

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8041 HOUSE RESOURCES

Title: Red Top Retort Site

Location: Aleknagik

Site I.D.: 92-2-5-9-286-1

Ledger Code: 49139

Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: Mercury contamination is present at the site caused by a 1945 mining operation. There is also some Bunker C oil contamination on site. The Bureau of Land Management (BLM) is the land owner and responsible party. They have assumed responsibility and have obtained a contractor for the clean-up of the site.

FY93 Actions: The site was evaluated and secured by DEC and BLM. The final site assessment and clean-up is expected to occur in early FY94. Cost recovery is anticipated.

FY93 Expenditures: \$ 1,655.27

Title: Chil Bo San #6  
Location: Unalaska Island  
Site ID: 89-2-5-1-011-1  
DEC Region: Southcentral  
Ledger Code: 49533  
Project Manager: Bruce Erickson, Western District Office, Anchorage, 349-7755

Situation: The vessel Chil Bo San #6, a reefer ship, ran aground at Unalaska Island on January 11, 1989 after breaking a propeller shaft. The vessel spilled 47,000 gallons of diesel fuel and left additional hazardous substances on the ship.

FY93 Actions: Through negotiations, an agreement was reached with the owners of the vessel. All hazardous materials were removed from the vessel and the shoreline. In addition, the responsible party paid departmental costs and civil penalties totalling \$94,000. The case has been closed.

FY93 Expenditures: \$ 2,129.30

Title: SERO Hazardous Waste Collection

Location: Southeast

Site ID: N/A

DEC Region: Southeast

Ledger Code: 49164

Project Manager: Al Kegler, Juneau District Office, Juneau, 465-5348

Situation: Upon completion of the 1992 oil and hazardous substance barge collection servicing Hoonah, Skagway, Gustavus, Pelican, Elfin Cove, Tenakee and Yakutat, approximately 20,000 gallons of waste oil and 70 drums of hazardous wastes were collected and removed from the communities.

FY93 Actions: Wastes collected from the communities were disposed of properly.

FY93 Expenditures: \$ 24,011.99

Title: Vern Dunham

Location: Anchorage

Site ID: 89-2-1-0-109-1

DEC Region: Southcentral

Ledger Code: 49534

Project Manager: Eileen Olson, Anchorage District Office, 349-7755

Situation: Vern's Asphalt Maintenance's (a/k/a Vern's Pollution Solution) waste oil operation was located in south Anchorage approximately 12 miles from downtown, at numbers 3400 - 3540 on E. 112th Ave., between Cange Street and Jerome Street, to the south of O'Malley Road, and to the north of O'Malley airstrip and Klatt Road. DEC inspectors found seven underground storage tanks and two pulled tanks at the site. Up to 70,000 gallons of waste oil may be in the nine 10,000-gallon tanks; the seven underground tanks were full and the two pulled tanks were partially full. There is evidence of surface spillage of waste oil at the site but it is unknown whether the underground tanks have leaked. The residents of the area are concerned about potential well water contamination. The department does not have permission to enter the property. Investigation of property ownership is ongoing, and to date has not been conclusive. Property ownership issues will need to be resolved prior to site entry.

FY93 Actions: Department legal counsel began an investigation of property ownership and began reviewing and summarizing federal investigatory files and federal district court files pertaining to the activities of the owner(s) and operator(s). The UST Financial Assistance Program sent Dunham a letter on February 5, 1993 outlining the defects in his grant application and setting a 45 day response deadline. (The LUST grant was later denied as the tanks had never been in compliance with state law).

FY93 Expenditures: \$ 2,075.80

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER  
410 WILLOUGHBY AVENUE, SUITE 105  
JUNEAU, AK 99801-1795

Phone: (907) 465-5000  
Fax: (907) 465-5070

March 24, 1994

The Honorable Ramona Barnes  
Speaker  
Alaska State House of Representatives  
State Capitol  
Juneau, AK 99801

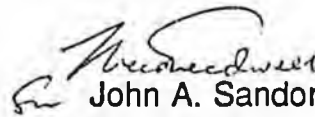
Dear Representative Barnes:

Today I am transmitting to you the fiscal year 1993 Annual Report on the Oil and Hazardous Release Response Fund, also known as the "Response Fund," pursuant to AS 46.08.060.

The Department has significantly improved management of the Response Fund. This past year DEC implemented a new procedure to process other agency Response Fund requests for inclusion in the Governor's budget. The Office of Management and Budget has also benefited from the streamlining of this process which makes evaluating requests and establishing funding levels a uniform process. Further, we are working to include future improvements on reporting efforts of expenditures by other agencies in the Response Fund legislation which is being considered this year. Additionally, Departmental cost recovery efforts are being shifted into full gear. Tracking of personal services time alone has increased 300 per cent. Statewide implementation of cost recovery policy and procedures should be completed by the fall.

Please contact me if you have any questions or require additional information regarding the Department's management of the Response Fund. Thank you.

Sincerely,

  
John A. Sandor  
Commissioner

CU/cu

Enclosure: OHSRRF Annual Report

cc: All Members of the House w/enclosure



# Audit Report

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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

# LEGISLATIVE BUDGET AND AULIT 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 adminisuators 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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### DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA  
Legislative Auditor  
Merle R. Jenson, CPA  
Deputy Legislative Auditor

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

(907) 465-3830, Juneau  
(907) 561-1445, Anchorage  
(907) 465-2347, Juneau FAX

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

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

18-4463-94

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.

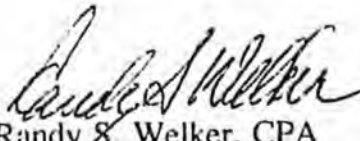
  
Randy S. Welker, CPA  
Legislative Auditor

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## 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:

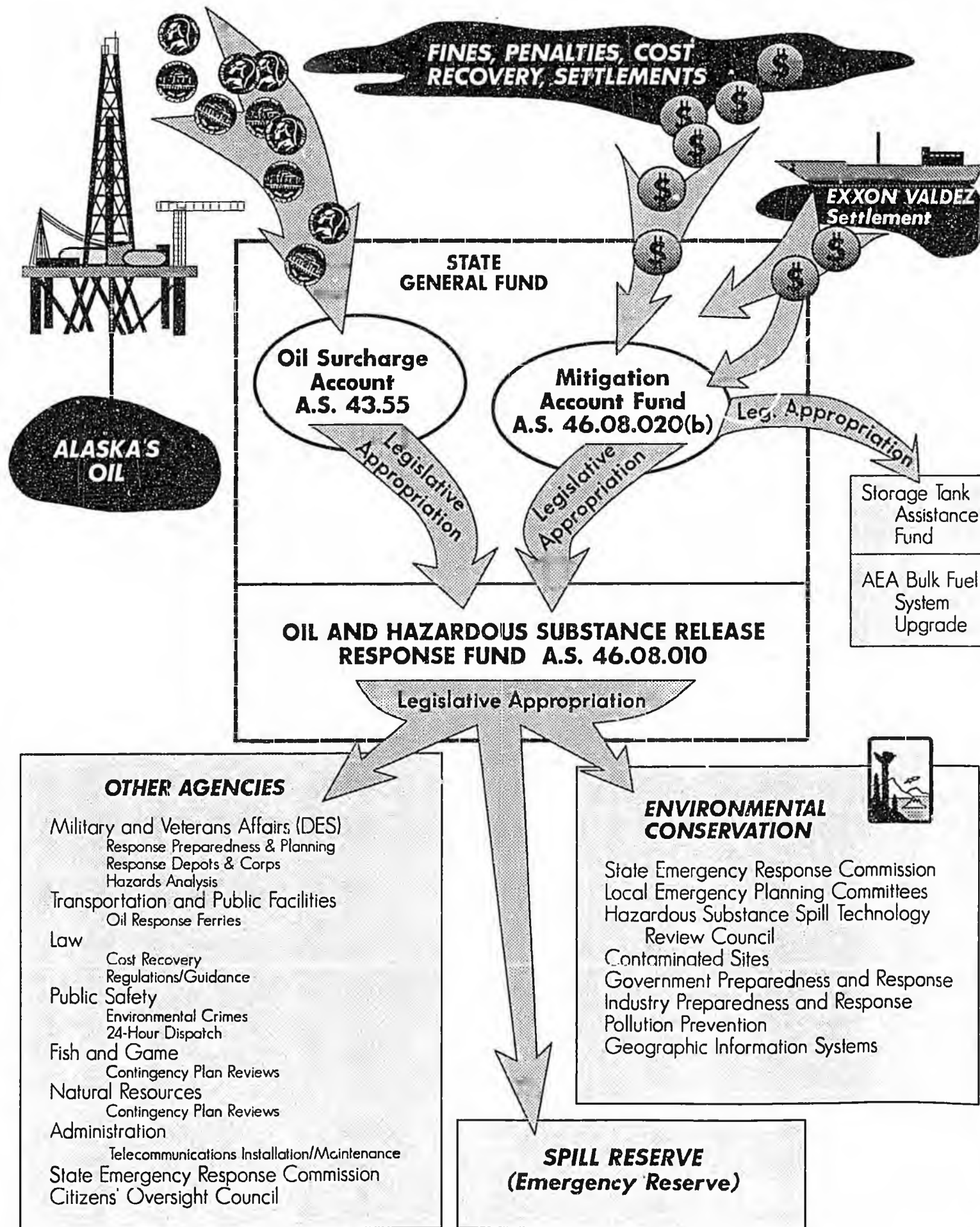
1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.
2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, SLA 1986.

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 39, 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 Reserve, and a \$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 5¢ 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 the 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 style="text-align: center;">Senate Bill 25 [Ch 83, SLA 91]</p>	<p>(a) 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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">reworded by: HB 567 [Ch 191, 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 style="text-align: center;">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 style="text-align: center;">Senate Bill 264 [Ch 113, SLA 89]</p> <p style="text-align: center;">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>

<p>House Bill 470 [Ch 59, SLA 86]</p>	<p>(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);</p> <p>(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;</p>
<p>Senate Bill 261 [Ch 90, SLA 89]</p>	<p>(6) prepare, review, and revise</p> <p>(A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and</p> <p>(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and</p> <p>(7) restore the environment by addressing the effects of an oil or hazardous substance release.</p>
<p>House Bill 566 [Ch 190, SLA 90]</p>	<p>(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.</p> <p>(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.</p>
<p>House Bill 578 [Ch 199, SLA 90]</p>	<p>(d) Upon request from</p> <p>(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</p>
<p>Senate Bill 165 [Ch 48, SLA 91]</p>	<p>(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.</p>

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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 261 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 5¢ 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 5¢ 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 5¢ 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>4</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>4</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

In FY 91, direct 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 5¢ 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>6</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>7</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>6</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>7</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

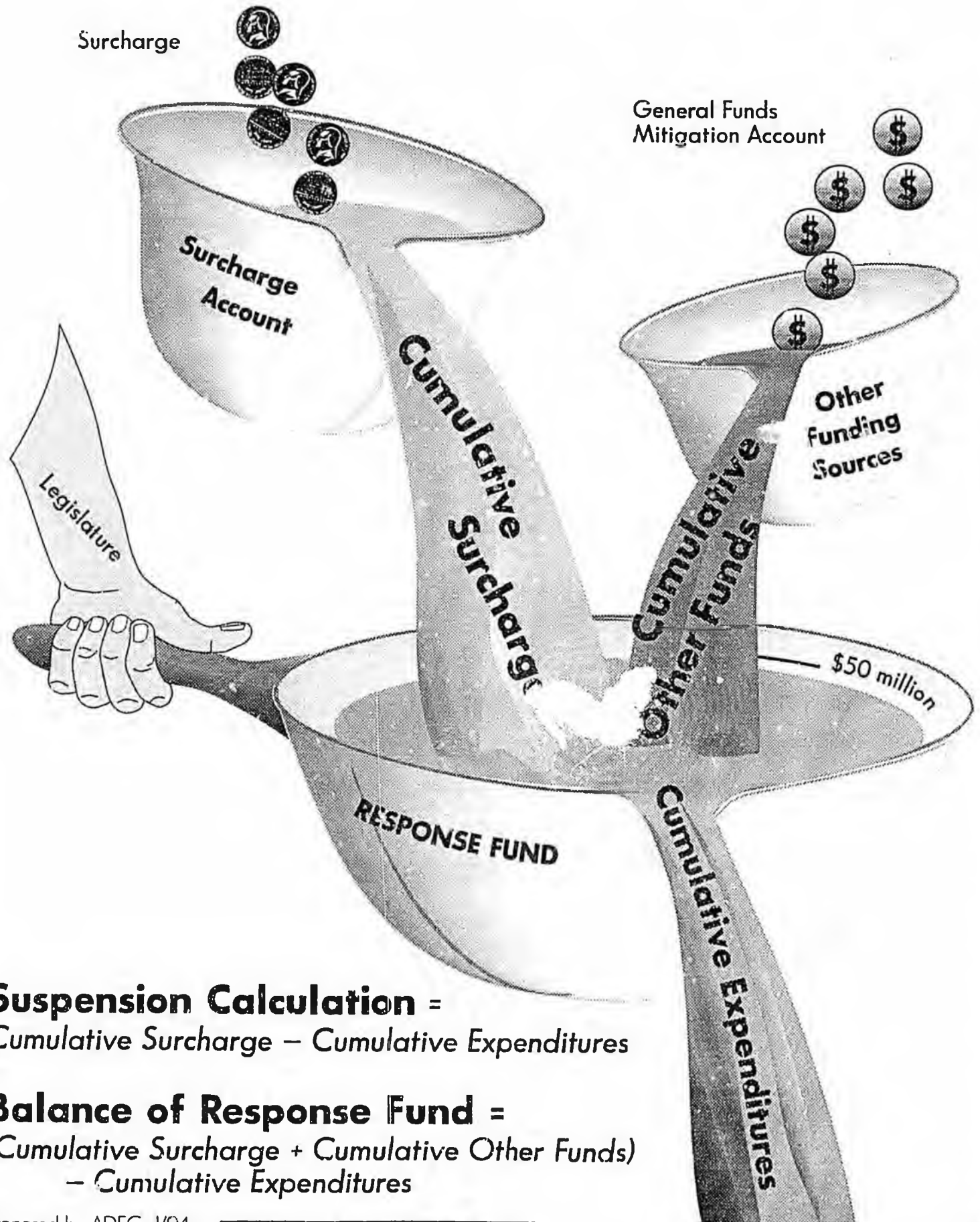
As discussed above, the State had over \$27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5¢ surcharge had a deficit balance of over \$8.5 million as of the same time. It should be recognized that there 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. 1

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>s</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>s</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>\$30,409,091</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
\$320,900	\$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
\$320,900	\$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
<b>Total Expenses</b>	<b>\$428,815</b>	<b>\$329,977</b>	<b>\$6,592,500</b>

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>Exxon Valdez</i>	Total
\$1,702,000	\$6,932,000	\$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	\$492,600	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
<b>\$33,477,600</b>	<b>\$31,844,100</b>	<b>\$22,295,400</b>	<b>\$24,599,600</b>		<b>\$119,567,992</b>

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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.
<i>Exxon Valdez</i> 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]
\$20,081,900	\$3,318,000	✓	✓	SB 261 [Ch 90, SLA 89] SB 264 [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.

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]
\$236,800	\$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	\$0	✓		

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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 is 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, DECIDNR 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.

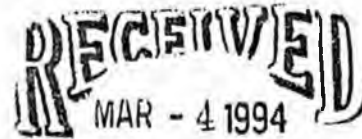
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**DEPT. OF ENVIRONMENTAL CONSERVATION**

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



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**

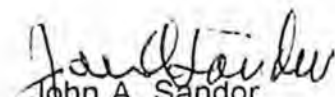
**DEC should develop a systematic method of addressing contaminated sites so those sites that pose the greatest risk to public health or the environment are addressed first.**

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.

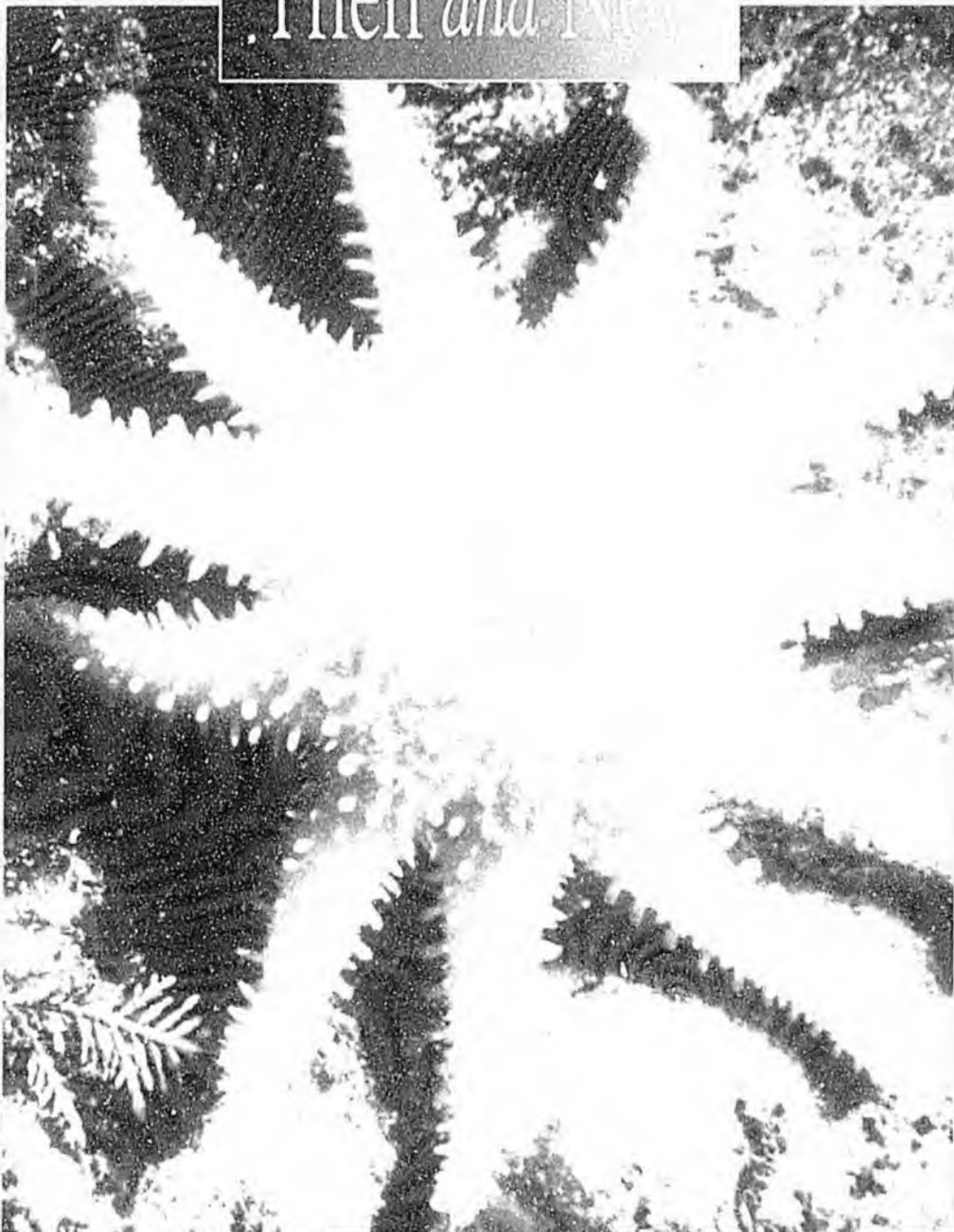
What the DEC has been providing is a prioritized list of high priority contaminated sites determined by the ranking model and judgement by regional staff with the suspicion that the responsible party is reluctant or unwilling to conduct the necessary cleanup. We agree with the recommendation to provide 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

*Then and Now*



*changes since the*

**Regional Citizens' Advisory Council**  
**PRINCE WILLIAM SOUND**

RCAC  
mission

Citizens  
promoting  
environmentally  
safe operation  
of the  
Alyeska  
terminal and  
associated  
tankers.



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Then and Now

THE EXXON VALDEZ OIL SPILL WAS not simply a freak accident. While Exxon as the spiller should be held fully accountable and responsible for the spill and its impacts, there were myriad other factors that allowed it to happen. The oil industry, government agencies, elected officials and, to some extent, the citizens of Alaska also share varying degrees of responsibility for conditions that allowed the spill to occur and failed to ensure prompt, effective cleanup.

The oil industry failed to maintain adequate prevention and response systems.

Regulatory agencies failed to protect public resources because of ineffective or inadequate monitoring, oversight and enforcement.

State and federal elected officials were unwilling to pass laws strong enough to protect the environment and give regulatory agencies the funds they

needed to protect public resources.

Most Alaskans simply weren't paying attention.

The *Exxon Valdez* oil spill was caused by the ship's master and crew. It could have been prevented by stronger prevention practices and vigilant government oversight. Once the spill occurred, better response planning could have lessened the impacts.

This publication provides an overview of how factors that led to the nation's worst oil spill have been addressed in the ensuing four years. Are the resources and communities of Prince William Sound and the Gulf of Alaska better protected from a major oil spill than they were four years ago? Can Alaskans now breathe easier?

The Regional Citizens' Advisory Council of Prince William Sound (RCAC) believes Prince William Sound and communities in the path of tanker traffic clearly are much better protected now. Yet continued vigi-

lance is essential to ensure that protections aren't diluted and that gains are not lost as political memory dims.

Much has changed since 1989, mainly because of new and revised federal and state laws and regulations spurred by the *Exxon Valdez* oil spill. The goal of this publication is to provide the general public with information about many of the changes implemented, and some of the gaps that still remain, as a measure of how much the risk of major oil spills has been reduced.

This publication was produced by the RCAC, an independent non-profit organization formed after the *Exxon Valdez* oil spill to promote environmentally safe operation of the crude oil terminal in Valdez, Alaska, and the tankers it serves.

Under a contract with Alyeska Pipeline Service Company, RCAC monitors and advises Alyeska on terminal operations, spill prevention and

response planning, and other environmental issues. RCAC conducts independent research, monitors regulatory activity and advises tanker owners and operators, regulatory agencies and the public, on issues related to oil transportation and its environmental impacts.

RCAC's 18 member organizations include communities affected by the *Exxon Valdez* oil spill and interest groups with a stake in the affected region.

The federal Oil Pollution Act of 1990 requires an industry-funded citizens' advisory group for Prince William Sound; the RCAC is certified as the entity that meets the requirement.

The views expressed in this document are those of the RCAC, which is solely responsible for the content. ★

—June 23, 1993

Continued  
vigilance is  
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and that gains  
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**H**ISTORICALLY, once oil is spilled on water it is never fully contained and recovered. Despite improvements in containment and cleanup technology, it has been virtually impossible to recover all the oil from a major spill, even in the most favorable conditions. Indeed, the best-laid response plans in the world are no guarantee that any spilled oil will be recovered since severe weather conditions can render even a good response plan useless.

The first line of defense must be prevention.

### VESSEL TRAFFIC SERVICE

The U.S. Coast Guard's Vessel Traffic Service (VTS) system func-



*Tanker positions are plotted every three minutes through the Valdez Narrows and every six minutes elsewhere.*

PHOTO BY SEAN REID © 1992

tions as the waterway manager for major shipping including tankers traveling to and from the Valdez Marine Terminal. Numerous changes have been made to update and improve the system. These changes enhance the Coast Guard's ability to monitor and provide traffic advisories to inbound and outbound tankers from its Vessel Traffic Center in Valdez.

Radar coverage has been upgraded to provide better resolution in varying weather conditions and at an extended range.

The *Exxon Valdez* left the tanker lanes altogether to avoid ice. Now, if a vessel of 1,000 or more gross tons encounters ice, the one-way zone—which has always applied through the Valdez Narrows—is extended to Bligh Reef. The extended one-way zone allows a tanker to avoid ice by using any portion of the traffic separation scheme, without risk of collision with an on-coming vessel.

A third permanent position, watch supervisor, was added to the Vessel Traffic Center, to supervise the radar and radio watch standers. Qualifications and training for watch standers have also been upgraded and expanded.

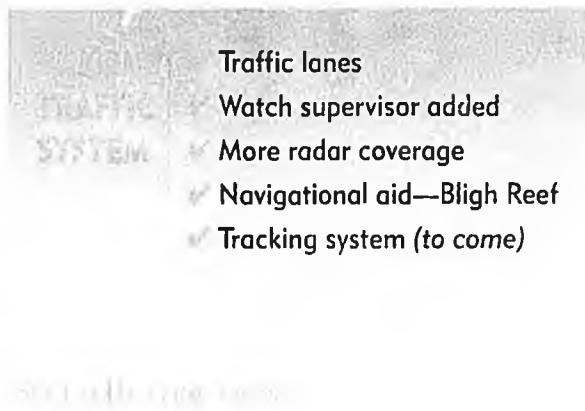
Reporting and communica-

tions have been upgraded. New repeater towers installed by Alyeska allow better two-way communications between tankers and the Valdez Marine Terminal. Coast Guard personnel now track and plot tanker positions every three minutes while the tanker is in the Valdez Narrows and every six minutes elsewhere in the radar coverage area between the terminal and Bligh Reef. If a ship moves from one traffic lane into another, to avoid ice for example, fixes are taken every three minutes until the vessel re-enters its correct lane.

A new tracking system, to begin operating in mid-1994, will enable the Coast Guard to track tankers beyond Bligh Reef. The new system will give a visual display of all tankers between the terminal and approaches to Hinchinbrook Entrance. The new system will automatically transmit tanker position data, determined by a satellite-based global positioning system, back to the Vessel Traffic Center.

A fixed navigational aid tower has been installed on Bligh Reef. Studies required by federal law are

investigating additional navigation aids and the adequacy of tanker navigation safety standards.

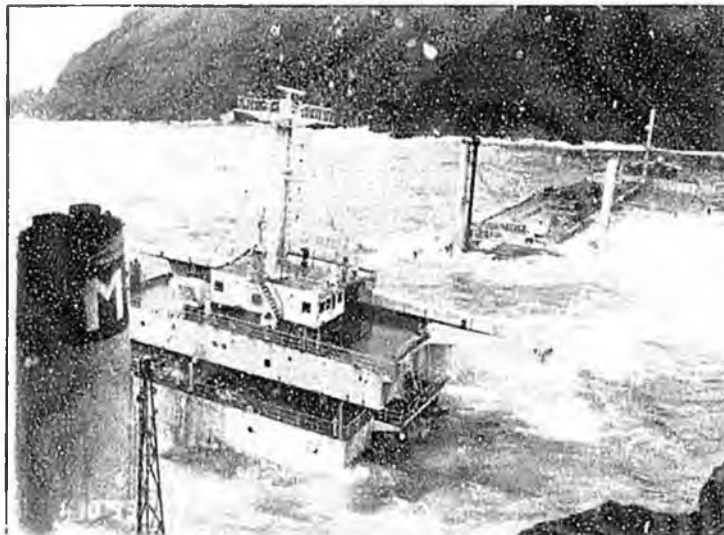


The *Exxon Valdez* was traveling, unaccompanied by an escort vessel, at 12 knots and accelerating when it approached icebergs northwest of Bligh Reef. Tankers now must be accompanied by escort vessels and must stay within one-half mile of the escorts. Alyeska limits the maximum speed of the escort vessels to 10 knots in Prince William Sound, thereby indirectly limiting the speed of the tanker, as well.

Since 1977, the U.S. Coast Guard has restricted laden tankers to a maximum speed of 6 knots through the Valdez Narrows. After a steering malfunction in 1992 on the tanker *Kenai*, Alyeska

ordered escort vessels to stay within one-quarter mile of the tanker through the Narrows.

In the past, tankers could request permission to deviate from the traffic lanes altogether. Tankers now must remain in the traffic lanes, although they may request Coast Guard permission to move from one line to the other if circumstances warrant.



*The Braer goes down on the coast of Shetland, the victim of severe weather.*  
PHOTO BY SCOTT STERLING

Weather restrictions on tanker traffic were instituted after the *Exxon Valdez* oil spill. Now, the Coast Guard closes Port Valdez to tanker traffic if sustained winds are 40 knots or more. If sustained winds are between 30 and 40 knots, the Coast Guard requires

additional tugs through the Valdez Narrows: a total of two tugs for tankers up to 100,000 dead weight tonnage (DWT) and three tugs for tankers over 100,000 DWT. Alyeska suspends escorts altogether in sustained winds over 40 knots, because such weather would render spill response impractical, if not impossible. If escort vessels encounter such winds while under way, they normally proceed. In more severe weather conditions, escorts may turn back, but that occurs infrequently (see "Areas of concern").

While severe weather was not a factor in the grounding of the *Exxon Valdez*, it has been a factor in other major spills, most recently the *Braer* off Scotland's Shetland Islands. After the *Braer* incident, the Coast Guard Captain of the Port in Valdez evaluated conditions at Hinchinbrook Entrance and instituted new weather restrictions there. Outbound laden tankers may not transit Hinchinbrook Entrance if sustained winds in the Gulf of Alaska are 50 knots or more, or if seas reach 15 feet or greater.

Until April 1989, signs of alcohol use did not prevent tanker crews

from returning to their vessels through the terminal. Under new alcohol screening procedures instituted by Alyeska, all tanker captains are given breath tests an hour before sailing. Crew members suspected of consuming alcohol are tested; any with blood alcohol content of .04 percent or greater are denied access to the terminal and their vessel.

A state-certified ship's pilot must be on board all tankers transiting between Bligh Reef and the terminal. A federally-licensed pilot or two licensed deck officers must be on watch on the bridge while the vessel is under way in Prince William Sound between Bligh Reef and Seal Rocks. Federal law also now limits the number of hours crew members may work, to reduce the risk of fatigue-induced accidents (see "Areas of concern").

Spill prevention measures begin before a tanker leaves the terminal. State regulations now require that all tankers docked at the Valdez Marine Terminal be surrounded with containment boom while cargo is transferred.

The Coast Guard has always

required laden tankers to have one tug escort through the Valdez Narrows. Now, the State of Alaska requires each laden tanker to be accompanied to Hinchinbrook Entrance by at least two escort vessels. Up to two additional tugs may be required through the Valdez Narrows, depending on weather conditions and vessel size. Federal law, under the Oil Pollution Act, also requires two escort vessels in Prince William Sound. The Coast Guard is writing regulations to implement that requirement.

The escort vessels have two functions: to assist a tanker disabled or in trouble and to provide the first line of defense should a spill occur. At least one of the escorts is a spe-



*The Heritage Service escorts a laden outbound tanker.*

PHOTO COURTESY ALYESKA PIPELINE SERVICE CO. © 1989 DAVID PREDEGER

cially-fitted Escort Response Vessel, or ERV, equipped with containment boom, oil skimmers, a work boat to deploy boom, storage capacity and a trained crew. The second escort may be another ERV or a tug.

Since 1980, when the tanker *Prince William Sound* drifted powerless for approximately 17 hours, tankers calling at the terminal have carried towing packages to facilitate hook up with an escort vessel (see "Areas of concern").

One of the most important steps taken to prevent and reduce oil spills is the federal requirement that by 2015, all tankers in U.S. waters must have double hulls. Double hulls are to be phased in, with certain vessels to be converted or scrapped on schedules based on size and age of the vessel.

Double hulls are important because studies indicate that double hulls could have prevented five of the six major oil spills in Alaskan waters between 1975 and 1990. In the case of the *Exxon Valdez*, one study said a double hull could have reduced the amount of oil spilled by 60 to 80 percent.<sup>1</sup>

Double-hulled vessels existed

long before 1989, and more have been built since then. However, no double-hulled tankers are currently used in the trans-Alaska pipeline system (TAPS) trade. Most of the tankers calling at the terminal in Valdez were built in the 1970s. Approximately one-third of the tankers now coming to Valdez have double bottoms.<sup>2</sup> On three of the double-bottom tankers, the wing tanks are left empty, making them de facto double-hulled tankers.

The structural integrity of the tanker *Exxon Valdez* was not an issue in its grounding. However, in 1988, a report issued by the Coast Guard identified the TAPS trade fleet as disproportionately affected by structural failures. The problem was underscored in January 1989, when the tanker *Thompson Pass* spilled 71,000 gallons of crude oil at the terminal because of cracks in its hull. The Coast Guard now requires more stringent inspections of tankers vulnerable to structural failure.



[TOP] Citizens whose communities may be at risk from tanker traffic are represented on the Citizens' Advisory Council of Prince William Sound Regional. Pictured: Jim La Belle, Chugach Alaska Corp., and Larry Evanoff, Chenega.

[BOTTOM] Cordova is one of 18 communities and interest groups that make up the Regional Citizens' Advisory Council of Prince William Sound.

PHOTO BY RICHARD NEWMAN

The Exxon Valdez oil spill generated a shift in the oil industry's attitude about the need to communicate with and involve local citizens in issues and decisions that affect their lives. That change in attitude was exemplified by former Alyeska President James Hermiller, who in

the summer of 1989, actively supported formation of a citizens' advisory group funded by Alyeska.

Citizens are involved in preventing and responding to oil spills through the RCAC. There is a similar citizens' group for Cook Inlet and another is forming among citizens of Northwest Alaska. The RCAC has 18 member organizations consisting of communities affected by the Exxon Valdez oil spill and other interest groups with a stake in the region.

The RCAC monitors terminal and tanker operations in the area impacted by the Exxon Valdez oil spill, conducts independent research and advises industry and government on ways to prevent oil spills and respond effectively if spills do occur. The RCAC is funded through a contract with Alyeska Pipeline Service Company. The RCAC, or a similar citizens' advisory group, is required by the federal Oil Pollution Act of 1990 (OPA 90) as a demonstration program that eventually may be applied in other U.S. ports.

Citizen advisory groups do not necessarily prevent complacency among the general public, but they can serve as an early warning system to alert industry, government

The Exxon Valdez oil spill generated a shift in the oil industry's attitude about the need to communicate with and involve local citizens.

and the public of problem areas.

Prior to 1989 there was no mechanism, other than public hearings required by regulatory agencies, for citizens to advise the oil industry or otherwise speak directly on operations that affect their communities and livelihoods. Earlier attempts by Prince William Sound residents to give their input to oil industry representatives were generally met with negative responses.

Alyeska and others in the oil industry have become more sensitive to and communicate better with Alaskans in coastal communities, where residents' lives depend on the Sound's resources.

*Alaska Department of Environmental Conservation  
Division of Pollution Control*

The Alaska Department of Environmental Conservation (ADEC) and the U.S. Coast Guard are the two agencies most directly responsible for oversight and monitoring of the Valdez Marine Terminal and oil tanker traffic. After the *Exxon Valdez* oil spill, both agencies were criticized for failing to either implement or enforce

adequate prevention measures.

Changes have been made in both agencies.

At the state level, the *Exxon Valdez* oil spill focused public and political attention on the need for ADEC to have the authority and funding to monitor and oversee terminal and tanker operations, programs which had been under-funded through the late 1970s and '80s.

After 1989, state funding increased significantly for spill drills, review and approval of contingency plans, and facility and vessel inspections. Oil-related functions were consolidated into one division, called Spill Prevention and Response (SPAR). State legislation passed in 1990 provided the authority, resources and funding that ADEC needed to effectively monitor and oversee industry operations and implement spill prevention and response programs.

ADEC now has the authority, which it didn't have before, to require and enforce prevention measures as a condition for approval of contingency plans. Those measures include more training, more equipment, more inspection and maintenance of equipment, better record-keeping

**FAST ALASKAN:** Seven Halyon tugs were downed at Pohnke Channel, Alaska, South. C-1

**VALDEZ SPILL**

- More photos of the spill, A-6
- Marine life in danger, A-7
- Map of the spill, Back Page

## Anchorage Daily News

# Crude oil fouls Sound



**Oil officials react slowly to disaster**

**Tanker spill is largest ever in U.S.**

**Governor says he won't run for re-election**

*MAJOR U.S. OIL SPILL (ENVIRO)*

*The Exxon Valdez oil spill focused public and political attention on the need for better monitoring and oversight.*

and specific requirements for laden tankers.

However, the progress appears to be woefully short-lived, since ADEC is under attack again and many of the gains made are now at risk (see "Areas of concern").

The Coast Guard is the federal agency most affected by the Exxon Valdez. As a result of the problems

that emerged from the spill, the Coast Guard has a more direct role in spill prevention and response and much greater regulatory oversight of the oil transportation industry. It is responsible for implementing most of the new prevention measures required by the Oil Pollution Act of 1990 (OPA 90). \*

Progress by the state appears to be woefully short-lived, since ADEC is under attack again and many of the gains made are now at risk.

**P**REVENTION measures reduce the incidence and sometimes the severity of oil spills. But until prevention efforts become fail safe, the industry, regulatory agencies and the public must be prepared to respond to spills that do occur. Oil transportation poses risks to the environment. It is incumbent upon those who handle and carry crude oil, as well as regulatory agencies and the public, to make sure that spilled oil is contained and recovered to the greatest extent humanly possible.

The speed and effectiveness of responding to an oil spill hinge on the availability of equipment, resources and trained personnel. Ultimately, responding to a spill depends on planning, preparation and favorable weather.

#### OPERATIONAL PREPAREDNESS

Anyone who handles or transports crude oil or refined product is a potential spiller. Potential spillers cannot operate without an approved contingency plan for preventing and responding to a spill. What's in the plan and provisions

for drills, training, acquisition of equipment, etc. is determined by state and federal laws and regulations. Requirements vary based on type of vessel or facility, location, and amount and type of cargo carried or handled.

Contingency plans were required before. But since 1989, state and federal agencies have expanded plan requirements and changed some of the assumptions. Those who must have contingency plans to operate—called “plan holders”—must provide greater assurances that personnel are being trained, that equipment and resources are available and can be mobilized quickly, and that all players have practiced their roles in preparation for an actual spill.

The size of spill assumed in a response plan makes a tremendous difference in the resources and equipment that must be available. Alyeska's 1987 contingency plan, approved by the state, said it was highly unlikely that a spill of 8.4 million gallons (three-quarters the size of the *Exxon Valdez* spill) would occur and reasoned that “Catastrophic events of this nature

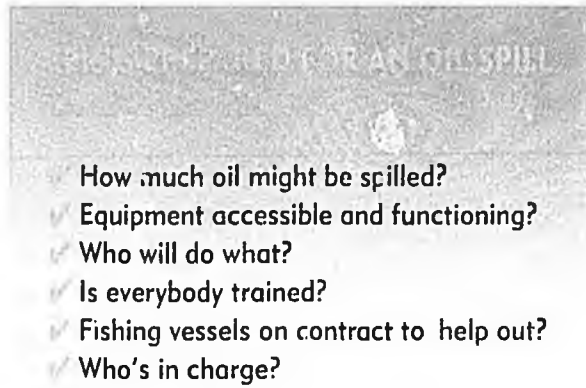
are further reduced because the majority of tankers calling on Port Valdez are of American registry and all of these are piloted by licensed masters or pilots.”<sup>3</sup>

Both state and federal law now require planning for larger potential spills than in the past, and require more spill response equipment to be immediately available.

Plan holders must have enough equipment immediately available to deal with a spill of 300,000 barrels of oil within 72 hours. Plan holders must also plan for a much larger spill based on a complicated formula that includes credit for prevention measures.

As the consortium that operates the trans-Alaska pipeline and terminal for its seven owner companies, Alyeska is the plan holder for spills on the pipeline and at the terminal. In Prince William Sound, the tanker owner or operator would be the actual spiller and therefore ultimately responsible, but Alyeska is charged by the State of Alaska with providing the initial response. Federal law requires the tanker operator to submit vessel response plans, but the vessel operator may contract with Alyeska.

Tanker owners and operators must have their own approved



contingency plans, but state law requires them to contract with Alyeska to provide the initial response described in their plans. Under these contracts, Alyeska manages the spill response for up to the first 72 hours after a spill. After that, it may transfer management of the response to the spiller, so long as the U.S. Coast Guard and the Alaska Department of Environmental Conservation agree that the spiller or its representative is ready to take over.



*Alyeska's escort response vessels are equipped to respond quickly if a spill occurs.* PHOTO: SEAN REID



*Fishing vessel tows boom during a spill drill. Local fishermen demonstrated in 1989 that they could be effective components of spill response.*

PHOTO COURTESY ALYESKA PIPELINE SERVICE CO. • RANDY BRANDON

The first three days after the Exxon Valdez oil spill afforded nearly ideal weather for oil recovery. Seas and winds were calm. But the equipment wasn't ready. Seventeen hours after the grounding, neither the leading edge of the spill nor the grounded tanker had been boomed and the few skimmers on-scene were operating ineffectively. Two hours later, skimming was forced to stop, pending arrival of more storage capacity. Throughout the first few days, debate raged about use of dispersants.<sup>4</sup> Exxon argued for widespread dispersant use, yet didn't have either enough dispersant or the equipment to do the job.

The situation now is quite different. Prince William Sound is home to Alyeska's Ship Escort and Response Vessel System (SERVS), among the top oil spill response forces in the world.

SERVS has two functions: to assist tankers in safe navigation through Prince William Sound and respond to a tanker problem or spill. The escort side of SERVS' fleet consists of five escort response vessels (ERVs) and three tugs. The ERVs are equipped to

tow or assist tankers, carry spill response equipment and contain, recover and store oil. The escort vessels stay within one-half mile of the laden tanker and maintain radio communication with the tanker bridge until the tanker reaches Seal Rocks, outside Hinchinbrook Entrance.

Trained response crews are on duty around the clock and a response fleet is on standby alert whenever a laden tanker is transiting the Sound. SERVS employs approximately 200 trained personnel; another 60 people comprise Alyeska's crisis management team.

Four task forces, each with a trained crew and a large barge with two skimming systems on-board, are stationed at three sites: one each at Naked Island and Cape Hinchinbrook and two in Port Valdez. SERVS' response resources include 33 miles of containment boom, 37 high-volume skimming systems, barges to receive recovered oil and water mixture, and equipment to pump and transfer oil-water mix. Equipment is tested in drills and exercises, to reduce the chances of confusion and surprises in an actual incident.

Local fishing vessels are part

*Alyeska has pre-positioned spill response equipment at hatcheries, community response centers and other sites in Prince William Sound. Community Response Centers are also set up in Kodiak, Seldovia and Seward.*

<b>OIL SPILL RESPONSE</b>	✓ Equipment stockpiled & ready
	✓ Drills & exercises held regularly
WATCH UNCERTAIN AREAS:	■ Fishing vessels organized
	■ Management structure clear
	■ Storage for recovered oil
	■ Response outside Sound

of Alyeska's planned response to a tanker spill. Private vessels are used, among other things, to transport response equipment, deploy and tend boom, and mobilize pre-staged equipment to protect hatcheries. Alyeska has provided comprehensive response training to about 35 fishing boats and their crews. Another 300-plus



fishing boats and their crews have undergone training in basic response. The fishing vessels, based in communities in Prince William Sound, the Kenai Peninsula and Kodiak Island, are under contract with Alyeska to respond according to a pre-determined call-out procedure.

Spill containment and removal equipment is stockpiled at five fish hatcheries in Prince William Sound. Five community response centers also have been established in Prince William Sound, at Chenega, Cordova, Tatitlek, Whittier and Valdez. Three other centers have been established in Kodiak, Seldovia and Seward. Each center is responsible for coordinating emergency responses, manpower and equipment. Spill response equipment is pre-positioned at the five community response centers in Prince William Sound, and at Naked Island and Port Etches.

Two airborne dispersant delivery systems are maintained at Anchorage International Airport, for rapid mobilization if dispersant use is approved.

Storage capacity for recovered oil was a problem in the 1989 recovery effort. Boats would pick up the emulsified oil, only to find

there was nowhere to put it. Alyeska now maintains storage capacity, much of it on barges, for nearly 20 million gallons of recovered oil and water mixture (see "Areas of concern").

### UNITED STATES COAST GUARD SPILL RESPONSE CAPABILITY

Spill drills enable response personnel to become knowledgeable and proficient in the strengths and weaknesses of equipment and procedures. Major, all-systems drills are conducted twice a year, as required by the state and the Coast Guard. These major drills include state and federal agencies, fishing vessels, tanker owners and operators and the RCAC. In 1992, Alyeska conducted nine drills at the terminal, including two surprise drills. Smaller equipment exercises are held much more frequently, often on a weekly basis.

An important aspect of spill response implemented since 1989 is use of the National Interagency Incident Management System (NIIMS), an incident command system (ICS) first developed by fire fighters in California to coordinate management, resources and roles during an emergency response.



*Practice—a tanker is surrounded by boom during a major spill drill.*

PHOTO BY DENNIS HARDING  
CHEVRON CORP

This ICS integrates the party responsible for the spill, the State of Alaska and the Coast Guard in a unified command structure that expands according to need. It also establishes a pre-determined decision-making process and a common language that significantly reduces confusion and misunderstandings among personnel from different organizations. The ICS structure has been adapted by industry and government agencies to define and coordinate their roles and responsibilities in the event of a spill. The ICS structure has been tested and practiced extensively in drills.

Other requirements added since 1989 put more emphasis on shoreline protection, identification

of sensitive areas such as hatcheries, and wildlife protection. A new term was coined – Nearshore Response – to describe the effort to protect shorelines threatened by spilled oil that has escaped initial containment.

Nearshore response is a major component of spill response, in which local personnel, knowledge and resources can be used to protect critical resources and shorelines. Industry groups, RCAC and regulatory agencies have worked cooperatively to develop nearshore response plans. The nearshore response plan for Prince William Sound appears strong, but strategies for implementing it still need to be developed (see "Areas of concern").



*One of the jobs of the RCAC is to monitor the adequacy of spill response. From left, Kristin Stahl-Johnson, John Herschleb and Ann Rothe get briefed at the Valdez Marine Terminal.*

PHOTO: SEAN REID

After the *Exxon Valdez* oil spill, an existing spill response fund was expanded to ensure that reserves would be available to respond to a major oil spill and provide a long-term funding source for the state's spill prevention and response programs. The money for this expanded role comes from a five-cent conservation surcharge on every barrel of oil produced in Alaska. The surcharge ceases when the fund reaches \$50 million.

One of the projects to be paid for from the fund is a volunteer response corps and emergency response depots to ensure prompt response in the event of another major spill. However, little progress has been made to set them up (see "Areas of concern").

To ensure that money will be available to pay for responding to and cleaning up a major spill, the federal Oil Pollution Act required

establishment of a \$1 billion oil spill liability trust fund, funded by the oil industry.

The Oil Pollution Act strengthened federal authority to order spill cleanup action and requires the Coast Guard to direct spill response actions when any spill poses a risk to public health or safety. It also provides tougher criminal penalties and higher civil penalties for the spiller.

Local citizens are involved in actual spill response and drills in several different ways. One of the jobs of the RCAC is to monitor the adequacy of spill response. RCAC representatives convey local concerns, advice and observations to response officials and help communicate developments in the response effort to local communities. ★