1945), which may provide an exception for exported Alaska crude (all of which, I understand, is destined for American markets, and may not be exported in international commerce), but I would need more time to research the ramifications of the exception.

Senator Bettye Fahrenkamp
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The change in the incidence of the tax, making it apply to "delivery to a port for transportation by a vessel that transits the navigable waters of the state" makes this fee look less like an export tax than had the earlier version.

JC:gc
WKG9/084

N E W S R E L E A S E

APRIL 5, 1989

SENATOR JIM DUNCAN

P.O. Box V, JUNEAU, ALASKA 99811

465-4766

INTRODUCTION OF SENATE BILL 261,
AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO
PREPARE AND ANNUALLY REVIEW AND REVISE A MASTER OIL AND HAZARDOUS
SUBSTANCE DISCHARGE AND PREVENTION CONTINGENCY PLAN FOR THE STATE
AND REGIONAL OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND PREVENTION
CONTINGENCY PLANS FOR CERTAIN REGIONS OF THE STATE.

SENATOR JIM DUNCAN (D), JUNEAU, TODAY INTRODUCED LEGISLATION
WHICH WILL REQUIRE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
TO PREPARE AND MAINTAIN A MASTER PLAN SPECIFYING RESPONSIBILITIES
OF ALL PARTIES AFFECTED BY AN OIL OR HAZARDOUS SUBSTANCE
DISCHARGE. UNDER CURRENT LAW, THE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION IS REQUIRED TO REVIEW THE OIL DISCHARGE CONTINGENCY
PLANS FOR OIL TERMINAL FACILITIES, BUT NO STATE MASTER PLAN ON
HOW TO DEAL WITH OIL SPILLS CURRENTLY EXISTS.

NEWS RELEASE
SENATE BILL 261
APRIL 5, 1989

"I THINK IT IS WOEFULLY APPARENT THAT THE STATE MUST BE THE POLICY MAKER AND LEADER IN THE AREA OF SPILL CLEANUPS," SAID DUNCAN TODAY IN JUNEAU. DUNCAN CONTINUED, "WE MUST TAKE A PRO-ACTIVE APPROACH TO THE PROTECTION OF OUR ENVIRONMENT, WE CANNOT SIMPLY REACT AFTER THE FACT TO OIL SPILLS SUCH AS THE RECENT DISASTER IN VALDEZ."

SENATE BILL 261 WILL REQUIRE THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PREPARE STATE-WIDE AND REGIONAL PLANS BY JULY 1, 1990 WHICH CLEARLY STATE THE RESPONSIBILITIES OF ALL PARTIES WITH RESPECT TO CATASTROPHIC OIL OR HAZARDOUS SUBSTANCE DISCHARGE. "I, FOR ONE, DO NOT WANT TO SEE ANOTHER CATASTROPHE OCCUR WHERE THE STATE AGENCIES, MUNICIPALITIES AND THE OIL COMPANIES DON'T CLEARLY KNOW WHAT ACTIONS EACH SHOULD TAKE IMMEDIATELY TO MITIGATE THE DAMAGE", SAID DUNCAN.

IN ADDITION, DUNCAN'S BILL WILL ALLOW THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO USE FUNDS FROM THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND TO INVESTIGATE AND EVALUATE THE RELEASE OF THREATENED RELEASE OF OIL OR HAZARDOUS SUBSTANCES AND TO PREPARE THE STATE AND REGIONAL MASTER PLANS FOR SPILL CONTAINMENT. THE FUND COULD ALSO BE USED TO RESTORE THE ENVIRONMENT BY ADDRESSING THE EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE.

NEWS RELEASE
SENATE BILL 261
APRIL 5, 1989

"THIS BILL ESTABLISHES WHAT THE RULES WILL BE FROM HERE ON OUT FOR ANYONE EXTRACTING, TRANSPORTING, OR USING OIL OR HAZARDOUS SUBSTANCES IN THE STATE OF ALASKA," SAID DUNCAN. HE CONTINUED, " IT SETS UP REQUIREMENTS FOR PREVENTION, CONTAINMENT, CLEAN-UP AND RESTORATION IN THE CASE OF AN ACCIDENT. I FEEL THAT WE OWE IT TO THE RESIDENTS OF THIS STATE TO PROTECT ALASKA'S ENVIRONMENT."

Alaska Water Resources Board
Resolution No. 89-17

Authority For Immediate Oil Spill Response by
State or Federal Authorities

WHEREAS: Recent oil spills by tankers and other vessels in Alaska waters have demonstrated that immediate and effective response may make a critical difference between success or failure of the eventual containment and clean-up of the spill; and

WHEREAS: Conventional assumptions regarding the vessel and cargo owner's responsibility hold that the owners must be given first opportunity to take effective measures to contain and clean-up the spill, and that only after a demonstrated failure to do so may the state or federal agencies assume control of the clean-up and control strategy; and

WHEREAS: The vessel and cargo owners' motivations and actions regarding clean-up may in some instances be influenced by economic rather than environmental considerations; and

WHEREAS: The potential for delay while inadequate or ineffective control measures are attempted has potentially drastic consequences for the natural environment and the economic livelihood of Alaskans.

NOW THEREFORE BE IT RESOLVED: The Alaska Water Resources Board urges the Governor to request that the Attorney General analyze any legal constraints on the ability of the State to enact legislation permitting the Alaska Department of Environmental Conservation or the U.S. Coast Guard, as appropriate, to take control of the containment and clean-up of an oil spill immediately after it is discovered, if the agency has reason to believe that effective response may otherwise be delayed, or the resources potentially affected are of such high value, that immediate governmental direction is required.

Adopted this 9th day of March, 1989
Alaska Water Resources Board



Peg Tileston, Chairwoman
Alaska Water Resources Board

MEMORANDUM

Date: April 18, 1988
To: Senate Resources Committee
From: Senator Tim Kelly
Subj: Proposed amendments to CSSB261 (Oil & Gas)

During expedited consideration of CSSB261 in the Oil and Gas Committee, committee members acknowledged that the measure probably would require clarifying amendments.

As members may know, I was the prime sponsor of elements of the bill dealing with language to give the state its own emergency oil spill response capability, and I am proposing the following amendments to those sections.

Amendment No. 1

Page 6, Delete lines 15 through 25

This section is located in the wrong place. The intent of this section was to authorize the Oil and Hazardous Response Office within the Department of Environmental Conservation to establish and maintain a system of oil and hazardous substance spill containment and clean-up supply depots around the state.

Amendment No. 2

Page 11, insert after line 8 and renumber sections accordingly

This proposed amendment reinstates the depots but clarifies my intent better than the current language.

Sec. 46.08.120. RESPONSE DEPOTS. (a) The office shall establish and maintain emergency response equipment and supply depots in areas of the state determined by the director to be potential sites of releases or threatened releases of oil or hazardous substances.

(b) The office, when feasible, may enter into contracts with government entities, persons or private organizations to provide the facilities, personnel, equipment and supplies that may be required to carry out this section. Contracts under this section are governed by AS 36.30 (State Procurement Code).

Amendment No. 3

Page 8, line 2

Change the may to shall

Amendment No. 4

Page 8, line 4

Change the may to shall

Amendment No. 5

Page 10, delete lines 25 through 28

My objective was to allow the office maximum latitude to contract or enter into agreements in relation to the response corps, but the professional staff of the office should not be contract employees.

Amendment No. 6

Page 11, line 11

This amendment would add language to expand the duties of the office to spills on land as well as into the navigable waters of the state.

x x x navigable waters or on the lands of the state.

Amendment No. 7

Page 10, substitute for line 18.

This is a Namendment to add the words emergency and corps to the title of the article..

ARTICLE 1. OIL AND HAZARDOUS SUBSTANCES EMERGENCY REPOSE
OFFICE, CORPS AND DEPOTS

Amendment No. 8

Page 10, insert after line 18 and renumber accordingly.

The purpose of this amendment is to clarify my intent. Specifically, it is my intention that the office and corps be established to respond to emergencies. It is not my intent to relieve industry of its obligation to have contingency plans or the ability to implement those contingency plans.

Sec. 46.08.100 FINDINGS. It is the finding of the Legislature that the Exxon Valdez oil spill disaster demonstrated a need for the State of Alaska to have a independent spill containment and clean-up capability to respond to emergencies. However, nothing in this section shall relieve the persons identified in (insert contingency plan citation) and (insert liability citation) for responsibility for containing and cleaning-up spills of oil or hazardous substances.

Amendment No. 9

Page 10, insert after line 12

The goal of this amendment is to clarify the authority of the office to contract and enter into agreements and to establish and maintain depots.

(5) enter into contracts with agencies of the state and federal government, political subdivisions, transporters and other private persons for the establishment and maintenance of regional oil and hazardous substances equipment and supply depots.

(6) enter into contracts with the University of Alaska and private persons for research into oil and hazardous substances spill technology research.

Amendment No. 10

Page 12, insert after line 16

The purpose of this amendment is to define the word depots.

(3) "depots" means the oil and hazardous substance supply and equipment storage depots.

MEMORANDUM

Date: April 19, 1988
To: Senate Resources Committee
From: G. Michael Harmon
Subj: Proposed amendments to SB266

The purpose of these amendments are to delete sections of the bill pertaining to an oil spill containment strike force and an emergency oil spill containment fund.

Amendment No. 1

Page 1, lines 6 through 11

To delete strike force and creation of new emergency oil spill containment fund from the title.

For an Act entitled: "An Act imposing an oil spill fee on crude oil; and providing that proceeds of that fee may be appropriated to the oil and hazardous substance release response fund; and providing for an effective date.

Amendment No. 2

Page 4, lines 15 through 18

To change oil spill emergency containment fund to oil and hazardous substance release response fund.

Sec. 43.59.040. USE OF REVENUE DERIVED FROM FEE. The legislature may appropriate the annual estimated balance of the account established under AS 43.59.030 to the oil and hazardous substance release response fund established by AS 46.08.010.

Amendment No. 3

Page 4, lines 25 through 26

To change oil spill emergency containment fund to oil and hazardous substance release response fund.

(2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.08.010.

Amendment No. 4

Page 6, line 21 through Page 11, line 20

Delete in their entirety and renumber following section accordingly.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

TESTIMONY ON ISSUES RELATED TO HAZARDOUS SUBSTANCE SPILLS

APRIL 12, 1989

The Department of Environmental Conservation appreciates the opportunity to comment on the legislation being considered here today.

Before we comment on each specific bill, I would like to describe some of the issues we see as critical to an effective legislative package to address hazardous substance spills. These thoughts and recommendations are preliminary, as most of the department's experts in this area are still in the field. We have not had an opportunity to fully debrief on this incident and to fully develop a position on the remedies necessary to better protect the people of the state and the natural resources of the state. However, we would like to share these thoughts. We have also not yet had an opportunity to provide specific recommendations on each bill.

Structure of contingency planning and response

The relationship between operators, the state, and other interested parties in both preventing and responding to hazardous substance releases needs thorough analysis and possible change. At present, the industry has the lead in both developing plans to respond to spills and in carrying out the actual response. The state is left in a largely reactive posture, and other interested parties such as local communities, fishing groups, and so on, are basically not included at all.

In the event of an inadequate response, the state's recourse under existing statutes is to take over the spill response. At present, DEC's resources to conduct such an operation are extremely minimal. Hence, the practical remedy in existing statute for failure to perform is largely ineffective. We need to look at whether the state needs to have an independent ability to initiate and carry out a meaningful response, without relieving the responsible party of their responsibility for the reaction to the spill. It might be appropriate to consider providing authority to compel a response according to approved contingency plans. A state strike force is another approach.

With regard to contingency planning, all planning is left to operators of facilities. While cooperative agreements between different operations are possible, they are not required. There is no requirement for participation in a statewide data base and response planning structure.

The major lesson of this spill is that we cannot rely on the structure we have now, and we need to look at ways to improve responsiveness.

Adequate Funding for Prevention and Response Activities

A second concern is the need to adequate funding for spill prevention and response activities. Several bills propose funding sources for a reliable, adequate response fund. There must also be adequate funding for prevention, response planning, and ongoing preparedness. This is a critical portion of an effective solution.

Penalties

The penalties provided in the existing legislation need to be reexamined. The Department supports increases in penalties to reflect more closely actual costs. We also need to review the adequacy of criminal penalties. Current requirements for demonstration of financial responsibility for operators need to be updated to reflect more accurately actual damages. The Department recommends that the Legislature specifically address the problem of derelict vessels abandoned on state tidelands, and consider financial responsibility for salvage. Penalties for failure to comply with the regulations, as well as those for spilling oil into the water, need to be addressed.

Prevention

In the area of prevention, the Legislature might consider a review of the navigation aids that govern tanker traffic in the waters of the state to determine whether enhancements would reduce likelihood of collisions, groundings or other problems. The Department should be given the authority to look at ways to prevent spills, in addition to respond to spills.

Technology

The Department believes that improved technology needs to be identified and developed. Experience in this spill indicates that other countries have technology, such as the Soviet skimmer and Norwegian boom deployment vessels, that is substantially better than what is currently described as the state of the art in this country. It would be important to review this technology and to identify areas where more research and development is needed. We

have discussed with Norwegian pollution control authority officials the establishment of a working relationship for technical exchange and training. A training center for northern climates could be appropriate for Alaska.

Involvement of local residents and experts

In Prince William Sound, the best expertise on how to move vessels and materials on the waters came from the fishermen, without doubt. The fishermen and other residents of the area have provided invaluable guidance and direction for those parts of the cleanup and defensive operations that have been successful. The response plan needs to tap this expertise. Expensive equipment from all over the world is of little value if it cannot be deployed. The use of fully trained volunteers from local communities would be one way to make use of this expertise, and is a method we would support. There may also be others. In Norway, volunteers are trained in each community for spill response, in a way that resembles fire departments here.

A combination of state, local, and industry response capacity, in conjunction with adequate state agency funding and authority, is a promising approach for Alaska.

MEMORANDUM

State of Alaska

TO: Richard A. Neve'
Commissioner
Dept. of Environmental
Conservation

FROM: Norman C. Gorsuch
Attorney General

By: Douglas K. Mertz *DM*
Assistant Attorney General
Department of Law

DATE: September 2, 1983

FILE NO: 366-090-84

TELEPHONE NO: 465-3600

SUBJECT: Re: Proper expendi-
tures from Oil Spill
Expense Reserve
Account

You have asked our opinion on what expenditures are proper from the Oil Spill Expense Reserve Account. That fund was created by a legislative appropriation in 1980 for the purpose of enabling the Department of Environmental Conservation to deal with oil spills. You now ask our advice on whether Reserve Account funds may be spent on travel, training, and equipment in anticipation of spills, or are limited to direct expenses incurred in controlling specific spills.

We believe it is compatible with the legislative intent behind the appropriation to spend funds on training, travel, and equipment specifically intended to be of use in combating spills, but that the funds are not available for routine administration of departmental functions, including the oil spills program.

The language in the appropriation itself is extremely broad. It consists of a single line item appropriation to ADEC as follows: "HB 205 Prevention & control/oil pollution \$1,542,600" -- (ch. 120, SLA 1980, at 67). HB 205 was a bill, enacted as chapter 116 of SLA 1980, which revised the State's oil pollution laws. The figure of \$1,542,600 is the total amount requested by ADEC in the fiscal note accompanying HB 205 (see 1980 House Journal Supplement No. 43). Of that amount, the note requested that \$1,000,000 be set aside as a continuing account for responding to oil spills, while the remainder was suggested as allocations for positions and support for administration of ADEC's oil spill program in FY 1981. 1/ The fiscal note justified creation of the reserve account by referring to the

1/ In 1981 the legislature made \$1,000,000 of the \$1,542,600 into a continuing appropriation. Sec. 26, ch. 16, SLA 1981.

Richard A. Neve', Commissioner
Dept. of Environmental Conservation
Our file: 366-090-84

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extraordinary costs of fighting particular spills within the state (e.g., the Lee Wang Zin and the Glacier Queen -- and outside it (e.g., the Amoco Cadiz and the Argo Merchant), where clean-up and investigation costs went into the millions. Since major spills are not predictable, either in frequency or cost, it was the department's position that the only way the state could provide for its own spill response capabilities was by setting up a separate account outside of the routine operational budget.

Legislative acts, including appropriations, must be interpreted so as to give effect to the legislature's intention. But to be binding that intention must be included in the statement of purpose of the appropriation. Other expressions of legislative intent, outside of the appropriation act, may be considered as evidence of what the legislature wished to accomplish in the enactment, but such extrinsic sources cannot substitute for expressions of purpose found in the act. In other words, although limitations expressed in an enactment are binding law, in the absence of such limitations in the enactment, other expressions such as committee reports or letters of intent do not themselves gain the force of law.

In this case, the only direct limitation on the appropriation is that it be connected with administration of HB 205 and with prevention and control of oil pollution. The fiscal note, prepared by ADEC, should be taken as a general guide to legislative intent, since the total appropriation matches that requested in the note, but cannot be taken as binding the department to particular allocations. It is the clear law in Alaska that agencies may transfer between allocations within an appropriation (AS 37.07.080(e)) as long as the stated purpose of the appropriation is observed. Thus, in this instance, the only binding obligation on DEC is that the \$1,542,600 be spent for oil pollution prevention and control.

To apply this conclusion to your specific questions, we have little difficulty with your proposed uses of the funds. Training to enable ADEC personnel to prevent or control oil spills is clearly within the scope, as are attendant necessary expenses such as travel costs. Equipment for use in controlling spills -- both replacement equipment and new technologies -- is directly related to the intended purpose. Laboratory equipment used to analyze spilled oil, either to identify the precise substance for better response or to identify the spiller for

Richard A. Neve', Commissioner
Dept. of Environmental Conservation
Our file: 366-090-84

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enforcement purposes 2/, also falls in this category.

We mention one caveat. In apparently adopting ADEC's oil pollution strategy, as set out in the fiscal note to HB 205, the legislature separated the reserve account from other appropriations for routine operational expenses of the department. While it can be argued that the appropriation language is broad enough to cover any oil spill related activity of the department, we think it is the better policy to reserve the fund for expenses connected with preparing for, executing, and following up on responses to spills. In other words, we advise against use of the reserve account for ordinary and routine expenses of the department, even when they have some relation to oil pollution. Of course this may leave some gray areas, but that is unavoidable given the imprecision in the language of the legislative appropriation.

Let us know if you have further questions.

DKM:dlm

cc: Keith Kelton

2/ We have previously concluded that reserve account funds may be used to support oil spill related litigation, since recovering expenses and penalties is mandated under the same substantive oil pollution laws and is a clear deterrent to discharges. See 1981 Inf. Op. Att'y Gen. (July 9; J66-795-81).

MEMORANDUM

State of Alaska

TO: Glenn Adams
Special Assistant
Dept. of Environmental
Conservation

DATE: May 14, 1984

FILE NO: 366-368-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Calculating inci-
dental administra-
tive costs in pollu-
tion incidents

By: Douglas K. Mertz *DKM*
Assistant Attorney General
Department of Law

You requested our opinion regarding calculation of "incidental administrative costs", as that phrase is used in AS 46.-03.760(e). That provision makes polluters liable to the state

for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

Specifically you ask whether each item of "incidental administrative costs" must be documented in detail (postage, office supplies, etc.), or whether another method of calculation -- e.g., a flat percentage of salary -- could be used. The statute reveals a policy of allowing the state to recoup its true costs, including all incidental costs, so we believe the courts would accept any consistent accounting method reasonably calculated to arrive at those true costs.

For example, it would probably be an acceptable method of proving incidental administrative costs to add a certain amount, to cover costs, to the fully documented costs, such as employee salary. That amount must be arrived at through a carefully structured study and must include only costs which it would be difficult or inefficient to account for on a detailed, per-item basis.

To put it in concrete terms, your department could take all the usual costs of doing business which apply to department personnel working on a particular pollution incident, such as ordinary office supplies, ordinary postage, portions of the time of support staff not assigned to that incident (such as a receptionist or administrative officer), and from these determine a true "cost of doing business". That cost could then be expressed in terms which allow inclusion in a particular project such as a certain dollar amount per employee/hour actually spent on the project. (E.g., if incidental administrative costs to the

Glenn Adams, Special Assistant
Dept. of Environmental Conservation
366-368-84

May 14, 1984
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department were calculated as \$5 per employee per hour, you would simply multiply the "incidental administrative costs" rate by the employee hours spent on the incident, or, alternatively, add the \$5 to each employee's hourly wage and benefit "rate".)

Two caveats are in order: since this method is for the purpose of showing true costs, as nearly as can be calculated, the figures should be determined through a well-designed and executed study of the actual costs, including incidental administrative costs, of running your department. ^{1/} Secondly, the costs included under "incidental administrative costs" should not include those costs which can just as easily be recorded on a per-item basis, such as long-distance telephone, certified mail and courier costs, and other non-routine special services. Such items are routinely itemized in costs bills submitted to courts by litigants, so it is likely that a court would insist on an itemization unless it can be shown to be impossible or inefficient.

I hope this helps. Please let me know, or consult our Administrative Services Division, if you need further help in determining a proper amount to include in your calculation of true costs to the state, including incidental administrative costs.

DKM:dIm

1/ For examples, you might consult the Department of Law's Division of Administrative Services, which periodically calculates the true cost to the state of each hour of attorney time, including support and administrative costs. The resulting figure is then used to support requests for attorney fee awards in court.

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PROTECTION OF WATERS

38 § 551

Historical Note

As enacted this section read:
 "Whenever it appears after investigation that there is a violation of any rule, regulation, order or license issued by the commission, the commission shall proceed in accordance with the provisions of section 451, subsection 2.

"Whoever violates any provisions of this subchapter or any rule, regulation or order of the commission made hereunder shall be punished by a fine of not less than \$100 nor more than \$5000. Each day that any vio-

lation shall continue shall constitute a separate offense. The provisions of this section shall not apply to any discharge promptly reported and removed by a licensee in accordance with the rules, regulations and orders of the commission."

The 1971 amendment substituted "Board of Environmental Protection" for "Environmental Improvement Commission".

The 1977 amendment repealed and replaced the section.

Library References

Health and Environment ⇐36.

C.J.S. Health and Environment §§ 49, 50, 134, 139, 151 to 154, 156.

§ 551. Maine Coastal Protection Fund

The Maine Coastal Protection Fund is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to \$4,000,000 until July 1, 1978. Thereafter the fund shall be limited to \$6,000,000 and the Board of Environmental Protection shall collect fees in accordance with subsection 4. To this fund shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the board related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and 3rd party damages covered by this subchapter.

Moneys in the fund, not needed currently to meet the obligations of the board in the exercise of its responsibilities under this subchapter shall be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Maine Coastal Protection Fund.

1. **Research and development.** The Legislature may allocate not more than \$100,000 per annum of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations shall be made in accordance with the provisions of section 555.

2. **Third party damages.** Any person, claiming to have suffered damages to real estate or personal property or loss of

38 § 551**WATERS AND NAVIGATION**

Title 38

income directly or indirectly as a result of a discharge of oil, prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the person causing the discharge can agree to the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection Fund.

B. If the claimant, the board and the person causing the discharge cannot agree as to the amount of the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

2-A. Exceptions; 3rd party damage claims. Subsection 2, 3rd party damages, shall not apply to waters of the State classified under sections 368, 369 and 371, except those waters below head of tide until July 1, 1978.

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3. **Board of Arbitration.** The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the board to have caused the discharge, one to be chosen by the board to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment then the board shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

A. No member of the board shall serve as an arbitrator.

B. A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may by regulation prescribe. In the event that the party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

E. Determinations made by a majority of the Board of Arbitration shall be final, and such determinations may be subject to review by a Justice of the Superior Court but only as to matters relating to abuse of discretion by the Board of Arbitration.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

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4. Funding.

A. License fees shall be determined on the basis of $\frac{1}{2}$ ¢ per barrel of oil transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of records certified to the board, provided that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, the license fee shall be determined on the basis of 1.0¢ per barrel. License fees shall be paid to the board and upon receipt by it credited to the Maine Coastal Protection Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter, license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development, provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the board when the balance in the fund has reached \$4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to the private and special laws of 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to the private and special laws of 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

5. Disbursements from fund. Moneys in the Maine Coastal Protection Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the board related to the enforcement of this subchapter.

B. All costs involved in the abatement of pollution related to the discharge of oil, petroleum products and their by-products covered by this subchapter.

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PROTECTION OF WATERS

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C. Sums allocated to research and development in accordance with this section.

D. Payment of 3rd party claims awarded in accordance with this section.

E. Payment of costs of arbitration and arbitrators.

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund.

G. Payments to Treasurer of State pursuant to subsection 4, paragraph B.

(H) Sum up to \$20,000

6. Reimbursements to Maine Coastal Protection Fund. The board shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the board finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program;

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The board may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

7. Waiver of reimbursement. Upon petition of any licensee the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war.

B. An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

each year which has been allocated by the legislature in a contingency basis, which has been allowed in accordance w/ section 555 for payment of costs, for studies, of the environmental impact of discharges prohibited by Sec 543 which may have adverse economic effects & which occur subsequent to such allocation, when such studies are deemed necessary by the commission.

C. An act of God, which shall mean an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the board immediate credit therefor shall be entered for the party involved. The findings of the board shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred not a right granted.

1969, c. 572, § 1; 1971, c. 618, § 12; 1973, c. 625, §§ 278, 279; 1975, c. 379, §§ 1 to 3; 1977, c. 375, §§ 10 to 16.

Historical Note

The 1971 amendment substituted "Board of Environmental Protection" for "Environmental Improvement Commission".

The 1973 amendment substituted "Protection" for "Petroleum" in par. A of subsec. 2; and substituted "subchapter" for "article" and "third" for "3rd" in par. B of subsec. 6.

The 1975 amendment added the proviso at the end of the first sentence of par. A, and added the proviso at the end of the first sentence and added the second sentence in par. B in subsec. 4; and added par. G of subsec. 5.

The 1977 amendment deleted "the sum" prior to "\$1,000,000" and "July 1, 1978" thereafter in the second sentence, inserted the third sentence, and substituted "fund" for "sum" where first appearing in the fourth sentence of the first paragraph; in subsec. 2, deleted "petroleum products or their by-products" following "oil", inserted "hereinafter called the claimant" and substituted "alleged to be" for "he claims to have" in the first sentence of the first paragraph, added par. B; and repealed and rewrote pars. A and B, which prior thereto read:

"A. If the claimant, the board and the person causing the discharge can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection Fund.

"B. If the claimant, the commission and the person causing

the discharge cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter."

The 1977 amendment also added subsec. 2-A; and repealed and replaced par. B of subsec. 3 which prior thereto read:

"Arbitrators shall be named by their principals within 10 days after the commission receives notice of claims arising from a discharge prohibited by section 543. If either party shall fail to select its arbitrator within the said 10 days the other party shall request the American Arbitration Association to utilize its procedures for the selection of such arbitrator and the 2 arbitrators shall proceed to select the neutral arbitrator as provided in this section."

The 1977 amendment also repealed and replaced subssecs. 4 and 6 which prior thereto read:

"4. Funding.

"A. Annual license fees shall be determined on the basis of $\frac{3}{4}$ cent per barrel of oil, petroleum products or their by-products transferred by the applicant during the licensing period and shall be paid monthly on the basis of records certified to the board, provided, however, that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 230 shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, such license fee shall be determined

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OIL AND GAS ACTIVITIES

Legislative Report

April 17, 1989

The focus of the Legislature over the past two weeks has been a combination of the Prince William Sound oil spill and how to shape and finance the FY 90 budget. With slightly more than three weeks until adjournment major decisions are needed on not just the budget, but on House and Senate priority legislation. The House Majority Caucus met for several hours last week to try to decide on their budget priorities. The Senate Majority Caucus also met and named education as one area that will not be cut in the FY 90 budget.

The House Majority Caucus has agreed to take out the \$171,600 in the Governor's budget for ANWR, but keep a \$100,000 contingency fund for the Governor to use as he sees fit. Rep. Kay Brown, chair of the Department of Environmental Conservation budget subcommittee, has recommended the department receive an additional \$4.7 million in their FY 90 budget. Of that amount, \$322,300 will be for emergency response and contingency planning, \$315,000 for hazardous waste cleanup and reduction, and \$1.8 million for oil pollution control and emergency response.

The Senate Oil and Gas Committee met three evenings last week to review and move out several bills relating to the oil spill. Included in that package was HB-68, strict liability for the release of oil or hazardous substances. This week the committee will meet on April 20 and if necessary on April 22 to hear HB-118, ELF.

The House of Representatives seated David Finkelstein this week. On April 4, Finkelstein won the election for the House seat in district 13-A. The election was ordered by the Supreme Court when the November election failed to produce a clear winner. Rep. Spohnholz was seated temporarily to the 13-A seat until the new election could be held. Finkelstein will serve on the House Labor and Commerce, State Affairs, and Chair the House Special Committee on Tourism.

NEW INTRODUCTIONS:

HB-281. Unitary Tax:

On April 10, Governor Cowper introduced a unitary tax bill in the House. The bill is identical to SB-119, which has been bogged down in Senate Finance. Reportedly, the bill

was introduced in the House to get hearings underway so that when the Senate version arrived, the bill could move quickly to the House floor.

The bill would require corporations that are members of affiliated groups owned by foreign corporate parents to file corporate income tax returns based on the "water's edge" method instead of the "worldwide unitary" method of tax accounting now required under Alaska law. As introduced, the bill does not affect firms engaged in the production of oil or gas from a lease or property in the State or engaged in the transportation of oil or gas by a regulated pipeline in Alaska.

HB-281 is referred to the House Special Committee on Foreign Trade and Finance.

HB-286. Penalties for Workplace Safety Laws:

Rep. Niilo Koponen has introduced HB-286, a bill which would raise the penalties for workplace safety law violations. HB-286 proposed the following changes.

** An employer who knowingly (the standard in current law is willfully) or repeatedly violates workplace safety laws that are applicable to the employer may be assessed a civil penalty of \$30,000 for each violation. The current assessment limit is \$10,000 per violation.

** An employer who receives a citation for a serious violations of a provision of state workplace safety laws shall be assessed a civil penalty of up to \$3,000 for each violation, up from the current \$1,000 violation.

** An employer who receives a citation for a violation of workplace safety law, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$3,000. This fine is up from \$1,000.

** An employer that fails to correct a violation within time allowed under a citation by be assessed a civil penalty of not more than \$3,000, up from \$1,000 in current law.

** An employer who knowingly or repeatedly violates a provision or regulation of the workplace safety laws and the violation causes the death to an employee, if convicted will be punished by a fine of not more than \$30,000 (\$10,000 currently). A second conviction under this subsection would be subject, upon conviction, of a fine of not more than \$60,000 (\$20,000 currently).

** A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other documents filed or required to be maintained under the workplace safety laws, is punishable, upon conviction, by a fine of not more than \$30,000 (currently \$10,000).

** The final change would raise the civil penalty for each violation of the posting requirements under this chapter from the current fine of up to \$1,000 to a penalty of up to \$3,000.

HB-286 was referred to the House Labor and Commerce and Judiciary Committees.

HB-287. Establishing Oil/Haz. Substance Response Office/Corps:

Rep Mike Davis has introduced this legislation which is identical to SB-264, by Sen. Kelly. HB-287 was referred to the House Resources and Finance Committee.

HB-288. Oil/Haz. Substance Discharge/Prevention Contingency Plans:

HB-288, introduced by Rep. Mike Davis, is identical to the original version of SB-261, by Sen. Duncan. HB-288 was referred to the House Resources and Finance Committees.

HB-289. Severance Tax on Oil:

Rep. Mike Davis has introduced HB-289, a bill identical to Sen. Kerttula's original version of SB-260. HB-289 was referred to the House Resources and Finance Committees.

SB-271. Civil Penalties/Unpermitted Discharge of Uncontaminated Crude Oil/Failure to Implement Discharge Contingency Plan:

On April 8, the Senate Special Committee on Oil and Gas introduced SB-271. The bill adds a new section to state statute, AS 46.03.759, which would provide civil penalties for the discharge of crude oil. Under this bill, a person who is found to be liable under any other state law for an unpermitted discharge of uncontaminated crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or damages or the costs of containment and cleanup, liable to the state in a civil action for a civil penalty. The civil penalty would be \$1,000 per barrel of crude oil discharged for the first 100,000 barrels and

\$2,000 per barrel discharged in excess of 100,000 barrels.

In determining how many barrels of crude oil have been discharged for the purposes of assessing the civil penalty, SB-271 states that the court shall subtract the number of barrels the defendant proves were removed from the environment within the first 36 hours after the discharge due to cleanup operations that conformed with state and federal law. The dispersal of oil through the use of chemical agents or other means would not be considered removed for the purposes of this subsection.

The court would be mandated under this legislation, to assess a civil penalty five times that set out in this bill if the discharged was caused by gross negligence or an intentional act of the defendant or the defendant did not take reasonable measures to contain and clean up the discharged oil. SB-271 states that the court may reduce the civil penalties under this act, if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third party. This defense would not be valid if the third party is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

The current law regarding the detention of vessels without a warrant as a security for damages is amended under SB-271 to include AS 46.04.035. This would allow the state to detain a vessel as security for payment of civil penalties imposed under this new statute.

SB-271 would also add a new section to state law regarding liability for the failure to implement an oil discharge contingency plan. Under this proposal, a person who failed to respond to an unpermitted discharge of uncontaminated crude, in a manner required under their oil discharge contingency plan, would be strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.759 against any other person for that discharge.

The bill also amends the current financial responsibility section of law relating to pollution and cleanup. It includes the language in this bill relating to actions brought under the amended detention of vessels section and the civil penalties imposed under AS 46.03.759.

SB-271 was referred to the Senate Oil and Gas, Resources, and Finance Committees.

April 11, 1989:

The Senate Oil and Gas Committee waived the five-day rule for SB-271, and heard it for the first time on April 11. Senator Pearce gave an overview of the legislation, emphasizing that her bill is directed at the release of crude oil. Pearce said she believes the committee

should look at Title 46, during the interim and review the penalties for all discharges. She said the penalties have not been addressed since 1977, and added that costs have certainly gone up since that time.

April 12, 1989:

Assistant AG Doug Mertz suggested the committee take a more encompassing look at all the statutes relating to penalties for the discharge of hazardous substances. He said there are four purposes that should be addressed in all statutes: strict penalties; compensation for state and public resources; recouping cleanup costs; and recouping of state and private costs for property damage.

Mertz explained that SB-271 would remove crude oil from the dollars per gallon law, AS 46.03.758. Mertz said this statute is not in itself intended as a penalty, but rather to pay the public for damages that are nonquantifiable. By removing crude oil from this section, Mertz explained, the State would be unable to recoup nonquantifiable damages from a crude oil spill. Mertz said that if separate penalties are designed for crude oil, he said they could be passed in a new section or added to the penalties found in AS 46.03.760(a).

Mertz suggested the committee consider raising the ceilings on assessments in subsection 758 to those originally proposed for the bill. Those levels are \$50, \$25, and \$10 per gallon depending on the type of environment that was impacted. Mertz said the present penalties are too low and should be adjusted to more adequately cover the cost of nonquantifiable resources. He said that there was a scientific computation done when the original bill was proposed in 1970's that justified the levels presented above. Additionally, Mertz would like to see the committee remove the \$100 million cap found in Section 758.

Mertz suggested that the committee also make a distinction in AS 46.03.759 between actual penalties and damages. Mertz said that pure penalties are punishment and damage is to recover a compensation for loss.

April 13, 1989:

The Senate Oil and Gas Committee crafted a substitute for SB-271 that they moved out of committee on April 13. The substitute adds language aimed at giving the Department of Environmental Conservation the authority to compel a response to a spill. The language states that a holder of an approved oil discharge contingency plan that fails to respond to an unpermitted discharge of uncontaminated crude oil in a manner required under the plan, it strictly liable, jointly and severally, for the civil penalties assessed under AS 46.03.759 against any other person for that discharge.

Senators Tim Kelly and Pearce recommended the bill pass. Senators Halford and Adams had no recommendation. CSSB-271 is now in Senate Resources for review.

SB-277. Valdez Oil Disaster Review Panel:

Senator Jan Faiks has introduced SB-277, a bill that would establish the Valdez Oil Disaster Review Panel. The panel would be charged with gathering information about the events leading up to the Valdez oil disaster, ensuring efforts to contain and clean up the oil discharged, and the short-term and long-term effects of the Valdez oil disaster on the natural resources and the economy of the State.

Senator Faiks explained that the panel is modeled after the executive order which established the Presidential Commission on the Space Shuttle Challenger Accident. Faiks hopes that establishment of a similar mechanism for the Valdez oil spill, will allow Alaskans to examine the facts and circumstances leading up to the spill as well as develop recommendations on steps which can be taken to minimize the possibility of a similar accident occurring again in the future.

The panel would consist of ten members appointed by the Governor and two members from each legislative body. The panel could issue subpoenas, administer oaths, hold hearings, and conduct investigations related to its duties. State agencies would be required by law to cooperate with the panel. The panel would be charged with submitting a report of its findings and recommendations to the Governor and Legislature by March 1, 1990. The panel would be terminated 20 days after submission of the report.

SB-277 was introduced on April 12 and referred to the Senate Oil and Gas, Resources, and Finance.

After introduction, Senator Drue Pearce requested that the five-day rule be waived for SB-277 so the Oil and Gas Committee could hear it that evening.

Senator Faiks gave the committee an overview of her legislation. She said she was in the process of developing a fiscal note on the legislation with the help of the Governor's Office. Faiks estimated the fiscal note will be about \$75,000 to \$100,000.

Senator Kelly proposed several changes to the legislation that will be included in a committee substitute. The title of the panel will be changed to the Exxon Valdez Oil Spill

Commission. Additionally the panel will be increased to 15 members to allow the Department of Environmental Conservation to nominate a members to serve. Kelly also suggested that appointees be paid \$150 a day per diem when on commission business.

April 13, 1989:

On April 13, the Senate Oil and Gas Committee moved out a substitute version of SB-277. Changes to the bill include:

** changing the name of the commission to the Exxon Valdez Oil Spill Commission;

** raising the commission membership from 14 to 15 members, to include an employee of the Department of Environmental Conservation;

** and granting to nongovernment members a salary of \$150 per day while on commission business.

Senators Adams, Halford, Pearce and Kelly all recommended this bill pass. SB-277 is now before the Finance Committee for review.

COMMITTEE HEARINGS:

HB-9. Appropriation ANWR Lobby:

On April 10, the Senate Resources Committee heard HB-9. The version of the bill that passed the House proposes an appropriation of \$350,000 to assist Alaska's congressional lobbying effort to open ANWR to oil and gas development. Rep. Cotten gave an overview of the substitute legislation, stating the proposal includes the \$295,500 for state agency and contractual expenses proposed in the Governor's original fiscal note and an additional \$54,500 for a reserve for unanticipated contractual services that may become necessary in FY 90.

John Katz, head of the Governor's DC Office, said before the oil spill he was comfortable with the level of funding that passed the House. He now believes the amount should be reevaluated. Before the spill, he reported, there was great momentum in Congress towards passage of ANWR legislation. Katz reported that Sen. Bennett Johnston, Chair of the Senate Energy Committee has indicated for policy and political reasons, ANWR should be "put on the back burner for awhile." He said the Senate Energy and Environment Committee has announced several meetings to begin on April 19. Those meetings will focus on effluent

discharge problems in Valdez, the oil spill, and oil discharge problems on the North Slope. Katz believes these hearings might be used to build a negative record to be used against ANWR development. He also reported that the House Merchant Marine Committee has cancelled their ANWR hearings and that the Chair of the House Interior Committee has indicated that he will not bring up ANWR now or in the foreseeable future.

Katz said that some members of Congress have pointed to the price shock, which has resulted since the oil spill, as an indication that ANWR must move. He said many are discussing the addition of marine transportation, licensing of tanker captains, and oil spill cleanup language in ANWR legislation.

Katz said he would be meeting soon with ANWR ally groups to reach a consensus on how the State should proceed. He said his lobbying team has advised the State to start from scratch, noting that they cannot count on any previous supporters to still be in favor of ANWR development. Katz believes that every Congressman must be talked to about the oil spill and tanker safety.

More funds will be needed in HB-9, Katz believes, for the State to take on a new effort. He had not yet worked out the exact figure he thinks will be necessary, but advised the committee he would have that by the end of the week. He said he would like this funding used to increase the ability of state agencies to respond with testimony and graphics to the numerous hearings scheduled on environmental concerns in Alaska and ANWR; the direct advocacy effort in DC; and an increased media relations efforts. Katz said that seven Congressional committees have sought jurisdiction over the oil spill.

Bill Glude, Executive Director of the Alaska Environmental Lobby, testified against the appropriation. He said the oil spill is a clear indication of the oil industry's lack of capability to address such problems. Glude suggested the funds would be better spent on oil spill contingency planning or in the oil and hazardous substances release response fund.

The Committee voted to move the bill and the House fiscal note to Finance for review. A letter stating that a revised budget for this bill is forthcoming will also be sent to Finance.

HB-55. Oil and Gas Conservation Commission:

On Friday, April 14, the House Resources Committee moved out HB-55. The bill is aimed at improving the the state's underground injection control (UIC) program for injections wells related to the recovery and production of Class II oil and natural gas wells. It also conforms

certain sections of the AOGCC statute (AS 31.05) to the revised criminal code and removes unnecessary restrictions on the Commission's authority to regulate oil and gas activities. Governor Cowper stated in his transmittal letter on HB-55 that the primary reason for this bill is "the need to improve the state's UIC program to ensure continued federal funding." In June 1986, the AOGCC applied to the US Environmental Protection Agency (EPA) for a state UIC program for Class II wells. The EPA approved the state's proposed program, but required several changes in AS 31.05 in their memorandum of agreement with the AOGCC. If the changes requested by the EPA are not made, continued federal funding for the UIC program could be jeopardized.

Amendments to the criminal provisions were recommended by the Criminal Division of the Department of Law. The amendments would make the criminal provisions of AS 31.05 consistent with AS 11 and AS 12 (the criminal code statutes that were rewritten in 1981 and 1982). Other amendments proposed in HB-55 remove what the AOGCC believes are unnecessary restrictions on their jurisdiction over federal land.

The committee moved the bill without adopting an amendment proposed by Chair Menard at a previous meeting, to place the Class II Underground Well Injection program under the Department of Environmental Conservation. The committee instead adopted a Letter of Intent asking the Administration to examine the possibilities of moving all or a portion of the responsibility for the underground injection control (UIC) program by executive order or administrative order from the AOGCC to the Department of Environmental Conservation. The letter states that it is the intent of the Legislature that the agency or agencies with control over the program conduct sufficient inspections of the types of substances being injected and provide for public participation during all phases of the UIC program. In conclusion, the letter states it is also the intent of the Legislature that the agency or agencies assigned the responsibility be best suited to protect Alaska's ground water.

Representatives from the Alaska Center for the Environment and Trustees for Alaska and an environmental attorney from Anchorage spoke in favor of amending the bill to transfer the UIC program to the Department of Environmental Conservation. Al Hastings, Senior Staff Engineer for Conoco, spoke against the amendment.

The bill moved out with individual recommendations. Signing "do pass" were Reps. Menard, Navarre, and Davis. Reps. Hudson, Foster, and Sharp had no recommendation. HB-55 is now before the Judiciary Committee for review.

HB-244. Frequency of Certain State Agency Reports:

On April 10, the House Finance Committee moved out a substitute version of HB-244. The bill is aimed at reducing state expenses by changing the frequency of submission of several reports. Included in the bill is the Five-Year Oil and Gas Leasing Program, which is now presented to the Legislature on an annual basis. If this bill is passed, the Five-Year plan would be required on a biennial basis. The bill would also apply to the annual report on the state's royalty-in-kind oil or gas that is in surplus and projected intrastate domestic and industrial needs. If CSHB-244 is approved, this report will only be due to the Legislature when the Commissioner decides to sell state royalty oil taken in-kind.

CSHB-244 is now in Rules for floor scheduling.

SB-255. Special Arbitration Comm. - Valdez Oil Discharge Disaster:

On April 13, the Senate Judiciary Committee held its first hearing on SB-255. The bill, sponsored by Senate President Kelly, would create the Valdez Disaster Arbitration Commission charged with holding hearings and making awards for claims arising from the Valdez oil discharge disaster. Arbitration by the commission, which would consist of five members appointed by the Governor one of which is a member of the American Arbitration Association at the time of the appointment, would be governed by the Uniform Arbitration Act, except that an arbitration award would have to provide that the arbitrators' expenses and fees incurred in the conduct of the arbitration be paid by the person against whom the claim is brought.

Under SB-255, a person having a claim for damages or costs of containment and cleanup arising from the Valdez oil discharge could apply to the commission in writing for an arbitration claim. If the commission determines that respondent agrees to arbitration by the commission, it may proceed. If the respondent does not agree to arbitration, the commission is required to promptly notify the claimant.

Judiciary Chair Sen. Faiks presented the committee with a substitute version of the bill for consideration. The substitute proposes numerous changes.

** The Commission will consist of panels of five members each.

** The Governor will determine how many panels are appointed.

** Each panel will consist of two members appointed by the Governor and two by Exxon. The fifth member will be selected by a majority vote of the four. If they cannot agree on a fifth member, that member will be appointed by the American Arbitration Association.

** If all parties to the arbitration agree, a panel of less than five members can be

appointed.

** The substitute adds language regarding the amount of the claimant's expenses and fees that will be covered in different instances.

** The bill requires that the panel may not provide that the claimant pay any expenses or fees of the person against whom the claim was brought.

** The bill adds a section on future claims, only allowing them if the claimant can demonstrate that the new claim is based on evidence that could not have been ascertained with reasonable effort at the time the prior claim was arbitrated.

** The substitute adds a definition of damages that includes any personal injury or property damage, including economic and noneconomic damages.

Attorney General Doug Baily said that the Administration favors every effort to obtain prompt inexpensive resolution of these claims, but has some substantial problems with the bill. Baily stated his objections to the legislation.

** There is no funding mechanism for the arbitration commission.

** Unless there is some indication from Exxon and others responsible that they are willing to arbitrate claims, Baily said this proposal would be a lot of effort and expense for nothing.

** The State could be the target of a claim so it would be inappropriate for the Governor to be appointing commission members.

** Baily said to have a fiscal note on this bill it must be housed within a state agency, which could prove another conflict if the State was the target of a claim.

Baily suggested the members look at the existing State Arbitration Act that is an existing mechanism for the appointment of arbitrators. The current arbitration procedures are within the court system, Baily said, although this statute prevents the award of attorney's fees.

Baily said there is some indication that Exxon may be preparing to move forward on the payment of some claims, without releases for future claims. He said Exxon officials met with Governor Cowper on April 12 and outlined their procedures for meeting claims.

Art Snowden, Administrative Director for the Court System, said he is also concerned about the conflict of interest if the commission is housed in the administrative branch. He said under court procedures there would be no fiscal note, arbitration costs would be paid for by the parties involved. Arbitrations would be selected from the American Arbitration Association, allowing both parties to strike off proposed arbitrators from a list, until they reach agreement. Snowden said if the Legislature expects the court system to do more, it must provide funding.

There was also discussion about the TAPS fund and how the arbitration allowed for under the fund works. Reportedly, the fund is limited to \$100 million per incident of which the liable party is responsible for the first \$14 million.

Sen. Tim Kelly said he met with Governor Cowper on April 12 and the Governor said he would be introducing a package of bills relating to the oil spill. He said he supports arbitration for claims. Kelly believes it is important to go ahead with work on this bill. He said the way he envisioned the legislation, all costs of the commission would be paid for by Exxon, as a cost of the oil spill.

Bill Yankee, a Prince William Sound drift netter, suggested the committee make arbitration mandatory. He said that a trial by jury would be available if either party disagreed with the arbitrators ruling.

The committee agreed to adopt the substitute version as a working document. Sen. Faiks staff will address concerns raised by the committee and bring a new substitute forward on Tuesday, April 25. Areas that will be addressed include:

- ** a funding mechanism;
- ** whether the commission should be housed in the court system, the administration, or be a separate entity;
- ** whether to strengthen the state arbitration act instead of creating a new commission;
- ** a provision to provide claimants with counsel; and
- ** whether to provide mandatory and/or voluntary arbitration.

SB-256. Reimbursement Costs from Haz. Substance Releases:

On April 11, the Senate Finance Committee considered SB-256. The bill would allow municipalities that entered into agreements with the Department of Environmental Conservation for the reimbursement of expenses relating to the release or threatened release of oil or a hazardous substance to be reimbursed for expenses incurred before the agreement was signed. The bill is retroactive to March 24, 1989, the date of the Valdez oil spill. This will allow those communities that have responded to the spill to receive reimbursement for those expenses approved by the department.

The Senate Community and Regional Affairs Committee held a hearing on SB-256 on April 6 and adopted a substitute version of the bill. The substitute amends current state law which states the Attorney General, at the request of the Commissioner of DEC, "may" seek to recover expenditures made to contain and clean up oil or a hazardous substance that has been released or to control the threatened release. The substitute version changed the word

"may" to "shall," directing immediate recovery.

The committee discussed the bill briefly. Sen. Uehling offered the suggestion of a sunset provision, which would make the law expire at a certain date. Sen. Pearce said she was concerned that this would force DEC to enter into written agreements with communities now, in the event of a future spill. She believes this would be a waste of DEC's time and budget. The bill was moved from committee with individual recommendations. Senators Frank, Pearce and Fisher signed "do pass." Sens. Binkley and Uehling had no recommendation. SB-256 has a zero fiscal note.

April 12, 1989:

On April 12, the Senate passed the Community and Regional Affairs committee substitute for SB-256 on a 19 to 1 vote. Senator Halford voted against the bill. SB-256 was moved to the House where it was referred to the House Community and Regional Affairs and Finance Committees.

HJR-32. Oil/Gas Drilling. North Aleutian Basin:

The Senate Resources Committee held their first hearing on HJR-32 on Monday, April 10. Bob Grogan, Director of the Division of Governmental Coordination, said the Administration supports the Senate Oil and Gas substitute version of the resolution. He expressed concern that the Legislature not use this resolution to go beyond the scope of Bristol Bay in a call for review of all OCS leasing in light of the Prince William Sound oil spill. Grogan said the Administration will be talking with other states about OCS leasing policy at a later date.

John Katz, head of Governor Cowper's DC office, addressed the issue of buying back the Bristol Bay leases. Katz said the only silver lining in the entire tragedy of Prince William Sound might be that the members of Congress and Presidential Administration are really focusing on what the State has been saying about Bristol Bay. Within that context, Katz said, efforts that have been underway in the executive branch and Congress on this subject seem to have more credibility.

Katz reported that in addition to the court challenges, the State has been pursuing a moratorium on exploration and development, and has also sought to include Bristol Bay in the Presidential OCS Task Force. None of those efforts are final yet and Katz advised the committee that he can't say with any certainty that the State will be successful in either effort.

Katz reported that talk of buying back the Bristol Bay leases has been raised lately by fishermen. He said the State did not pursue this earlier because of the impacts it could have on the federal budget deficit. In the aftermath of Prince William Sound, however, Katz's believes there should be further examination of this particular option. His office will examine, in particular, what happened when State bought back the Kachemak Bay leases and try to identify any "weapons" that might offer assistance in the current situation.

Katz said he believes the State has not jeopardized any of its options by mentioning the question of a buy-back. If the buy back is ultimately rejected, Katz said, he believes the option of temporary moratorium or task force will still be viable. A buy-back is the ultimate objective of the Administration now, Katz said, and the only question he has is whether the buy-back recommendation must be premised by a moratorium, additional studies of Bristol Bay, and a full analysis of what just happened in Prince William Sound. Katz said the Administration will be pursuing all options as the Congressional process continues.

Tom Cook, Exploration Representative for Chevron USA Inc., gave similar testimony as that given by him in Senate Oil and Gas. He advised members that Chevron does not foresee tanker traffic in Bristol Bay, but rather a marine pipeline to transport the oil to shore and an overland pipeline to move it to a port on Pacific Ocean. Sen. Frank asked Cook if contingency planning for oil spills was part of Chevron's exploration plan. Cook said that a typical exploration plan takes six to 12 months to development and to be approved. He said a big element of these plans is contingency planning to prevent spills, and provide for containment and cleanup if they occur. He said it is important to remember that there is no potential for a large spill during an exploration operation. Cook said a successful exploration well in this are would pump only a few thousand barrels of oil daily.

Bill Glude, Executive Director of the Alaska Environmental Lobby, testified in favor of the resolution along with Phil Kelly from Senator Zharoff's staff.

Senator Eliason questioned whether buy-back language in SJR-11 should be added to this resolution. John Katz said this should be the ultimate goal, that the leases cannot be held in suspension forever without the charge of illegal taking of property. Katz said that Congress will probably look at a temporary moratorium first to try and establish a documentary basis for the buy back.

Bob Grogan said he wasn't sure if there was a precedent in the federal OCS program for buy backs. He suggested the committee consider language that would read "if possible, for the Department of Interior (DOI) to buy back the leases." He said that would not jeopardize the State's other options in the event it proves illegal for DOI to pursue this option.

The committee could not agree on the language so the resolution was held over until the next meeting.

April 14, 1989:

On Friday, April 14, the committee considered a substitute version of HJR-32. The substitute adds language in the resolve clause which asks the President to suspend the lease sale and include it in the work assigned to his special task force, to also consider the potential for buy-back of the leases. The substitute was adopted and all six members present recommended it do pass. HJR-32 is now Rules for calendaring.

SCR-15. Hydrogeological Surveys on the Kenai Peninsula:

On April 11, the Senate Finance Committee moved out SCR-15. The resolution, by Sen. Mike Szymanski, urges Governor Cowper to direct DNR's Division of Geological and Geophysical Surveys perform hydrogeological surveys of those parts of Nikiski and the central Kenai Peninsula not yet surveyed by the US Geological Survey (USGS) to determine the movement and geology of the ground water in those areas. In addition, Szymanski would like to see the Division produce a comprehensive report for those areas based on their studies and past studies by the USGS. Sen. Szymanski believes that this work must be done if oil, gas, chemical and industrial production is to continue in the Nikiski and central Kenai Peninsula in a manner that is consistent with the protection of the residents, visitors, water supplies, and resources of the Kenai Peninsula.

The committee did not accept the \$200,000 fiscal note, as Sen. Pearce said the appropriation was in the House budget for the Department of Natural Resources and she had every intention of adding it to the DNR budget on the Senate side as well. SCR-15 was moved from committee with individual recommendations.

SCR-15 was scheduled on the Senate calendar on Friday, April 14. There was considerable debate over the resolution and it was held over to Monday's calendar.

Senate Oil and Gas Committee:

The Senate Special Committee on Oil and Gas held meetings on April 11, 12, and 13 to address legislation relating to the oil spill, pollution control, and the release of hazardous substances. Under discussion were SB-260, SB-262, SB-264, SB-266, SB-272, SB-277,

HB-68, and SCR-30. There were also presentations from the Department of Law concerning the current state and federal statutes relating to the oil spill liability and penalties for the illegal discharge of hazardous substances. Action on the bills heard by the committee is included under the bill title.

The April 11 meeting began with a presentation by Attorney General Doug Baily and Assistant AG Doug Mertz. Baily was asked to discuss the structure of the state team that will assess the oil spill damage. Baily said that the question of damage calculations are matters that will either be resolved administratively or by litigation. He was not willing to say how the State will proceed in this regard. Baily said the federal TAPS fund might respond to some State claims, but said he would not publicly discuss the priority of how the State will pursue such funds or the exact manner. The AG said there are damages, civil penalties and punitive damages to multiple parties available under current state and federal law. He said the State will seek to have all losses reimbursed, but Baily was not willing to say now whether he will seek damages or punitive damages.

Baily said the Departments of Environmental Conservation and Fish and Game are now gathering data that will be essential to demonstrate damages and the long term effects of the spill. The Department of Law, he added, is providing them with legal assistance.

Baily was asked if it could be shown that the State was somehow responsible for the accident, what would be the result. Baily said there are defenses under some statutory schemes, such as the TAPS fund, that arise when there is negligence by a government agency. He said that if Exxon's announcement that they are fully liable is withdrawn, Baily expects the company will proceed to some adversarial position. He said at that point he would expect Exxon to raise every available defense to liability.

Baily said that Alaska has a variety of statutes relating to pollution.

AS 46.03.758 - referred to as the dollar per gallon law. This statute is intended to compensate the public for natural resource damages that are nonquantifiable. The court uses a formula in regulation to determine the penalties, which cannot exceed \$100 million.

AS 43.03.760(a) - this is the civil penalty provision. Under this provision, the court looks at the amount of damage and assesses a penalty. The maximum penalty is \$100,000 per violation and \$5,000 a day for each day the violation continues. (e) of this same section allows the State to recover all actual damages, both direct and indirect costs associated with abatement, containment, or removal of the pollutant, restoration of the environment, and all incidental costs.

AS 46.03.780 - this is the section of law relating to the liability for restoration. The liability for damages under this section includes an amount equal to that required to restock injured land or waters, replenish a damaged or degraded resource, or to otherwise restore the environment of the State to its condition before the injury.

AS 46.03.790 - the criminal penalties of Class A and Class B misdemeanors are included in this statute.

AS 46.03.822 - this section provides the standards for adjudicating strict liability, where negligence does not need to be proved. Section .824 spells out what is included in the term damages in Section .822. Section .822 is available to private parties as well as the State.

AS 46.03.828 - this section allows for other rights of action under other statutes.

AS 46.03.875 - the section states that all remedies provided by AS 46.03 or AS 46.04 are cumulative, and the securing of relief, whether injunctive, civil or criminal, under a section of these chapters does not stop the State from obtaining relief under any other section of the chapters.

AS 46.04.010 - this section directs the State to promptly seek reimbursement for cleanup expenses.

AS 46.04.030 - this section requires oil discharge contingency plans.

AS 46.04.040 - this section requires oil terminal facilities, offshore exploration or production facilities, and tank vessels to have proof of financial responsibility.

AS 46.08 - this chapter sets up the oil and hazardous release response fund, specifies how the fund is financed, and mandates the State to seek prompt reimbursement of fund expenditures.

Baily said the federal statutes regarding illegal discharges of hazardous substances tend to be weaker than state statutes. He said there are civil penalties under the Clean Water Act, \$100 million in the TAPS fund, and modest amounts available under the CERCLA or Super Fund law. Any penalties claimed under federal law by the federal government would go to the federal government, Baily said.

Sen. Tim Kelly asked if the US Congress changed the TAPS law cap if it could be used for this spill. Baily said if the law was applied retroactively, it could be used. He said his

department is preparing a number of options for Governor Cowper to give to Congress that would make changes to federal law. He said the recommendations could include changes to the TAPS fund and Coast Guard regulations. Baily also mentioned the suggestion of legislation allowing for strict liability for oil spills which did not require proof of negligence.

Senator Pearce said that in recent conversation with John Katz, head of the Governor's DC office, Katz informed her that the TAP Fund may soon be rolled into another fund.

April 12, 1989:

On April 12, Assistant AG Doug Mertz gave another overview of federal and state oil discharge laws. Mertz said that the three federal laws, TAPS, Clean Water and CERCLA, nearly duplicate laws in state statutes. He said the main difference is in the caps on awards. Mertz said the State will mainly rely on its own statutes in regards to the Valdez oil spill since state statutes are less restrictive. He said that private parties could use either state or federal statutes to seek damages. Mertz said most oil spill claims are settled out of court.

Mertz also gave a brief update on the 1986 oil spill in Cook Inlet from the tanker Glacier Bay. He said the State has attempted to negotiate settlements, but those attempts have not worked. He said the State is at the point of filing litigation to recoup costs and damages. Mertz pointed out that there are already a number of private actions that are in court. He said the tanker company has also filed suit against the federal government for failure to adequately chart Cook Inlet.

Amy Kyle reported that the State spent between \$250,000 and \$400,000 in response to the Cook Inlet spill. She said as a result of the Prince William Sound spill, DEC will take a look at all oil spill contingency plans in the State.

Kyle also described the issues the department sees as critical to an effective legislative package to address hazardous substance spills. She said the recommendations are preliminary, since most of the department's experts are still in the field. Kyle said she would speak briefly on the proposed oil spill legislation, but the department was not yet ready to provide specific recommendations on each bill.

Kyle proposed that the following seven categories be included in a legislative package addressing hazardous substance spills.

1. Structure of contingency planning and response - Kyle said the question of whether the State needs to have an independent ability to initiate and carry out a meaningful response to

oil spills, without relieving the responsible party of their responsibility for the reaction to the spill, should be addressed. She said it might be appropriate to consider providing authority to compel a response according to approved contingency plans, or create a state strike force. Kyle said the major lesson of this spill is that the State cannot rely on the structure it has now, and needs to look at ways to improve responsiveness.

2. Adequate Funding for Prevention and Response Activities - Kyle said there needs to be adequate funding for spill prevention and response activities. Additionally, adequate funding is needed for prevention, response planning, and ongoing preparedness. Kyle believes this is a critical portion of an effective solution.

3. Penalties - Kyle said the penalties in existing statute need to be reexamined. DEC supports increases in penalties to reflect actual costs more closely. She said the adequacy of criminal penalties should also be reviewed. Kyle said that current requirements for demonstration of financial responsibility for operators needs to be updated to reflect actual damages more accurately. The department also recommends the Legislature specifically address the problems of derelict vessels abandoned on state tidelands.

4. Prevention - Kyle suggested the Legislature consider a review of the navigation aids in areas of tanker traffic in state waters to determine whether enhancements would reduce the likelihood of collisions, groundings or other problems. She also said DEC should be given the authority to look at ways to prevent spills, in addition to respond to spills.

5. Technology - DEC believes that improved technology needs to be identified and developed. Kyle said it would be important to review the technology other countries have developed and perhaps establish technical exchanges with them. She added that a training center for northern climates could be appropriate for Alaska.

6. Involvement of Local Residents and Experts - Kyle said a response plan should tap the expertise of local residents. She said the use of fully trained volunteers from local communities would be one way to make use of this expertise, and is a method DEC would support.

7. Coordinated Response Capability - Kyle said that a combination of state, local and industry response capacity, in conjunction with adequate state agency funding and authority, is a promising approach for Alaska and one that is needed.

Kyle then offered comments on the individual bills before the committee.

April 13, 1989:

On April 13, the Senate Oil and Gas Committee opened the meeting with testimony from the oil industry. Don Cornett, Alaska Coordinator for Exxon, was first to testify. Cornett said Exxon's top priority after the spill was to safely recover the one million barrels of oil which remained on the Exxon Valdez. He said his firm reacted quickly to the spill with equipment and personnel. Cornett reported that at this point, it has been estimated that more than 60 percent of the spilled oil has evaporated, been dispersed, biodegraded, or recovered. He said much of the remaining oil has made its way into the Gulf of Alaska, where nature will decompose the oil.

Cornett said Exxon has placed a top priority on key environmentally sensitive areas. He said that others have contributed to the protection of the areas as well and Exxon has paid \$1.5 million to local groups to cover their costs in the oil spill containment effort. Cornett said that rescue centers for birds and otters have been constructed in Valdez, and one is under construction in Seward.

Attention in recent days has been devoted to shoreline cleanup under the guidelines established by the Shoreline Cleanup Committee, Cornett said. He added that Native Alaskan workers and contractors are being given priority in his company's oil spill cleanup efforts.

In regards to how Exxon will reimburse persons for damages resulting from the spill, Cornett made the following remarks.

** Exxon intends to provide fair, reasonable and prompt settlements to those who were damaged by spilled oil. Claims will be expeditiously processed by offices in Valdez, Cordova and Homer. Additional offices will be established in Kodiak and Seward, if needed.

** Loss of income claims will be processed for individuals and businesses that lose net income because of their reduced ability to use the natural resources of Prince William Sound as a direct result of the discharge of oil.

** To support a claim, documentation such as federal tax returns, permits to fish, fish delivery tickets, contracts with processors, employment certification from employers, and other valid records will be required.

** A three step payment procedure has been placed into operation, providing advances, partial settlements, and final settlements. Special financing arrangements are being

developed to assist in solving the cash flow problem of businesses such as canneries.

** Exxon hopes that most claims can be handled successfully through this process, but when agreement cannot be reached the company supports the use voluntary arbitration to reach resolution.

Rob Shoaf, with Alyeska Pipeline Service Company, said he, the management, and employees of his company share the belief that everyone in the oil industry must renew their dedication to preventing another occurrence like the Prince William Sound spill. Shoaf said Alyeska is willing to work with DEC to as it plans and implements new prevention and response techniques for Prince William Sound. He suggested that the hatcheries in the Sound, Kachemak Bay, Cook Inlet, Kodiak and the Alaska Peninsula also participate in the assessment of what happened and in the preparation to prevent and to respond to similar events in the future.

Shoaf believes the best plan to prepare for future events will be based on a thorough study of what happened this time. Now that the State has appropriated the money needed for ongoing response efforts, Shoaf believes the number one priority should be to establish an assessment process that will involve all potentially affected groups.

Shoaf explained the current operations in Valdez as a result of DEC's emergency order which directed immediate changes in the operation of the Valdez Marine Terminal.

** Tanker Safety - pilots are escorting tankers past Bligh Reef, two tugs are accompanying all outbound tankers, Alyeska maintains radio or radio/telephone contact with all tankers in PWS (equipment will be installed to record these radio transmission), DEC is evaluating Coast Guard radar procedures and equipment.

** Oil Spill Response - all vessels are boomed upon arrival at the terminal, the area within the booms is inspected on an hourly basis, all core contingency equipment required by the oil spill plan is at the terminal and available for use, Alyeska now has a 24 hour 12 man oil spill response crew.

Future Equipment and Material - Alyeska and DEC are working together to define what additional steps need to be taken to satisfy the requirements of the order.

Shoaf urged the Legislature to encourage DEC to take steps that will enhance the response capability existing in Prince William Sound, but wait to create the ultimate response organization until after an evaluation of recent events can be completed and recommendations come forth from DEC and local communities.

Shoaf suggested the Legislature direct DEC to work with their Joint Committee and/or Task Force to analyze what happened and to plan for the future. He believes that DEC should be given the discretion and resources to purchase and deploy basic equipment and materials, and to create and train a basic Prince William Sound response organization. Shoaf said these efforts should be under the direction of a State Oil Spill Coordinator, housed in DEC.

If a fee on TAPS throughput or an additional severance tax on North Slope production is used to create revenue for a public response organization and a response fund, Shoaf believes uses of the revenue should be limited to those areas and events that might be affected by North Slope production and transportation. He added that if the geographic area or the types of events covered by a fund created by new taxes is expanded, then the revenue sources should be expanded as well. Shoaf suggested that if a new revenue source is established, a cap be placed on the fund balance and imposition of the tax. Shoaf believes that expenditures from the fund that area recovered from responsible parties should be returned to the fund to avoid reimposition of the tax.

Jim Palmer with BP Exploration said the Prince William Sound spill cannot be dismissed as just one company's tragedy. Palmer said that all members of the oil industry share in the loss. Palmer reported that the major owners of Alyeska, including James Ross of BP America, met with Governor Cowper shortly after the spill occurred and instituted immediate actions to reduce the risk of reoccurrences. Palmer said work is being done to improve the systems for transporting oil out of Valdez.

Palmer urged the committee to look at the legislation before them and evaluate how it fits with other legislation before them and new contingency plans for consistency. Palmer agreed that funds are needed to increase the oil spill containment fund, but suggested the fund be financed by penalties imposed under AS 46.03.758(b).

Hugh Motley, vice president and general tax officer for ARCO Alaska, Inc., testified on SB-260. The bill proposes a five cent per barrel increase in the severance tax to pay expenses incurred by the State in response to an oil spill or release of a hazardous substance. Motley asked the Legislature to wait until a factual accurate record of the spill is available before acting on legislation, which he believes could have sweeping, long term impacts.

Motley said ARCO understands that additional legislation is being demanded by a concerned public, but added that raising oil taxes and establishing a new cleanup fund is not the answer. According to Motley, SB-260 only duplicates existing financial safeguards and

does nothing to reduce the risk of a recurrence or improve oil spill response capability.

SB-260 could severely impact marginal fields in Cook Inlet and on the North Slope, Motley said. Some of the fields are so marginal that they are currently assessed little or no production tax for the State, he added. Motley concluded by saying that no one has had adequate time to assess the short term effects of SB-260, and other spill-related bills on state oil revenues, the economy or the oil industry. He urged the committee to get all the facts before taking action on this or any related bill. Senator Szymanski was upset by Motley's remarks that the legislation only duplicated current environmental safeguards. Szymanski said Motley was not qualified to remark on the State's response capability. He said the Legislature should have taxed the industry more heavily in the past so there were adequate funds now for response to Prince William Sound.

Bill Glude of the Alaska Environmental Lobby, said the Lobby supports the intent of all the bills. He believes the priorities in wake of the Exxon Valdez oil spill are: ensuring the oil industry payment for improved state capability to prevent and respond to oil and hazardous substance release; stronger penalties to prevent and respond to oil and hazardous substance release; stronger penalties to prevent future disasters of this type; and adequate DEC funding to upgrade response and monitoring efforts.

Public testimony was taken on the bill. Residents of Juneau, Homer, Cordova, and Barrow testified on the legislation. A general summary of the testimony would show support for the bills, but a desire for additional financial assistance for state programs. Many suggested the cents per barrel tax be higher and that the cap of \$20 million be eliminated.

The committee moved out substitute versions of HB-68, SB-260, SB-271, and SB-277. Senate bills 261, 264, and 266 were combined into a substitute for SB-261. A discussion of the substitutes is listed under discussion of each bill.

SB-260. Severance Tax on Oil/Pollution Control:

On Tuesday, April 11, the Senate Oil and Gas Committee heard SB-260 for the first time. Paula Terrell, staff to Senator Jay Kerttula, gave an overview of the bill. SB-260 proposes a severance tax on oil for pollution control. The bill proposes to add a new section to state law which would impose a five cent per barrel tax on oil produced from each lease or property in Alaska, except oil that is exempt from taxation.

The taxes paid under this proposal would be deposited into the general fund, but the Commissioner of Administration would be charged with separately accounting for them. The

bill states the Legislature may annually appropriate the proceeds to the hazardous substance release response fund.

Terrell explained that the new fiscal note on the bill shows revenue of \$32 million in FY 90, \$30 million in FY 91, \$28 million in FY 92, \$26 million in FY 93 and \$23 million in FY 94. Co-sponsor of the legislation, Sen. Mike Szymanski, said that the \$20 million appropriation approved by the Legislature for the Prince William Sound oil spill will only "scratch the surface." He added that the least the Legislature can do this session is to make sure the oil and hazardous release response fund is fueled with this severance tax increase.

Sen. Pearce asked if the Commissioner of Environmental Conservation has given the State any ballpark estimate of the costs the State will incur for the spill cleanup. Szymanski said in informal meetings with State officials and Exxon, he said estimates of \$500 million to \$1 billion have been mentioned for the total cost, some of which he said will be direct expenses made by Exxon.

April 12, 1989:

Commissioner of Revenue Hugh Malone testified that this bill would levy a five cent charge on all non-royalty barrels on all fields, regardless of the profitability of the field. Malone said this could be particularly onerous towards the less profitable fields such as the Cook Inlet fields. He said, however, that given the volatility of oil prices, five cents is small, and it is unlikely this bill would affect production decisions. Malone added that there was not enough time to do an accurate analysis of the impact of this proposal on small fields.

Malone complimented the sponsors of this legislation, stating that this bill represents a perspective many in Alaska now hold. Malone said Alaskans are "mad as hell" and he believes this bill is a start but won't come close to offsetting the economic harm the people in Prince William Sound will suffer from this spill. Malone said his department has done a calculation of the anticipated loss of revenue to the State from the reduced throughput. He will give the figures to the committee. He said the spill happened at a time of premium oil prices and the State results has lost revenue in both royalty and tax income. Malone said it will be a long time before the reduced production can be made up. Malone presented the committee with a chart illustrating the cost of this tax by field, in FY 90 through FY 95. In FY 90, the bill is projected to raise about \$32 million. The FY 90 figures are listed below.

Prudhoe Bay - \$23m., Kuparuk - \$4m, Milne - 0, Endicott - \$2m., Lisburne - \$1m., Niakuk - 0, Cook Inlet - \$1m., ngi's - \$1m.

April 13, 1989:

The Oil and Gas Committee moved out a substitute version of SB-260 on April 13. The committee changed the title of the bill to read "An Act levying a severance tax on oil and providing that all the proceeds of the that tax may be appropriated into the oil and hazardous substances release response fund.

Other changes to the bill include:

** the Commissioner of Administration may cap the tax at \$100 million;

** addition of language from Sen. Halford's bill, SB-266, which would allow for the suspension and reimposition of the tax;

** and addition of the Halford "blackmail" clause from SB-266, which stops the levy of the tax in a fiscal year if the Legislature does not appropriate enough of the tax to restore the oil and hazardous waste release response fund to a level of at least \$100 million.

Senator Adams offered an amendment to the bill to raise the tax from five cents to twenty cents per barrel. The amendment failed on a three to one vote. Senators Adams, Halford, Kelly and Pearce all signed "no recommendation" on the committee report.

SB-261, Oil/Haz. Substance Discharge/Prevention Contingency Plans:

The Senate Oil and Gas Committee held their first hearing on SB-261 on April 11. The bill, sponsored by Senator Jim Duncan, will require the Department of Environmental Conservation to prepare and maintain a master plan specifying responsibilities of all parties affected by an oil or hazardous substance discharge. Under current law, DEC is only required to review the oil discharge contingency plans for oil terminal facilities.

SB-261 will also require DEC to prepare state-wide and regional plans by July 1, 1990, which clearly state the responsibilities of all parties with respect to a catastrophic oil or hazardous substance discharge. In addition, the bill will allow DEC to use funds from the oil and hazardous substance release response fund to investigate and evaluate the release or threatened release of oil or hazardous substances and to prepare the state and regional plans for spill containment. The fund could also be used to restore the environment by addressing the effects of an oil or hazardous substance release.

Senator Duncan gave an overview of the bill stating that the provisions of this bill will not impact any requirements in current statute for contingency plans. Duncan said he didn't know if this bill, which would clarify and specify the responsibilities of state, federal and municipal agencies, would require federal legislation as well.

April 12, 1989:

Amy Kyle testified that DEC believes the requirement of a master response plan is a good one. She said the master plan could tie in all the available resources in an area and possibly tie together resources in areas such as Prudhoe Bay and Cook Inlet. DEC supports the approach taken in this bill.

Kyle said the department has done a draft fiscal note for this bill that would require three in-house staff and a consultant. The department believes it would take about two years to complete the master response plan and cost the State about \$300,000.

April 13, 1989:

On April 13, the Senate Oil and Gas Committee moved out a substitute version of SB-261. The substitute combines portions of SB-261 with SB-264 (Kelly) and SB-266 (Halford). The new bill includes the following changes.

** (Language from SB-266) Levies a fee of five cents per barrel of the crude oil delivered, from every person who delivers crude oil to a port of transportation by a vessel that transits the navigable waters of Alaska. This differs from SB-266 in that the fee is raised from two cents to five cents per barrel and the term marine waters is changed to navigable waters. This last change is made throughout the bill. Language concerning the administration of the fee, disposition of proceeds of the fee, suspension and reimposition of the fee when the fee is not imposed, and definitions of terms are all from SB-266.

** (SB-261) Requires the preparation and annual review of statewide and regional oil and hazardous substance discharge and prevention plans. This section was amended by Sen. Adams to allow the Commission of DEC, in preparing and annually reviewing the state master plan, "to require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section."

** (SB-266) Establishes the Oil and Hazardous Substance Spill Containment Fund, but adds language from SB-261 requiring the Commission of DEC to administer the fund, make an annual report to the Legislature and Governor on various issues, and lists what cost may

be paid from the fund.

** Adds a new section to the bill regarding use of the fund. This section was amended to allow use of the fund if there is a potential catastrophic oil discharge that constitutes an emergency, the discharge is potentially an emergency under AS 46.03.080(a), or the Governor declares the discharge an emergency under AS 26.23. This section also lists uses for the fund that require legislative appropriation and lists what the fund may not be used for. The committee also amended the bill to allow the fund to be used to finance the preparation of state and regional master plans. This use of the fund is subject, however, to legislative appropriation.

** (SB-264) Establishes the Oil and Hazardous Substance Response Office. This section was amended to allow the Commissioner to establish and maintain the office by direct employment, contract with political subdivisions, transporters, other private persons and the University of Alaska. Language from SB-264 regarding emergency powers of the office and the definition of terms in the bill relating to the office and corps are added as well.

** (SB-264) Establishes an oil and hazardous substance response corps, consisting of volunteers who are trained by the oil and hazardous substance response office and are available on a short notice to assist the office in containment and cleanup.

** Adds a new section regarding the duties of the office. This section was also amended during the meeting to give the office more flexibility in its response. The office may respond to an oil and hazardous substance discharge if the oil discharge is a potentially catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a), the discharge of oil or a hazardous substance is potentially an emergency under AS 46.03.865, or the Governor declares the discharge an emergency under AS 26.23.

** The final section of the bill regarding preparation of the initial statewide and regional master plans for submission to the Governor by July 1, 1990 comes from SB-261.

An amendment proposed by Sen. Duncan to insure that DEC had the ability to pay for the costs to monitor, assess and investigate an emergency failed to be adopted. Senator Pearce will send a letter to Senate Resources explaining Duncan's concerns and why the Oil and Gas Committee did not adopt the amendment.

The substitute for SB-261 was approved by the committee. Senators Kelly and Pearce signed "do pass." Senator Adams had no recommendation and Senator Halford did not sign the report. Although approved by the committee, the bill will not move to Resources until

Monday, April 24.

SB-264. Establishing Oil/Haz. Substance Response Office/Corps:

Senator Tim Kelly gave an overview of SB-264 to the Senate Oil and Gas Committee on April 11. The bill would establish an oil and hazardous response office in the Department of Environmental Conservation. The office would be staffed by a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil or hazardous substances. The office would be charged with establishing an oil and hazardous substance response corps. The corps would consist of volunteers trained by the office in cleanup and containment techniques. Members of the corps would be entitled to wages, per diem, and expenses for training and days spent in service.

SB-264 would require the office to maintain emergency response depots in areas of the state determined to be potential sites of releases or threatened releases of oil or hazardous substances. The depots would be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

The bill would allow the corps to enter private property for the purpose of containment and cleanup under certain circumstances, but allows the affected property owner to be heard as soon as practicable and to present proof that the containment or cleanup action is unnecessary or that it is unnecessary to enter the property for cleanup or containment.

The bill would also give the office the ability to contract with municipalities or private entities provide cleanup and containment services; and conduct or contract for research studies designed to develop and improve the technology for effective cleanup and containment.

SB-264 amends current state law to allow the DEC commissioner to pay all costs incurred in establishment and maintenance of the oil and hazardous substance response office and of the expenses of the oil and hazardous substance response corps out of the oil and hazardous substance release response fund. Kelly said a cost estimate of the bill would be about \$19.7 million.

Kelly said he doesn't believe the State can trust the oil industry to carry out containment and cleanup of oil spills, that the State must be prepared. He said the Corps, which he envisions to be similar to the National Guard, would be used in the case that industry contingency plans fail. He said members of the Corps would be a trained group of paid

volunteers that would know how to deal with an oil spill emergency.

April 12, 1989:

Amy Kyle testified that DEC believes the response office and corps is a good idea. She believes the incident command model is good to look at along with the training of volunteers. Kyle suggested the Legislature look at Norway's program for training local resident volunteers. Kyle added that the Legislature must address a funding mechanism for this proposal.

SB-266. Oil Spill Emergency Containment Fund:

On April 11, the Senate Oil and Gas Committee heard an overview of SB-266 by its sponsor Senator Rick Halford. The bill would create an oil spill emergency containment fund as a source of money to mitigate the effects of damages from oil spills, and an oil spill containment strike fund. The bill establishes a two cent per barrel fee for every barrel of crude oil delivered to a port for transportation by a marine vessel, with the exception of oil exempt from taxation, such as state royalty oil. The fee would be paid quarterly. The bill requires the fees be deposited into the general fund and accounted for separately by the Commissioner of Administration. The bill would give the Legislature the authority to appropriate the annual estimated balance of the account to the oil spill emergency containment fund. SB-266 also prescribes circumstances under which the fee may be suspended and reimposed. If the Legislature fails to appropriate an amount of money from the general fund to restore the contingency fund to at least \$20 million, the bill authorizes a year-long suspension of the fee.

The oil spill emergency containment fund would be established under this legislation to pay the costs incurred by the State of emergency oil evaluation, containment, and cleanup efforts caused by an oil discharge into the marine waters of the state, regardless of fault. The Commissioner may draw on the fund if the discharge is catastrophic or if the Governor declares an emergency. The fund may not be used, however, to make grants or to reimburse parties for expenditures incurred by a person that did not have the prior approval of the Commissioner.

SB-266 also requires the Commissioner of Environmental Conservation to establish and maintain, at state ports and harbors from which crude oil is regularly transported by vessels, an oil spill containment strike force. The strike force would be made up of specialists in the evaluation, containment, and cleanup of oil discharges and must be prepared to respond promptly to an oil discharge in the marine waters of the State. Expenditure of money from the

fund for maintenance of the task force, however, would be subject to legislative appropriation.

If passed, the Commissioner of Environmental Conservation will be required to submit an annual report to the Legislature to keep it apprised of the fund's ability to address oil discharge cleanup efforts.

Halford said he believes the State shouldn't just look at the tax side of the industry to address oil spill issues. He said the State already receives \$1.5 billion from the industry in tax revenue. He added that his bill would address this issue by levying a fee of two cents per barrel to finance the oil spill emergency containment fund, that is capped \$20 million. Halford said the fee may have to be raised to three or four cents to raise the \$20 million in a reasonable time. Halford said that the fund would not be used for long term cleanup but rather to finance a response team. He focused his efforts on development of a funding mechanism that would avoid the issue of dedicated funds. Members agreed that there could possibly be a "marriage" between Kelly and Halford's bills.

DEC Deputy Commissioner Amy Kyle said the department supports a state strike force. She said this bill is limited to cure oil spills and marine spills and the response is limited to catastrophic incidences and emergencies. The department believes the Legislature should address these issues with a broader view, considering all types of responses the State could be required to make. She pointed in particular to the Crown Point incident and the possibility of an accident involving a tanker carrying PCB contaminated oil. Kyle said the fee structure is a good feature of this bill, but said the bill should also address cost recovery. Kyle said the department has no preconceived notions about the a strike force would be organized, whether it should be contracted out or involve state employees. She suggested the Legislature look at the strike force in terms of the master plan.

SCR-30. Urging Coordinated Research/Development of Programs for Prevention and Cleanup of Oil Discharges:

The Senate Oil and Gas Committee heard SCR-30, by Senator Pat Rodey, for the first time on April 11. The resolution calls on the Governor to direct the Science and Engineering Advisory Commission and the Alaska Science and Technology Foundation to explore additional ways to coordinate their activities and the activities of other state agencies to achieve development of better prevention and response techniques related to oil discharges. The resolution also suggests the Governor consider having Alaska host a future conference where worldwide experts could focus on the prevention, consequences, and lessons of oil

discharge disasters like the one at Prince William Sound.

Senator Paul Fischer said he was concerned that the Legislature not bypass the University, whose real function is research. Sen. Kelly said he thought this was the first good idea that has been advanced for the Alaska Science and Technology Center.

April 12, 1989:

On April 12, the Oil and Gas Committee briefly discussed SCR-30. Amy Kyle, Deputy Commissioner of Environmental Conservation, said her department supports this resolution. She added, however, that she has not had time to contact the Alaska Science and Technology Foundation to see if this is an area they would like to pursue.

HB-68. Liability Release of Hazardous Substances/Clean-Up Costs:

On April 11, the Senate Oil and Gas Committee reviewed HB-68 for the first time. The bill, sponsored by Gov. Cowper, relates to liability for the release or threatened release of a hazardous substance, and to the recovery of State costs incurred in containing or cleaning up of an oil or hazardous substance spill. The bill is a combination of two bills from last session -- HB-459 (strict liability for release of oil/hazardous substances, Davis) and HB-389 (recovery of state costs for oil/hazardous substance releases, Governor) -- both of which passed the House. Cowper believes the bill is necessary to clarify who is potentially liable for damages that might occur from a release of a hazardous substance, and the cost of clean up.

DEC Deputy Commissioner Amy Kyle gave an overview of the bill. She said several questions have been asked about the effect of the tort reform initiative passed by the voters last fall on this legislation. Kyle said the initiative was not intended to have any bearing on environmental issues. She said she has a legal opinion from the Attorney General's office and Legislative Legal Services to back up her statement. She said the opinions conclude that there is nothing in the initiative that precludes instituting this type of liability. Kyle said that most states that have passed tort reform have exempted liability for pollution.

April 12, 1989:

On April 12, Amy Kyle, Deputy Commissioner of DEC, presented a sectional analysis of HB-68. Kyle said that the provisions in HB-68 would not have affected the Cook Inlet or Valdez oil spills because in those cases the owner and operator were identified. Sen. Halford expressed concern about strict liability for the release of hazardous substances and whether

its application to refined fuel products will affect the availability. Kyle explained that the bill is not intended to capture production that is transported through commerce, but rather substances that are being moved for disposal. She said she believes the current language in the bill protects small business people in their sale and use of products considered as hazardous substances.

Sen. Halford discussed the amendment the House Resources Committee had added to the bill, which exempted fuel transporters. The language was removed in House Judiciary. Kyle said she had no objections to adding the language back in. Halford offered an amendment to exempt persons who transport refined oil. The amendment was adopted.

April 13, 1989:

On April 13, the Senate Oil and Gas Committee moved out a substitute version of HB-68. The only change to the bill was the addition of language which exempts transporters of fuel oil from the strict liability provisions, unless they spill their product. Senator Tim Kelly signed "do pass" while Senators Halford, Adams and Pearce had no recommendation.

FLOOR ACTION:

SJR-31. Establishing Joint Committee on Oil Spill:

On April 8, the Senate voted unanimously in support of SJR-31. The resolution would create a Joint House/Senate Committee on oil spills. The committee, which would consist of five appointees from each legislative body, would act as a legislative liaison between state and federal agencies, municipalities, and other entities involved in the current oil spill disaster.

Other responsibilities of the committee would be to monitor investigations and hearings on the oil spill disaster by state agencies, the Coast Guard, the National Transportation Safety Board, and Congressional committees; make an assessment of the activities and actions of responsible entities before, during, and after the oil spill disaster; determine the need for statutory changes and other legislative action to ensure that future oil spills can be avoided or efficiently contained and cleaned up; and issue a report of its findings and recommendations to the Legislature by January 1, 1991.

If established, the committee would be authorized to meet during session and in the interim, but would be terminated on the first day of the Seventeenth Alaska State Legislature.

Sen. Adams proposed an amendment to the resolution, calling for the committee to report its findings and recommendations to the Legislature before January 1, 1990 as well as in 1991. The amendment was adopted by unanimous consent.

SCR-31 was sent to the House for further review. It was referred to the House Finance Committee where it will be heard on Wednesday, April 19.

SB-247, Special Appropriation Valdez Oil Spill:

On April 8, the Senate voted not to concur with the House amendments to SB-247. The House moved the lapse date of the appropriation to January 31, 1990 and added language so that two million dollars of this appropriation would not lapse from the fund. The House will be asked to recede from its amendments to the bill.

The House voted not to recede from its amendments so a conference committee was appointed to work out a bill that would satisfy both bodies. Rep. Larson was appointed to Chair the House Committee which also included Reps. Hoffman and Rieger. Senator Uehling was appointed to chair the Senate Committee, with Senators Binkley and Syzmanski. The conference committee met on the evening of May 10 and worked out a compromise bill.

The conference committee substitute keeps the January 31, 1990 lapse date put in by the House, but limits the appropriation to \$10 million in general fund and \$10 million in program receipts. Only monies in the oil and hazardous release response fund in excess of two million dollars on January 31, 1990 will lapse into the general fund.

In a House Majority Caucus on Tuesday, March 11, there was discussion of adding another \$10 million into the FY 89 supplemental appropriations bill, now under preparation by the House Finance Committee.

COMMITTEE SCHEDULE:

- | | |
|-----------------|---|
| (H) Resources - | Tues., Apr. 18, 3:00 PM
Presentation by Arlon Tussing: Oil Spill |
| (S) Resources - | Fri., Apr. 21, 1:30 PM
HB-106, Haz. Waste Reduction Program |

(S) Oil and Gas -

Thurs., Apr. 20, 5:30 PM
SCR-30, Coordinated Research/Oil Spill Tech.
HB-118, ELF

Sat., Apr. 22, 1:00 PM
Bills previously heard before committee

(H) Finance -

Mon., Apr. 17, 1:30 PM
HB-196, Certify Underground Tank Installers
HB-220, Underground Storage Tanks

Tues. Apr. 18, 1:30 PM
HB-128, Oil/Gas Leases/Royalty Reduction

Weds., Apr. 19, 1:30 PM
SCR-31, Jt. Committee Oil Spills

(S) Finance -

Thurs., Apr. 20, 10:00 AM
Presentation, Joseph Stanislaw
World Oil Prices

Fri., Apr. 21, 8:30 AM
HB-119, Unitary Tax

(H) State Affairs -

Tues., Apr. 18, 8:30 AM
HB-276, Permanent Fund - Amerada Hess



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3655

AEL ISSUE PAPER: OIL SPILL RELATED BILLS

The Alaska Environmental Lobby strongly urges immediate action in response to the Exxon Valdez oil spill disaster. The following priorities must be addressed during the current legislative session:

- 1) The oil industry must pay the state for improved prevention and response capability.**
- 2) Stronger penalties are needed to deter industry carelessness.**
- 3) Fund DEC to upgrade response and monitoring efforts.**

REVENUE:

*** A \$.03/barrel severance tax would not generate sufficient funds to cover costs of cleanup, emergency response and prevention. While it is too early to establish accurate figures, estimates have ranged from \$ 1/2 to 2 billion for cleanup and liability from the Exxon Valdez disaster.**

*** A \$1.00/barrel tax on all oil production would generate approximately \$640 million. This amount, in conjunction with other oil revenue sources, comes closer to providing sufficient funding for cleanup, prevention, monitoring, and restoration.**

PENALTIES:

*** Much stronger penalties on all oil and hazardous substance releases are necessary incentives to industry.**

*** Consider applying these penalties toward restitution for damages not recoverable in court.**

*** Criminal penalties for oil and hazardous substance release need to be considered.**

RESPONSE AND PREVENTION:

*** The state's oil spill and hazardous substance release response and prevention efforts must be strengthened and coordinated. Responsibilities must be delineated; local governments and citizens must be included; and substance releases must be thoroughly evaluated, investigated, and prosecuted.**

Comments SB 261, 260,271, 285

Alan Stein 4/20/89

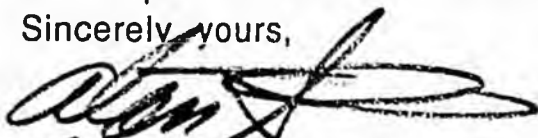
I have been an Alaskan Fisherman and resident for 18 years. I captain my own vessel. I have served on the Alaska Seafood Marketing Institute salmon committee and am currently the vice chair of the Juneau School District Advisory Council. The views expressed on the bills are mine alone.

SB 285 contains an excellent provision. The Prince William Sound Authority should have no members of the oil industry. This bill properly excludes them unlike SB 277 which places them on a blue ribbon investigatory committee. Provisions which involve the public may overly interfere with the more pressing need for action. Curbing the reach of public involvement here is justified. I heartily endorse SB 285 and its sponser for adressing vital needs. It should sail through committees in both houses on a fast track. The need is urgent.

SB 161 needs extensive change. The five cent a barrel provision, I testified was far too small. A one dcllar a barrel tax is needed so that the fund quickly accumulates a large amount. Please amend the bill to tax the profitable fields one dollar a barrel and the more marginal fields five cents a barrel. The cap needs to be raised. It stands at 100 million now. It needs to be one billion. One billion is needed for clean up of Prince William Sound alone. Exxon is buying every scientist they can find as well as whole laboratories. The government needs countervailing power to maintain scientific objectivity. A clean up ship of the Soviet skimmer class needs to be stationed in Alaska for immediate deployment. 200 miles of boom at 20 million dollars for each 200 miles needs to be stockpiled at Prudhoe, Valdez, Sitka, Ketchikan, Kodiak, and Dutch Harbor for quick deployment. A fleet of skimmers needs to be purchased. Finally and most important a spill drill team of 100 persons needs to constantly drill at key locations throughout the year. Alyeska will not do this. The State must pay for it by taxing the consortium members. Interest from the fund should go to the general fund to help improve the quality of education and the enviornment.

The liability provisions which were in SB 271 should be greatly increased and made to adjust themselves according to an accepted index of prices. I recommend a 10,000 a barrel civil fine and elimination of the loop hole of third party negligence which lets the companies off the hook of liability if they can blame it on a drunk captain. Finally, holding tanker wreck for security is meaningless. Does the state think it can sell the Valdez as it sits in PWS? This provision is absurd. the concept of security is however vital. A new form of security should be poosted. Instead, the companies need to post bond in Alaska of 5 billion which would gaurentee they would clean up their act. Criminal fines need to be included.

Sincerely yours,



Alan Stein

Blame for Delay in Cleanup Shifts to Pipeline Company

Continued From Page 1

million barrels of oil, could have wandered into shallow waters unnoticed and unwarned.

But a reconstruction of the accident and its immediate aftermath, based on scores of interviews and confidential company and government documents, shows that much of the 10 million or so gallons of oil now fouling the shorelines and coastal waters of the nation's largest state could have been confined in the early morning hours of that Good Friday.

Instead, the first full emergency crew did not arrive at the spill site until at least 14 hours after the shipwreck. And the crippled 987-foot-long ship was not surrounded by floating oil containment booms for another 21 hours.

By then, the oil was out and, combined with additional delays over the next two days in trying to burn or disperse the oil, the deadening fluid was out of any effective control, destined to befoul hundreds of miles of shoreline. As of this weekend, the oil had reached the shore of a second national park, Katmai, an undeveloped area more than 250 miles from the accident site. Several days earlier, the oil had washed ashore at Kenai Fjords National Park.

A Reconstruction

The Accident And Its Aftermath

It has been generally assumed that short staffing and equipment problems were to blame for the early delay. In public statements Alyeska, which is charged by the state with preparing and implementing the initial response to such emergencies, attributed delays entirely to problems with a barge damaged in a winter storm. The barge, Alyeska officials said, was a major component in their contingency cleanup plans.

But interviews with Alyeska employees indicate that hours before the first response boats left the Valdez terminal, enough equipment and personnel were on hand to take the initial steps required by law. Some government investigators are coming to the same conclusion and are now examining the possibility that Alyeska's managers deliberately delayed the response. If true, no one knows for sure what might have motivated such costly delays, possibly jealousies among the seven oil pipeline owners who compete rigorously elsewhere in the world, or simply a paralyzing bureaucratic inertia

among pipeline workers fearful of making vital decisions just before the arrival of a planeload of top Exxon officials.

"The equipment problems and the manpower problems don't cut it as an explanation," said one senior Alaskan official examining Alyeska's response, who asked not to be identified.

Mr. Baily's suggestion that the scope of the spill may have been underestimated seems contradicted by some internal Alyeska messages. At 3:23 A.M., three hours and 19 minutes after the accident, preparations to leave the dock were under way. Capt. Kenneth Beirend, chief of security at Alyeska's Valdez terminal, informed his men and their colleagues along the pipeline that an emergency center was now open and marine crews were preparing to leave for the accident site. "We anticipate substantial activity in the Valdez area at first light," he messaged.

Also at 3:23 A.M., the Coast Guard says, its personnel aboard the tanker radioed their estimate of a major spill of at least 138,000 barrels. Alyeska knew the spill's scale, because at 4:01 A.M. it used the same 138,000-barrel estimate in its formal accident notification to the state. The spill has since been estimated to total 240,000 barrels, with each barrel containing 42 gallons of oil.

Dan Lawn, Alaska's Department of Environmental Conservation's representative in Valdez, was on board the stricken tanker by 3 A.M. and in touch with Alyeska. "They said they were on the way," Mr. Lawn recalled. "They

said the same thing several times through the night and at dawn. Never once did they indicate they had any problems or that there would be a delay." He also rejected Alyeska's claim of barge trouble. "Any prudent person could have had that barge ready in three to four hours at the most," he said.

As to when Exxon assumed responsibility for the emergency response, Mr. Brennan of Alyeska said the change came "over several days as they were able to take charge."

But in a message to employees at 7:22 A.M. George M. Nelson, president of Alyeska, made no mention of Exxon's abilities as criteria to take over the spill operation, just the arrival of Exxon officials. "Immediate response to the spill," he said, "is being handled by crews from the pipeline terminal, with management of the operation being transferred to Exxon officials as they arrive."

Coast Guard logs show that at 9:50 A.M. Alyeska radioed a message that a full spill team was about to shove off and would arrive at the spill at about 1 P.M. When the no spill team actually arrived at the accident site is in dispute, but Mr. Lawn, who was waiting there, said no help arrived until about 4 P.M. The first group of Exxon executives arrived in Valdez from Houston aboard a corporate jet by early afternoon.

State officials also noted that although prior notification is necessary before Alyeska can transfer responsibility for handling a spill, no notification was given until more than 24 hours after the actual transfer.

CITIZENS Coalition
AGAINST BIG OIL.

CORRECTION

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



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

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*** A \$1.00/barrel tax on all oil production would generate approximately \$640 million. This amount, in conjunction with other oil revenue sources, comes closer to providing sufficient funding for cleanup, prevention, monitoring, and restoration.**

PENALTIES:

*** Much stronger penalties on all oil and hazardous substance releases are necessary incentives to industry.**

*** Consider applying these penalties toward restitution for damages not recoverable in court.**

*** Criminal penalties for oil and hazardous substance release need to be considered.**

RESPONSE AND PREVENTION:

*** The state's oil spill and hazardous substance release response and prevention efforts must be strengthened and coordinated. Responsibilities must be delineated; local governments and citizens must be included; and substance releases must be thoroughly evaluated, investigated, and prosecuted.**

* The emergency response office must be **primarily responsible for prevention, monitoring, investigation, and enforcement**. It also must **activate trained, local volunteers for emergency take-over of deficient industry clean up**.

* This state-funded response effort must not be a substitute for cleanup of oil and hazardous substances by the responsible party; it is designed only as an emergency back-up. **The state must be exempted from liability for taking over an inadequate industry cleanup**.

* **DEC needs to be adequately funded as the appropriate agency to carry out this response, investigation and prevention**. ADF&G and DNR also need additional money to fulfill their respective response and restoration duties.

LEGISLATIVE INQUIRY:

* A joint legislative committee, which focuses on **investigation, citizen involvement, and recommendations**, is an appropriate vehicle for evaluating the events surrounding the Exxon Valdez discharge disaster.

April 17, 1989

Karen Brewster

Comments SB 261, 260,271, 285

Alan Stein 4/20/89

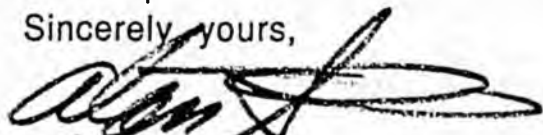
I have been an Alaskan Fisherman and resident for 18 years. I captain my own vessel. I have served on the Alaska Seafood Marketing Institute salmon committee and am currently the vice chair of the Juneau School District Advisory Council. The views expressed on the bills are mine alone.

SB 285 contains an excellent provision. The Prince William Sound Authority should have no members of the oil industry. This bill properly excludes them unlike SB 277 which places them on a blue ribbon investigatory committee. Provisions which involve the public may overly interfere with the more pressing need for action. Curbing the reach of public involvement here is justified. I heartily endorse SB 285 and its sponser for adressing vital needs. It should sail through committees in both houses on a fast track. The need is urgent.

SB 161 needs extensive change. The five cent a barrel provision, I testified was far too small. A one dollar a barrel tax is needed so that the fund quickly accumulates a large amount. Please amenc the bill to tax the profitable fields one dollar a barrel and the more marginal fields five cents a barrel The cap needs to be raised. It stands at 100 million now. It needs to be one billion. One billion is needed for clean up of Prince William Sound alone. Exxon is buying every scientist they can find as well as whole laboratories. The government needs countervailing power to maintain scientific objectivity. A clean up ship of the Soviet skimmer class needs to be stationed in Alaska for immediate deployment. 200 miles of boom at 20 million dollars for each 200 miles needs to be stockpiled at Prudhoe, Valdez, Sitka, Ketchikan, Kodiak, and Dutch Harbor for quick deployment. A fleet of skimmers needs to be purchased. Finally and most important a spill drill team of 100 persons needs to constantly drill at key locations throughout the year. Alyeska will not do this. The State must pay for it by taxing the consortium members. Interest from the fund should go to the general fund to help improve the quality of education and the enviornment.

The liability provisions which were in SB 271 should be greatly increased and made to adjust themselves according to an accepted index of prices. I recommend a 10,000 a barrel civil fine and elimination of the loop hole of third party negligence which lets the companies off the hook of liability if they can blame it on a drunk captain. Finally, holding tanker wreck for security is meanigless. Does the state think it can sell the Valdez as it sits in PWS? This provision is absurd. the concept of security is however vital. A new form of security should be poosted. Instead, the companies need to post bond in Alaska of 5 billion which would gaurentee they would clean up their act. Criminal fines need to be included.

Sincerely yours,



Alan Stein

Blame for Delay in Cleanup Shifts to Pipeline Company

Continued From Page 1

million barrels of oil, could have wandered into shallow waters unnoticed and unwarned.

But a reconstruction of the accident and its immediate aftermath, based on scores of interviews and confidential company and government documents, shows that much of the 10 million or so gallons of oil now fouling the shorelines and coastal waters of the nation's largest state could have been confined in the early morning hours of that Good Friday.

Instead, the first full emergency crew did not arrive at the spill site until at least 14 hours after the shipwreck. And the crippled 987-foot-long ship was not surrounded by floating oil containment booms for another 21 hours.

By then, the oil was out and, combined with additional delays over the next two days in trying to burn or disperse the oil, the deadening fluid was out of any effective control, destined to befoul hundreds of miles of shoreline. As of this weekend, the oil had reached the shore of a second national park, Katmai, an undeveloped area more than 250 miles from the accident site. Several days earlier, the oil had washed ashore at Kenai Fjords National Park.

A Reconstruction

The Accident And Its Aftermath

It has been generally assumed that short staffing and equipment problems were to blame for the early delay. In public statements Alyeska, which is charged by the state with preparing and implementing the initial response to such emergencies, attributed delays entirely to problems with a barge damaged in a winter storm. The barge, Alyeska officials said, was a major component in their contingency cleanup plans.

But interviews with Alyeska employees indicate that hours before the first response boats left the Valdez terminal, enough equipment and personnel were on hand to take the initial steps required by law. Some government investigators are coming to the same conclusion and are now examining the possibility that Alyeska's managers deliberately delayed the response. If true, no one knows for sure what might have motivated such costly delays, possibly jealousies among the seven oil pipeline owners who compete rigorously elsewhere in the world, or simply a paralyzing bureaucratic inertia

among pipeline workers fearful of making vital decisions just before the arrival of a planeload of top Exxon officials.

"The equipment problems and the manpower problems don't cut it as an explanation," said one senior Alaskan official examining Alyeska's response, who asked not to be identified.

Mr. Baily's suggestion that the scope of the spill may have been underestimated seems contradicted by some internal Alyeska messages. At 3:23 A.M., three hours and 19 minutes after the accident, preparations to leave the dock were under way. Capt. Kenneth Behrend, chief of security at Alyeska's Valdez terminal, informed his men and their colleagues along the pipeline that an emergency center was now open and marine crews were preparing to leave for the accident site. "We anticipate substantial activity in the Valdez area at first light," he messaged.

Also at 3:23 A.M., the Coast Guard says, its personnel aboard the tanker radioed their estimate of a major spill of at least 138,000 barrels. Alyeska knew the spill's scale, because at 4:01 A.M. it used the same 138,000-barrel estimate in its formal accident notification to the state. The spill has since been estimated to total 240,000 barrels, with each barrel containing 42 gallons of oil.

Dan Lawn, Alaska's Department of Environmental Conservation's representative in Valdez, was on board the stricken tanker by 3 A.M. and in touch with Alyeska. "They said they were on the way," Mr. Lawn recalled. "They

said the same thing several times through the night and at dawn. Never once did they indicate they had any problems or that there would be a delay." He also rejected Alyeska's claim of barge trouble. "Any prudent person could have had that barge ready in three to four hours at the most," he said.

As to when Exxon assumed responsibility for the emergency response, Mr. Brennan of Alyeska said the change came "over several days as they were able to take charge."

But in a message to employees at 7:22 A.M. George M. Nelson, president of Alyeska, made no mention of Exxon's abilities as criteria to take over the spill operation, just the arrival of Exxon officials. "Immediate response to the spill," he said, "is being handled by crews from the pipeline terminal, with management of the operation being transferred to Exxon officials as they arrive."

Coast Guard logs show that at 9:50 A.M. Alyeska radioed a message that a full spill team was about to shove off and would arrive at the spill at about 1 P.M. When the spill team actually arrived at the accident site is in dispute, but Mr. Lawn, who was waiting there, said no help arrived until about 4 P.M. The first group of Exxon executives arrived in Valdez from Houston aboard a corporate jet by early afternoon.

State officials also noted that although prior notification is necessary before Alyeska can transfer responsibility for handling a spill, no notification was given until more than 24 hours after the actual transfer.

CITIZENS Coalition AGAINST BIG OIL.

S B

264

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environmental Conservation
 Title: An Act establishing an oil and BRU: Environmental Quality
hazardous substance response office and Administrative Services
corps, etc. Components: Environmental Quality
 Sponsor: Kelly, Sturgulewski, Eliason, etc. Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		660.0	660.0	660.0	660.0	660.0
TRAVEL		60.0	60.0	60.0	60.0	60.0
CONTRACTUAL		2700.0	2620.0	1620.0	1620.0	1620.0
SUPPLIES		265.0	265.0	265.0	265.0	265.0
EQUIPMENT		325.0	325.0	325.0	325.0	325.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		4030.0	3930.0	2930.0	2930.0	2930.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Dan Easton Phone: 465-2640
 Division: Environmental Quality Date: April 20 1989

Approved by Commissioner: AD/gle Date: 4/20/89
 Agency: Alaska Department of Environmental Conservation

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

ESTABLISH DEPOTS AND RESPONSE STATIONS (\$2000.0)

The Department estimates that \$2000.0 will be required for each of the first two years to establish and stock depots and response stations at a minimum of two locations: Valdez and on the Kenai Peninsula. Once established, subsequent year costs are expected to decline to \$500.0 for contracted services to maintain inventories and response readiness.

100	\$ -0-
200	\$ -0-
300	\$1,500.0
400	\$ 250.0
500	\$ 250.0
Total	<u>\$2,000.0*</u>

*includes \$1,500.0 in first and second year costs

ESTABLISH OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE (\$2,030.0)

The Response Office would consist of a full-time staff of nine agency personnel: a director, six response specialists, one clerk-typist and one administrative assistant. First-year costs to establish and staff the office are estimated at \$700.0. Subsequent year costs are estimated at \$600.0. Other costs include training contracts (\$200.0), contracts with local governments (\$500.0), wages and per diem for volunteer training (\$300.0), contracts with private response specialists (\$100.0), and contracts for oil spill response research (\$100.0).

100	\$ 660.0
200	\$ 60.0
300	\$1,200.0
400	\$ 15.0
500	\$ 95.0
Total	<u>\$2,030.0*</u>

*includes \$100.0 in first year costs

FURTHER

FIN

4/21/89

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES

Committee considered SB 264

establishing an oil and hazardous substance response office and corps; and authorizing the use of the oil and hazardous substance release response fund for certain expenses and recommended

- replace with _____ CS SB 264 (Resources) same title
- or adopt _____ CS _____ new title
- attached amendment(s) and + may do pass technical title change (HB only)
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

2 Rick Halford NO REC

 Chairman signature and recommendation

Committee Backup attached

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



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ANCHORAGE, ALASKA 99503
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SENATE SPECIAL COMMITTEE ON OIL AND GAS

To: Members of the Senate Special
Committee on Oil and Gas

From: Committee staff

Re: SB 264, Sectional analysis

Date: April 11, 1989

Section 1. AS. 46.08

This chapter, Oil and Hazardous Substances Releases, is amended to add a new section creating the Oil and Hazardous Substance Response Office.

Sec. 46.08.100. Office Established.

The response office is established within the Department of Environmental Conservation. It is to be staffed with a director and staff who are specialist in the technologies related to discharge of hazardous substances.

Sec. 46.08.110. Response Corp.

A response corp, comprised of volunteer shall be trained in containment and cleanup techniques by the office. The members are entitled to per diem, wages and expenses for training and while on containment and cleanup actions.

Sec. 46.08.120. Response Depots.

The response office shall maintain depots with staff and equipment in areas of the state where there is the potential for hazardous substance releases.

Sec. 46.08.130. Emergency Powers.

The director may allow his staff to enter private property for the purpose of cleanup and containment if there is reasonable grounds to believe that a release of oil or other hazardous substance has occurred or is likely to occur and it would prejudice the interests of the state to delay action. A prior hearing is not necessary under these conditions.

The affected property owner has the right to a hearing to present proof to the office that the action was unnecessary.

Sec. 46.08.140. Contracts.

The office may enter into agreements to provide cleanup and containment services.

Sec. 46.08.150. Research.

The office may conduct research or contract for studies to improve the technology relating to cleanup and containment.

Sec. 46.08.040. Purposes of the Fund.

This section of existing law, dealing with the uses of the oil and hazardous substance release fund, is amended to include the cost of the response office and response corp.

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

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ANCHORAGE, ALASKA 99521
(907) 561-7612

April 11, 1989

Senator Drue Pearce, Chair
Special Committee on Oil & Gas
Alaska State Senate
Box V
Juneau, Ak 99811

Re: SB 264, Establishing an oil spill response office and corps.

Dear Senator Pearce,

I introduced SB 264 in response to the catastrophic oil spill that occurred in Prince William Sound two weeks ago which is still wreaking destruction relatively unchecked. There is not one Alaskan that will allow the repeat of such a disastrous event. I believe that the state must take control of operations to contain and clean up oil spills before there will be any measure of protection and guarantee against a disastrous aftermath of any future event.

The bill establishes an office of oil and hazardous substance response and a cadre of Alaskan volunteers trained and ready to quickly respond to oil and hazardous substance releases throughout the state. A system of material and equipment depots will be established in areas of the state susceptible to spill or release events. The office has authority to enter into agreements and contracts with other agencies, municipalities, and private entities to augment the state's readiness and capability to control and minimize damage from a spill or release of any size.

I have drawn on organizational structures for wild fire suppression as a successful pattern for the state's oil and hazardous response organization (see attached concept outline). Indeed, rapid response and the ability to quickly marshall large numbers of trained personnel and quantities of material as may be necessary is exactly what is needed.

I propose that depots be established along the pipeline, in Cook Inlet, and in the Pacific Rim coastal communities. If the Bering Straits has substantial tanker deliveries of MacKensie Delta oil, then Barrow, Kotzebue, Nome and all major

Sen. Kelly
Page 2
April 11, 1989

communities down that coast most definitely should have depots and rapid response capabilities. There may be sufficient reasons for Bristol Bay and other communities to also have response capabilities right now.

Substantial funds should be made available for training of a corps of volunteers. The Prince William Sound disaster unfortunately is already providing a training ground for many Alaskans on massive oil spill clean up. It would seem valuable that response teams from other depot communities also get experience with the real thing.

Oil spill research and clean up technology funds should be made available. In the months ahead, there should be much known about what proved useful and what did not to make an assessment of better methods and materials for oil spill containment and clean up.

Finally, I propose that the legislature fund this initial effort with \$20,000,000 from the Oil and Hazardous Substance Release Response Fund (AS 46.08.010). This commitment and all future expenses of the response office and corps should be borne by the oil production or transportation industry.

I do not present SB 264 as the only answer or even as a complete proposal. But it does provide a framework that I believe can be successful. It eliminates reliance on others and accepts both the commitment and responsibility that Alaskans will best protect Alaska and its land and marine resources.

Sincerely,



TIM KELLY
Alaska State Senator

SB264 Concept and Organizational Outline

Premise

The people of Alaska cannot depend on the oil industry to protect them from the environmental damage and economic hardships caused by catastrophic spills of oil or hazardous substances.

Goal

To establish a capability within the Department of Environmental Conservation to respond rapidly to oil and hazardous substance spills on the lands and in the waters of the State of Alaska.

Objective

To establish a management structure for oil and hazardous substance spill response research, training, planning, operations, command and control.

The following management structure is patterned after the Incident Command System developed by the U.S. Forest Service to combat large forest fires.

Oil and Hazardous Substance Response Office

Duties

- Establish oil and hazardous response positions, qualifications and certification requirements for Response Corps personnel.
- Establish inter-agency Incident Command System.
- Recruit and train personnel for on-call Response Corps.
- Establish and maintain system of Response Depots for the marshalling of oil and hazardous response equipment and supplies.

Organization

- Director
- Operations Officer
- Logistics Officer
- Planning Officer
- Training Officer
- Finance Officer
- Liaison Officer

- Safety Officer
- Crisis Management Information Officer
- Depot Managers (11)
- Clerical (4)

Response Corps

Duties

- To be on call to respond rapidly to an oil or hazardous substance spill anywhere in Alaska.
- To establish and maintain acceptable levels of training, certification, experience, readiness and physical fitness.

Organization

Incident Operations

- Air Operations Supervisor
- Vessel Operations Supervisor
- Staging Area Supervisor
- Strike Team Supervisor

- Helicopter Coordinator
- Helibase Manager
- Helispot Manager

- Vessel Coordinator
- Vesselbase Manager
- Vesselspot Manager

- Strike Team Leader
- Strike Team Single Resource Boss—Containment Booms
- Strike Team Single Resource Boss—Dispersant Materials
- Strike Team Single Resource Boss—Firing
- Strike Team Single Resource Boss—Dozer
- Strike Team Single Resource Boss—Wildlife and Bird Capture and Cleaning
- Strike Team Members

Incident Planning

- Training Specialists
- Agency Coordinator
- Mobilization/Demobilization Leader
- Spill Behavior Analyst
- Meteorology Analyst
- Wildlife/Fisheries Behavior Analyst
- Economic Impact Analyst

Incident Logistics

- Facilities Unit Leader
- Communications Unit Leader
- Incident Dispatcher
- Base Camp Manager
- Security Manager
- Medical Unit Leader
- Food Unit Leader
- Supply Unit Leader
- Ordering Manager
- Receiving/Distribution Manager
- Transportation Unit Leader

Incident Financial Management

- Cost Unit Leader
- Time Unit Leader
- Personnel Time Recorder
- Equipment Time Recorder
- Compensation/Claims Unit Leader
- Procurement Unit Leader

Oil and Hazardous Substance Response Depots

Duties

- To stockpile oil and hazardous materials containment and clean-up equipment at key points across the State of Alaska.
- To maintain stockpiles in a state of readiness to respond rapidly to spills wherever they occur.

Composition

- Prudhoe Bay
- Fairbanks
- Valdez
- Kenai
- Kodiak
- Sitka
- Unalaska
- Seward
- Ketchikan
- Cordova
- Yakutat