

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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HOUSE RESOURCES

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MARCH 15, 1993

TESTIMONY TO THE  
HOUSE RESOURCES COMMITTEE  
HB 238 (2/3/94 CS WORK DRAFT)

The 5th anniversary of the Exxon Valdez disaster is upon us. Do you remember what it was like in coastal communities? A surprising number of us still experience the spill's effects. And we remember why we had to go through all of it.

We remember an oil industry prideful and arrogant in its unwillingness to provide reasonable and necessary prevention and response measures. We remember meek and ineffectual federal and state regulators emasculated by the money and power of the industry. And we know how it feels to be sacrificed for the greed, comfort, and convenience of others. We never want to see it happen again. Never.

As legislators with the knowledge of that experience you have the sacred responsibility to see that it never does.

House Bill 238 was originally conceived at the behest of an oil industry intent on avoiding payment of the five-cent per barrel surcharge imposed after the spill. Industry would deny the people of Alaska money needed to offset the risks and damages resulting from oil and gas activities. Underneath 21 pages of complicated wording, HB238 seems still to be a vehicle for granting the oil industry a massive tax reduction.

At least in the face of all the public testimony in opposition to this bill some accommodations to common sense and decency have found their way into the committee substitute. You are to be commended for:

Including hazardous substances as a subject of the bill

Redefining "catastrophic release" to include spills of 10,000 barrels or more

Providing some mechanism for minimal funding of response preparation, prevention, and mitigation.

Unfortunately, the bottom line is that splitting the fund in two assures inadequate funding for all aspects of spill prevention and response.

-- more --

-- HB 238, O'Meara, 3/15/94 --

Legislative appropriation of the surcharge to the funds remains discretionary, with no assurance to the public that needed programs will be supported. Limitations on the uses of money in the funds and deletion of annual, required revision of state and regional contingency plans reflects a stronger desire on the part of the legislature to assure savings for the oil industry than to prevent and respond effectively to spills. And the \$50 million cap on the "catastrophic response" fund, combined with a \$10 million per spill limit is a farce, in light of the costs of attempting to deal with the Exxon Valdez disaster.

Considering all of this I would make the following recommendations regarding HB 235.

Heed public concerns and scrap the bill -- but if you feel you must pass something, focus on the welfare of the people above all else:

Simplify and shorten the bill so that ordinary people can read it and understand

Increase the surcharge to ten-cents per barrel

If you must split the fund, apply 5-cents to "catastrophic response" and 5-cents to preparation, prevention, and mitigation

Increase the "catastrophic response" fund cap to at least \$100 million

Remove per spill expenditure limits

Retain your revised definition of "catastrophic" and continue to include hazardous substances

Find a way to make appropriations to both funds and all accounts mandatory.

Remember the Exxon Valdez. Remember the reasons it occurred. I find it difficult to believe that any of you would wish to be counted among those responsible for the next major spill. Tell the oil industry that to be welcome in Alaska it must be willing to pay its way by preserving and improving the "470" fund. Kill HB238.

END OF DOCUMENT



sue is finally development in a heavily fished portion of Cook Inlet between Kasilof and Anchor Point. The groups asked the court for an injunction halting the lease sale until the case could be heard in court. On Jan. 24, one day before the scheduled sale, Superior Court denied the appeal late Tuesday in a one-sentence order that offered no explanation for the decision. The case now goes back to Superior Court, where oral arguments will be heard Sept. 21. The Hickel administration has argued that Cran-

lease sales by allowing the director of the Division of Oil and Gas discretion in establishing the scope of any pre-sale reviews and by allowing the director to decide the relevant issues of any such review. The bill is scheduled for a hearing today by the Senate Finance Committee.

# Williams tries new deal on spill fund

By JEANINE POHL  
THE JUNEAU EMPIRE

A new proposal has emerged in the legislative fight to change how oil industry taxes are funneled into the state's oil and hazardous waste cleanup and spill prevention fund.

Rep. Bill Williams, D-Saxman, wants to keep the nickel-a-barrel tax intact, and give oil companies credits for money paid once the fund reaches its cap of \$50 million.

His version of House Bill 238 has the support of the Department of Environmental Conservation and environmental groups. Meanwhile, a Senate bill that has generally been supported by the oil industry has moved to its final committee before a Senate vote.

Like the Senate bill, Williams' legislation would change the way the fund is accounted for.

"My goal was to save the oil companies money while making sure that the money that was being spent was being spent correctly," Williams, chairman of House Resources, said Wednesday.

His bill gives the DEC what it wants — a single fund to draw on to pay for spill response and cleanups, as well as prevention programs.

Williams held several hearings last session on another bill introduced by Rep. Joe Green, R-Anchorage, that is similar to the Senate legislation.

"I am concerned that the various versions presented to date go beyond fixing what is broken," Williams said.

Green said he believed the Senate version of his bill is moving



REP. BILL WILLIAMS

faster.

"It's far too late in the session for such a drastic change," he said of Williams' measure.

Green's bill and the one sponsored by Sen. Mike Miller, R-North Pole, would have split the fund in two. At first, 3 cents of the nickel tax would have gone into a fund for catastrophic oil and hazardous waste spills, the rest for prevention programs. That has been changed in Miller's bill to split the nickel equally between the two funds.

The tax is a legacy of the Exxon Valdez oil spill nearly five years ago. The tax was to be suspended whenever the spill response and prevention fund hit the \$50 million mark.

But lawmakers added pro-

grams and responsibilities to the fund, and state spending and the way the fund is accounted for have kept the fund from reaching its mark. According to DEC, it now totals about \$37 million, while the oil industry has paid out over \$112 million in taxes.

Miller's bill also has a so-called "blackmail clause" that suspends half the tax if the Legislature does not appropriate all of the current fund's money into the newly created catastrophic spill account.

The clause would effectively end the oil companies' taxes paid to the spill cleanup fund earlier by filling up the account, which would still have a cap of \$50 million.

Miller defended the clause, saying it is the "big stick" the Legislature needs to force the state to carry out the original intent of the spill-response legislation.

He said today that DEC and the Legislature have "frittered away" the fund and his bill will bring accountability to spending. He also included language preventing lawmakers from spending spill fund money on state ferries to be used for spill cleanup and response.

Miller said he was not familiar with Williams bill, but said he would be willing to work with the House to address what he called the accounting problems of the spill fund.

Senate Bill 215 continues to be opposed by the DEC and environmental organizations while receiving support from oil companies.

Bob Poe, DEC's director of administrative services, said that under Miller's bill oil companies

would pay about \$8 million over a five-year period. With Williams' proposal he said companies would pay about \$10.3 million over the same time period.

"We will continue to make the case for stronger support of a prevention and abatement program," DEC commissioner John Sandor said. He said the department's preference was to keep the nickel whole, as is proposed in Williams bill.

Patti Saunders, an attorney for the Anchorage-based Alaska Center for the Environment, said Williams' bill is a great improvement over the other measures that would change funding of spill prevention and response.

"This bill recognizes the need for a balance between the public interest and the oil industry's interests," Saunders said.

Beverly Ward of Arco Alaska Inc. said the way the fund is structured prevents it from ever reaching the \$50 million cap. "We want the cap to be achievable so that at least part of the time the tax can be suspended."

Ward said her initial impression of Williams' bill is that it's the "right approach" in attempting to simplify the fund's accounting, although she said she's not ready to endorse it yet.

"I don't think we have much confidence that we'd ever get the (tax) credit," Ward said.

Williams said he planned to schedule a hearing for his bill next week in the House Resources Committee.

NEWS CLIPPINGS IN  
Anchorage Daily News

Date: 2/28 1994

# The 470 Fund

*Appropriateness, fairness the issues*

Legislative battles over the so-called "470 Fund" oil tax have centered on bookkeeping and fairness. Each of those issues can be cleanly resolved — and ought to be.

At issue is a fund titled the Oil and Hazardous Substances Release Response Fund, financed by a nickel-per-barrel surcharge on oil production and intended — supporters argue — to fund prevention and response programs for incidents involving all types of oil and hazardous substances.

Oil companies — which naturally enough want to pay less — argue that the fund is rigged. It sets a \$50 million cap, they argue, but because money is drained away for recurrent expenses, the cap is never reached.

Others — principally the state Department of Environmental Conservation, which spends 470 Fund money on regulatory programs — argue that the tax is doing exactly what was intended, that the uses of the money are vital, and that changing the levy would mean cutting essential regulatory activities. DEC is supported in this interpretation by organizations like the Prince William Sound Regional Citizens' Advisory Council.

So far, most of the debate has centered on whether the 470 Fund (named for the number of the bill by which it was established) is a stacked deck. What we really ought to be talking about is whether the money raised is appropriate — and, if so, how it can be fairly collected.

It would be hard to argue that the need for oversight, regulation and clean-up preparedness has diminished. Events like the Exxon Valdez oil spill and critical federal inspection of pipeline operations make it clear that constant, vigilant regulation is essential. Legislators should establish how much money DEC and related organizations need to accomplish that, and fund them adequately.

It also makes good sense to have a fund on hand for emergency response. That seems straightforward, as well. With a fund solely dedicated to that purpose, it probably would make sense to cap it and suspend (but not remove) the levy when the balance was fully met.

Surely legislators can segregate these questions and reach equitable answers to each. It may be possible to do that within the mechanism of the 470 Fund legislation. If not, starting from scratch and fashioning legislation to meet the goals independently is the way to go.

# Cheers & Jeers



**CLEARING THE SMOKE OUT OF BUILDINGS:** A cheer to the National Association of Chain Restaurants for backing the Smoke-Free Environment Act of 1993, which would ban smoking in many buildings open to the public.

Association executive director Terrie Dort, who represents 90,000 chain restaurants, says it would be best for Congress to implement a ban, rather than have a hit-and-miss banning system. Tobacco spokeswoman Brennan Davis is wrong to say that the restaurateurs "really have overstepped their bounds ..." with this latest move. Perhaps what's bugging the tobacco industry is that the battle over smoking has switched arenas. Americans are rightly focusing on the rights of nonsmokers to breathe clean air, rather than the rights of smokers to pollute that air with carcinogens.



**SURGEON GENERAL TAKES ON TEEN SMOKING:** A cheer to Surgeon General Jocelyn Elders for taking the anti-smoking ball and running with it. Ms. Elders has made teen smoking one of her prime causes, and the latest surgeon general's report on smoking is

sure to cause pro-tobacco folks to blow smoke rings out of their ears. "Smoking is not just an adult habit. It is an adolescent addiction," she said in her latest report — which is focused entirely on teen-agers and smoking. She's on the right track, especially when you consider that almost three out of four daily smokers began puffing in their impressionable adolescence.



**TO SMOKE OR NOT TO SMOKE: GIRLS SWAYED BY ADS?** A cheer to the University of California San Diego Cancer Center for authoring a study linking those early female-oriented tobacco ads to increasing numbers of young girls' picking up the

smoking habit. The study shows that as these ads increased, cigarette smoking among female adolescents skyrocketed. During that same time period — from the late 1960s to 1975 — smoking among boys was on the decline, according to The New York Times.

The tobacco industry argument that youngsters turn to smoking because of parental smoking or peer pressure is weakened when you think twice about it. How did those parents get sucked into smoking in the first place? And couldn't some peer pressure originate in kids who emulate what they see on television, including smoking ads with youthful themes? These kids then influence other kids to adopt smoking and the cycle is repeated.

# Audit Report

DEC

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DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION  
OIL AND HAZARDOUS SUBSTANCE  
RELEASE RESPONSE FUND

January 10, 1994

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Audit Control Number:

18-4463-94

Division of Legislative Audit  
P.O. Box 113300, Juneau, Alaska 99811-3300

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# Audit Report

DEC

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DEPARTMENT OF ENVIRONMENTAL  
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OIL AND HAZARDOUS SUBSTANCE  
RELEASE RESPONSE FUND

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P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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# ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
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(907) 465-3830  
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January 10, 1994

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

## DEPARTMENT OF ENVIRONMENTAL CONSERVATION OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

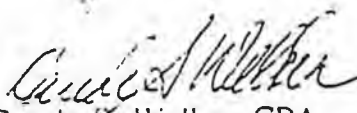
January 10, 1994

Audit Control Number

18-463-94

The objective of the audit was to review policy issues relating to the Oil and Hazardous Substance Release Response Fund within the Department of Environmental Conservation.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology beginning on page one.

  
Randy S. Welker, CPA  
Legislative Auditor

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted a review of policy issues relating to the Oil and Hazardous Substance Release Response Fund (Response Fund) administered by the Department of Environmental Conservation (DEC).

### Objectives

The objective of the review was to gain an understanding of policy issues relating to the Response Fund. Specific objectives of the review were to:

1. Review the history of the Response Fund: including the original purposes of the fund, the reasons for establishing a 5¢ per barrel of oil surcharge, and the current purposes of the Response Fund.
2. Determine the criteria DEC uses in its decisions to fund certain projects and whether the criteria is consistent from project to project.
3. Determine what accounting procedures are currently in place that allow the legislature to track where and how Response Funds are being spent.
4. Recommend possible statutory changes that will clarify how Response Fund monies should be administered by agencies outside of DEC.

### Scope

We focused our examination on the legislative history of the Response Fund, the budgeting process for FY 91 through FY 94, and FY 92 and FY 93 expenditures that were related to selected projects.

### Methodology

Our evaluation of policy issues relating to the Response Fund involved review and analysis of the following documents:

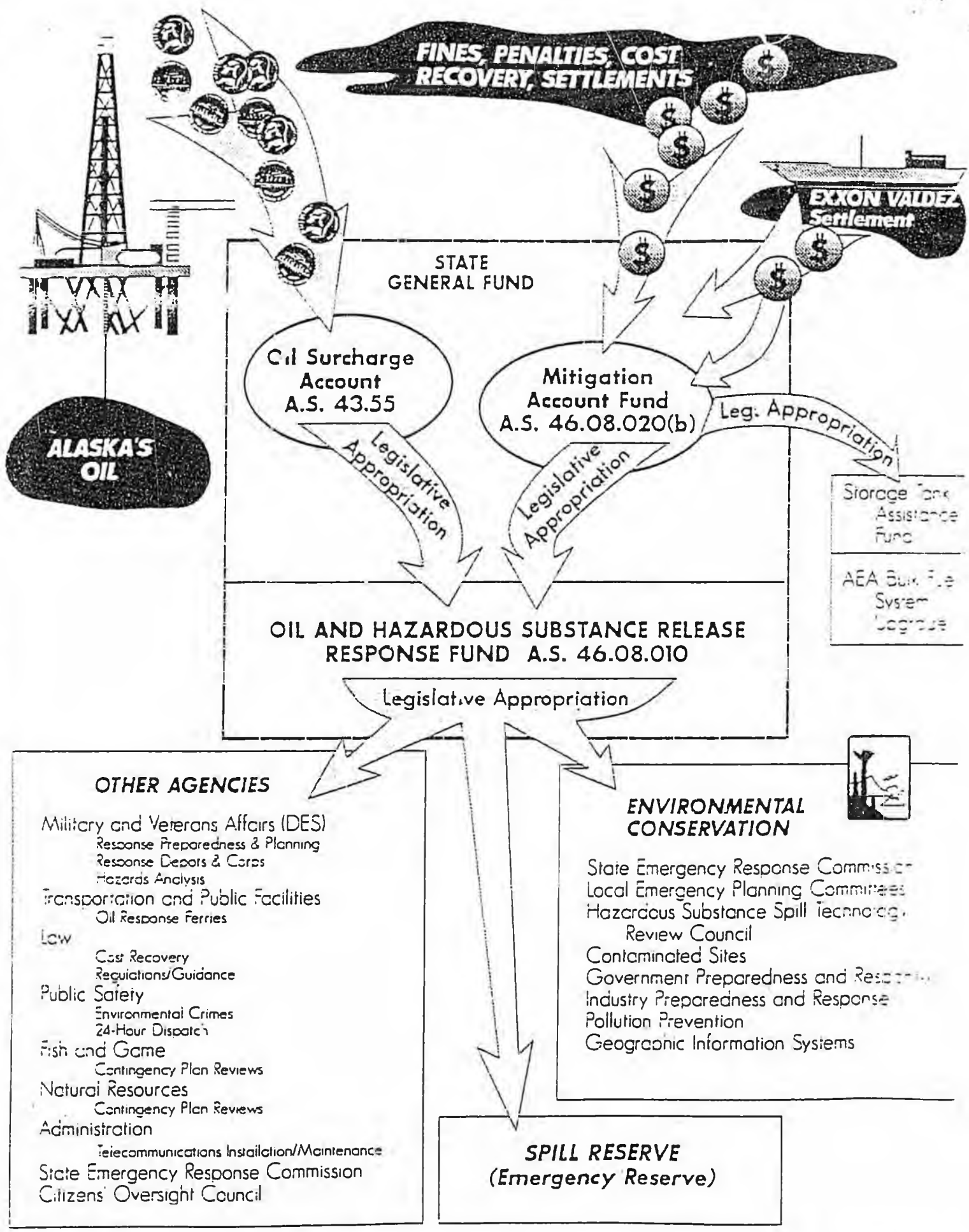
1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.
2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, S.L.A. 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13. SLA 1989.
4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29. SLA 1989.
5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 30. SLA 1989.
6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90. SLA 1989.
7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112. SLA 1989.
8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113. SLA 1989.
9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190. SLA 1990.
10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191. SLA 1990.
11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199. SLA 1990.
12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48. SLA 1991.
13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83. SLA 1991.
14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.
15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.
16. Response Fund Annual Reports for FY 87 through FY 93.
17. DEC Policy Statements on the Response Fund.
18. Attorney General Opinions and memorandums on the Response Fund.
19. Industry contingency plans and corresponding documentation maintained at DEC.

20. Documents pertaining to DEC spill responses through November 8, 1993.
21. DEC database information and other documentation related to contaminated sites.
22. Oil Spill Commission Final Report.
23. A pamphlet put out by the Prince William Sound Regional Citizens' Advisory Council entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill.*"
24. Newspaper coverage regarding the Response Fund and its usage.

Additionally, we interviewed the following:

1. Staff within DEC.
2. Staff within Department of Military and Veterans Affairs.
3. Staff within Division of Legislative Finance.
4. Staff of Office of the Governor, Office of Management and Budget.
5. Staff within Division of Legal Services.
6. Chairman of the former Alaska Oil Spill Commission and current chairman of Hazardous Substance Technology Review Council.



## ORGANIZATION AND FUNCTION

The 1986 Alaska State Legislature passed House Bill (HB) 470 (Ch 59, SLA 86), a bill relating to the release of oil and hazardous substances. This legislation established an Oil and Hazardous Substance Release Response Fund (Response Fund) on July 1, 1986 with appropriations from three different sources totalling \$680,666: \$158,677 from the balance of the Oil Spill Mitigation Account, \$221,989 from the balance of the Oil Spill Expense Account, and \$300,000 FY 87 capital budget appropriation. The facing page illustrates flows into and out of the Response Fund.

Between 1986 and 1989, deposits into the Response Fund were made from general fund appropriations and from the Oil and Hazardous Substance Release Mitigation Account (mitigation account). This account is composed of money recovered from parties responsible for oil and hazardous substance spills through cost recovery and fines, penalties, or damages. Money in the mitigation account may be appropriated each year to the Response Fund. In the past, the legislature has also appropriated money from the mitigation account into the storage tank assistance fund and to the Alaska Energy Authority's program directed at upgrading bulk fuel storage systems.

In 1989, the legislature enacted statutes which levied a surcharge of 5c per barrel of taxable oil produced from each lease or property in the State. The commissioner of the Department of Administration accounts for the money in a separate general fund account, which is commonly called the Oil Surcharge Account (surcharge account). As explained on page 13 in Background Information, the surcharge is subject to suspension and reimposition if certain criteria are met. Between FY 87 and FY 94, a total of \$109,200,000 has been appropriated to the Response Fund from the surcharge account and \$5,033,600 has been appropriated from the mitigation account. In addition, the legislature has appropriated in excess of \$74,000,000 from the general fund to the Response Fund through FY 93.

Money left over in the Response Fund after all appropriations have been made to agencies for their operating costs has been appropriated to the spill reserve. The spill reserve may be accessed by the Department of Environmental Conservation (DEC) only for costs necessary to investigate, evaluate, contain, clean up, and take other necessary action to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. DEC does not budget for "response" to releases of oil or other hazardous substances, so all spill reserve expenditures are unbudgeted response activities.

DEC can only make expenditures out of the Response Fund with specific legislative appropriation, except for emergency releases of oil or hazardous substances paid out of the spill reserve. Each year the legislature determines what projects and activities will be paid for out of the Response Fund. In addition to DEC, twelve state agencies have been funded with monies from the Response Fund. These agencies have been active in contingency plan review, state master and regional contingency planning, and working with the State Emergency Response Commission.

## Spill Prevention and Response Division

Within DEC, the primary user of the Response Fund is the Spill Prevention and Response Division (SPAR). SPAR was created in July 1991 for the purpose of preventing and responding to negative impacts to public health and the environment caused by oil and hazardous substance spills. The division administers four programs:

1. The Government Preparedness and Response Program (GPRP) was developed to protect public health and the environment by ensuring a planned and safe response to releases or threatened releases of oil or hazardous substances. The emphasis of this program is on the State's ability to prevent and respond to spills. The program is responsible for facilitating local, regional, and statewide response preparedness. To achieve this, GPRP prepares, reviews, and revises state and regional prevention and response plans for oil and hazardous discharge. An integral part in the planning process is the State Emergency Response Commission (SERC).

GPRP provides staff support to SERC. SERC evolved from the federal Superfund Amendments and Reauthorization Act (1986). This legislation required the State to minimize the impact on human health and the environment from oil and hazardous substance releases by facilitating local, regional, and statewide response planning. SERC was established by executive order in 1987 but did not become operational until FY 91.

The commission is comprised of the commissioners or their designees of eight state agencies, the adjutant general or his designee, and seven public members appointed by the governor. To the extent practicable, public members have expertise in the emergency response field. The main duties of the group are to designate Local Emergency Planning Districts, appoint the membership of Local Emergency Planning Committees (LEPCs), comment on local emergency plans, provide technical assistance to LEPCs, and receive and process information requests from the public.

2. The Industry Preparedness Program (IPP) focuses on the oil industry's ability to prevent and respond to releases or threatened releases of oil. Statute requires industry to submit proof they have both the financial ability and physical ability to respond to releases. Their physical ability is demonstrated by a contingency plan which must be approved before obtaining a permit to operate. Contingency plan requirements apply to oil tank vessels, barges, crude oil pipelines, and onshore and offshore oil exploration and production facilities. In addition, oil terminal facilities that contain an amount of product specified in statute must have a contingency plan. IPP is responsible for reviewing, approving, and testing contingency plans as well as ensuring operators meet the financial responsibility requirements set out in statute.
3. The Contaminated Sites Remediation program was created to abate threats to public health and the environment posed by sites contaminated by improper disposal or discharges of hazardous substances. The number of contaminated sites is large and ever increasing. The program attempts to identify and assess contaminated sites and

ascertain their potential threat to public health and the environment. With this information, contaminated sites can be prioritized so those sites posing the greatest threat are addressed first. The method by which the program addresses a contaminated site depends on the identity of the party responsible for the contamination. Cooperative agreements are in place with the federal government to clean up sites where the federal government is the responsible party. A memorandum of agreement exists between several state departments to address those sites where the State is the responsible party. For sites where a responsible party is willing to help clean up, the program provides oversight. If a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead cleanup efforts.

4. The Underground Storage Tank program assists owners and operators in meeting federal regulations. These regulations require new underground storage tank installations to meet national standards and tanks already in operation phase-in to meet those standards. Federal law also requires each facility to demonstrate financial responsibility in the event of a spill. In Alaska, a Storage Tank Assistance Fund was established which offers grants and loans to owners and operators to test, clean up, upgrade, or close their facilities. The Storage Tank Assistance Fund receives monies from the mitigation account thereby reducing funding that flows from the mitigation account into the Response Fund.

These four programs are developed and managed by the director of SPAR. Program managers are centralized in SPAR's central office and their role is to develop policy and provide technical guidance to the four regions of DEC so that programs are implemented in an effective and consistent manner across regions.

DEC has been divided into Northern Region, Southcentral Region, Southeast Region, and Pipeline Corridor Region. Regional managers report directly to the commissioner and are responsible for making sure SPAR program objectives, as well as other divisions' program objectives, are accomplished. Regional offices assume line authority of district and field office staffs. Actual work on contaminated sites, spill response, spill drill and inspections, and review of contingency plans is accomplished primarily by district offices with support from their region.

PURPOSES OF THE RESPONSE FUND  
AS 46.08.040

<p>Senate Bill 25 [Ch 83, SLA 91]</p>	<p>(4) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to</p>
<p>Senate Bill 261 [Ch 90, SLA 89]</p>	<p>(1) investigate and evaluate the release or threatened release of oil or a hazardous substance and</p>
<p>House Bill 470 [Ch 59, SLA 86]</p>	<p>contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;</p>
<p>Senate Bill 264 [Ch 113, SLA 89]  reworded by: HB 567 [Ch 19, SLA 90] HB 566 [Ch 190, SLA 90]</p>	<p>(2) pay all costs incurred to (A) establish and maintain the oil and hazardous substance response office;</p>
<p>House Bill 567 [Ch 191, SLA 90]</p>	<p>(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030; (C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and (D) to verify or establish proof of financial responsibility required by AS 46.04.040;</p>
<p>Senate Bill 264 [Ch 113, SLA 89]  reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]</p>	<p>(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;</p>

House Bill 470  
[Ch 89, SLA 86]

- (4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);
- (5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

Senate Bill 261  
[Ch 90, SLA 89]

- (6) prepare, review, and revise
  - (A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and
  - (B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and
- (7) restore the environment by addressing the effects of an oil or hazardous substance release.

House Bill 566  
[Ch 190, SLA 90]

- (b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.
- (c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)--(7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.

House Bill 578  
[Ch 199, SLA 90]

- (d) Upon request from
  - (1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and

Senate Bill 165  
[Ch 48, SLA 91]

- (2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

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## BACKGROUND INFORMATION

The Response Fund was established with the passage of House Bill 470 in 1986 (Ch 59, SLA 86) by the legislature and the governor signing the bill into law. The bill, which was sponsored by Representative Mike Davis, created the Response Fund in the state general fund. The legislature set out their reason for establishing the Response Fund in the Purpose, AS 46.08.005. In that stated purpose, they declared the release of oil or hazardous substances presents a substantial threat to public health, to the environment, and to the economy of the State. The Response Fund was to provide a readily available fund for the payment of expenses incurred by DEC in protecting the environment from oil and hazardous substances releases.

### Original uses of the Response Fund

The commissioner of DEC was named the Response Fund administrator and was authorized to use the fund for three distinct purposes:

1. Contain and clean up, which includes monitoring, assessing, investigating, and evaluating, the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.
2. Provide matching funds for participation in federal oil discharge cleanup activities.
3. Recover the cost to the State or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

Alaska Statute 46.08.010 specifically disallowed using the fund for capital improvements.<sup>1</sup> During meetings of the House Special Committee on Oil and Gas, the commissioner of DEC explained that he did not want the fund to be viewed only as a means to deal with future spills, but also "to investigate and deal with sites where poor management of waste disposal may have occurred in the past."

### Original methods to finance the Response Fund

The legislature could appropriate money received from federal, state, or other sources into the Response Fund. Money recovered from parties responsible for the containment and cleanup at a specific site and fines, penalties, or damages recovered because of an oil or hazardous release would be deposited in the general fund into a special account called the mitigation account. The legislature could annually appropriate to the Response Fund a sum

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<sup>1</sup>"Capital improvement" is defined in AS 46.08 to mean "construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall."

equal to the amount received in the mitigation account during the calendar year preceding that legislative session.

### Legislature reacts to Exxon Valdez grounding

No new legislation was introduced or passed regarding the Response Fund between June 1, 1986, the effective date of the original legislation, and March 24, 1989 when the *Exxon Valdez* hit Bligh Reef in Prince William Sound. After that incident, six bills were enacted in 1989 that affected the Response Fund. The current purposes of the fund with annotation of the bill and date of each section change can be found on pages 8 and 9. Senate Bill 247 (Ch 13, SLA 89) went into effect just 20 days after the *Exxon Valdez* oil spill and was to cover expenditures necessitated by the state response. The legislature appropriated \$20 million to the Response Fund, of which \$10 million came from the general fund and \$10 million came from general fund program receipts, which were to be reimbursement of cleanup costs from Exxon.

Senate Bill (SB) 256 (Ch 29, SLA 89), while being approved by the governor on May 11, 1989, was made retroactive so that the effective date was March 24, the day of the grounding. The bill amended AS 46.08.070 so cost recovery had to be immediately sought by DEC for money expended to contain or clean up oil or a hazardous substance. Previously the statute had allowed DEC to seek cost recovery, but did not require the department to do so. Senate Bill 256 also permitted DEC to reimburse a municipality for actual expenses incurred in the abatement of a release if the municipality entered into an agreement with DEC.<sup>2</sup>

House Bill 68 (Ch 39, SLA 89), which had an effective date of May 13, 1989, provided for strict liability for the release of a hazardous substance. A new section was added to AS 46.08 to allow the State to place a lien for expenditures by the State from the Response Fund against all property owned by a person who is determined by the commissioner to be liable for the expenditures.

The authorized uses of the fund were expanded with the passage and signing into law Senate Bills 261 (Ch 90, SLA 89) and 264 (Ch 113, SLA 89). From testimony at public hearings, it was apparent that residents of the State did not trust the oil industry to live up to their responsibilities identified in contingency plans. Residents discussed the need for oil facilities to be inspected and for unannounced drills to test industry's ability to implement their contingency plans. Residents also expressed that DEC needed to be adequately funded to upgrade monitoring and response efforts. Many residents voiced support for the oil industry to be held strictly liable for their spills, but at the same time have an independent state response capability. The two senate bills recognized this concern by containing identical Findings and Purpose, which included, "*the March 24, 1989, oil spill disaster in the Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability.*"

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<sup>2</sup>Prior to the statute amendment, the municipality could only be reimbursed if the agreement had been entered into before the expenses were incurred.

Senate Bill 251 added a state master plan and regional master plans to the duties of DEC. The State Master Plan, which was to be addressed in AS 46.04.200, included requiring or scheduling unannounced oil spill drills to test the sufficiency of an oil terminal facility discharge prevention and contingency plan. The preparation, review, and revision of the state master plan and regional master plans were added as the fourth authorized use of the fund. In addition, the first use of the fund was amended to include investigate and evaluate as well as the contain and clean up previously allowed. A fifth purpose allowed the Response Fund to be used to restore the environment by addressing the effects of an oil or hazardous substance release.

Senate Bill 264 established an oil and hazardous substance response office in DEC. That office was authorized to establish emergency response depots, which would be staffed and equipped in areas of the state determined to be potential sites of releases of oil or hazardous substances. The response office was authorized to establish response corps, which were to be in the Department of Military and Veterans' Affairs (DMVA), Division of Emergency Services (DES). The corps would consist of volunteers who register with the office and are trained by the office in techniques for containment and cleanup. The costs for the response office, depots, and corps were included as a purpose of the Response Fund.

#### Imposition of a 5c per barrel conservation surcharge

The passage of SB 260 (Ch 112, SLA 89), which was sponsored by Senator Jalmar Kerttula and co-sponsored by Senator Mike Szymanski, levied a 5c per barrel surcharge on crude oil. The sponsor statement dated April 11, 1989 said the intent of the legislation was that revenues from this additional tax would provide a continuing source of funding for the Response Fund. This would ensure that adequate funds are available to meet the State's responsibility for oil spill clean up.

Since the legislature cannot dedicate revenues in any piece of legislation without a constitutional amendment, a clause was included in SB 260 to encourage the appropriation of the surcharge from the surcharge account into the Response Fund. If the legislature does not appropriate the balance of the surcharge account to the Response Fund or if the governor vetoes or reduces the appropriation of the surcharge account to the Response Fund, the surcharge would not be imposed that fiscal year.

The surcharge would also be suspended by the commissioner of the Department of Revenue if the commissioner of the Department of Administration reported that the difference between the cumulative total of surcharge money appropriated to the Response Fund equals or exceeds the amount expended by the fund by \$50 million. If the surcharge had been suspended, it could be reimposed if the commissioner of the Department of Administration reports that the difference is less than \$50 million.

During committee meetings regarding SB 260, discussion was held as to how long the imposition was likely to remain in effect based on expenditures from the Response Fund. One senator pointed out that 13 oil spill related pieces of legislation were currently pending and passage of them all would create more expenditures from the Response Fund than had

occurred so far. A member of legislative counsel agreed that there would be an unlimited draw from the Response Fund, but the sponsor of the legislation said the draw could not be unlimited. Expenditures from the Response Fund were limited by what revenues were produced by the 5c per barrel. Legislative counsel explained that, "through legislation and statutes, the legislature establishes the purposes for which the fund can be used." In the Findings and Purpose of the enacted piece of legislation, the legislature explained their purpose by stating:

(a) *The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.*

(b) *It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.*

#### Uses of Response Fund continue to expand

House Bill 567 (Ch 191, SLA 90) extended the number of the purposes of the fund which were to review oil discharge prevention and contingency plans; to conduct training, response exercises, inspections, and tests in order to verify state, municipality, and industry preparedness; and to verify or establish proof of financial responsibility. The bill also clarified DEC's reporting requirements on the Response Fund to include describing each personal services position and total compensation for the position, each contract in excess of \$20,000, and each purchase in excess of \$10,000.<sup>3</sup>

House Bill 566 (Ch 190, SLA 90) established SERC in DEC. The oil and hazardous substance response office in DEC established by Senate Bill 264 would serve as staff for SERC. SERC was to designate boundaries of local emergency planning districts and establish local emergency planning committees. SERC was to review and approve local, regional, and state plans for hazardous substance discharge response.

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<sup>3</sup>House Bill 470 had required the commissioner of DEC to submit an annual report to the legislature. The report had to include the amount of money expended from the fund in the preceding fiscal year, the amount and source of money received, a summary of municipal participation in responses paid by the fund, a detailed summary of department activities paid by the fund, and the projected cost for the next fiscal year of monitoring sites oil spill or hazardous waste sites. The report also had to include a summary of contaminated sites, the threat these sites represented to public health or the environment, and the cost and action needed to clean these sites.

A Hazardous Substance Spill Technology Review Council,<sup>7</sup> which was to review and recommend research topics to DEC, was created under SERC. The bill clarified that the Response Fund was to pay expenses incurred by DMVA, DES for response corps and depots when presented with appropriate documentation by the division. This bill allowed the Response Fund to be used for response to a declared disaster emergency related to an oil or hazardous substance discharge.

House Bill 578 (Ch 199, SLA 90) created a Citizens' Oversight Council on Oil and Other Hazardous Substances in the legislature (oversight council). The oversight council would request money from the Alaska Legislative Council, which in turn would seek reimbursement from the Response Fund. The oversight council would determine whether state and federal agencies were fulfilling their responsibilities for the prevention and response to oil and hazardous releases. The oversight council was to file an annual report with the legislature and governor and make policy recommendations to prevent releases.

Senate Bill 25 (Ch 83, SLA 91) amended the authorized uses of the Response Fund to include making grants to a municipality or village that is affected by a release involving extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from current revenue sources. Senate Bill 165 (Ch 48, SLA 91) allowed the Response Fund to be used to construct or refurbish one or more ferries so the ferries would have the capability to assist in responding to oil or hazardous substance spills.

#### Legislature plays active role in shaping purpose of fund

In addition to expanding the purpose of the Response Fund through statutory amendments, the legislature has taken an active role in shaping the purpose of the fund by appropriating on a project specific basis. In FY 93 over \$50 million was appropriated from the Response Fund. The legislature was specific in the purpose of the appropriations by allocating each appropriation to individual projects. On several occasions, the legislature was detailed to the point of listing a specific project's purpose and location. For example the appropriation for the Nearshore Demonstration Project reads:

*The sum of \$1,200,000 is appropriated from the oil and hazardous substance release response fund (AS 46.08.010) to the Department of Environmental Conservation, division of spill prevention and response, for fiscal year 1993, for nearshore strike team demonstration projects along the Gulf of Alaska coast and in southeast Alaska that are developed in consultation with the division of emergency services and the regional citizens' advisory councils in the affected region.*

The legislature has chosen to supplant general fund appropriations with Response Funds. They have done so when services previously funded out of the general fund qualified for

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<sup>7</sup>The Division of Legislative Audit conducted a Sunset Audit on the Department of Environmental Conservation, Hazardous Substance Spill Technology Review Council, dated November 29, 1993.

Response Funding. For example in FY 93, the legislature changed the funding source for over \$950,000 in SPAR management costs from the general fund to the Response Fund. In addition, when DEC requested capital appropriations to clean up contaminated sites where the State was the responsible party, the legislature changed the funding source to the Response Fund from the general fund.

#### Various budgeting procedures used to track Response Fund expenditures

Appropriations from the Response Fund were made to other agencies. This made it very difficult for DEC, as fund administrator, to manage expenditures. In an attempt to give DEC greater control and responsibility for activities supported by the Response Fund, especially those of other agencies, the legislature put the entire Response Fund appropriation into the front section of the FY 92 budget bill (Ch 73, SLA 91). This had the effect of greatly increasing the complexity of accounting for Response Fund expenditures. To gain access to the Response Fund appropriation, DEC was forced to use intra-agency reimbursable services agreements (RSAs) between itself and the Response Fund. DEC would then fund approved projects from other agencies such as DMVA and the Department of Fish and Game (DFG) via inter-entity RSAs. This created a chain of interlocking RSAs which made it very difficult to track expenditures related to the Response Fund.

#### Different budget processes were used in FY 93 and FY 94

DEC took a more effective role in the management of the Response Fund in FY 93 and FY 94. For FY 93, DEC notified other agencies that they must file a formal request for any activities they wanted funding with Response Funds. This procedure improved coordination, but was untimely. By the time agency requests had been received, reviewed by DEC, and forwarded to the Office of the Governor, Office of Management and Budget (OMB) with DEC's recommendation, the State's budget had essentially already been submitted.

DEC followed the same interagency process for the FY 94 budget, but the memorandums were submitted to the other agencies in a timely manner. DEC reviewed the requests based on the anticipated statutory requirements those agencies needed to fulfill. DEC submitted to OMB a list of allocations of Response Funds DEC recommended for approval. OMB has the final approval authority in making recommendations to the governor's budget.

Except for two notable appropriations,<sup>5</sup> there were no direct operating appropriations to agencies other than DEC in FY 93. However, direct capital appropriations were made to other agencies for cleanup of contaminated sites. In FY 94, no "front section" appropriations were made to DEC except for the transfer from the oil surcharge and mitigation accounts to the Response Fund. The SPAR division is the direct recipient of the funds. SPAR is responsible for RSAs between DEC and other agencies.

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<sup>5</sup>The two FY 93 appropriations made to agencies other than DEC were, \$7,500,000 appropriated to the Alaska Marine Highway Ferry Replacement Fund and \$237,300 appropriated to the Legislative Council for the Citizens' Oversight Council on Oil and Other Hazardous Substances.

Reimbursable Services Agreements extensively used for Response Funds expenditures

DEC entered into 16 RSAs with other agencies in FY 92 and entered into 17 RSAs with other agencies in FY 93 where the primary funding source was the Response Fund. In addition, DEC had 17 internal RSAs between its own divisions in FY 92 and 16 internal RSAs in FY 93. Response Fund expenditures on both internal and external RSAs combined totalled almost \$16 million in FY 92. In FY 93, there were over \$6 million in Response Fund RSA expenditures related to FY 92 RSAs and over \$8 million on FY 93 RSAs.

Agencies provide minimal supporting information to DEC for their RSA expenditures when requesting reimbursement from the Response Fund. Generally the supporting summary of accounting information provides limited detail of the agencies' activity, especially those related to personal services. DEC requires copies of invoices for purchases exceeding specified dollar amounts. Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. Examples of individual external FY 92 and FY 93 RSAs are included in Table D of this report.

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## REPORT CONCLUSIONS

### Purposes of the Response Fund prevail over contradictory purpose of major funding source

As explained on page 13 of Background Information, SB 260, which established the 5c per barrel surcharge on taxable oil produced, indicated the purpose of the surcharge was for the "state to have an independent spill containment and cleanup capability in the event of future discharges [emphasis added] of oil or a hazardous substance." Under the provisions of the bill, the revenue generated by the surcharge was to be appropriated to the Response Fund.

The Response Fund had already been used to address cleanup of existing contaminated sites. This resulted in a situation whereby the major funding source of the Response Fund had the more narrow focus of being used for future discharges. But the activities of the Response Fund itself were broader, in that they addressed the results of historical oil and hazardous substance spills, i.e., contaminated sites.<sup>7</sup>

Members of the oil and gas industry have expressed dismay at how the expanded uses of the fund, particularly as it is being used to cleanup existing contaminated sites, does not meet their understanding of the reason for the surcharge. There are claims that "there have been abuses to the oil spill fund since it was established in 1989."<sup>8</sup> Such arguments appear to us to be based on the emphasis on future discharges that was placed on the 1989 imposition of the surcharge. As quoted above, this emphasis was part of the Findings and Purpose of Senate Bill 260. The Findings and Purpose does not carry the degree of authority that an enacted statute does.

Therefore AS 46.08.040, Purposes of the Fund, is the overriding authority on appropriate uses of the fund. At payment date, the surcharge becomes an unrestricted revenue to the State, albeit from a specified source. It is the prerogative of the legislature to determine the best use of the State's unrestricted revenues. Specific cleanup activities cited by an oil and gas industry group as being inappropriate uses of the Response Fund include "cleaning up state campgrounds, state airports, responding to chlorine leaks and buying new ferries." All of these specific projects are appropriate uses of the Response Fund: the first two involved cleanup of contaminated sites; the third project is a response to a hazardous substance spill; and the fourth item is a specific allowed use of the fund under expanded legislation. However, the dichotomy between the purposes of the fund and the purpose of

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<sup>7</sup>In 1986 during committee meetings regarding the bill originating the Response Fund, the commissioner of DEC had made it clear he intended cleanup activities from the Response Fund to address both current and past spill activity. The final legislation was silent as to what time period would be used to determine cleanup activities. In addition, the purposes of the Response Fund were expanded in 1989 and have continued to expand since that time.

<sup>8</sup>Quote came from an article entitled "AOGA supports bill to fix the oil-spill-response fund," which was published in the Forum/Letters section of the *Anchorage Daily News* on November 27, 1993. The letter was written by Ardie Gray, who is the public affairs manager of the Alaska Oil and Gas Association.

the major funding source has created a continuing controversy about the appropriateness of how the fund is being used.

#### Current spill reserve balance is close to DEC goal for adequate response

As of the end of FY 93, the unreserved balance of the spill reserve was \$27,084,100. In a draft report, DEC stated the spill reserve had two primary purposes. One was to address costs faced by communities, municipalities, and villages in responding to a major spill incident. The second purpose would be to cover state costs. DEC has a goal of depositing and maintaining \$30 million in spill reserve for these two purposes: \$10 million for communities, municipalities, and villages; and, \$20 million for the State.

Alaska Statute 29.60.510 states in part that the commissioner of the Department of Community and Regional Affairs "may not expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill reserve or of the unrestricted balance of the fund for grants authorized under this section. . . ." The other \$20 million in the spill reserve may be accessed by DEC.

Allowed uses include costs necessary to investigate, evaluate, contain, clean up, and take other necessary action, to address a release or threatened release of oil or a hazardous substance. Such release or threatened release must pose an imminent and substantial threat to the public health or welfare, or to the environment. One reason for having the spill reserve is for an immediate source of start-up cash in the event of a catastrophic spill. It is estimated that \$50 million would last about 10 days in a spill the magnitude of *Exxon Valdez*.

#### Spill reserve balance and the 5¢ surcharge suspension formula are unrelated

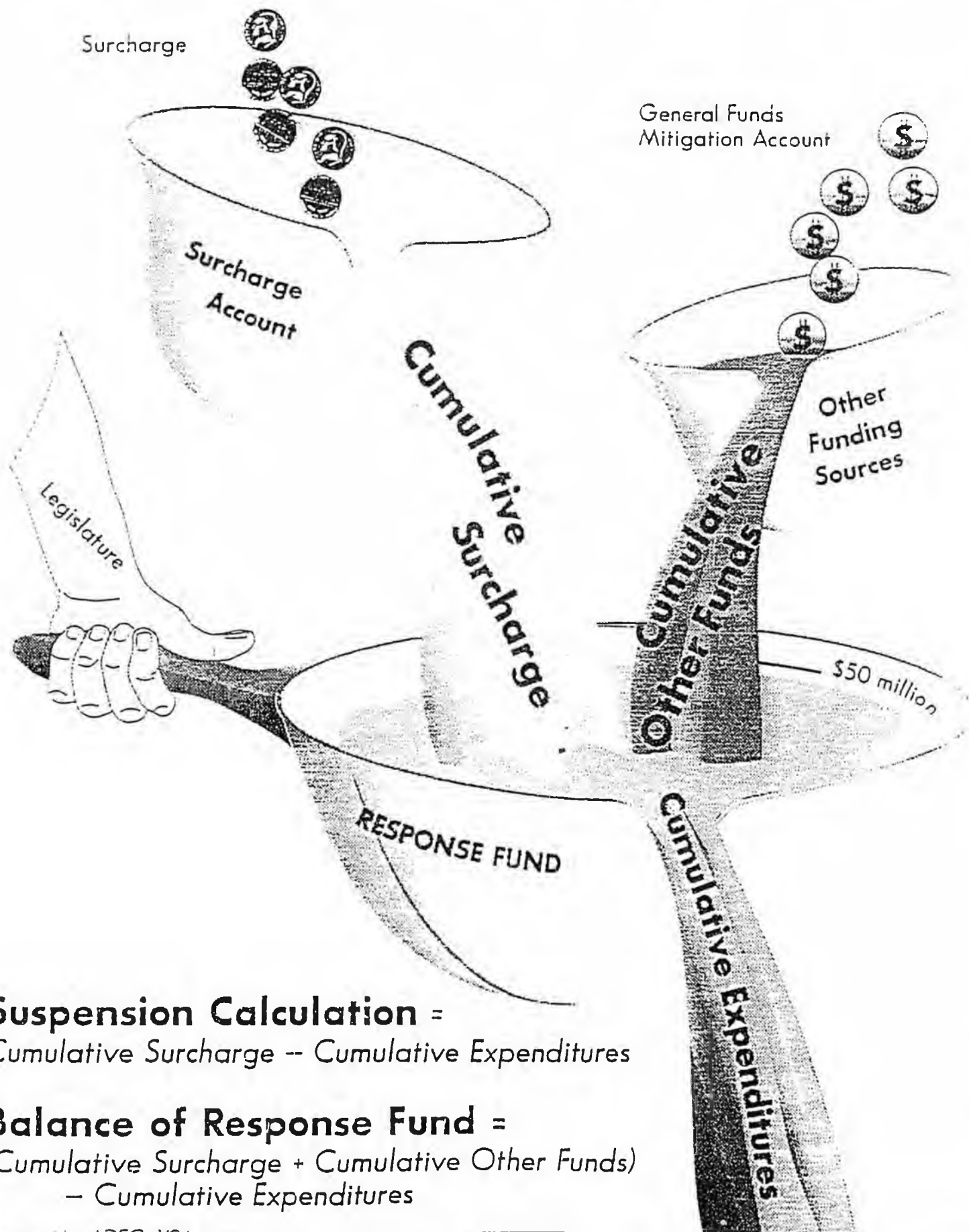
As discussed above, the State had over \$27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a deficit balance of over \$8.5 million as of the same time. It should be recognized that there is a difference between the spill reserve balance and the surcharge suspension balance. The difference between these two is based on the revenues that go into calculating each balance. The facing page illustrates the difference between the suspension calculation and the balance of the Response Fund.

The \$27 million set aside to respond to spills includes all revenue sources, i.e., fines, penalties, damages, surcharge revenues, and additional general fund appropriations. While the suspension calculation only considers surcharge revenues. Both the spill reserve and suspension calculation consider cumulative expenditures.

#### DEC lacks authority and capability of monitoring other agencies Response Fund expenditures

Although DEC is the administrator of the Response Fund, the department lacks the authority to control the spending of other agencies. Further, DEC does not have the personnel to

# SURCHARGE SUSPENSION vs. RESPONSE FUND BALANCE



**Suspension Calculation =**  
*Cumulative Surcharge -- Cumulative Expenditures*

**Balance of Response Fund =**  
*(Cumulative Surcharge + Cumulative Other Funds)*  
*- Cumulative Expenditures*

monitor or audit the appropriateness of other agencies' expenditures. Other agencies have had access to the Response Fund through the use of RSAs. According to Alaska Administrative Manual 40.060, an RSA is an inter-entity transfer where one agency is reimbursed for costs associated with services provided to another agency. As administrator of the Response Fund, DEC has been forced to enter into RSAs for which the agency has limited inherent interest or expertise. In some cases, the RSA represents a project or budget request for which DEC did not originally endorse or support the other agency's request for access to the Response Fund.

DEC has made it a standard practice on all RSAs with other agencies to require five pieces of information. This information is required in order for DEC to fulfill its annual reporting requirements to the legislature. DEC requires the servicing agency to provide:

1. a listing of each position control number (PCN) with title and the amount compensated the position;
2. copies of all contracts in excess of \$20,000 and all subsequent amendments, and copies of all RSAs with the University of Alaska in excess of \$20,000 and all subsequent amendments;
3. documentation of each purchase in excess of \$10,000;
4. the amount paid to each municipality, community, or village; and
5. RSAs to other state agencies funded by the RSA must also report the information requested in items 1 through 4.

Many of the Response Fund RSAs require quarterly reports be submitted to DEC project managers. The reports are generally submitted; however, the extent of information varies between servicing agencies.

DEC has spent an inordinate amount of time trying to monitor RSAs with other agencies. DEC's experience has been, in a practical sense, the department has no power to monitor the expenditures or deny a request for funds from other agencies. An example of the lack of power, is provided for by an FY 92 reimbursement request: the Department of Fish and Game (DFG) came to DEC and wanted reimbursement for expenditures that DFG could not support; DEC initially refused reimbursement; but because the only alternative left to DFG would be to request a supplemental appropriation, DEC staff was directed to pay the RSA reimbursement request.

#### Criteria for allocating resources within SPAR varies by program

The only Response Fund expenditures that DEC has direct control over are the expenditures actually made by the department, the majority of which occur in the SPAR division. The criteria used by SPAR in determining which projects will be undertaken varies between programs. SPAR can exercise discretion when allocating resources for the following

services: spill response, reviewing and testing contingency plans, and contaminated site cleanup.

1. Response depends on the risk posed by a spill: The Government Preparedness and Response Program within SPAR is charged with responding to spills that pose an imminent and substantial threat to public health or the environment. No preset policy exists as to which spills will be responded to in a region. Determining if a spill poses an imminent and substantial threat is a subjective process. Every region and district has taken into consideration a myriad of factors and developed its own method for deciding whether a spill warrants a response. Common criteria for response among regions include proximity of a spill to populations and water source, size of spill, and type of spill. The level of response can vary from responding via telephone, to monitoring the cleanup, to taking the lead in response through a contractor.
2. Progress in reviewing contingency plans has lagged behind agency projections: As discussed in Background Information, the *Exxon Valdez* oil spill caused major revisions to the statutes that set forth requirements for oil discharge prevention and contingency planning. As a result of the new statutes, SPAR's IPP was required to draft new regulations. These regulations forced affected operators to either prepare contingency plans or make amendments to their existing plans. The new regulations also created the need for technical assistance to be provided to those operators who were either drafting amended, or developing new, contingency plans. IPP has focused their resources on drafting new regulations, providing technical assistance to operators and reviewing contingency plans.

As a result of the new regulations which became effective in August 1992, a large number of new and amended plans were submitted to IPP. To cope with the influx of plans requiring review, regulations provided for a transitional period. During this period, IPP was permitted to review the plans in a predetermined order of priority.

Review of contingency plans has fallen behind agency projections. Almost 200 contingency plans required approval by IPP. Most of the submissions requiring approval are amendments to existing plans that were previously approved under the old regulations. These plans continue to be considered approved until plan amendments that incorporate the new regulations have been reviewed. Of the almost 200 plans, only 30 have been approved under the new regulations as of December 9, 1993. However, many plans are in the final stages of review and, according to DEC staff, most should be approved by the end of 1994.

A successful oil spill prevention program is composed of interrelated parts. The success of IPP is dependent on the combined strength of its facility inspections, oil spill drills, contingency plans, and financial responsibility sections.

Contingency plans must be tested and facilities inspected to provide assurance that personnel are being trained and that equipment and resources are available and can be mobilized quickly. To help speed up its contingency plan review process, IPP has

shifted resources away from performing oil spill drills and facility inspections.

As a result, most of IPP drill activity has been limited to oversight of industry-initiated drills and fewer inspections have been performed. Once the review process has advanced to a point where the program is reviewing contingency plans on a regular rotational basis, SPAR plans to shift its IPP resources back to testing contingency plans through department-initiated drills and inspections.

3. Priority for contaminated sites perceived differently: One of the major purposes of the Contaminated Sites Remediation Program is to determine the priority (see sidebar to the right for a discussion on the Hazard Ranking Model, which is used to prioritize sites) in which sites should be addressed. This is necessary so that resources can be allocated in such a way that the sites which represent the greatest risk to the public and the environment are addressed first — regardless of ownership.

Although central office presents prioritization as one of the program's main emphases, a statewide list of all contaminated sites in priority order does not exist. Instead, resources are allocated based on the identity of a responsible party, their willingness and capacity to clean up, site priority when known, and the amount of public interest in a site.

As discussed in Organization and Function, SPAR's central office is responsible for developing policy and providing technical assistance to regions and districts. Work on contaminated sites is accomplished at the district level with support from their region. Most of staff time at the district level is spent providing oversight to responsible parties who are willing to perform cleanup.

The logic behind addressing willing responsible parties (RPs) is simple. Helping willing RPs is efficient in that more sites are cleaned up by oversight than by working with uncooperative RPs or by taking state lead in cleanup. The other motivation behind helping RPs is a socioeconomic concern. RPs are often stimulated to clean up their site because a real estate, construction, or some other financial transaction is involved. In the past when DEC staff explained they did not have time to monitor

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#### Hazard Ranking Model

The Hazard Ranking Model is the primary tool available to the Contaminated Site Remediation Program to determine caseload priorities. The hazard ranking model is an exposure model that uses factors such as the level of toxicity, exposure to ground or surface water, and population density to determine a site's relative priority. The model provides for unknowns, allowing sites to be ranked when information is missing. The ranking scores compose an index of relative threat posed by the contaminated sites to public health and the environment.

DEC personnel do not consider the hazard ranking score an absolute indicator of priority because ranking scores can be skewed by factoring in unknowns and because the model does not take into consideration certain elements. In practice, the ranking score is considered one of many indicators when determining caseload priorities.

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cleanup of a site, the RP contacted their legislator, who in turn contacted the district and insisted their constituent be assisted.

It is not uncommon for political pressure to play a role in the way resources are allocated. In the past, sites, which were a lower priority relative to other sites, have received funding because of an heightened interest in the site taken by the general public, the governor, or a particular legislator.

4. District personnel reluctant to initiate state-lead in contaminated site cleanup: For a site to be eligible for state-lead, potential RPs must be identified and an extensive notification process must be completed. Because state-lead sites are labor intensive, district personnel are reluctant — or do not have the resources — to conduct RP searches or go through the notification process.

District personnel are also hesitant to take state lead because they feel their role should be one of service agency rather than enforcement agency. Rather than taking the lead in cleanup and holding the RP liable, staff want to help RPs find some way to assume responsibility. False promises from unwilling or incapable RPs have also slowed down the process of cleaning up sites with state-lead money.

Because of the amount of resources required to identify state-lead sites and a general reluctance by district staff, the program does not have a complete listing of contaminated state-lead sites.

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 2

The legislature should make statutory changes to clarify the role of the fund administrator.

A. Currently there is no clearcut criteria in place stating how DEC should "manage" the Response Fund.

In order to be properly evaluated as the fund administrator, DEC needs the legislature to clarify their expectations of the department's role. Alaska Statute 46.08.050 identifies two accounting duties of DEC. This statute says DEC

- (1) shall maintain accounting records showing the income and expenses of the fund; and
- (2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

This statutory requirement has not been amended since the Response Fund was first established in 1986. The duties were appropriate when the fund was used to respond to emergency spills, and DEC was virtually the only user of the fund. But DEC lost its effectiveness as administrator when the Response Fund began to be used as a funding source for a number of projects managed by many different agencies.

As explained on page 22 of Report Conclusions, DEC has spent an inordinate amount of time trying to monitor the appropriateness of expenditures made by other agencies. It has been difficult for DEC to monitor the appropriateness of reimbursement requests from other agencies when the service provided is beyond DEC's interest or expertise. DEC is often put in the position of having to approve for reimbursement an expenditure for which the department has no way of determining represents a valid project cost. DEC has not experienced as many problems on those RSAs with other agencies for services which the department would normally contract.

DEC has, with the assistance of Office of the Governor, Office of Management and Budget (OMB) and Legislative Finance, developed an adequate budget process showing appropriations into and out of the Response Fund. DEC can track allocations to specific projects. The department has also developed an internal process to review other agencies' Response Fund requests and make recommendations to OMB for inclusion in the Governor's budget. These duties are appropriate for DEC to fulfill in its role as fund administrator.

We recommend the legislature amend part (1) of AS 46.08.050 to state that DEC shall develop procedures governing the expenditure of, and accounting for, money expended from the fund for activities of their own department. Other agencies who

receive monies from the Response Fund must develop their own procedures governing the expenditure of, and accounting for, money expended from the fund. To receive reimbursement from the Response Fund, other agencies must submit to DEC the detailed information required to be included in the annual report on the Response Fund's activities. DEC shall rely on the other agencies' internal procedures when responding to a request for reimbursement. The legislature may request Division of Legislative Audit to review the procedures developed by each agency and audit that agency's expenditures against the Response Fund.

- B. Some of the information DEC is required to submit in their annual report is either too voluminous or too uncertain to provide meaningful information to the legislature.

Information required by AS 46.08.060 to be included in DEC's annual report is as follows:

- (1) a summary of the sites identified by the department;
- (2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites, and
- (3) the appropriate actions needed to abate these threats, and their estimated cost.

DEC has not been providing this information as part of the annual report because of the volume and uncertainty of information involved. DEC has indicated this information is available for review in their office in the Statewide List of Contaminated Sites. A list of contaminated sites dated November 8, 1993, which is 104 pages long, contains site name and address and hazard ranking model score on 1,858 sites, of which 338 are in a closed status and 1,520 are in an active status. Of the 1,520 active sites, 240 sites are unranked, and 38 sites cannot be ranked due to lack of information available on the site. In addition to the known sites, DEC is aware that there are likely to be a large number of sites which are not yet on their database.

We recommend the legislature amend part (b) of AS 46.08.060 to allow DEC to report information on contaminated sites that can be readily prepared and still be of use to the legislature. DEC should be asked to identify how many sites are in active and closed status on the database. DEC should identify the number of sites and prioritize those sites based on immediate and long-term threats to the public health or welfare; or to the environment. Since the information is too uncertain, DEC should not be asked to provide individual discussion on each site, nor due to the volume of sites, should the department be asked to report the appropriate actions and estimated costs involved.

## Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

In the original legislation on the Response Fund, DEC was not required to seek recovery of money expended by the department to contain and clean up oil or hazardous substances. The actual wording was:

*The attorney general, at the request of the commissioner, may seek [emphasis added] to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control threatened release of oil or a hazardous substance.*

While DEC did seek recovery and levy fines and penalties in some instances, many contaminated sites were cleaned up without any intention of seeking cost recovery. In addition, appropriations were made from FY 88 through FY 90 to cleanup contaminated sites on the Kenai peninsula. There were no cost recovery requirements related to these appropriations.

Because of the lack of cost recovery requirements DEC district staff and the public developed a cooperative relationship regarding DEC's monitoring of the clean up of contaminated sites. The public came to view monitoring of clean up of contaminated sites as a service provided by DEC, rather than as an enforcement action. Since cost recovery would not be sought, DEC staff did not consistently track their personal service costs related to cleanup.

The passage of Senate Bill 256 (Ch 29, SLA 1989) changed the optional nature of the statutory phrasing. The legislation made it definite that cost recovery must be sought. Specifically the statute called for:

*The attorney general, at the request of the commissioner, shall immediately seek [emphasis added] to recover money expended by the department under AS 46.08.005-46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or hazardous substance.*

DEC has been slow to develop policy and procedures related to accumulating cost information that can be used to support recovery efforts. DEC has developed a draft Cost Recovery Policy and Procedures manual that addresses when and how to code costs to sites. As of the date of this report, this policy still has not been fully implemented. Of particular concern is the failure to consistently charge personal service costs to specific sites. This makes it difficult, if not impossible, to recoup these costs from the responsible party.

The draft Cost Recovery Policy and Procedures manual also addresses how to identify and notify potential responsible parties (PRPs) of their obligation to clean up a site. Staff who

have received training on the manual reported to us a reluctance to implement the policy. Specifically staff feel the public needs to be adequately notified of DEC's policy change of seeking cost recovery for containment and cleanup efforts.

Not all applicable DEC personnel have received training on the Cost Recovery Policy and Procedures manual. In some districts, we found staff unaware that a cost recovery procedures manual was available.

We recommend DEC revise the draft Cost Recovery Policy and Procedures manual to address public notification and consistent statewide implementation. After the manual is revised, training should be provided to DEC personnel so that the department's policy will be consistently implemented. The manuals need to be made available in each region and district office.

### Recommendation No. 3

DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

A. Program personnel and resources have been allocated to contaminated sites based on the identity of the PRP and the willingness/insistence of the RP to clean up a site.

The Contaminated Sites Remediation Program is in place to carry out one of the original purposes of the Response Fund, to clean up oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare, or to the environment. The program has a limited amount of resources that must cope with a large and ever increasing number of contaminated sites. Because there exists more contaminated sites than resources to address them, a system must be in place to allocate resources to the highest priority sites. Central office of the Spill Prevention and Response division, has drafted policy which sets criteria for determining priority and allocates resources to the highest priority sites. However, district personnel are reluctant to implement the proposed policy change. As a result, highest priority sites are not being addressed.

As discussed in Report Conclusions, district personnel spend most of their time providing oversight to RPs who are willing to clean up contamination. Because RP searches, PRP notification, and negotiation with unwilling RPs is timeconsuming and frustrating, district staff prefer to allocate their resources to sites where the RP is known and is willing to cleanup. This method of allocating resources is efficient in that it allows more sites to be cleaned given districts' limited staffing. It also provides the easiest way to cope with pressure from insistent RPs who need their sites cleaned for socioeconomic reasons, such as real estate transactions or potential construction. However many of the sites with a willing RP do not pose an imminent and substantial threat relative to other sites.

Such an approach only provides limited assurance that Response Funded activities are addressing sites that pose the most "imminent and substantial" threat to the general public. While we recognize district personnel have a legitimate basis for wanting to work with willing RPs, their approach does not ensure that the statutory purpose of the Response Fund is met.

DEC should work to implement their draft guidance policy entitled Prioritization of Contaminated Site Work. The policy addresses allocating resources in such a way that the highest priority sites are addressed first. In addition, DEC should redefine their role in monitoring RPs with relatively low priority sites. Any change in DEC's policy of providing oversight to willing RPs should be accompanied with a thorough public notice campaign.

B. Contrary to what the department has reported to the legislature, DEC has not maintained a current complete prioritized list of state-lead<sup>4</sup> sites.

In budget papers presented to the legislature, DEC stated that they maintained a list of state-lead sites and prioritized them based on their threat to human health or the environment, or unique social or economic factors. The department also claims that sites are placed on the list only after DEC staff have determined that PRPs will not clean up the site or when no PRP can be determined or located.

DEC also made it clear to the legislature that the list of state lead sites accompanying the budget request is dynamic. If a responsible party decides to perform cleanup or a site's relative priority changes, the funding allocated to that site will be used to fund the next highest priority site.

In practice, DEC has not maintained a complete prioritized list of state-lead sites. In addition, the department has not always completed the proper notification process before placing sites on the state-lead list. As discussed in Report Conclusions, district staff are reluctant to perform RP searches or go through the RP notification process because the procedures are timeconsuming. Once a site is allocated funding, taking lead in cleanup is highly labor intensive.

DEC has not documented their rationale for allocating funding among state-lead sites. We recognize that a state-lead list is dynamic. However, in our view, the dynamic nature of the program makes a current list of prioritized state-lead sites essential. In addition, the dynamic nature of the program makes it imperative that the rationale used to justify funding decisions be documented and presented to the legislature.

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<sup>4</sup>As stated in the Organization and Function section, if a site poses a substantial threat and no responsible party has been identified or the responsible party is unable or unwilling to clean up, the State will take the lead in cleanup efforts. These sites are commonly called state-lead or orphan sites.

DEC should make an effort to pursue state-lead on sites that present an imminent and substantial threat to public health and the environment. As part of this effort, an updated list should be prepared and maintained to guide in the allocation of funding. Before sites are placed on the state-lead site list, their orphan status should be confirmed through the proper notification process.

## AUDITOR COMMENTS

State better able to prevent and respond to oil spill, but ability jeopardized by cuts in staffing

The Prince William Sound Regional Citizens' Advisory Council (PWS-RCAC) and staff in the Department of Environmental Conservation (DEC) both believe the State has improved its prevention and response capabilities for oil and hazardous substance spills. Both organizations feel that the State is in a better position than it was on March 24, 1989, the date of the *Exxon Valdez* spill. Much of the reason for these improved capabilities is attributed to the financing of prevention and response activities made possible by the Oil and Hazardous Substance Release Response Fund (Response Fund). However, the two organizations are concerned about the current trend of reducing staff positions in DEC. In a pamphlet entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill*" the PWS-RCAC points out:

*Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding. Laws must be implemented through clear, strong regulations and enforced by committed agencies that are given the funding necessary to monitor, oversee and enforce compliance.*

PWS-RCAC's point echoes one of the observations made in the report produced by the Alaska Oil Spill Commission (AOSC). AOSC said, "*The Valdez DEC office always has been seriously understaffed, which weakened the state's position relative to Alyeska. The state cannot negotiate or enforce effectively without adequate competent personnel.*"

As we explain in Report Conclusions, DEC's progress in reviewing contingency plans has lagged behind the department's projections. To increase staff time devoted to contingency plan review and approval, inspections and drills have been severely limited. DEC's oil program consists of several interrelated parts. Prevention includes contingency plans, inspections, and drills. Other parts include response and cleanup, which occur only when prevention has failed. If any part of DEC's program is hindered, the department does not have an effective, viable program.

We understand the decision DEC was forced to make in allocating resources to contingency plan review and approval. However, inspections and drills are a fundamental portion of a successful prevention program. DEC is already dangerously close to having to implement statute with limited resources. Any reduction of staff positions in the Spill Prevention and Response (SPAR) division will jeopardize the likelihood of a successful prevention program. AOSC addressed this same problem in their final report on the events leading up to the *Exxon Valdez* grounding, "*Rigor flagged, complacency took root. Prevention was neglected with disastrous results.*"

We wonder whether complacency is again taking root. Program consequences must be considered when SPAR funding is reduced. SPAR needs to be funded at least at the current level to maintain its ongoing operations. However, if the legislature decides to reduce

funding for SPAR then statutes should be amended or repealed so that required programs can be eliminated. Reduction of funding alone does not eliminate a department's duty to fulfill statute.

SPAR needs general funds if contaminated sites are to be cleaned for socioeconomic reasons

As explained in Recommendation No. 3, district staff often monitor the cleanup of willing responsible parties (RPs). While many of these sites do meet Response Fund criteria (that is, they pose an imminent and substantial threat to public health or the environment) others clearly do not. The RP is often motivated to clean their site in order to obtain bank financing for the sale of the property or obtain a permit to do construction on the property. While these sites may not pose a substantial risk, the monitoring of the site cleanup by DEC is important to the owner for their own socioeconomic reasons. If the legislature feels that DEC is providing a valuable and valid public service by providing technical assistance on sites that do not pose an imminent and substantial threat, then the legislature needs to make general funds available to SPAR.

## ISSUES NEEDING FURTHER STUDY

It was beyond the scope of this audit request for us to test Oil and Hazardous Substance Release Response Fund (Response Fund) expenditures and accounting procedures developed in agencies other than the Department of Environmental Conservation (DEC). However, as explained in the Background Information section, other agencies are significant users of the Response Fund. In FY 92 DEC entered into over \$18.5 million in Response Fund reimbursable services agreements (RSAs) with other agencies; in FY 93 DEC entered into almost \$5 million in Response Fund RSAs with other agencies. Consistently, the largest participants in using the Response Fund outside of DEC are the Department of Law, the Department of Military and Veterans Affairs, and the Department of Fish and Game.

As stated in Report Conclusions and Recommendation No. 1, DEC has little authority and receives limited information supporting requests for reimbursement on the RSAs. Supporting information submitted with the request for reimbursement usually provides little detail and DEC is forced to rely on the other department's accounting procedures.

We suggest that the Legislative Budget and Audit Committee may want to consider reviewing the support for selected expenditure transactions, the accounting procedures, and project results of Response Fund activity in agencies outside of DEC. Those agencies we recommend be considered for review include the Department of Law, Department of Military and Veterans Affairs, and the Department of Fish and Game.

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TABLE A

RESPONSE FUND SUMMARY AS OF JUNE 30, 1993

Sources of funding:

Oil Surcharge Revenue	\$82,500,000
General Fund	44,447,000
Program Receipts: Exxon Reimbursements 1989 & 1990	30,000,000
Mitigation Revenue	<u>4,346,600</u>
	<u>161,293,600</u>

Uses of funding:

Expenditures through FY 93 (Note 1)	119,567,992
Reserve for Encumbrances	6,786,808
Reserve for Prior Year Appropriations	2,190,914
Accounts receivable recorded for Exxon Valdez cleanup	<u>2,338,795</u>
Fund Balance/Spill Reserve (Note 2)	<u>\$30,409,071</u>

Note 1: Expenditures are inception to date as reported in Response Fund Annual Reports for FY 87 - FY 93. This amount is the same as the total reported in our Table B.

Note 2: Department of Environmental Conservation has stated their fund balance/spill reserve is \$27,084,100; which is \$3,324,991 less than what we have calculated. Review of their backup indicates the discrepancy occurred in FY 91 and FY 92 when information for the annual report was pulled from the Alaska accounting system. The department needs to reconcile this discrepancy.

TABLE B

SUMMARY OF EXPENDITURES BY FISCAL YEAR  
(NOTE 1)

PROJECT	FY 87	FY 88
Contaminated site investigation, safety, cleanup, and cost recovery	\$428,815	\$329,977
Spill Response containment, safety, cleanup, and cost recovery		
Spill prevention and response preparedness		
State and regional contingency planning		
Spill response office, depots, and corps		
Mt. Redoubt Volcano/Publication of 1990 annual report		
Spill reserve		
Spill response drills		
Kenai cleanup project		
State Emergency Response Commission and local emergency response planning		
Local Emergency Planning Committees		
UAA - Soldotna Fire Training		
DFG - Spill prevention and response preparedness		
LEG - Citizen's Oversight Council		
Hazardous Substance Spill Technology Review Council		
Arctic Marine Resources Commission		
Prince William Sound Regional Citizens' Advisory Council		
Non-crude Oil Tanker/Barge Study		
Nearshore Strike Team Demonstration Projects		
Oil spill contingency plans/requirements		
Geographic Information System		
Advisory Council/transportation of oil		
Ferries with oil spill response ability		
Natural resource damage assessment		
Subtotal of Non-Exxon Related Expenses	\$428,815	\$329,977

FY 89	FY 90	FY 91	FY 92	FY 93	Total
\$120,900	\$774,500	\$1,671,700	\$1,262,400	\$2,926,700	\$7,714,992
	211,000	690,200	378,500	71,000	1,350,700
		1,056,200	3,846,200	5,385,800	10,288,200
	158,400	556,700	223,500	54,700	993,300
	199,800	967,700	1,125,100	2,663,000	4,955,600
	112,800	4,800			117,600
	245,500	313,600	71,400	268,500	899,000
		448,500	105,700		554,200
		583,700	555,900	177,900	1,317,500
		399,600	257,000	186,200	842,800
			575,200	1,039,700	1,614,900
				88,400	88,400
		119,800			119,800
		119,500	237,300	88,300	445,100
			112,400	275,300	387,700
			100,000	90,000	190,000
			57,200	10,200	67,400
			29,900		29,900
				3,300	3,300
			84,200	15,000	99,200
				91,600	91,600
			120,300		120,300
			102,400	7,501,500	7,603,900
			1,358,400	59,400	1,417,800
\$120,900	\$1,702,000	\$6,932,000	\$10,603,000	\$20,996,500	\$41,313,192

PROJECT	FY 87	FY 88	FY 89
Subtotal of Non-Exxon Related Expenses (from page 38)	\$428,815	\$329,977	\$320,900
DEC - Exxon Valdez			5,456,300
RSAs - Exxon Valdez			609,700
Local Response - Exxon Valdez			205,600
LAW - Exxon Valdez Litigation			
DFG - Exxon Valdez Damage Assessment			
Exxon Valdez - Spill Cleanup and Cost Recovery			
Exxon Valdez - Assessment and Restoration			
Exxon Valdez Litigation			
Exxon Valdez Project			
Subtotal for Exxon expenses			6,271,600
<i>Total Expenses</i>	<i>\$428,815</i>	<i>\$329,977</i>	<i>\$6,592,500</i>

Note 1: This table was prepared from expenditures reported by the Department of Environmental Conservation in their Response Fund Annual Reports for FY 87 - FY 93. We have not audited this information and therefore do not express an opinion on its reliability. Since project titles changed over the seven years, for comparability purposes we have grouped those activities that seemed the same despite small title changes.

FY 90	FY 91	FY 92	FY 93	<i>Razon Valdez</i>	Total
\$1,702,000	\$6,932,300	\$10,603,000	\$20,996,500		\$41,313,192
24,005,400	11,977,700			41,439,400	
4,560,000				5,169,700	
3,210,200				3,415,800	
	4,100,000			4,100,000	
	8,834,400			8,834,400	
		2,337,300	292,600	2,829,900	
		6,654,400	407,000	7,061,400	
		1,576,900	2,703,500	4,280,400	
		1,123,800		1,123,800	
31,775,600	24,912,100	11,692,400	3,603,100	78,254,800	78,254,800
\$33,477,600	\$31,844,100	\$22,295,400	\$24,599,600		\$119,567,992

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TABLE C

DESCRIPTION OF RESPONSE FUND ACTIVITIES APPROPRIATED  
IN FY 92 AND FY 93

As reflected by discussion in Background Information, there have been numerous changes to the Oil and Hazardous Substance Release Response Fund (Response Fund) since its inception in 1986. Many of the amendments expanded the authorized purposes of the fund. The following table illustrates all Response Fund appropriations for FY 92 and FY 93. The table indicates if these appropriations would have been covered under the original purposes of the fund or if they are allowed due to amendments subsequent to 1986 inception.

The first two columns of the table give the name of the project or activity and a brief description of the purpose of the project. FY 92 operating appropriation amounts came from Ch 73, SLA 91. FY 93 operating appropriation amounts come from Ch 136, SLA 92 and capital appropriation amounts come from Ch 5, FSS 1992.

Some projects meet both original and expanded legislation and are so indicated by a checkmark in both columns. One project, Arctic Marine Resources Commission, in our opinion, does not appear to meet either the original or any expanded use of the Response Fund, but there is nothing that prevents the legislature from appropriating from the Response Fund for other uses.

Project/Activity	Description
Department of Environmental Conservation (DEC) Operating Programs - except Contaminated Sites	Operating programs include the Director's Office and the Division of Spill Prevention and Response (SPAR). The Director's Office is responsible for administrative support, safety and data management. In addition to contaminated sites, SPAR is composed of three sections: Government Preparedness and Response, Industry Preparedness Program, and Underground Storage Tank Program. Government Preparedness develops regulations and guidelines for SERCs and LEPCs, ensures that local plans are under development and are integrated with other plans, ensures that there is a complete compilation of hazards analysis for the State, and conducts drills on the state and local plans. Industry Preparedness reviews oil discharge prevention and contingency plans for oil operations, conducts inspections and spill drills, and administers the statewide financial responsibility program to ensure that oil operators demonstrate sufficient proof of ability to respond.
Exxon Valdez Oil Spill Project	Response funded activities in FY 92 included data compilation and documentation, monitoring, and select restoration activities. The funding was also allocated to coordinate support efforts by state agencies. FY 93 monies funded DEC's Oil Spill Response Office whose staff gathered data regarding the extent of subsurface oil and surveyed selected beaches. In addition, staff archived records and created a records database.
Contaminated site projects identified by DEC	Contaminated sites are ranked based on a hazard ranking model that prioritizes sites based on their threat to human health or the environment. DEC also takes into account unique social or economic factors. However, the ranking model allows for numerous unknowns, which affects the reliability of the numeric scores. The cleanup list is subject to constant change as responsible parties assume cleanup responsibilities and as new contaminated sites become known. DEC provides oversight only on sites where the responsible party is taking action. Contaminated sites that require cleanup, but where the potential responsible party is unknown, unwilling, or unable to clean up are referred to as orphan sites. DEC must go through a notification process to the potential responsible party before a site is placed on the orphan site list. The State initiates cleanup on orphan sites.
Contaminated sites identified by other agencies	Beginning in FY 92, contaminated sites with the State as the responsible party were dealt with by a Memorandum of Agreement between several state agencies. Department of Natural Resources, Department of Transportation and Public Facilities, and DEC formed a work group that determined which sites were the highest priority and submitted a capital budget request for funding. The major tool used by the group to rank the various sites was DEC's ranking model. The work group recommended funding for 10 projects in FY 93 for a total capital request of \$2.6 million. Actual expenditures in FY 93 came to slightly over \$310,000.
Oil Spill Reserve	The legislature established the spill reserve so that funds would always be available for the abatement of a release of oil or a hazardous substance. The spill reserve can only be accessed to address a release that poses an imminent and substantial threat to public health or the environment. DEC only uses the spill reserve to address unbudgeted activities that pose an imminent and substantial threat. Eleven spills were responded to in FY 92 for a total of \$71,382.76, and thirty were responded to in FY 93 for a total of \$245,995.37.
Oil Response capable ferry	The legislature authorized expanding the use of the fund to include refurbishment or construction of marine response vessels. Alaska Marine Highway System is currently in the design phase of constructing a vessel that could be used to respond to oil spills. For FY 93, the legislature appropriated \$7.5 million from the Response Fund to the Alaska Marine Highway System Replacement Fund for the oil response ferry. But these funds will not be used until the vessel is in construction phase, which is currently targeted for the first quarter of FY 95.
State Emergency Response Commission (SERC)	SERC was established by executive order in 1987 and formalized in 1990 with the passage of HB 566. SERC guides and coordinates a state-wide emergency response plan. SERC designates Local Emergency Planning Districts (LEPDs) and approves LEPCs for those districts. SERC reviews and comments on local emergency plans, including oil facility and vessel spill contingency plans.
Local Emergency Planning Committees (LEPCs)	The State has been divided into 26 LEPDs. SERC establishes and appoints a Local Emergency Planning Committee for each district; however, only 14 LEPCs have been established to date.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$5,731,300	\$7,339,300	✓	✓	SB 261 [Ch 90, SLA 89] HB 567 [Ch 191, SLA 90]
\$29,081,900	\$3,318,000	✓	✓	SB 261 [Ch 90, SLA 89] SB 262 [Ch 113, SLA 89]
\$4,203,200	\$3,528,600	✓		
\$0	\$2,193,000	✓		
\$12,627,400	\$23,656,700	✓		
\$500,000	\$7,500,000		✓	SB 165 [Ch 48, SLA 91]
\$329,900	\$350,800		✓	SB 261 [Ch 90, SLA 89]
\$900,000	\$1,200,000		✓	SB 261 [Ch 90, SLA 89]

Project Activity	Description
Response office, depots/corps	The legislature authorized that depots and corps were to be planned through the DEC master and regional contingency planning and the State Emergency Response Commission approval process. The exact determination of locations was left to the DEC and SERC planning process. The State was to pay for training volunteers in communities selected as depot sites and pay them when necessary to combat a spill or participate in training. Exact types and amounts of containment equipment and materials to be stored at depots was also left to the DEC and SERC planning process. DEC and DMVA have jointly expended over \$4 million on depots and corps to date. The only depot that has been established to date is a \$1.6 million project for a communications depot, which is 50% Response Funded and 50% funded by the Federal Emergency Management Authority. Other expenditures have been used to train 823 first responders and develop an Incident Command System and an Advanced Integrated Management System.
Citizens' Oversight Council on Oil and Other Hazardous Substances	This council was established in 1990 following the passage of HB 578. The council assesses the performance of state and federal agencies in preventing and responding to releases of oil and hazardous substances, identifies risks, and recommends improvements for environmental safety to the legislature, governor, and federal agencies.
Nearshore Strike Team Demonstration Projects	The legislature appropriated \$1.2 million for FY 93 to provide coastal communities that are not connected by a highway system with the resources to be able to respond to a major oil spill. Currently, contingency plans do not always address industry's preparedness to respond to a spill in communities for extended distances downstream from an oil terminal facility or tank vessel route. One purpose for the demonstration project was to define the optimum array of equipment needed in communities to mobilize and respond to spills which have escaped initial containment or to orphan spills which may occur within the operating range of nearshore communities. Two informal planning committees were organized - one for the Gulf of Alaska region and the other for Southeast Alaska region. Each region developed their own project design criteria.
Hazards Analysis	A Hazards Analysis covers four stages: (1) identifying the hazard, which is defined in AS 46.03.826, (2) performing a vulnerability analysis, (3) conducting a risk analysis, and (4) assessing response capability by industry and local response. After DEC had prepared a request for proposals to perform a statewide Hazards Analysis, LEPCs indicated that they preferred to control this project themselves. In FY 92, DEC delegated the responsibility and funding to LEPCs for the Hazards Analysis. As of October 15, 1993, hazards analyses are completed for four LEPDs, are in process for twelve LEPDs, and the other ten LEPDs are scheduled for completion in June 1994 as part of a statewide Hazards Analysis contract. Once the hazard analyses are complete, DEC believes they will have an inventory of between 80%-90% of all facilities with hazardous substances required to report under SARA Title III. DEC will need to keep their database of information up-to-date.
Geographic Information System (GIS)	The legislature appropriated \$689,300 for a GIS. DEC administered \$250,000 and signed a reimbursable services agreement with the Department of Military and Veterans Affairs (DMVA), Division of Emergency Services (DES) for the remaining \$439,300. GIS will be a map-based system that monitors where a spill has occurred in comparison to the natural surroundings. The GIS will be able to track the response of industry or the responsible parties and can be used to project what path the spill will follow. The GIS could store countless data useful in making decisions, such as population centers, location of contaminated sites and hazardous substances, and location of equipment. Two demonstration projects have been completed for DEC. One problem that has not been reconciled is how the DEC and DMVA, DES systems will coordinate. DES is developing an Advanced Integrated Incident Management System to respond to an emergency situation. DES is interested in knowing where manpower, communication, and aircraft are located. DEC will not be able to view DES' information on a geographic base.
Hazards Substances Spill Technology Review Council	The council exists within the SERC. The council's duties include responsibility for reviewing and recommending research topics to DEC, establishing testing protocols for the department to use to evaluate the effectiveness of hazardous substance spill technologies within the State, and compiling and maintaining information relating to containment and cleanup technology.

Project Activity	Description
Response office, depots/corps	The legislature authorized that Depots and corps were to be planned through the DEC master and regional contingency planning and the State Emergency Response Commission approval process. The exact determination of locations was left to the DEC and SERC planning process. The State was to pay for training volunteers in communities selected as depot sites and pay them when necessary to combat a spill or participate in training. Exact types and amounts of containment equipment and materials to be stored at depots was also left to the DEC and SERC planning process. DEC and DMVA have jointly expended over \$4 million on depots and corps to date. The only depot that has been established to date is a \$1.6 million project for a communications depot, which is 50% Response Funded and 50% funded by the Federal Emergency Management Authority. Other expenditures have been used to train 823 first responders and develop an Incident Command System and an Advanced Integrated Management System.
Citizens' Oversight Council on Oil and Other Hazardous Substances	This council was established in 1990 following the passage of HB 578. The council assesses the performance of state and federal agencies in preventing and responding to releases of oil and hazardous substances, identifies risks, and recommends improvements for environmental safety to the legislature, governor, and federal agencies.
Nearshore Strike Team Demonstration Projects	The legislature appropriated \$1.2 million for FY 93 to provide coastal communities that are not connected by a highway system with the resources to be able to respond to a major oil spill. Currently, contingency plans do not always address industry's preparedness to respond to a spill in communities for extended distances downstream from an oil terminal facility or tank vessel route. One purpose for the demonstration project was to define the optimum array of equipment needed in communities to mobilize and respond to spills which have escaped initial containment or to orphan spills which may occur within the operating range of nearshore communities. Two informal planning committees were organized - one for the Gulf of Alaska region and the other for Southeast Alaska region. Each region developed their own project design criteria.
Hazards Analysis	A Hazards Analysis covers four stages: (1) identifying the hazard, which is defined in AS 46.03.026, (2) performing a vulnerability analysis, (3) conducting a risk analysis, and (4) assessing response capability by industry and local response. After DEC had prepared a request for proposals to perform a statewide Hazards Analysis, LEPCs indicated that they preferred to control this project themselves. In FY 92, DEC delegated the responsibility and funding to LEPCs for the Hazards Analysis. As of October 15, 1993, hazards analyses are completed for four LEPCs, are in process for twelve LEPCs, and the other ten LEPCs are scheduled for completion in June 1994 as part of a statewide Hazards Analysis contract. Once the hazard analyses are complete, DEC believes they will have an inventory of between 80%-90% of all facilities with hazardous substances required to report under SARA Title III. DEC will need to keep their database of information up-to-date.
Geographic Information System (GIS)	The legislature appropriated \$689,300 for a GIS. DEC administered \$250,000 and signed a reimbursable services agreement with the Department of Military and Veterans Affairs (DMVA), Division of Emergency Services (DES) for the remaining \$439,300. GIS will be a map-based system that monitors where a spill has occurred in comparison to the natural surroundings. The GIS will be able to track the response of industry or the responsible parties and can be used to project what path the spill will follow. The GIS could store countless data useful in making decisions, such as population centers, location of contaminated sites and hazardous substances, and location of equipment. Two demonstration projects have been completed for DEC. One problem that has not been reconciled is how the DEC and DMVA, DES systems will coordinate. DES is developing an Advanced Integrated Incident Management System to respond to an emergency situation. DES is interested in knowing where manpower, communication, and aircraft are located. DEC will not be able to view DES' information on a geographic base.
Hazards Substances Spill Technology Review Council	The council exists within the SERC. The council's duties include responsibility for reviewing and recommending research topics to DEC, establishing testing protocols for the department to use to evaluate the effectiveness of hazardous substance spill technologies within the State, and compiling and maintaining information relating to containment and cleanup technology.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$1,700,000	\$800,000		✓	SB 264 (Ch 113, SLA 89)
\$237,300	\$237,300		✓	HB 578 (Ch 199, SLA 90)
\$0	\$1,200,000		✓	HB 567 (Ch 191, SLA 90)
\$0	\$177,300		✓	SB 261 (Ch 90, SLA 89)
\$0	\$689,300	✓	✓	SB 261 (Ch 90, SLA 89)
\$236,300	\$420,000		✓	HB 567 (Ch 191, SLA 90)

Project/Activity	Description
Arctic Marine Resources Commission (AMRC)	The legislature appropriated \$100,000 to fund the commission through FY 92, with the intent to form a Regional Citizens' Advisory Council for residents of Alaska's Arctic coastal communities. AMRC would review Arctic oil exploration and development issues affecting Alaskans and attempt to secure federal and industry recognition and support as an Arctic Regional Citizens' Advisory Council.
Alyeska Terminal Ballast Water Testing/Monitoring	The legislature appropriated \$175,000 for DEC to disburse to the Prince William Sound Regional Citizens Advisory Council. RCAC was to retain technical experts who would review and evaluate three monitoring programs being conducted by DEC at the Alyeska Valdez Marine Terminal. The three programs, which have been completed with final reports, were to monitor the influent ballast water to the ballast water treatment facility, to monitor the treated discharge from the ballast water treatment facility, and to monitor sediment hydrocarbon chemistry and sediment toxicity in Port Valdez.

FY 92 Appropriation	FY 93 Appropriation	Original Legislation	Expanded Legislation	Cite for Expanded Legislation
\$100,000	\$100,000			See discussion on page 43
\$175,000	80	✓		

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TABLE D

EXAMPLES OF EXTERNAL FY 92 AND FY 93 RSAs

*FY 92 RSA, DEC/DMVA Oil Spill Depots/Corps \$1,700,000*

Over \$1.2 million has been spent on this RSA through fiscal year end 93.

The "communications depot" is the only depot in place. The communications depot is a \$1.6 million project that will be 50% Response Funded and 50% federally funded by the Federal Emergency Management Agency. The equipment includes two 4.5 meter trailer mounted satellite communication dishes, four foamy satellite communication packages, and two mobile satellite telephones.

On the same RSA, DMVA trained 823 people to be first responders in the event of a spill. First responders include such persons as police and fire personnel. DMVA and the LEPCs worked together to determine who should be trained and in what localities. A database of people who were trained was prepared and given to GPRP.

*FY 93 RSA, DEC/DMVA Oil and Hazardous Substance Release and Response Preparation and Planning \$800,000*

This RSA, which only had \$155,000 in expenditures through fiscal year end 93, was to fund six different projects, many of the projects being continuing and open-ended. On Response Corps and Emergency Response Depots DMVA assisted and will continue to assist SPAR in preparing a 3-year strategic plan on the development of depots and corps to facilitate planning and budgeting.

For the State Emergency Response Commission, the Chief of Logistics was appointed by the Adjutant General as his designee and vice-chair on the commission. DMVA staff assisted and will continue to assist the Chief of Logistics in his membership roles on various SERC committees. DMVA provided and will continue to provide a person to serve as the State's alternate member of the Alaska Regional Response Team.

DMVA provided and will continue to provide an ex-officio, non-voting member to the board of directors on each of the two Regional Citizens' Advisory Councils in Alaska. For Emergency Response Planning, DMVA provided technical assistance to Local Emergency Planning Committees to ensure their response plans are consistent with the State Emergency Operations Plan. DMVA assisted and will continue to assist SPAR in developing a communications plan for response to oil and hazardous substance releases.

*FY 93 RSA, DEC/DMVA Geographic Information Systems (FEMME) \$439,300*

This RSA is to be used primarily for contractual services from the University of Alaska, Anchorage and the purchase of hardware and software. DMVA will develop an emergency management decision system for the State Emergency Operations Center with this funding ensuring that the system aids management of oil and hazardous substance release incidents. The system will incorporate a graphic user interface which will be compatible with DEC's geographic information system (GIS). GIS will provide an automated decision support system and an automatic resource tracking system. The GIS system will use computer graphics to show a map of response capabilities.

For an estimated \$250,000, the university will prepare a briefing paper on the emergency management decision system which includes: estimated costs for equipment, software, and training; a phasing plan; schedules and project milestones; cost/benefit analysis; and personnel utilization.

The hardware and software for the emergency management decision system is estimated to cost \$175,000.

*FY 93 RSA, DEC/DFG Spill Prevention Planning and Management Assistance and State Emergency Response Commission Contingency Plans \$202,200*

This RSA is to have DFG's participation on three distinct projects. DFG is expected to be reimbursed \$5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DFG will complete work tasks assigned by the commission or committees and provide expertise on fish and wildlife services.

DFG anticipates having \$127,200 in reimbursable expenditures for their participation in oil pollution control. DFG will review and comment on approximately 180 oil spill contingency plans submitted by industry for compliance with state regulations. DFG's primary focus is to enhance protection of fish and wildlife populations, habitats, and public uses of these resources.

DFG anticipates having \$70,000 in reimbursable expenditures for their participation in reviewing the state master and regional plans.

*FY 93 RSA, DEC/DNR Industry Contingency Plan Reviews and State Emergency  
Response Commission \$28,900*

This RSA is to have the Department of Natural Resources' (DNR's) participation on two distinct projects. DNR is expected to be reimbursed \$5,000 for their participation in the quarterly State Emergency Response Commission meetings and in any Emergency Response Committee meetings. DNR will complete work tasks assigned by the commission or committees.

DNR anticipates having \$23,900 in reimbursable expenditures for their participation in oil pollution control. DNR will review and comment on approximately 170 oil spill contingency plans submitted by industry for compliance with state regulations. DNR's primary focus is to ensure that sensitive natural resource areas are adequately protected.

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**DEPT. OF ENVIRONMENTAL CONSERVATION**

410 Willoughby St., Juneau, AK 99801

(907)465-5010

Mr. Randy S. Welker  
Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RECEIVED  
MAR - 4 1994

LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to reply to the Division of Legislative Audit's Preliminary Audit of the Oil and Hazardous Substance Release Response Fund (Response Fund). First I would like to formally thank Ms. Cynthia Ryan and Ms. Kristin Dolquist for the professional and thorough manner in which they conducted this audit. I have heard this comment made by several members of my staff.

In general, we believe that this draft audit report accurately reflects the legislative and Department of Environmental Conservation (DEC) history of the Response Fund. We also generally agree with the description of current DEC management of the Response Fund. In the face of the many misunderstandings currently existing about the Response Fund and its intended purpose, it is refreshing to see such an accurate explanation of the Fund.

Recommendation No. 1

The legislature should make statutory changes to clarify the role of the fund administrator.

We agree with the proposed statutory changes and will work with the Attorney General's Office and the respective Senate Finance and House Resource Committees to investigate ways that these statutory changes can be made.

Recommendation No. 2

DEC should revise the department's draft Cost Recovery and Policy and Procedures manual, implement the policy with due public notice, and provide training to all relevant personnel.

We generally agree with this recommendation and will take immediate steps to implement it.

DEC has been pursuing cost recovery on selected oil and hazardous releases since FY90. A formal cost recovery notification policy and process has been in place since April of 1992 and a draft cost recovery manual and training was completed in August of 1993.

We agree that these policies and procedures should be finalized and that any training inadequacies should be remedied as soon as possible.

Recommendation No. 3

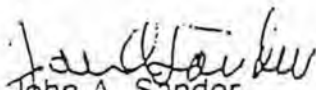
DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.

This is an excellent recommendation and one that will require coordinated assessments with other government agencies, especially the Department of Defense (DOD). The DEC has a formal Statement of Cooperation with the DOD and an assessment of the effectiveness of joint environmental programs is now underway. Opportunities for improvements in contaminated sites management will be identified and implemented as a result of this assessment.

What the DEC has been providing is a prioritized list of high priority contaminated sites determined by the ranking model and judgement by regional staff with the suspicion that the responsible party is reluctant or unwilling to conduct the necessary cleanup. We agree with the recommendation to provide a better listing and have been developing policies and guidance during this fiscal year to put in place a more aggressive approach to confirm responsible party intent and prioritize all contaminated sites into a high/medium/low category.

Thank you again for the opportunity to respond to this draft audit and we look forward to working with your office toward the completion of the proposed management recommendations.

Sincerely,

  
John A. Sandor  
Commissioner

HB

238

Version

2

8-LS0676Z ✓  
Chenoweth  
3/19/94

CS FOR HOUSE BILL NO. 238(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release  
2 response fund and to the content of reports relating to oil and hazardous  
3 substances; amending requirements relating to the revision of state and regional  
4 master prevention and contingency plans and requirements related to expenditures  
5 for oil or hazardous substances; amending the authority to contract to provide  
6 personnel to respond to a release or threatened release of oil or a hazardous  
7 substance; terminating the nickel-per-barrel oil conservation surcharge; and levying  
8 and collecting two new oil surcharges; providing for the suspension and  
9 reimposition of one of the new surcharges; and providing for an effective date."

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

11 \* Section 1. AS 26.23.020(g) is amended to read:

12 (g) In addition to any other powers conferred upon the governor by law, the

1 governor may, under AS 26.23.010 - 26.23.220,

2 (1) suspend the provisions of any regulatory statute prescribing  
3 procedures for the conduct of state business, or the orders or regulations of any state  
4 agency, if compliance with the provisions of the statute, order, or regulation would  
5 prevent, or substantially impede or delay, action necessary to cope with the disaster  
6 emergency;

7 (2) use all available resources of the state government and of each  
8 political subdivision of the state as reasonably necessary to cope with the disaster  
9 emergency;

10 (3) transfer personnel or alter the functions of state departments and  
11 agencies or units of them for the purpose of performing or facilitating the performance  
12 of disaster emergency services;

13 (4) subject to any applicable requirements for compensation under  
14 AS 26.23.160, commandeer or utilize any private property, except for all news media  
15 other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor  
16 considers this necessary to cope with the disaster emergency;

17 (5) direct and compel the relocation of all or part of the population  
18 from any stricken or threatened area in the state, if the governor considers relocation  
19 necessary for the preservation of life or for other disaster mitigation purpose;

20 (6) prescribe routes, modes of transportation, and destinations in  
21 connection with necessary relocation;

22 (7) control ingress to and egress from a disaster area, the movement of  
23 persons within the area, and the occupancy of premises in it;

24 (8) suspend or limit the sale, dispensing, or transportation of alcoholic  
25 beverages, firearms, explosives, and combustibles;

26 (9) make provisions for the availability and use of temporary  
27 emergency housing;

28 (10) allocate or redistribute food, water, fuel, or clothing; and

29 (11) use money from the oil and hazardous substance release  
30 response account in the oil and hazardous substance release prevention and response  
31 fund, established by AS 46.08.010, to respond to a declared disaster emergency related

1 to an oil or hazardous substance discharge.

2 \* Sec. 2. AS 29.60.510(a) is amended to read:

3 (a) The commissioner may use money from the oil and hazardous substance  
4 release response account in the oil and hazardous substance release prevention and  
5 response fund to make grants to a municipality or village that is affected by the release  
6 or by the response to the release and that demonstrates that the release or response to  
7 the release involves extraordinary expenditures that are beyond the reasonable  
8 capability of the municipality or village to meet from the current revenue sources of  
9 the municipality or village if

10 (1) the governor determines that a release of oil or a hazardous  
11 substance exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance  
12 that, when released into the environment, presents a threat to the economy and public  
13 welfare of the municipalities and villages affected by it at least equivalent in effect to  
14 the effect of a release of oil in an amount defined by this paragraph;

15 (2) the release has been proclaimed a disaster emergency by the  
16 governor under AS 26.23.020; and

17 (3) the governor finds that

18 (A) the release of the oil or hazardous substance into the  
19 environment presents a real and substantial threat to the economy and public  
20 welfare of the municipalities and villages that are affected by the release and  
21 by the resultant activities to contain and clean up the release; and

22 (B) it is in the best interest of the state to pay the expenses  
23 incurred by municipalities and villages to mitigate the social and economic  
24 effects that arise out of the release of the oil or the hazardous substance and  
25 the resultant cleanup activities.

26 \* Sec. 3. AS 29.60.510(b) is amended to read:

27 (b) For each disaster emergency declared by the governor under AS 26.23.020,  
28 and subject to agreement with the commissioner of environmental conservation as to  
29 the amount of money in the fund that may be used by the department to make grants,  
30 the commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF  
31 THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the

1 unrestricted balance of the fund for grants authorized under this section. If the  
2 commissioner and the commissioner of environmental conservation do not agree on the  
3 amount of money in the fund that may be used by the department to make grants  
4 under AS 29.60.500 - 29.60.599, the governor shall make the determination.

5 \* Sec. 4. AS 29.60.560(e) is amended to read:

6 (e) Expenditures made under this section may be made only from the amount  
7 transferred to the commissioner under AS 29.60.510(c), unless

8 (1) the commissioner and the commissioner of environmental  
9 conservation mutually agree that payment may be made from money in the oil and  
10 hazardous substance release response account in the oil and hazardous substance  
11 release prevention and response fund not transferred under AS 29.60.510(c); or

12 (2) the commissioner pays them from another source.

13 \* Sec. 5. AS 29.60.599(4) is amended to read:

14 (4) "fund" means the oil and hazardous substance release prevention  
15 and response fund established by AS 46.08.010;

16 \* Sec. 6. AS 37.14.410 is amended to read:

17 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by  
18 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred  
19 by the state on or before December 31, 1992, shall be deposited in the general fund  
20 and, except as required under (b) of this section, may not be credited to the oil and  
21 hazardous substance release mitigation account under AS 46.04.010 or to an account  
22 established in AS 46.08.020 or 46.08.025.

23 (b) A percentage of each payment deposited in the general fund under (a) of  
24 this section shall be credited to the oil and hazardous substance release prevention  
25 mitigation account established in [OIL AND HAZARDOUS SUBSTANCE  
26 RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020.  
27 That percentage is determined by dividing

28 (1) the amount of the expenses for which the state may be reimbursed  
29 under (a) of this section that were paid from the former oil and hazardous substance  
30 release response fund established under AS 46.08.010, by

31 (2) the total amount of expenses for which the state may be reimbursed

1 under (a) of this section.

2 \* Sec. 7. AS 43.55 is amended by adding a new section to read:

3 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
4 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,  
5 less any oil the ownership or right to which is exempt from taxation.

6 (b) The surcharge imposed by (a) of this section is in addition to and shall be  
7 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150, and is in  
8 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

9 (c) A producer of oil shall make reports of production in the same manner and  
10 under the same penalties as required under AS 43.55.011 - 43.55.150.

11 \* Sec. 8. AS 43.55 is amended by adding a new section to read:

12 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The  
13 legislature may use the annual estimated balance of the account maintained under  
14 AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge levied  
15 under AS 43.55.201 to make appropriations to the response account in the oil and  
16 hazardous substance release prevention and response fund established by AS 46.08.010.

17 \* Sec. 9. AS 43.55 is amended by adding a new section to read:

18 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE  
19 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the  
20 commissioner of administration shall determine, as of the end of that quarter, the fiscal  
21 year's

22 (1) unreserved and unobligated balance in the response account of the  
23 oil and hazardous substance release prevention and response fund established in  
24 AS 46.08.010; for purposes of this paragraph, the "unreserved and unobligated balance  
25 in the response account" means the cash balance of the response account less the sum  
26 of

27 (A) reserves for outstanding appropriations from the response  
28 account;

29 (B) encumbrances of money in the response account; and

30 (C) other liabilities of the response account;

31 (2) balance of the account maintained under AS 37.05.142 that accounts

1 for the proceeds of the surcharge that are deposited in the general fund;

2 (3) balance of the release mitigation account that originated from the  
3 sources described in AS 46.08.025(a)(2) and that is available for appropriation to the  
4 response account of the fund established in AS 46.08.010;

5 (4) total appropriations from the response account of the oil and  
6 hazardous substance release prevention and response fund established in AS 46.08.010;  
7 in calculating total appropriations under this paragraph, the commissioner of  
8 administration may not consider money appropriated from the response account for a  
9 purpose described in AS 46.08.045(a)(1).

10 (b) Within 15 days after making the determinations required by (a) of this  
11 section, the commissioner of administration shall

12 (1) add the amounts determined under (a)(1) - (3) of this section;

13 (2) determine the difference between the amount determined under (1)  
14 of this subsection and the amount determined under (a)(1) of this section; and

15 (3) report the amount determined under (2) of this subsection to the  
16 commissioner.

17 (c) In making the determination required by (a) of this section, the  
18 commissioner of administration may not consider money described in (a) of this  
19 section that is subject to a dedication imposed by law that restricts the use of the  
20 money to a specific purpose for which the response account of the oil and hazardous  
21 substance release prevention and response fund established in AS 46.08.010 may not  
22 be lawfully expended.

23 (d) If the commissioner of administration reports that the difference determined  
24 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue  
25 shall suspend imposition and collection of the surcharge levied and collected under  
26 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on  
27 the first day of the calendar quarter next following the commissioner's receipt of the  
28 commissioner of administration's report under (b) of this section. Before the first day  
29 of a suspension authorized by this subsection, the commissioner shall make a  
30 reasonable effort to notify all persons who are known to the department to be paying  
31 the surcharge under AS 43.55.201 that the surcharge will be suspended.

1 (e) Except as provided in AS 43.55.231, if the commissioner of administration  
2 reports that the difference determined under (b) of this section is less than  
3 \$50,000,000, the commissioner of revenue shall require imposition and collection of  
4 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins  
5 on the first day of the calendar quarter next following the commissioner's receipt of  
6 the commissioner of administration's report under (b) of this section. Before the first  
7 day of reimposition of the surcharge authorized by this subsection, the commissioner  
8 shall make a reasonable effort to notify all persons who are known to the department  
9 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be  
10 reimposed.

11 (f) Notwithstanding the requirement of (a) of this section that the cumulative  
12 determination of receipts and expenditures be made quarterly, when the amount  
13 determined under (b) of this section is \$45,000,000 or more, the commissioner of  
14 administration shall make the determinations required by this section not later than 30  
15 days before each calendar quarter and every 30 days thereafter.

16 \* Sec. 10. AS 43.55 is amended by adding a new section to read:

17 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized  
18 by AS 43.55.201 is not levied during any fiscal year for which

19 (1) the legislature does not, during the regular or a special legislative  
20 session preceding the first day of the fiscal year, appropriate at least an amount equal  
21 to the amount determined under (b) of this section from the general fund to the  
22 response account in the oil and hazardous substance release prevention and response  
23 fund; or

24 (2) the legislature, during the regular or a special legislative session  
25 preceding the first day of the fiscal year, appropriates at least the amount of money  
26 equal to the amount determined under (b) of this section from the general fund to the  
27 response account in the oil and hazardous substance release prevention and response  
28 fund and that appropriation is vetoed or reduced by the governor.

29 (b) The amount of money required to be appropriated from the general fund  
30 to the response account in the oil and hazardous substance release prevention and  
31 response fund by (a) of this section is the amount, determined for the last day of the

1 preceding fiscal year, that is the sum of the actual or estimated balance of

2 (1) the account maintained under AS 37.05.142 to account for all  
3 proceeds of the surcharge that are deposited into the general fund; and

4 (2) the portion of the balance of the response mitigation account that  
5 originated from the recovery of money described in AS 46.08.025(a)(2) and that was  
6 originally expended from the response account of the fund.

7 \* Sec. 11. AS 43.55 is amended by adding a new section to read:

8 Sec. 43.55.299. DEFINITIONS. In AS 43.55.201 - 43.55.299,

9 (1) "response account" means the oil and hazardous substance release  
10 response account established in AS 46.08.010(a)(2);

11 (2) "response mitigation account" means the oil and hazardous  
12 substance release response mitigation account established in AS 46.08.025(b).

13 \* Sec. 12. AS 43.55 is amended by adding new sections to read:

14 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

15 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
16 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,  
17 less any oil the ownership or right to which is exempt from taxation.

18 (b) The surcharge imposed by (a) of this section is in addition to and shall be  
19 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in  
20 addition to the surcharge imposed by AS 43.55.201 - 43.55.299.

21 (c) A producer of oil shall make reports of production in the same manner and  
22 under the same penalties as required under AS 43.55.011 - 43.55.150.

23 Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE. The  
24 legislature may use the annual estimated balance of the account maintained under  
25 AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge levied  
26 under AS 43.55.300 to make appropriations to the oil and hazardous substance release  
27 prevention account in the oil and hazardous substance release prevention and response  
28 fund established by AS 46.08.010.

29 \* Sec. 13. AS 43.55.900(15) is amended to read:

30 (15) "surcharge" means

31 (A) when used in AS 43.55.201 - 43.55.299, the surcharge

1 levied by AS 43.55.201;

2 (B) when used in AS 43.55.300 - 43.55.310, the surcharge  
3 levied by AS 43.55.300 [AS 43.55.200];

4 \* Sec. 14. AS 46.04.010 is amended to read:

5 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The  
6 department shall promptly seek reimbursement under AS 46.03.760(e), AS 46.08.070,  
7 or from an applicable federal fund, for the expenses it incurs in cleaning up or  
8 containing a discharge of oil. If the department obtains reimbursement for a portion  
9 of its expenses from a federal fund, the remainder of the expenses incurred may be  
10 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department  
11 under this section shall be deposited in the general fund and credited to a special  
12 account called the "oil and hazardous substance release response mitigation account".

13 \* Sec. 15. AS 46.04.200(a) is amended to read:

14 (a) The department shall

15 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide  
16 master oil and hazardous substance discharge prevention and contingency plan;

17 (2) annually review the statewide master oil and hazardous  
18 substance discharge prevention and contingency plan; and

19 (3) revise the statewide master oil and hazardous substance  
20 discharge prevention and contingency plan when, in the judgment of the  
21 commissioner, revision is necessary.

22 \* Sec. 16. AS 46.04.200(c) is amended to read:

23 (c) In preparing [AND ANNUALLY REVIEWING] the initial state master  
24 plan, the commissioner shall

25 (1) consult with municipal and community officials, and with  
26 representatives of affected regional organizations;

27 (2) submit the draft plan to the public for review and comment;

28 (3) submit the plan to the legislature for review, not later than the 10th  
29 day following the convening of a [EACH] regular session [, THE PLAN AND ANY  
30 ANNUAL REVISION OF THE PLAN];

31 (4) require or schedule unannounced oil spill drills to test the

1 sufficiency of an oil discharge prevention and contingency plan approved under  
2 AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section;  
3 and

4 (5) submit the plan [AND ANY ANNUAL REVISION] to the Alaska  
5 State Emergency Response Commission for its review and approval under  
6 AS 46.13.045.

7 \* Sec. 17. AS 46.04.210(a) is amended to read:

8 (a) For any region of the state, the boundaries of which are determined by the  
9 commissioner by regulation, in which the department is required to review and approve  
10 an oil discharge prevention and contingency plan submitted by a person under  
11 AS 46.04.030, the department shall

12 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional  
13 master oil and hazardous substance discharge prevention and contingency plan;

14 (2) annually review the regional master oil and hazardous substance  
15 discharge prevention and contingency plan; and

16 (3) revise the regional master oil and hazardous substance  
17 discharge prevention and contingency plan; the commissioner shall revise a  
18 regional master plan whenever, in the judgment of the commissioner, revision is  
19 necessary.

20 \* Sec. 18. AS 46.08.005 is amended to read:

21 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release  
22 of oil or hazardous substances into the environment presents a real and substantial  
23 threat to the public health and welfare, to the environment, and to the economy of the  
24 state. The legislature therefore concludes that it is in the best interest of the state and  
25 its citizens to provide a readily available fund for the payment of the expenses incurred  
26 by the Department of Environmental Conservation in responding to releases or  
27 threatened releases of oil or hazardous substances, and [THE DEPARTMENT OF  
28 TRANSPORTATION AND PUBLIC FACILITIES] in the protection of the  
29 environment of the state from the release of oil or hazardous substances.

30 \* Sec. 19. AS 46.08.010(a) is amended to read:

31 (a) There is established in the state general fund the oil and hazardous

1 substance release prevention and response fund. The fund shall be administered by  
2 the commissioner. The fund is composed of two accounts.

3 (1) the oil and hazardous substance release prevention account;

4 (2) the oil and hazardous substance release response account.

5 \* Sec. 20. AS 46.08.010(b) is amended to read:

6 (b) Money from an appropriation made to an account in the fund remaining  
7 in that account [THE FUND] at the end of a fiscal year does not lapse and remains  
8 available for expenditure in successive fiscal years.

9 \* Sec. 21. AS 46.08.020 is amended to read:

10 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS  
11 SUBSTANCE RELEASE PREVENTION ACCOUNT [FUND]. (a) The legislature  
12 may appropriate from the following sources to the release prevention account in the  
13 fund:

14 (1) money received from federal, state, or other sources or from a  
15 private donor;

16 (2) [MONEY RECOVERED OR OTHERWISE RECEIVED FROM  
17 PARTIES RESPONSIBLE FOR THE CONTAINMENT AND CLEANUP OF OIL OR  
18 A HAZARDOUS SUBSTANCE AT A SPECIFIC SITE., BUT EXCLUDING FUNDS  
19 FROM PERFORMANCE BONDS AND OTHER FORMS OF FINANCIAL  
20 RESPONSIBILITY HELD IN ESCROW PFNDING SATISFACTORY  
21 PERFORMANCE OF A PRIVATELY FINANCED RESPONSE ACTION;

22 (3)  fines or [,] penalties collected [, OR DAMAGES RECOVERED  
23  UNDER AS 46.08.005 - 46.08.080 OR OTHER LAW FOR COSTS INCURRED] by  
24 the state as a result of the release or threatened release of oil or a hazardous substance;

25 (3) the interest earned on the balances of each of the following:

26 (A) the prevention account;

27 (B) the prevention mitigation account;

28 (C) the response account; and

29 (D) the response mitigation account;

30 (4) fees for services collected under AS 44.46.025(a)(4) and (a)(5);

31 (5) fees for services collected under AS 44.46.025(a)(8) to the extent

1 those fees involve certification of laboratories conducting environmental analyses  
2 of oil or hazardous substances or other related analyses required by the  
3 department:

4 (6) fees collected by the department for the registration of oil spill  
5 response action contractors under AS 46.04.035.

6 (b) Money received by the state under (a)(2) - (6) [(a)(2) AND (a)(3)] of this  
7 section shall be deposited in the general fund and credited to a special account called  
8 the "oil and hazardous substance release prevention mitigation account." The  
9 legislature may annually appropriate to the prevention account in the fund from the  
10 prevention mitigation [THIS] account a sum equal to the amount received under  
11 (a)(2) - (6) [(a)(2) AND (a)(3)] of this section during the calendar year preceding the  
12 legislative session in which the appropriation are to be made.

13 \* Sec. 22. AS 46.08 is amended by adding a new section to read:

14 Sec. 46.08.025. FINANCING OF THE OIL AND HAZARDOUS  
15 SUBSTANCE RELEASE RESPONSE ACCOUNT. (a) The legislature may  
16 appropriate from the following sources to the oil and hazardous substance release  
17 response account in the fund:

18 (1) money received from federal, state, or other sources or from a  
19 private donor;

20 (2) money recovered or otherwise received from parties responsible for  
21 the containment and cleanup of oil or a hazardous substance at a specific site, but  
22 excluding

23 (A) money from performance bonds and other forms of  
24 financial responsibility held in escrow pending satisfactory performance of a  
25 privately financed response action; or

26 (B) fines and penalties described in AS 46.08.020(a)(2); and  
27 (3) natural resource or other damages recovered by the state as a result  
28 of the release or threatened release of oil or a hazardous substance, but excluding  
29 money described in (a)(2) of this section or AS 46.08.040(a)(2).

30 (b) Money received by the state under (a)(2) and (3) of this section shall be  
31 deposited in the general fund and credited to a special account called the "oil and

1 hazardous substance release response mitigation account." The legislature may  
2 annually appropriate to the response account in the fund from the response mitigation  
3 account a sum equal to the amount received under (a)(2) and (3) of this section during  
4 the calendar year preceding the legislative session in which the appropriations are to  
5 be made.

6 \* Sec. 23. AS 46.08.040(a) is amended to read:

7 (a) The [IN ADDITION TO MONEY IN THE FUND THAT IS  
8 TRANSFERRED TO THE COMMISSIONER OF COMMUNITY AND REGIONAL  
9 AFFAIRS TO MAKE GRANTS UNDER AS 29.60.510 AND TO PAY FOR IMPACT  
10 ASSESSMENTS UNDER AS 29.60.560, THE] commissioner of environmental  
11 conservation may use money from the prevention account in the fund to

12 (1) [INVESTIGATE AND EVALUATE THE RELEASE OR  
13 THREATENED RELEASE OF OIL OR A HAZARDOUS SUBSTANCE, AND  
14 CONTAIN, CLEAN UP, AND TAKE OTHER NECESSARY ACTION SUCH  
15 AS MONITORING AND ASSESSING, TO ADDRESS A RELF OR  
16 THREATENED RELEASE OF OIL OR A HAZARDOUS SUBSTANCE THAT  
17 POSES AN IMMINENT AND SUBSTANTIAL THREAT TO THE PUBLIC  
18 HEALTH OR WELFARE, OR TO THE ENVIRONMENT;

19 (2)] pay all costs incurred to

20 (A) establish and maintain the oil and hazardous substance  
21 response office;

22 (B) review oil discharge prevention and contingency plans  
23 submitted under AS 46.04.030;

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

30 (D) verify or establish proof of financial responsibility required  
31 by AS 46.04.040;

1                    (2) establish and maintain [(3) PAY THE EXPENSES INCURRED  
2 BY THE ALASKA DIVISION OF EMERGENCY SERVICES FOR] the oil and  
3 hazardous substance response corps and the oil and hazardous substance response  
4 depots;

5                    (3) [WHEN PRESENTED WITH APPROPRIATE  
6 DOCUMENTATION BY THE DIVISION;

7                    (4) PROVIDE MATCHING FUNDS FOR PARTICIPATION IN  
8 FEDERAL OIL DISCHARGE CLEANUP ACTIVITIES AND UNDER 42 U.S.C.  
9 9601-9657 (COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
10 COMPENSATION, AND LIABILITY ACT OF 1980);

11                    (5)] recover the costs to [THE STATE,] a municipality [,] or a village  
12 of a containment and cleanup resulting from the release or the threatened release of  
13 oil or a hazardous substance;

14                    (4) [(6)] prepare, review, and revise

15                    (A) the state's master oil and hazardous substance discharge  
16 prevention and contingency plan required by AS 46.04.200; and

17                    (B) a regional master oil and hazardous substance discharge  
18 prevention and contingency plan required by AS 46.04.210; and

19                    (5) [(7)] restore the environment by addressing the effects of an oil or  
20 hazardous substance release.

21 \* Sec. 24. AS 46.08.040(c) is amended to read:

22                    (c) Notwithstanding other provisions of this section, money from the oil and  
23 hazardous substance release prevention account [FUND] may not be used for a  
24 purpose specified in (a) [(a)(2) - (7)] and (d) [(d)(2)] of this section unless money is  
25 available from an appropriation made specifically for that purpose.

26 \* Sec. 25. AS 46.08.040(d) is amended to read:

27                    (d) Upon a request from

28                    (1) the Alaska Legislative Council, the commissioner shall use money  
29 from the prevention account in the fund to reimburse the Alaska Legislative Council  
30 for expenditures that it makes for the operation of the Citizens' Oversight Council on  
31 Oil and Other Hazardous Substances, established under AS 24.20.600; and

1 (2) the commissioner of transportation and public facilities, the  
2 commissioner shall transfer money from the prevention account in the fund to the  
3 Department of Transportation and Public Facilities to pay for the construction or  
4 refurbishment of one or more vessels of the Alaska marine highway system that have  
5 the capability to assist in responding to spills of oil and hazardous substances; in  
6 expending money in the prevention account in the fund whose use for vessels of the  
7 marine highway system is authorized by AS 19.65.025 and this paragraph, the  
8 commissioner shall give priority to construction of one or more new vessels that have  
9 the characteristics required by this paragraph.

10 \* Sec. 26. AS 46.08 is amended by adding a new section to read:

11 Sec. 46.08.045. PURPOSES OF THE OIL AND HAZARDOUS SUBSTANCE  
12 RELEASE RESPONSE ACCOUNT. (a) In addition to money in the response  
13 account that is transferred to the commissioner of community and regional affairs to  
14 make grants under AS 29.60.510 and to pay for impact assessments under  
15 AS 29.60.560, the commissioner of environmental conservation may use money from  
16 the response account to

17 (1) investigate and evaluate the release or threatened release of oil or  
18 a hazardous substance, and contain, clean up, and take other necessary action, such as  
19 monitoring and assessing, to address a release or threatened release of oil or a  
20 hazardous substance that poses an imminent and substantial threat to the public health  
21 or welfare, or to the environment;

22 (2) recover the costs to the state of a containment and cleanup resulting  
23 from the release or the threatened release of oil or a hazardous substance;

24 (3) restore the environment by addressing the effects of an oil or  
25 hazardous substance release; and

26 (4) provide matching funds for participation in federal oil discharge  
27 cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental  
28 Response, Compensation and Liability Act of 1980).

29 (b) When the governor declares a disaster related to an oil or hazardous  
30 substance discharge emergency under AS 26.23.020(c), the governor may, during the  
31 effective period of the disaster emergency, use money from the response account to

1 respond to the disaster emergency.

2 (c) Notwithstanding other provisions of this section, money from the response  
3 account may be used for the purposes in (a) of this section without a specific  
4 legislative appropriation. However, when exercising this authority, the commissioner  
5 of environmental conservation shall, within five days of accessing the response  
6 account, provide a written report to the governor summarizing the release, the state's  
7 actions, both taken and anticipated, the costs of the state's actions, both taken and  
8 anticipated, and other information considered appropriate by the commissioner or the  
9 governor. The governor may, at any time during the state's response, approve,  
10 disapprove, or amend the action.

11 \* Sec. 27. AS 46.08.050(b) is amended to read:

12 (b) A [THE] department that is appropriated or allocated money from the  
13 fund, either directly or through a reimbursable service agreement with the  
14 Department of Environmental Conservation, shall develop procedures governing the  
15 expenditure of, and accounting for, money it expends [EXPENDED] from the fund.  
16 The Department of Environmental Conservation may not reimburse or pay money  
17 to another state agency for the agency's activities under AS 46.08.040 or  
18 AS 46.08.045 unless the state agency provides to the department the information  
19 necessary to complete the report required by AS 46.08.060 [ , AND MAY NOT  
20 DELAY IMPLEMENTATION OF THIS CHAPTER PENDING THE EFFECTIVE  
21 DATE OF THE PROCEDURES].

22 \* Sec. 28. AS 46.08.060(a) is amended to read:

23 (a) The commissioner shall submit a report to the legislature not later than the  
24 10th day following the convening of each regular session of the legislature. The report  
25 may include information considered significant by the commissioner but must include:

26 (1) the amount of money expended by the department under  
27 AS 46.08.045 [AS 46.08.040(a)] during the preceding fiscal year;

28 (2) the amount and source of money received and money recovered by  
29 or on behalf of the department during the preceding fiscal year under

30 (A) AS 46.04.010 (reimbursement of cleanup expenses);

31 (B) AS 46.08.020(a)(2) (recovery of fines and penalties); and