

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8042 HOUSE RESOURCES

357

Areas Of Concern

PROGRESS made by the State of Alaska since 1989 is in jeopardy. ADEC's ability to implement monitoring, oversight, prevention and response is being hobbled by a legislature and administration sympathetic to oil industry concerns.

Much of the state's spill prevention and response efforts are funded by a nickel-per-barrel conservation surcharge on oil producers. The surcharge was instituted after the Exxon Valdez spill, in part to ensure a long-term funding source for the state's spill prevention and response programs and to set aside a reserve for use in case of a future spill. The surcharge is levied only until the fund reaches \$50 million. But continuous draws from the fund by the legislature have kept it from reaching that level, requiring the industry to keep paying into it.

Questionable legislative appropriations from the fund—to pay for a new state ferry, for example—have fueled efforts to narrow how the fund can be used. In the 1993

legislative session, oil industry lobbyists attempted to restrict the fund to actual spill response. Though unsuccessful in 1993, those efforts are expected to continue in 1994.

While the bill didn't pass, the message was not lost on the legislature. Most of the Fiscal Year 1994 budget cuts made in ADEC's Spill Prevention and Response Division (SPAR) are projects and programs paid for out of that fund. The result will be significant delays in programs designed to mitigate environmental impacts of terminal operations, prevent another major spill and improve response should oil spills occur. By reducing those programs, the legislature ensured that the fund will reach its \$50 million cap sooner, resulting in less industry taxes.

Separate from political pressure on the response fund, there have been staffing and organizational problems. Positions in ADEC's Spill Prevention and Response (SPAR) Division have gone unfilled. As of

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June 1992, 16 positions were vacant or unfilled, representing about 18 percent of the division's total staff.⁵

Between 1989 and 1992, the legislature appropriated nearly \$10 million from the spill response fund to establish a volunteer response corps and emergency depots. Yet little progress has been made to set it up and much of the funding has lapsed because it wasn't spent.⁶

Although all laden oil tankers coming into Prince William Sound must carry special towing equipment, there is significant disparity in how the towing equipment is stowed. Stowage affects how quickly the equipment can be deployed. On some tankers, towing equipment can be deployed in 15 minutes or less with a deck crew of two. On others, however, deployment would take a crew of eight at least one hour, with power, and at least three hours, without power.

Although not currently a federal requirement, emergency towing equipment is being proposed under rules to implement provisions of OPA 90.

Efficient towing packages are

only part of the solution. Any towing package would be of questionable value to a tanker that loses power in the Valdez Narrows, where the navigable water shrinks to a width of 0.5 nautical mile. A tanker disabled at the narrowest portion of the Narrows could hit the rocks in less than 10 minutes. Averting a grounding in that situation would depend on the escort tug's ability to push or pull the tanker away from the rocks. It is not clear that the assist tugs and ERVs now being used in the Narrows are capable of doing so.

A study co-sponsored by the RCAC, industry groups and regulatory agencies is investigating the adequacy of current towing practices and equipment, and escort vessel deployment. The study is expected to be completed by the end of 1993.

At the center of the issue is whether the more-maneuverable tractor tugs should be required in Prince William Sound. Unlike conventional tugs, tractor tugs could be more safely attached to a tanker before it enters the Narrows. The study findings will be considered by the Coast Guard when it develops federal regulations on escort requirements.

LOCAL RELEVANCE WEATHER DATA

Lack of information about weather conditions in Prince William Sound and Hinchinbrook Entrance is a problem. Because of wind patterns and local topography, readings from the wind measuring station at Potato Point are not always a reliable gauge of actual conditions. Inadequate reporting stations through the Sound mean that frequently the only information available about wind and sea conditions is from a vessel already under way.

The problem is lack of funding. During the *Exxon Valdez* oil spill cleanup, the National Oceanic and Atmospheric Administration (NOAA) temporarily placed reporting stations at numerous sites in Prince William Sound, but later removed them. The Coast Guard has requested NOAA install weather stations at various locations in Prince William Sound to provide real time weather information to aid in better vessel traffic management.

OVER-SIGHT CROSS-CAPITAL ISSUES

While federal law now limits the work hours of tanker crews, ques-

tions about other human factors have yet to be answered. Meanwhile, the U.S. Congress has yet to ratify international protocols for crew certification and training, even though such protocols would improve the safety and technical training of crews on foreign vessels calling at U.S. ports.

Issues such as the adequacy, qualifications and training of crews are to be addressed in a U.S. Coast Guard study of tanker navigation safety standards. The study is expected to be released in 1995. Minimum requirements for pilots also need to be re-evaluated; that issue will also be addressed in a Coast Guard study.

OVERSIGHT

- Coast Guard given more authority & responsibility**
- ADEC given more authority and funding**
- Citizens have a voice**

PROBLEM AREAS

- X State politicians cutting back on spill programs**
- X Transfer of spill response to spiller (criteria vague)**



Kodiak—Oil from the Exxon Valdez hit the beaches but little has been done to assess the need there for response resources.

The nearshore response plan for Prince William Sound is good, but more work needs to be done to implement and test it. Strategies must be developed, equipment must be tested and personnel trained and drilled. The nearshore response plans are expected to be addressed more fully in future major drills, beginning in fall 1993.

RCAC continues to be concerned about the adequacy of response capabilities and preparation outside Prince William Sound. Oil from the *Exxon Valdez* washed up on the beaches of Kodiak. Island and the southern Kenai Peninsula, yet little has been done to assess the needs of those areas or provide them with response resources. There are no specific detailed plans describing what resources and equipment will be provided, where they will come from, and how they will be transported to the region within the time period required.

RCAC is also concerned about whether the storage capacity outlined in Alyeska's contingency plan will be sufficient to meet actual needs in the event of a spill.

This is especially critical for nearshore response. Available storage capacity affects recovery of spilled oil, because skimming can proceed only so long as there is somewhere to store the recovered oil and water.

Under its state-required contingency plan for tanker spills in Prince William Sound, Alyeska may transfer management of a spill response to the actual spiller, i.e., the vessel owner or operator. The transfer of spill management from Alyeska to the spiller must be approved by the Department of Environmental Conservation (DEC) and the U.S. Coast Guard.

However, RCAC has several concerns about the transition of response management. The criteria used to determine whether the responsible party is capable of managing the response are vague. Also vague are the criteria for determining whether the responsible party is financially able to respond. RCAC also questions whether responsible parties have the experience and training to take over in the middle of a crisis. ★

Conclusion

RCAC believes Prince William Sound is better protected from major oil spills and better prepared for an effective initial response should a spill occur. Important steps have been taken to prevent oil spills from occurring. Crews are better trained and monitored. Masters are held to more stringent requirements. Measures have been instituted to increase chances of safe passage and reduce the possibility of accidents.

Several important prevention measures, such as double hulls on tankers and a study of human factors in tanker operations, will take time to implement. Getting laws on the books is only the first step and the federal rulemaking process is slow. Many of the actual requirements and specific decisions have yet to be clarified and formalized in final regulations. 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.

Yet, industry and regulators are actively demonstrating the importance of learning from experience. During 1993, the Coast Guard and Alyeska's SERVS division instituted safety changes in response to potential problems that came to light from the *Braer* spill in Shetland and the *Kenai* incident in 1992.

Response capabilities in Prince William Sound have improved dramatically. Alyeska, through its SERVS division, has done an excellent job of acquiring, stockpiling, testing and drilling spill response equipment and training personnel.

The fact that there is room for improvement in some areas should not detract from the very substantial overall progress that has been made by both industry and regulatory agencies.

In the face of such progress, it is all the more alarming to see the State of Alaska backing off its commitment to oil spill prevention and response. Alaskans who care about the safe transportation of oil and environmental protection must defend ground gained since 1989, continue to monitor implementation of new laws, strengthen weak areas and close gaps that remain. *

Laws that appear strong when enacted can be weakened through vague regulations and inadequate funding.

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5 YEARS AFTER THE SPILL

Time dulls the pain, urgency

By KIM FARARO

Daily News business reporter

No one has forgotten the footage of the stranded tanker belching waves of thick, black crude into Prince William Sound, or the photos of oiled otters, belly up on blackened beaches.

Yet while major gains in tanker safety have been made since the Exxon Valdez disaster that began five years ago today, some of the Sound's protectors say Alaskans are forgetting how difficult it is to clean a catastrophic spill and are losing the will to fight for costly protection.

The resulting complacency, those activists say, is slowing needed reforms and threatening to undo some of the improvements in spill protection made since 1989.

Only months ago, there was a striking echo of the unpreparedness that marked the early effort at cleaning up the 11-million-gallon spill from the Exxon Valdez. In each case, a barge was involved.

Just how badly the industry was prepared in 1989 became apparent after the 12:27 a.m. radio message from Capt. Joseph Hazelwood to the Coast Guard in Valdez.

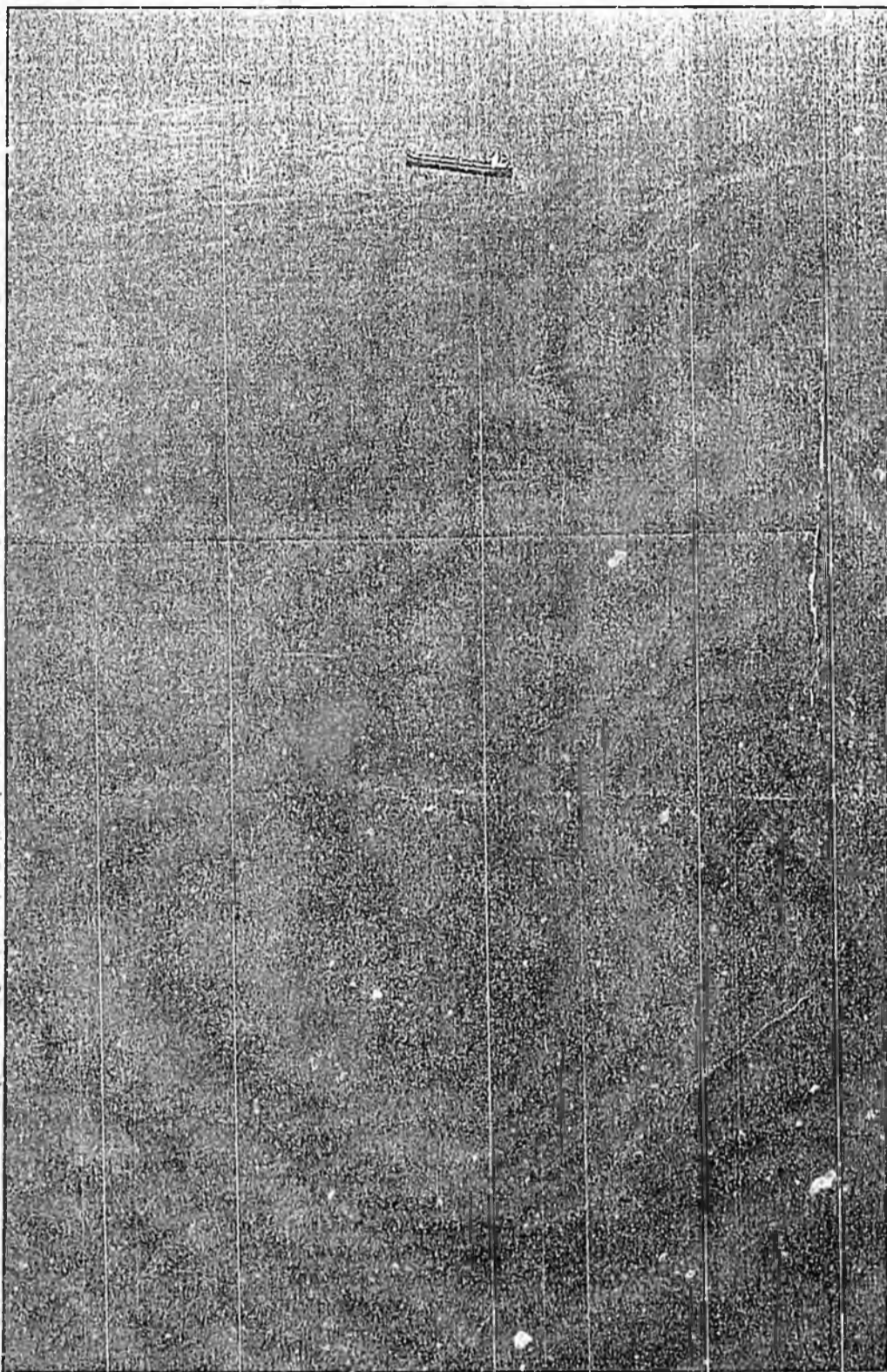
"We've fetched up, hard aground north of Goose Island off Bligh Reef," Hazelwood said in a slow, deep monotone. "Evidently we're leaking some oil, and we're going to be here for a while."

In the hours that followed, Alyeska Pipeline Service Co. workers struggled in the dark to reload cleanup equipment onto the company's spill-response barge. Some equipment was in warehouses. Some was buried under mounds of Valdez snow.

The barge had been unloaded weeks before for repairs and had not been readied for service.

The barge made it to the stricken ship 14 hours later — and hours too late. By then, the bulk of the oil that spilled had escaped into the

Please see Back Page,
5 YEARS LATER



ERIK HILL / Daily News photo

Oil spills from the tanker Exxon Valdez after it ran aground on Bligh Reef in Prince William Sound.

INSIDE

■ Seventeen people who had roles in the Exxon Valdez oil spill or the cleanup and investigations that followed reflect on the effects of the worst oil spill in U.S. history and talk about what they're doing now. Metro, B-1

5 YEARS LATER: Oil-spill preparedness better, but concern fades

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Sound.

Last December — four years and eight months after that disaster — Alyeska sent its largest barge out of state for maintenance.

The state Department of Environmental Conservation could have demanded the barge stay put until a replacement was found. But it didn't.

Steve Provant, the department's top man for spill prevention in Valdez, believed Alyeska's assurances that it could handle a spill using backup equipment on other barges.

Provant, the official who directed the state's cleanup effort after the Exxon Valdez spill, changed his mind when a test of a backup skimmer failed. But it was too late. The barge was gone, and a new one couldn't get there for several weeks.

Alyeska, owned by seven of the North Slope oil producing companies, won't be punished for the barge incident. But the state has proposed fining the tanker companies that have spill-cleanup agreements with Alyeska a total of \$110,000.

"Complacency is insidious and this is how it starts," said Joe Banta, a spill specialist with the Prince William Sound Regional Citizens' Advisory Council, an oil-industry watchdog group. "People say nothing happened, so it's OK. But we can't say that because what's the next step backward? The point is, had we had a spill, we might really not have done as good a job because this barge was gone."

Even the most die-hard environmental defenders of Prince William Sound agree the oil industry's ability to prevent and react to spills has dramatically improved since March 1989. In most cases, the changes were mandated by a flurry of state and federal laws passed in the wake of the Exxon Valdez.

Tankers that relied mainly on the skills of their crew to keep them out of trouble in the sometimes stormy Sound now have a virtual armada of escort vessels to choose from. Each ship is trailed by at least one tug, which could push or pull the tanker away from danger, and a response vessel carrying cleanup equipment in case the rescue fails.

The escort vessels' much-expanded inventory of spill-

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— Joe Banta, Prince William Sound Regional Citizens' Advisory Council

fighting equipment is considered among the best in the world, and their crews have practiced cleanup maneuvers countless times during the past five years.

The Coast Guard stiffened rules for safe travel through the Sound, forbidding sailing in high winds. The agency also expects to finish installing a tanker tracking system this summer that will finally allow it to keep tabs on ships all the way through the Sound.

Alyeska has instituted tight procedures designed to catch drunken crew members before they board their ships. Hazelwood was charged with drunkenness after the disaster, though a jury acquitted him.

And in case the Coast Guard or other regulators go soft on industry — as was widely charged after the Exxon Valdez disaster — two citizens' groups have been created that bird-dog their activities and those of the oil companies.

The older of the groups, the Prince William Sound Regional Citizens' Advisory Council, spends a lot of time nudging regulators to take a tougher stance with industry on such issues as how much spill equipment is needed. The group receives more than \$2 million a year for its work from the oil industry and spends much of its money on scientific and technical studies that test oil-industry assertions about pollution and spill preparedness.

But even with all the improvements, environmental regulators and activists say, more needs to be done to keep history from repeating itself.

Some major battles have ended in compromises that will delay improvements for years.

In 1990, Congress required oil tankers to have a double hull, but allowed ship owners up to 25 years to switch. The hulls would add what government and other experts say is a critical layer of protection between a ship's cargo tanks and the rocks and reefs that could tear them open.

That same year, Arco Ma-

rine tried unsuccessfully to interest Alaska's other oil shippers to join it in designing a super skimmer to augment crude cleanup by small skimmers that slurp oil.

Jay Kitchener, an Arco Marine official, said at the time that such improved spill technology was crucial to giving oil companies a fighting chance to pick up more than just a fraction of Exxon Valdez-sized spills.

Other battles continue. The Prince William Sound Regional Citizens' Advisory Council, or RCAC, is leading the fight to get more weather stations installed in the Sound, arguing that the Coast Guard's wind restrictions make sense only if the agency knows how hard the wind is blowing.

The Valdez Coast Guard station agrees that it knows very little about the weather in much of the Sound and relies on ships to report on high winds by radio. Officials there have asked for more money from their Washington, D.C., headquarters to add reporting stations, but have not yet won approval.

RCAC also is pushing regulators to consider making Alyeska add versatile tugs to its response fleet. The citizens' group has joined shippers in paying for a study of the tugs and other response equipment that is expected to be completed this year.

Fishermen and environmentalists are still pushing the Coast Guard to order tanker escorts in less-traveled Cook Inlet. And Dan Lawn, a longtime DEC official and oil-industry critic, is still hoping for rules that would increase the size of tanker crews to reduce fatigue on ships.

At the same time, battles that already were won are being refought.

RCAC's Joe Banta is trying to get regulators to adhere to post-Exxon Valdez legislation that required agencies to stash spill-response equipment at depots around the state.

The law, passed in 1989, was written to ensure that communities would have good equipment to protect

themselves from spills if industry and government spill-fighters were overwhelmed. Banta recalled that volunteers were forced to build booms made of logs during the Exxon Valdez spill because no other boom was available.

No depots have been created yet. Pete Wuerpel of the state's division of emergency services, which is charged with creating the depots, says the division has so far purchased a communications system for use in remote areas. He says such systems are essential to efficient spill cleanup.

Wuerpel blames the DEC for delays in getting other equipment, saying the agency officials haven't said what they think would work best. The DEC says it has been difficult to figure that out because each community's needs are different. The agency is testing equipment this year so it can make recommendations to the emergency services division.

RCAC also is expecting to follow up results of a 1992 study showing some tankers plying Prince William Sound would need hours — and in one case, days — to deploy towing gear mandated years ago. Tankers that lose power can use the cables to connect to tugs that can control the bigger ships' movement. The Sound's tugs also have towing gear, but the author of the study said a good towing system deployed from a tanker would likely work better in stormy seas.

With so much to accomplish, oil-spill activists say they need every ounce of support they can get from the public, the regulators, the legislature and the industry. Instead, they say, attention is straying, threatening not only future reforms but those already made.

Stan Stephens, a Valdez charter boat operator who heads RCAC, and others say DEC will need to be more aggressive if it hopes to keep up with an oil industry increasingly concerned with saving money as production declines.

That decline already has had an effect. Late last year

Alyeska announced it would cut the number of people who tie up tankers for loading. The company cited declining oil production for the cutbacks. Company officials said that if they needed help with the tankers, they would call in workers whose only job had been to prepare for oil spills.

Alyeska said the move won't hurt oil-spill preparedness because it will only need the workers occasionally. But environmental activists see history repeating itself. Alyeska dismantled the crews dedicated to oil-spill response in the early '80s. Those crews were re-created June 1, 1989, after a frustrated Gov. Steve Cowper put pressure on Alyeska.

In the legislature, politicians sympathetic to the oil industry, including Republican Rep. Joe Green, continue to try to roll back a 5-cents-a-barrel tax imposed on Alaska crude after the Exxon Valdez spill. The tax is expected to raise \$26 million this year.

The legislature enacted the tax in 1989 so the state would have the ability to clean up oil and other hazardous spills. But the money is paid into a fund with broader uses, and it has become an important funding source for the DEC. The agency is using the money in part to beef up monitoring of companies' abilities to clean up oil and other types of spills.

Mead Treadwell, deputy DEC commissioner, said the idea behind the increased inspections is to avoid repeating past mistakes. Although Alyeska had a spill-response plan in 1989, regulators hadn't carefully checked to see if it was doable. It wasn't.

Industry supporters have argued that the oil industry shouldn't have to pay for nonoil cleanups, but a recently released legislative audit says the tax money can be used for those purposes.

The audit also says funding cuts could jeopardize DEC's ability to maintain a viable prevention program, which it suggests is key to avoiding another Exxon Valdez disaster. The auditors noted that the state oil spill commission investigating the spill blamed the disaster in good part on the lack of focus on prevention and on complacency.

"We wonder whether complacency is again taking root," the audit said.

In the wake of the Exxon oil spill

Five years later, principle players recall catastrophe

Over the spring, summer and fall of 1989, news coverage of the Exxon Valdez disaster overshadowed virtually all other events in Alaska. Many of the names from that period became household words, and a few were media stars.

Five years later, most of them have returned to private life and relative obscurity. Here are 17 people — and one infamous ship — who played prominent roles in the Exxon Valdez oil spill.

The Exxon Valdez

■ **WHAT IT DID:** On March 24, 1989, the Exxon Valdez, with more than 50 million gallons of North Slope crude on board, shuddered as it steamed through the shallows of Bligh Reef. It jerked to a halt, impaled on a spine of rock, as the first of some 11 million gallons of oil began boiling from its hull.

■ **WHERE IT IS TODAY:** With the name "Exxon Valdez" firmly etched in the public mind as a symbol of environmental disaster, Exxon sought to rehabilitate the ship's image by changing its name to "Exxon Mediterranean" and banishing it to oil hauling far from the United States, in the Mediterranean. Last year, Exxon Shipping, the subsidiary that owned the ship, changed its corporate name to the more mellifluous and organic "Sea/River Maritime," so the Exxon Valdez is now the "Sea/River Mediterranean." Last month, it crept back to North America for the first time since the spill, where protesters from Greenpeace discovered it at anchor in Freeport, Bahamas, and painted its old name on its hull. In nontoxic paint, they claimed. At the moment, the ship that became history on Bligh Reef is tankering oil back in Europe, said Les Rogers, a Sea/River spokesman.

Steve Cowper

■ **WHAT HE DID:** As Alaska governor from 1986-1990, he played a high-profile role in the state's response to the spill. On the morning of March 24, 1989, before even hearing about the spill, Cowper announced to a Fairbanks newspaper that he would not seek re-election in 1990. A few hours later, he flew to Valdez and motored out to the stricken ship, climbing a dangling ladder to reach the deck. What he saw so angered him that nine days later, he threatened to shut down the pipeline — and forgo millions of dollars in state revenue — if Alyeska Pipeline Service Co. and its oil company owners couldn't come up with a workable plan for cleaning up spills.

■ **WHERE HE IS TODAY:** Despite gaining nationwide prominence, Cowper stuck to his decision to leave politics. He spent some time in California, then returned to Anchorage in 1992, where he works as a business consultant.

■ **WHAT HE SAYS:** The spill left Alaska and the oil industry with a "permanent burden of proof" that oil and gas can be developed without jeopardizing the environment. But he also says the spill belongs to history now. "There's been a fixation on the Exxon Valdez. To me, it's time to move away from that. ... It's time to declare our lessons learned."

Samuel Skinner

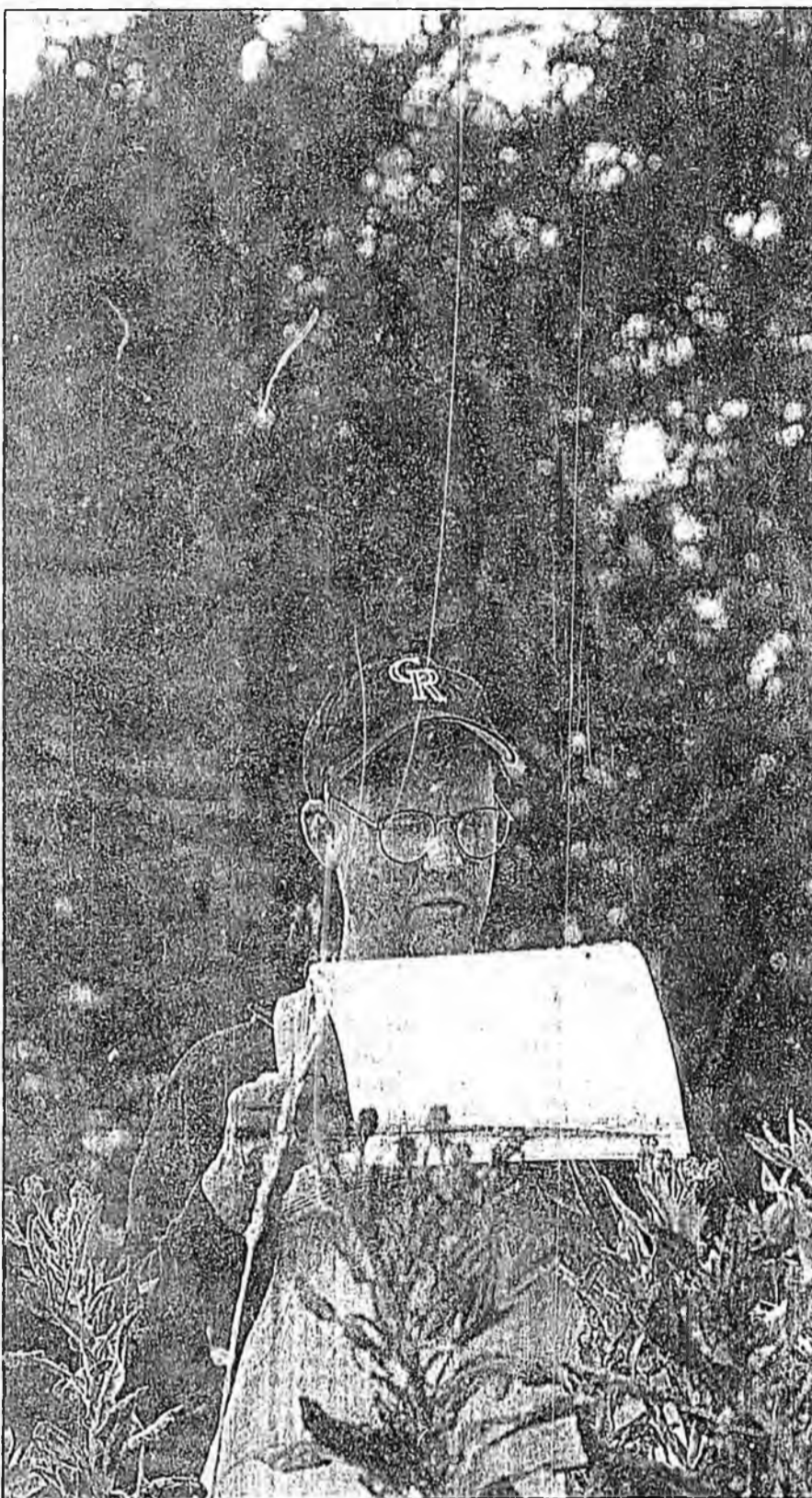
■ **WHAT HE DID:** Samuel Skinner was U.S. Transportation Secretary when the Exxon Valdez went aground. That made him the boss of the Coast Guard. Apart from cameo appearances by Vice President Dan Quayle, Skinner was the highest-ranking federal official to monitor the spill and the cleanup.

■ **WHERE HE IS NOW:** He later became President George Bush's chief of staff. Soon after Bush left office, Skinner was hired as president of Commonwealth Edison, an electric company serving Chicago and northern Illinois.

■ **WHAT HE SAYS:** When the state and environmental groups were criticizing Exxon's beach-cleaning and oil-skimming efforts, Skinner defended the company, saying it had done all it could. Looking back, Skinner said he remains convinced of that. "I still believe that we were very fortunate it was Exxon that was the spiller. They were willing to step up to the plate and spend several billion dollars." He said he thought the spill had resulted in better control of tanker traffic, better spill-response plans and a better understanding of oil in the environment.

Michael Tumey

■ **WHO HE WAS:** Michael Tumey was a volunteer firefighter from Girdwood who became one of the most visible protesters in the months following the spill. In April 1989, he climbed down the side of the Calais II building in Midtown, where Exxon had its offices, and draped a huge sign on the side of the building: "Oil Spilled, Exxon Killed, Remember the Scound!" In October, he interrupted an Anchorage Chamber of Commerce meeting where Exxon USA President William



JIM JAGER / Daily News file photo

Ernie Piper checks a map while looking for a test pit from an earlier oil-spill survey on Seal Island last summer. He led a team of researchers who evaluated cleanup progress.

Ernie Piper

■ **WHAT HE DID:** As a special assistant to Gov. Steve Cowper at the time of the oil spill, Ernie Piper became the governor's chief spokesman on spill matters. Straight-talking and quotable, Piper was a frequent critic of the early cleanup effort led by Exxon and the U.S. Coast Guard. In September 1990, Piper was named "on-scene coordinator" for the spill, but news reports generally referred to him as the state's "cleanup chief." Although his credentials were solidly Democratic, Gov. Wally Hickel, Republican turned Alaskan Independence Party standard-bearer, asked Piper to stay on, citing his advocacy for the state's interests. Piper also served on the Department of Environmental Conservation restora-

tion team, wrote a history of the spill for DEC and, last summer, ran a shoreline survey for the Exxon Valdez Trustees Council.

■ **WHERE HE IS TODAY:** Piper is serving as campaign manager to former Anchorage mayor Tony Knowles' gubernatorial bid.

■ **WHAT HE SAYS:** "The thing that stands out most for me is the fact that, not just in government but also in industry and the general public, there are some fundamental misunderstandings about science and about technology and about the environment. Science and technology cannot do everything that people think they can do, and at the same time the environment can be more resilient and more complex than we like to think."

Stevens was scheduled to speak. Standing up with a blackened Sesame Street Big Bird that looked like a large, oiled bird, Tumey said "Mr. Stevens, I have a bird I don't believe you counted on."

■ **WHERE HE IS TODAY:** Tumey still lives in Girdwood, where he is a self-employed construction worker and a volunteer firefighter. He remains interested in oil-spill prevention, but now concentrates on issues like ozone depletion and pesticide use. His last major involvement in the oil-spill issue was lobbying Congress to require double hulls on tankers.

■ **WHAT HE SAYS:** Oil companies are better prepared for a spill than they were five years ago. "I think more and more the oil industry realizes it's only good public relations nowadays to walk their talk and to protect the environment." But unless the public and the press remain vigilant, the industry will once again "try to save a dollar instead of putting it into prevention." His remaining image of the spill is how people came together to protest and to clean up.

Please see Page B-3, MAJOR

Major players reflect on an ecological tragedy

Continued from Page B-1

Frank Iarossi

■ **WHAT HE DID:** As president of Exxon Shipping Co., the subsidiary that operated the tanker, Iarossi flew from Houston to Valdez the morning of the grounding. He was the top — and most visible — Exxon official in Alaska during the spill's early days, appearing at a series of noisy Valdez press conferences. Early on, he admitted the oil had slipped beyond Exxon's control, despite years of industry assurances that it could handle a major spill. He also acknowledged that Joe Hazelwood, the captain of the grounded tanker, had a history of drinking known to the company. He received praise from some Prince William Sound fishermen for his willingness to work with them during the spill's early days.

■ **WHERE HE IS TODAY:** Iarossi left Exxon about a year after the spill to become chairman and chief executive of the American Bureau of Shipping, a nonprofit corporation that inspects and classifies ships to make sure they are seaworthy. Both Iarossi and Exxon have maintained his leaving the company had nothing to do with the Exxon Valdez. Iarossi splits his time between Houston and New York.

■ **WHAT HE SAYS:** Iarossi is traveling in Asia and could not be contacted; publicly he has had little to say about the oil spill. But in an interview last year with the Houston Post, Iarossi said his top priority was fulfilling the shipping bureau's mission of promoting safety at sea. An aging fleet, he said, means substandard vessels must be identified and upgraded or removed from service. "I think I understand the consequences of an unsafe ship like very few people in the world do," he said. "If I let myself, I could become a crusader."

Dan Lawn

■ **WHAT HE DID:** Dan Lawn, the state regulator with the Alaska Department of Environmental Conservation, had warned that Alyeska was unprepared for a big spill long before the Exxon Valdez ran aground. On March 24, 1989, he was the first DEC official to reach the stricken Exxon Valdez. Later, in a BBC Home Box Office docudrama, he was portrayed as one of the few heroes in the spill.

■ **WHERE HE IS NOW:** Lawn still works for the DEC in Valdez, but was stripped of his oil-industry watchdog duties in August 1989. In January 1992, an independent arbitrator ruled that Lawn should not have been demoted, but the DEC has kept him in a job overseeing sewage and drinking water systems. Lawn is suing to get his old job back.

Rick Steiner

■ **WHAT HE DID:** A Cordova marine biologist, he helped organize fishermen to protect their fish hatcheries in the hectic days following the spill and became a leading spokesman for local interests. Later, he came up with the idea to use Exxon settlement funds to conserve forests in Prince William Sound, Kenai Fjords National Park and Kachemak Bay by buying out loggers.

■ **WHERE HE IS TODAY:** He is still working for the University of Alaska Marine Advisory Program, and still devoted to oil-spill issues, particularly tanker safety. He helped organize a conference in Anchorage this week marking the

five-year anniversary. ■ **WHAT HE SAYS:** "We know that oil, fish and wildlife don't mix," Steiner says. "We know that oil is harmful. We know we can't fix what we've done. . . . That says to me that at least 90 percent of our effort should be prevention" of oil spills. Tanker safety has been improved in Prince William Sound, he said, but there are still improvements to be made here and around the world.

Joseph Hazelwood

■ **WHAT HE DID:** The skipper of the Exxon Valdez,



Michael Chalos and Joseph Hazelwood

Joseph Hazelwood ordered the tanker to shift position to dodge icebergs, then left the bridge. With Third Mate Gregory Cousins in charge, the tanker failed to make a second turn and ran aground on Bligh Reef. Hazelwood was acquitted of three charges, including operating a vessel under the influence of alcohol, and convicted of negligent discharge of oil, a misdemeanor. The conviction was overturned by the Alaska Court of Appeals, but the Alaska Supreme Court last December directed the lower appellate court to reconsider.

■ **WHERE HE IS TODAY:** Since the spill, Hazelwood has worked as an oysterman in Long Island Sound, an instructor at the State University of New York Maritime College and, presently, as a maritime consultant for the New York law firm of his defense attorney, Michael Chalos. Hazelwood, who has an unlisted telephone number, did not return messages left with his parents and with the law firm, Chalos and Brown.

Robert Kagan

■ **WHAT HE DID:** The man at the helm when the tanker failed to negotiate a simple turn and ran aground, Robert Kagan testified at Joseph Hazelwood's trial that the tanker captain had told him later that night he had done "a hell of a job." Third Mate Gregory Cousins testified that what Hazelwood actually said was, "Damn fine job, Bob." Cousins said he interpreted the remark as an attempt at black humor.

■ **WHERE HE IS TODAY:** According to an Exxon spokeswoman, Kagan continues to work for SeaRiver Maritime Inc., the new name for Exxon Shipping Corp. The spokeswoman declined to say where and in what capacity Kagan is employed.

Adm. Paul Yost

■ **WHAT HE DID:** Adm. Paul Yost, the national commandant of the U.S. Coast Guard, was President Bush's man on the scene in Prince William Sound a month after the spill. Stung by criticism that the federal government wasn't doing enough, Bush dispatched Yost, a guff-talking, take-charge guy, in Valdez. Yost landed off suggestions that the Coast Guard take over the spill response, saying that would absolve Exxon of liability. He forced Exxon to come up with a much-delayed beach cleanup plan, but some of his other pronouncements, such as a swift decision that beaches should be cleaned with hot-water spray, were shelved as the jockeying over who should do what continued. The following year, in May 1990, he retired.

■ **WHERE HE IS TODAY:** Yost is president of the James Madison Memorial Fellowship Foundation, a federally funded agency in Washington, D.C., that awards student fellowships to high school social science and history teachers. Funded with a \$20 million endowment from Congress, the agency's aim is to increase teachers' understanding of the Constitution.

Chuck Hamel

■ **WHAT HE DID:** A disgruntled oil broker and investor

in North Slope leases, Chuck Hamel became the biggest critic of the Alaska oil industry. Four years before the March 1989 spill, Hamel had warned that Alyeska Pipeline Service Co. and its oil-company owners were systematically dismantling the spill-response program to cut costs. After the spill, Hamel was in Valdez working with commercial fishermen and helping arrange for congressional hearings. Hamel later became a conduit for Alyeska whistleblowers reporting persistent problems along the pipeline. His criticism of the oil industry made him the target of a 1990 spy investigation by Alyeska and the Wackenhut Corp. Hamel settled a damage lawsuit against the two companies last December for an undisclosed sum.

■ **WHERE HE IS TODAY:** After the settlement of his lawsuit, Hamel has virtually stopped his self-created role as the Alaska oil industry's biggest and most effective critic, as he was once described by a House committee that investigated the spill and the spy operation. Operating out of his home in Alexandria, Va., Hamel is now pursuing a variety of business opportunities and he said he may get back into the oil transportation business. ■ **WHAT HE SAYS:** Alyeska and its owner companies "dismantled the spill-response system because of greed. The spill demonstrated that cutting corners hurts everybody."



Greg Cousins testifies in court.

Greg Cousins

■ **WHAT HE DID:** As third mate on the Exxon Valdez, Greg Cousins was in charge on the bridge when the ship hit Bligh Reef five years ago. In October 1989, he pleaded no contest to civil charges of failing to navigate the tanker properly. A Coast Guard judge suspended his license for nine months.

■ **WHERE HE IS TODAY:** Cousins is no longer with Exxon. As of six months ago, he was working on a freighter, according to his Anchorage attorney, Bob Richmond. "The last I heard, he was sailing from Portugal to South Africa," Richmond said. "I couldn't tell you much more than that." Cousins may be back in the spotlight soon, however. He is one of the defendants in a civil lawsuit stemming from the spill. It is scheduled for trial in Anchorage federal court in May.

Dennis Kelso

■ **WHAT HE DID:** As Alaska's commissioner of Environmental Conservation, Dennis Kelso was the state's chief oil regulator at the time of the spill and the cleanup that followed. Quotable and legionic, he became the state's chief spokesman — and a major oil company critic. In one East Coast press conference, he called Alyeska Pipeline's cleanup plan "the biggest piece of American maritime fiction since Moby Dick."

■ **WHERE HE IS TODAY:** Now enrolled in a Ph.D. program at the University of California, Berkeley studying energy and resources. He returns to Alaska during the summer and works as a consultant and occasional wilderness guide.

■ **WHAT HE SAYS:** The people of Prince William

Sound "experienced the Exxon Valdez spill as a direct and frightening threat to their whole way of life, but they never gave up. . . . They believe there are still adverse effects of the spill, on salmon returns, physical lesions on herring anomalies with salmon behavior." On learning the Alaska Legislature is considering a bill to cut back on tax collections for its oil-spill response fund, Kelso said, "Five years out of the box, are we already forgetting that the time to prepare for a spill is before there is one?"

Don Cornett

■ **WHAT HE DID:** Don Cornett was Exxon's manager of Alaska operations and was one of those on the front line of the press conferences and company public relations efforts. With his rich drawl, he fueled thousands of tough questions about the slow progress of the spill cleanup.

■ **WHERE HE IS TODAY:** After the spill he was promoted and returned to Exxon Co. USA headquarters in Houston. He is now Exxon's manager of public relations. An Exxon spokesman said Cornett couldn't talk about the spill because of pending litigation.

Cmdr. Steven McCall

■ **WHAT HE DID:** As the federal on-scene coordinator and captain of the Port of Valdez, he was the point man who tried to keep the federal, state and oil industry groups working together to clean up the spill. This put him in the middle of fierce infighting that broke out between different agencies and between agencies and Exxon over how to proceed with the cleanup.

■ **WHERE HE IS TODAY:** McCall has retired from the Coast Guard and is working with Maritime Overseas Corp., a tanker operator, as manager of environmental affairs. Maritime operates tankers under charter to British Petroleum, including some that ply the Alaska trade. McCall's job is to develop oil pollution contingency plans that meet federal requirements developed in the aftermath of the Exxon Valdez spill.

■ **WHAT HE SAYS:** The spill came in McCall's fourth and final year in Valdez, an unusually long tour of duty for a Coast Guard officer and one that he did not expect. "By all rights I shouldn't have been anywhere near Valdez on March 24. . . . But being there that long helped me because I knew all the people and who I could rely on and who I couldn't rely on, and who was twisting the truth and who was talking on both sides of their mouth."

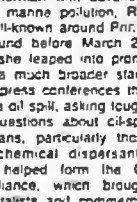
Riki Ott

■ **WHAT SHE DID:** As an established resident of Cordova and a commercial fisherman with advanced degrees in marine pollution, Riki Ott was well-known around Prince William Sound before March 24, 1989. But she leaped into prominence during the press conferences that followed the oil spill, asking tough, technical questions about oil-spill cleanup plans, particularly those involving chemical dispersants.

She later helped form the Oil Reform Alliance, which brought environmentalists and commercial fishermen together to work.

■ **WHERE SHE IS TODAY:** Ott says she is still doing the same work. She is reviewing, questioning, interpreting and commenting on the government's and Exxon's scientific findings. She has done some consulting work for Greenpeace. She is doing volunteer work for Alaska Clean Water Alliance and is habitat chairman of the United Fishermen of Alaska. She is also a fiber artist whose work focuses on marine ecology themes. The Oil Reform Alliance she helped form was dissolved earlier this month, but has been replaced by other grass-root groups made up of commercial fishermen and environmentalists, Ott said.

■ **WHAT SHE SAYS:** The tragedy now is the incredible manipulation by Exxon to make us think the spill is not as bad as we think. Ott said. Without the spill, she added, "I wouldn't be who I am today. They (Exxon) created me."



Rain or
snow
38/30



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GUNMEN KILL CANDIDATEWorld, Page 13

Gretzky gets his goal
Sports Page 14

PENINSULA CLARION

CLARION

Complimentary Copy For
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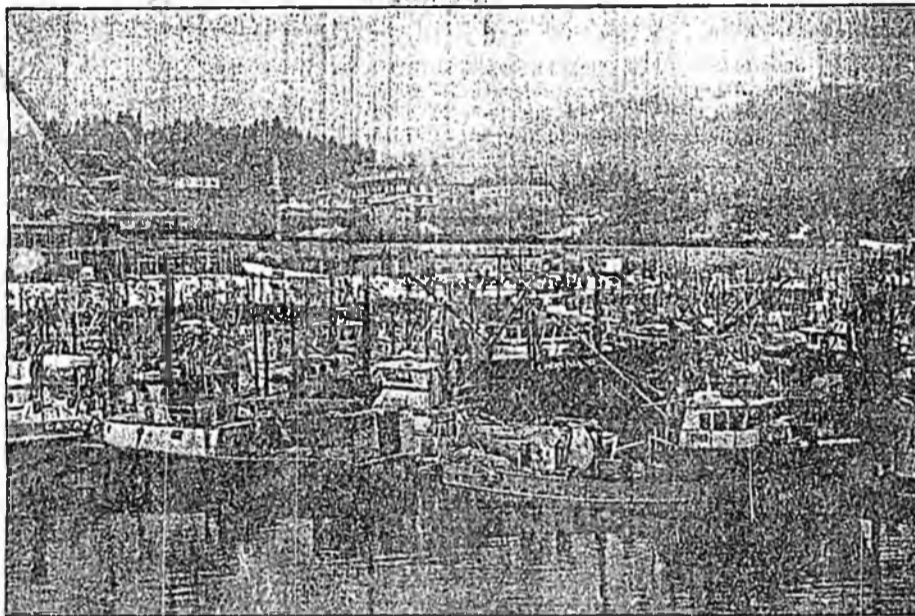


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'89 Spill still lingers



AP Photo/Al Grifo

Above, although the oil from the Exxon Valdez spill did not reach this coastal fishing town of Cordova, the effects of the spill are still being felt. Nearly half the work force of Cordova, a town of nearly 2,600, is directly employed in fish harvesting or processing.

And right, this Red Necked Grebe was covered in oil resulting from a spill on March 24, 1989, when the tanker Exxon Valdez ran aground in Prince William Sound dumping nearly 11 million gallons of toxic crude oil into pristine waters.

Since the tanker accident, storms have scoured Alaska's 1,500 miles of polluted coastline, removing about half the oil embedded in some places.



AP Photo/Jack Smith

Lawsuits unsettled five years after tanker strikes reef

By ROSANNE PAGANO
Associated Press Writer

CORDOVA — Tides and times have been kind to Prince William Sound in the five years since the Exxon Valdez rammed a charted reef, dumping nearly 11 million gallons of crude oil into pristine waters.

Storms have scoured Alaska's 1,500 miles of polluted coastline, removing about half the oil embedded in some places. Many beaches look clean. Population forecasts for bald eagles are good. The tourists are back.

"It's behind us," said John Manly, an aide to Gov. Walter J. Hickel, whose administration won a \$900 million

See SUITS, page 6

Fate of Inlet fishers snarled by tarballs

By CATHY BROWN
Peninsula Clarion

The value of an Upper Cook Inlet salmon permit has dropped by two-thirds in the last three years, a plunge commercial fishers' attorneys blame on the 1989 Exxon Valdez oil spill.

See INLET, page 6

...Suits

Continued from page 1

settlement from Exxon Corp. in 1991.

But it's not over for the people of Cordova, homeport to Prince William Sound's commercial fishing fleet.

Cordova fishermen are among the plaintiffs who filed damage claims in the wake of the March 24, 1989 accident. They are only just getting their day in court, and until they do, they will not turn the page on the Exxon Valdez.

They blame the Valdez spill for bad salmon harvests over the past two years. They say they are just hanging on, and that massive Exxon is trying to wait them out, an assertion the company denies.

"It's been a war of attrition," says salmon fisherman R.J. Kopchak, a former Cordova city councilman whose three-story house overlooks Cordova's dock and forested Orca Bay.

A typical week's mail, stacked on Kopchak's kitchen table, contains court notices about his lawsuit. More papers to sign, more documents to file.

"We know one guy, a fisherman here with a valid claim, who just quit sending in his paperwork. Refuses to do it anymore," Kopchak says as he scans the foggy bay.

"The longer Exxon and its attorneys can make it miserable for you, the greater the chance the settlement will be less."

Kopchak is among fishermen who say this summer's salmon season could be his make-or-break year. If the run fails or prices are weak, Kopchak says he may have to polish up his carpentry skills and move his wife and four young children somewhere else.

Lawyers for Exxon, the world's largest corporation, reject any suggestion that delay was a tactic. Complaints have been separated into state and federal class actions, each with separate trial judges, schedules and evidence rules.

The federal suit, scheduled to start May



AP Photo/Al Gallo

Fisherman R.J. Kopchak, his wife Barclay and youngest child, Zeb, stand by their fishing boat in Cordova March 9.

2, includes 100,000 potential class members. Some estimates put the damages at \$1.5 billion or more.

A trial in state Superior Court is scheduled to start June 6 and includes seven towns oiled in the spill's path. The mayors want compensation for municipal services they say were diverted in response to the spill.

Other state plaintiffs include 13 Alaska Native corporations; they claim damage to their land and archaeological sites. Natives also sued Exxon in federal court over damage to their traditional ways, which depend on the sound for food.

Evidence-gathering for all these actions has consumed the past five years. The company said more than 5 million pages of documents have changed hands; nearly 2,000 depositions were taken.

A list filed by Exxon names 315 planned witnesses in the federal case. Plaintiffs planned to call 270 witnesses in a case scheduled to last all summer. Authorities will testify on marine science, land values, fish abundance and — hardest of all — whether there are any lingering effects of

the spill.

In Cordova, everyone wants an Exxon settlement — even townspeople with no claim pending.

"We don't want to be known as the oil spill town any more," Mayor Margy Johnson said.

Seated at a table in the restaurant of her dockside hotel, Johnson points out a pair of sea otters playing in icy waters where, in late February, the fishing fleet is idle. Some Cordovans, hoping for a new image as a tourist town, say the city should adopt a new slogan — "sea otter capital of the world" is mentioned.

Johnson, a can-do businesswoman, wants action.

Until it was abruptly canceled this week, she was helping organize Cordova's first "Bury the Blues Day" on March 26. The event, complete with a New Orleans-style band parading through town, was aimed at uniting the community. But organizers called it off when too many people complained they weren't yet ready to forgive and forget.

"For Cordova, the spill was like a death in the family," Johnson says. "I'm appalled that five years later there's still no settlement with Exxon. That's like trying to get over a death when you can't read the will."

Cordova, a town of nearly 2,600 on the sound's eastern edge, is reached only by boat or plane. Nearly half the work force is directly employed in fish harvesting or processing. State labor economists reported this month there was "little prospect" that salmon prices would bounce back soon.

Employment has receded over the past three years, sales receipts dropped and more than two dozen homes are on the market, the state said.

Real estate agent Linden O'Toole — among the only families to get out of fishing, remain in Cordova and pursue a new occupation — says she is fielding about as many inquiries from out of state as from Cordovans looking to buy.

O'Toole, who is supporting her fisher-

man husband and two small children, says earnings from real estate have gone to pay off tens of thousands of dollars in fishing debts.

"I'm hoping for our sake and a lot of people in this town that Exxon will come through with a settlement," she says. "They're a huge company. They don't need to hurt families like ours to do business."

In 1990, one year after the spill, the fleet turned in a near-record pink salmon harvest and prices were good. Then, in 1991, prices on the worldwide market collapsed and harvests were dumped back into the sea.

The next two years, for undetermined reasons, the run failed. Last year, the Pacific herring season, which typically begins in April and is the fishermen's first cash crop of the year, was cut short in Prince William Sound when schools failed to materialize. Some fish were diseased.

Last year, frustrated by Exxon's claims that the spill caused no ongoing harm, a mosquito fleet of 65 seiners gave up the dismal pink salmon season to bottle up the Port of Valdez, terminus of the trans-Alaska oil pipeline. For nearly two days, no tankers could arrive or depart during the protest.

"I will never forgive and forget," says 42-year-old Doug Pettit, a Cordova fisherman who since 1987 has run a local heating repair business to tide his family over the winter.

"It's as if someone murdered my daughter," he says. "You can never forgive the person who did that."

Pettit is an oil-spill domino. Since fishing has declined, he has worked harder at the heating company. But his neighbors are living on savings and hopes for an Exxon settlement, and Pettit — who also has an Exxon claim pending — said he has gotten lenient on pricing.

"It isn't like you tapped a new resource," he says, taking a break one rainy morning as he coaxed heat from the pipes at the fishermen's union hall, in Cordova's downtown.

"You're still working with money from fishing. We all share the problem."

...Inlet

Continued from page 1

Five years ago today the tanker Exxon Valdez spilled nearly 11 million gallons of oil into Prince William Sound, oil that eventually made its way into Kodiak, Cook Inlet and Chignik fisheries.

In May attorney Brian O'Neill will begin the months-long process of trying to convince a jury that Exxon Corp. and Exxon Shipping Co. owe fishers in Prince William Sound, Cook Inlet and other spill areas almost \$1 billion in compensatory damages.

He will also be asking for an as-yet-undetermined amount in punitive damages.

O'Neill of the Minnesota firm Faegre and Benson will be the lead attorney trying the case against Exxon for more than 4,000 salmon and herring permit holders and their deckhands, including 303 Upper Cook Inlet permit holders.

The legal arguments vary for different fisheries, but O'Neill will argue that Upper Cook Inlet fishers are owed damages for three primary reasons:

- The drop in fish prices after the oil spill. O'Neill says Cook Inlet sockeye salmon prices dropped \$1 a pound from 1988 to the

1989, 1990 and 1991 seasons.

"People don't like to buy oiled fish," he said. He will argue the price drop continued past the spill year itself because fishers lost market share when they were unable to provide buyers with fish in 1989.

- The drop in limited entry permit values after the oil spill. The average value of an Upper Cook Inlet drift gillnet permit has fallen from a high of \$210,000 in 1990 to \$69,000 today, said Kurt Iverson, a research analyst with the state Commercial Fisheries Entry Commission.

Upper Cook Inlet set gillnet permits have dropped from a high of \$102,000 in 1990 to \$33,700 today, he said.

- The drop in boat values after the spill. The value of a commercial drift fishing boat has fallen about \$25,000, O'Neill said.

Pat Lynch, a member of the legal team representing Exxon, said he did not want to discuss the fishing industry's claims with the press before the case goes to trial.

O'Neill attributes the decline in boat and permit prices to a study that projected Kenai River sockeye salmon runs will crash in the mid-1990s, partly as a result of overescapement — too many fish entering the river — in the 1989 oil spill

year.

"That has harmed the ability of the river system to produce salmon," O'Neill said.

State fishery managers greatly restricted commercial fishing in Cook Inlet in 1989 because oil had entered the inlet. As a result, too many sockeye salmon made it up the Kenai River to spawn, and state biologists believe the resulting pressure on the food supply caused a dieoff in juvenile salmon populations. They expect that dieoff to result in dramatic declines in fish returns, starting in 1994 and worsening in 1995 and 1996.

Biologists say overescapement in 1987 and 1988 probably also contributed to the anticipated

crash in the system.

Entry Commission figures show the most dramatic declines in permit values occurred between 1991 and 1992, the year news of the projected crash was made public.

"The permit value drop was extreme," O'Neill said. "The moment people in the fishing business became aware there was a long-term damage to the Kenai River, why would you buy a permit there?"

Seventy lawyers are working on the court case on behalf of the commercial fishers, O'Neill said.

Exxon has fewer lawyers on the case, but three separate firms are involved in defending the company, Lynch said. The trial is expected to last three

months.

O'Neill said neither side has made an offer for an out-of-court settlement, although neither he nor Lynch ruled that out.

Exxon paid fishers and other affected groups more than \$300 million in claims for lost fish and other damage, in the months after the spill, an Exxon spokesman, Dennis Stanczuk, said. Those claims did not prevent fishers or other parties from suing for additional damages.

O'Neill is confident about the case, noting he represented the same Upper Cook Inlet fleet before the same judge, federal Judge Russell Holland, in the Glacier Bay oil spill case. The Glacier Bay spill in 1987 temporarily shut down

Upper Cook Inlet commercial fisheries during the peak of the red salmon run.

O'Neill came away with a \$51 million judgment for the fishing industry in that case.

Assuming the fishers win their case against Exxon, they could wait a few months to two years to receive their payment, depending on whether Exxon appeals, O'Neill said.

The fishing industry has already settled its suit against Alyeska Pipeline Service Co. Alyeska agreed five months ago to pay plaintiffs, primarily fishers, \$98 million in damages, O'Neill said. The process of distributing that money is not yet complete, he said.

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Oil and Hazardous Substance Release Response Fund
 Historical Expenditures and Funding
 Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									\$0.0
Mitigation Account Transfers In	\$302.7		\$136.5	\$197.6	\$1,696.1	\$30.1	\$1,823.3	\$661.2	\$4,847.5
General Fund Transfers In	\$380.7	\$976.2	\$10,500.0	\$32,600.0					\$44,456.9
General Fund Program Receipts Transfer In			\$9,469.0	\$15,596.7	\$2,976.9	(\$553.0)			\$27,489.6
Total General Fund Transfers In	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$4,673.0	(\$522.9)	\$1,823.3	\$661.2	\$76,794.0
.05 Surcharge Receipts Transfer In					\$27,000.0	\$28,500.0	\$27,000.0	\$26,700.0	\$109,200.0
TOTAL REVENUE	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$31,673.0	\$27,977.1	\$28,823.3	\$27,361.2	\$185,994.0
Expenditures From The Response Fund									
Statewide Programs	\$428.7	\$329.9		\$1,702.0	\$6,034.7	\$8,617.3	\$23,785.2	\$14,083.0	\$54,552.1
Exxon Valdez Oil Spill			\$6,271.6	\$31,775.6	\$24,912.1	\$15,702.8	\$297.0		\$78,959.1
Capital Budget					\$583.7	\$555.9	\$177.9	\$2,774.0	\$4,091.5
TOTAL EXPENDITURES	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$4,652.0	(\$464.9)	\$1,534.6	\$407.4	\$46,636.8
Proportion Expended From Surcharge Funds	\$0.0	\$0.0	\$0.0	\$0.0	\$26,878.5	\$25,340.9	\$22,725.5	\$16,449.6	\$91,394.6
Total Expenditures	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Reconciliation									
Total Revenue									\$185,994.0
Less Total Expenditures									\$138,031.4
Subtotal									\$47,962.6
Less Reserve For Encumbrances									\$10,559.2
Spill Reserve Balance									\$37,403.4



Alaska Sea Grant
College Program

news release

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Ocean Sciences

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MEDIA ADVISORY

March 18, 1994

FOR IMMEDIATE RELEASE

Contact: Doug Schneider, Sea Grant Information Officer, (907) 474-7449. An electronic copy of this news release also is available on Internet via the UA Gopher under Alaska Sea Grant News Releases; and the UA Vax, under EXPL SXLIB SEAGRANT, for a limited time
SG-94/NR135

Series highlights oil spill conference

Exxon Valdez: Five Years Later

An International Conference on the Prevention, Response, and Oversight Five Years after the *Exxon Valdez* oil spill. Sponsored by the Alaska Sea Grant College Program, University of Alaska Fairbanks.

To Reporters/Editors:

For three days beginning March 23, 1994, the Alaska Sea Grant College Program will convene an international conference of scientists, regulators, industry representatives, and environmental and citizen groups to discuss the improvements made and the gaps that remain in the nation's oil spill preparedness.

To assist reporters and editors interested in the conference, Alaska Sea Grant has prepared the accompanying four-part series of articles that highlights some of the issues that will be discussed at the conference. The series also is available on computer disk by calling Doug Schneider, information officer, Alaska Sea Grant, (907) 474-7449.

- MORE -

FYE - Toss

Part I *Oil spills less likely with new protections*

Numerous steps have been taken to prevent a repeat of the 1989 Alaska oil spill. Part one looks at what Alaska has done to prevent and respond to oil spills.

Part II *Critics say spill plans inadequate*

While much has been done to improve oil spill protections, gaps and shortcomings remain. Part two looks at these gaps and what's needed to repair them. Part two also includes sidebars on seafood contamination screening and cleanup technology.

Part III *Burning oil spills better than scrubbing beaches*

Burning oil spills has always been controversial, largely because of the unknown consequences to the environment and human health. Recently, Canada and the United States set fire to 26,000 gallons of oil intentionally spilled off the coast of Newfoundland, Canada. Part three looks at how the experiment went.

Part IV *Citizen councils experience growing pains*

After the *Exxon Valdez* oil spill, Congress recognized newly created Regional Citizen Advisory Councils as a check against government and industry complacency toward preventing oil spills. The fourth and final part of the series looks at how well these special citizen councils have worked.

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

March 18, 1994

FOR IMMEDIATE RELEASE

Contact: Doug Schneider, Sea Grant Information Officer, (907) 474-7449.

An electronic copy of this news release is available on Internet via the UA Gopher under Alaska Sea Grant News Releases; and the UA Vax under EXPL.SXLIB SEAGRANT, for a limited time.

SG-94/NR135

Part I: *Oil spills less likely with new protections*

Scientists, regulators, environmentalists and citizen groups meet this week at an international conference in Anchorage, Alaska, to assess the progress made toward preventing oil spills in the five years since the Exxon Valdez disaster. We begin part one of the four-part series, Exxon Valdez: Five Years Later, with a look at what Alaska has done to prevent and respond to oil spills.

VALDEZ, Alaska—The most obvious place to see how things have changed in the five years since the *Exxon Valdez* oil spill is to visit the Alyeska Pipeline Service terminal at the south end of the 800-mile Alaska pipeline.

Each day, some 1.5 million barrels of crude oil are loaded onto tankers at Valdez bound for West Coast refineries. Unescorted and largely unwatched before the spill, the tankers now traverse Prince William Sound flanked by large escort ships equipped with tow cables, containment boom and skimmers.

“I would say the escort ships are probably the single biggest improvement in protecting the sound from a repeat of the *Exxon Valdez* spill,” says Patty Ginsburg, spokeswoman for the sound’s Regional Citizens’ Advisory Council. “They provide a level of protection we did not have before and they are the first line of defense if a spill does occur.”

The council is one of two in Alaska set up after the spill to give the public a voice in how oil is transported in the state. The other is in Cook Inlet, the site of oil refineries and offshore gas and oil platforms. Prior to the spill, the public had virtually no say in how oil was produced and transported in the state. The councils, says Ginsburg, gave citizens “a seat at the table and a voice.”

- MORE -

Also new are the caches of oil spill boom, skimmers, pumps, absorbent pads and other hardware stockpiled by the U.S. Coast Guard in 11 locations from Dutch Harbor to Ketchikan. In 1989 equipment had to be airlifted from as far away as Europe to combat the Alaska spill. The new equipment complements industry stockpiles also required by the Coast Guard.

"We've taken numerous steps to improve our ability to respond to spills and enforce industry's obligation to prevent them," says Cmdr. Gary Stock. Stock is chief of the Coast Guard's marine environmental protection branch and is charged with enforcing federal oil spill laws in Alaska.

Exactly what has and hasn't been done to protect Alaska against future spills was the subject of a three-day international conference in Anchorage March 23-25. Scientists, regulators, environmentalists and citizen oversight groups presented their sometimes different accounts of the nation's oil spill readiness. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education agency at the University of Alaska Fairbanks.

On at least one thing everyone agrees. The *Exxon Valdez* triggered vast changes in the way oil is transported. The lion's share of those changes is the result of the Oil Pollution Act of 1990. The act requires, among other things, that tanker captains and crew be tested for drugs and alcohol, that tankers have double-hulls and that cleanup plans be improved. The act also mandates new measures that involve citizens in making public policy pertaining to oil transport.

In Alaska the act translates to an expansion of Coast Guard radar coverage of tanker traffic in Prince William Sound and escorts for outgoing tankers. The act also requires all tankers to have transponders that allow their locations to be pinpointed anywhere in the sound. In Valdez the Coast Guard used the act to justify a ban on loaded tanker traffic in the sound whenever winds exceed 40 miles per hour.

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Officials at the Alaska Department of Environmental Conservation also have taken steps to lessen the likelihood of future spills. The agency now conducts more stringent reviews of oil spill contingency plans, inspects ships and the Valdez terminal, conducts spill drills, operates prevention programs and oversees industry compliance with state and federal laws.

"Before 1989 there were no spill drills, no inspections, no response standards and minimum oversight," says Larry Dietrick, an environmental specialist with the DEC Oil Spill Prevention and Response Division. "Today we have all of those things. Things are much improved."

Also sorted out is deciding just who will be in charge of the next big spill. A new command structure now puts all doubt to rest, according to Coast Guard Capt. Don Bodron, the official now charged with having to decide whether to federalize any future spill. "The federal government is in charge," he says. "The federal on-scene coordinator has authority to assert federal control and direct cleanup operations over any future spill. There is no question about that."

Even the oil industry has gotten into the act and taken steps on its own to avert a repeat of the Alaska spill. In February, Alyeska began using pilot vessels to guide tankers through the sometimes ice-choked Prince William Sound.

But even with all the additional protections, no one believes the measures will prevent every spill.

"The Valdez spill overwhelmed everyone's idea of worst-case scenario," says Bodron. "If you're asking me if I think it could happen again, I would honestly say that yes, I do think it could happen again. That's why prevention is so important."

NEXT: Part two of the series, Exxon Valdez: Five Years Later, looks at gaps remaining in protection that could lead to another major oil spill.

The Alaska Sea Grant College Program is a marine research, education, and outreach service headquartered at the University of Alaska Fairbanks, School of Fisheries and Ocean Sciences. It is funded primarily by the National Oceanic and Atmospheric Administration in partnership with the State of Alaska and private industry.

END

March 18, 1994

FOR IMMEDIATE RELEASE

Contact: Doug Schneider, Sea Grant Information Officer, (907) 474-7449.

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SG-94/NR135

Part II: *More work needed to improve spill protections*

Many steps have been taken since the 1989 Exxon Valdez oil spill to lessen the chances of another large oil spill in Alaska. Yet critics say more should be done. Part two of the four-part series, Exxon Valdez: Five Years Later, examines the gaps in Alaska's oil spill protections.

ANCHORAGE, Alaska—While much has been done to protect against oil spills, state officials and a citizen advisory council say serious gaps still remain in Alaska's oil spill protections.

"We have better laws and we have better monitoring," says Patty Ginsburg, a spokeswoman for the Prince William Sound Regional Citizens' Advisory Council. "But we are still vulnerable in areas we can control. There's still a lot more work to be done."

The citizen group, created in 1989 to advise regulatory agencies and industry, highlighted its view of the strengths and weaknesses of the state's oil spill protections at a three-day conference in Anchorage March 23-25. There government, industry and citizen groups presented findings of research done to assess the measures taken since the *Exxon Valdez* oil spill. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education program at the University of Alaska.

The citizen group is concerned about a plan by state lawmakers to change the way a five-cent per barrel industry tax is spent. At present the tax is used to review oil spill contingency plans, conduct practice drills and pay for cleanup of spills when industry either can't or won't pay. The tax ran into controversy when lawmakers spent some of the revenue on a new state ferry and other projects with questionable ties to oil spill cleanup. Industry and state officials both want to narrow how the tax can be spent, but disagree on how to accomplish the goal.

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"This split nickle would not provide the funding to do the degree of oversight and prevention we need to have," says Ginsburg. "Our concern is that reducing the dollar amount may dilute the programs available."

Mike Conway, director of the state Department of Environmental Conservation Spill Prevention and Response Division, agrees. "If the money is cut it will be a signal that the state is heading back toward complacency," says Conway. "All of the efforts we've made to this point to prevent spills would be lost if those programs are eliminated."

Although several changes are being contemplated, mentioned most often is a proposal that would split the tax in half. Half the tax would be set aside in a reserve account to pay for cleanups. The other half would continue to fund state prevention and response programs. The reduced tax rate would raise about \$13 million each year. However, Ginsburg is worried that revenue may not be enough to pay the costs of prevention and response programs.

"The state is facing a billion dollar budget deficit," says Ginsburg. "If the industry doesn't fund these programs, it's unlikely the Legislature will fund them. And if that happens, the programs either could be eliminated or inadequately carried out."

State officials also say more needs to be done to reduce the number of spills along the trans-Alaska pipeline and near misses experienced by tankers in Alaska waters. In a letter sent February 28 to major Alaska oil shippers, DEC Commissioner John Sandor expressed concern that a recent rash of spills along the 800-mile pipeline and near-accidents involving tankers in Prince William Sound and Cook Inlet could jeopardize public trust in the state's ability to prevent oil spills. The letter cited specific incidents including the tanker *Overseas Ohio*, which struck an iceberg in Prince William Sound January 2, and the *Overseas Washington*, which lost power in Cook Inlet February 17.

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"We cannot ignore the above wake-up calls, nor the daily reminders of other spills and releases that are within close calls of being significant incidents," Sandor said in the letter. "I am not at all comfortable nor satisfied with the current status of spill prevention and response programs for both state government and the industry in Alaska." No mention was made in the letter of the steps the agency might take should the accidents and near misses continue.

The fact that a tanker lost power in Cook Inlet adds fuel to the debate over the ability of escort vessels to tow tankers that lose power. Critics of the escort ships, in use in the sound since shortly after the Alaska spill, say vessels may not be able to tow a stricken tanker during rough seas or high winds. Other ships, including so-called tractor tugs that can tow heavy ships through rough seas, are being studied to replace the current escort ships.

But Ricl Steiner, a University of Alaska professor in Cordova, calls the study an industry delaying tactic. "British Petroleum, which is a partner in the Alyeska consortium, uses tractor tugs at its terminal in the Shetland Islands and in Puget Sound," he says. "But Alyeska has balked at using them here in Alaska."

Ginsburg, whose citizen group is among the study's backers, defends the study. "We need good hard data about how the different tugs and escorts function under various conditions and scenarios here in the sound," says Ginsburg.

NEXT: Burning of oil spills has long been controversial in Alaska, and was only successfully tried once following the Exxon Valdez spill. Part three of the series, Exxon Valdez: Five Years Later, looks at what happened when scientists recently set fire to a 26,000-gallon oil spill off the coast of Newfoundland, Canada.

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Part Two (Sidebar)

Seafood testing not included in oil spill response plans

ANCHORAGE, Alaska—New screening methods that quickly test seafood for oil contamination are not included in state oil spill response plans. But the state agency responsible for inspecting seafood may adopt a plan of its own.

“This kind of screening has not become part of the standard response procedures for oil spills,” says Usha Varanasi, director of the National Marine Fisheries Service’s Northwest Fisheries Science Center. “It should be among the first things done following a spill.”

Varanasi, who directed the federal seafood testing program following the *Exxon Valdez* oil spill, spoke at a conference this week in Anchorage. She called on state officials to include the streamlined testing procedures in the state’s spill response plans. The conference was sponsored by the Alaska Sea Grant College Program, a marine research and education agency at the University of Alaska Fairbanks.

The screening methods, developed in the aftermath of the Alaska spill, eliminate the tedious and costly testing procedures used in the past, Varanasi said.

“Now that rapid screening methods are available that can cut both cost and time of processing samples of seafood, sediment and other biota, my call is to include these screening methods as a first level of testing,” Varanasi said.

Varanasi also called upon state officials to use the new screening methods to periodically test seafood from areas where future spills may occur. The baseline information would help officials judge whether hydrocarbon contamination levels increased after a spill.

“The state should know what the fish, shellfish and sediments should look like normally, to know if there have been significant changes after a spill,” says Varanasi.

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Manny Soares oversees the Alaska Department of Environmental Conservation efforts to safeguard the state's seafood. He says that while there presently is no written plan to test for oil contamination following a spill, he says his agency would begin such testing in the event of an oil spill.

"We don't have any ongoing plan on paper per se," says Soares. "But if we determined there was a need [for testing], we would respond accordingly to ensure the safety of Alaska's seafood. We can respond within hours. We have done that in the past and we are prepared to respond in the future."

As for an ongoing screening program that would measure hydrocarbon levels in seafood prior to any spill, Soares says his agency is looking into the possibilities.

"It would be great to have the data beforehand," he says. "We will have to re-evaluate these screening methods and see if we can put together a program with the resources at hand."

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Part Two (sidebar)

Lagging technology slows spill cleanup

ANCHORAGE, Alaska—Too bad oil spills don't happen when the weather is nice.

"The equipment we have—the skimmers, the booms and other technologies—were designed to work when the weather is good," says Walt Parker. "They don't work well under many of the conditions we have here in Alaska."

Parker chaired the Alaska Oil Spill Commission, which was created shortly after the 1989 *Exxon Valdez* oil spill to recommend ways to prevent future spills. He now is director of a state council that reviews oil spill technology and sponsors research aimed at improving the weapons used to wage war against oil spills. At a conference in Anchorage this week, Parker said existing technology needs improvement before it can be relied on to mop up spills.

"The big gap in protection is that there is a point at which we cannot pick up oil with traditional methods," says Parker. He says dispersants used elsewhere may not work well on Alaska's rocky beaches and in frigid waters, and skimmers are all but useless when the wind kicks up.

Only about 10 percent of the 11-million gallons of oil spilled by the *Exxon Valdez* was recovered by cleanup crews. The rest either evaporated, dispersed in the water or remains trapped in the beaches. To better the odds next time, Parker's council has funded studies on bioremediation, dispersants and burning to clean up spills.

"The goal is to make existing technologies work effectively in Alaska's climate," says Parker.

He says work done on a new dispersant shows promise, and he likes what he's heard so far about a test burn of 26,000 gallons of crude oil done off the coast of Newfoundland last year. The council funded a University of Washington study that measured the toxic effects of the burn's smoke plume. Early results of the study indicate burning may be a safe alternative to letting oil reach the beach.

END

March 18, 1994

FOR IMMEDIATE RELEASE

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SG-94/NR135

Part III: *Burning oil spills better than scrubbing beaches*

In the scramble to contain the rapidly spreading Exxon Valdez oil spill, officials consented to burning a portion of the slick. It was the only time burning has been used to cope with a spill in U.S. waters. Recently, Canadian and U.S. scientists set fire to 26,000 gallons of oil intentionally spilled off the coast of Newfoundland, Canada. Part three of the four-part series, Exxon Valdez: Five Years Later, looks at how the experiment went.

ANCHORAGE, Alaska—Last August, Canadian and U.S. researchers twice dumped 13,000 gallons of crude oil into the ocean off Newfoundland. Then they set fire to it. It was, officials say, the first realistic test to study whether burning is an environmentally safe way to clean up oil spills at sea.

“In many ways, and under certain conditions, burning is definitely a better deal for the environment and for the people who have to clean up the spill,” says Joseph Mullin, a federal Minerals Management Service scientist who participated in the study.

Mullin was in Anchorage to discuss his research at an international oil spill conference March 23-25. The conference highlighted the steps taken and the gaps that remain in the nation’s oil spill preparedness. The conference was organized by the Alaska Sea Grant College Program, a marine research and education program at the University of Alaska Fairbanks.

A large part of the conference focused on new technologies developed to prevent and clean up future oil spills. One of the promising technologies is actually simple—set the oil on fire. In tests first done in the laboratory, Mullin and other researchers found that between 95-98 percent of the oil was consumed by fire. What was left resembled roofing tar and was easily cleaned up. Mullin found that for some toxic chemicals, burning released no higher concentrations than what would normally occur through evaporation. For the remaining chemicals, burning actually reduced their concentration.

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"You're going to get pollution whether you burn the spill or not," says Mullin. "When you ignite the spill you see the pollution as smoke, which is mostly just the harmless carbon particles left over. If you don't burn it, you get oiled beaches and birds."

After the lab tests it was time to see what would happen under real ocean conditions. The researchers started small, setting fire to a 4,000-gallon spill on Mobile Bay, Alabama. Then it was on to the George's Bank, a once-rich fishing ground about 15 miles from St. John's, Newfoundland. As the U.S. and Canadian Coast Guards looked on, and as the EPA and Environment Canada monitored air quality, Mullin set fire to two 13,000-gallon oil slicks.

"It took off fast," recalls Mullin. The flames shot 300 feet into the air, and the smoke plume rose 8,000 feet during the three-hour burn.

While lighting the oil was fairly easy, getting the oil into a pool thick enough to ignite required surrounding the slick with a specially developed fire retardant boom. The oil needed to be at least two to three millimeters thick to catch fire, Mullin says. "It will burn down to about one millimeter and then blow out like a candle."

When it was over, about 300 gallons of sticky residue remained. Mullin says his tests confirm that burning is an environmentally-safe alternative to scrubbing beaches, rehabilitating wildlife and fighting costly legal battles.

"We criss-crossed the area with the testing equipment, and we didn't find anything harmful in the soot," says Mullin. "It was mostly carbon and residual heavy metals. At six kilometers away, we didn't pick up any particulates at all."

Alaska was following the Canada experiment with great interest. "We were very pleased with the outcome of the Canada burn," says Walt Parker, director of a state council charged with finding new technologies that could be used to clean up a future Alaska spill. Parker funded a team of scientists from the University of Washington to conduct independent measurements of the Newfoundland smoke plume. Early results of the tests indicate the technique may be a safe alternative to traditional cleanup methods.

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"I think we are at the point where we can tell the public what they can expect under different conditions," says Parker.

Industry also may welcome the research as a way to preserve their bottom line. Exxon spent as much as \$10,000 for each barrel of oil recovered after the Alaska spill. The average cost is about \$200 per barrel using conventional skimmers. By contrast, burning is a relatively low-tech job. Anyone with a match and some gelled gasoline can ignite an oil spill. And the cost to clean up the tar left after burning: about \$50 per barrel.

Still, burning hasn't been used in any U.S. ocean oil spill since the Alaska disaster. "Public acceptance is probably our biggest hurdle," says Mullin. "People don't think twice about the smoke in forest fires, but they react negatively to burning oil. In my view a few hours of air pollution is much better than beaches coated by oil for a couple of years."

While the public may not like the idea of billowing smoke plumes, the biggest limit to burning future spills probably is the environment itself. Mullin says ocean conditions must be ideal for burning to work. Rough seas that churn oil into the water make igniting the spill difficult. And even Mullin agrees that most oil spills don't happen when the weather is nice.

Ironically, the Newfoundland burns have their origins in Alaska, where a test burn the day after the *Exxon Valdez* spill proved that burning could be done without risking fire to the tanker itself. In the Alaska spill, 15,000 to 30,000 gallons of North Slope crude was corralled behind fire-resistant booms and

- MORE -

set afire. Thirty minutes later only 300 gallons of gooey tar was left. But burning the Alaska spill was a short-lived proposition. The day after the test, high winds and concerns about the effects of burning on the environment and human health ended the experiment.

Even so, Alaska and several other states have designated certain areas where oil spills can be burned. Mullin sees that as a big step forward.

“Five years ago, we didn’t have enough information to make good decisions on when to burn,” says Mullin. Now we have that information and it’s helping people include burning as a tool in their response and cleanup plans.”

NEXT: Shortly after the Exxon Valdez oil spill, Congress created special citizen councils to ensure that government and industry comply with new oil spill laws. The councils gave average citizens power to influence oil spill preparedness. Part four of the series, Exxon Valdez: Five Years Later, looks at how well Regional Citizen Advisory Councils have worked.

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SG-94/NR135

Part IV: *Citizen councils experience growing pains*

Shortly after the Exxon Valdez oil spill, Congress recognized newly created Regional Citizen Advisory Councils as a check against government and industry complacency toward preventing oil spills. The final part of the series, Exxon Valdez: Five Years Later, looks at how well citizen councils have worked.

ANCHORAGE, Alaska—Years before the Alaska oil spill, fishermen and environmentalists demanded that citizens have a say in how oil was shipped through the state's Prince William Sound.

Those demands went unmet until the tanker *Exxon Valdez* spilled 11 million gallons of oil into the sound and revealed glaring deficiencies in the state's oil spill protections. Soon after the spill, citizen councils were created, and in 1990 Congress officially recognized regional citizen advisory councils in Prince William Sound and Cook Inlet.

True to their intent, council membership consists of average citizens: fishermen, university professors, union laborers, environmentalists, business owners and others. But in the nearly five years since the councils were formed, their effectiveness at bringing about change has drawn mixed reviews—even from among their own ranks.

"I once thought the councils had power," says Doug Coughenower, a University of Alaska Fairbanks professor who represents Homer on the Cook Inlet Regional Citizens' Advisory Council. "When I first joined the council two years ago, I thought that if we didn't approve oil spill contingency plans the industry would be shut down. I know now that is not quite so."

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He says that rather than having real teeth to force change, the councils' role has been as their name implies—to merely advise government and industry on oil issues. "We can suggest and encourage and demand," says Coughenower. "But we cannot make them do all the things we ask."

Patty Ginsburg, a spokeswoman for the Prince William Sound Regional Citizens' Advisory Council, says the councils have been effective. More than anything, she says the councils send a clear message that the public is watching.

"A big chunk of what the councils are about is process, to sit side-by-side with government and industry and try to persuade them of your point of view," Ginsburg says.

Ginsburg says much of the council's successes stem from working cooperatively with industry and government. "We don't like to do a lot of breast beating," says Ginsburg. "Our effectiveness is based on our ability to get people to agree with us. In that, everyone gets the credit."

The strategy appears to have worked. In the five years since the spill, persuasion by the Prince William Sound council is credited with helping get the most stringent oil spill protections in the United States. The council also played a role in getting near-shore cleanup plans included in the region's oil spill contingency strategy, and spearheaded a cooperative study of escort vessels' ability to tow stricken tankers. Most recently, the council won an agreement by Alyeska Pipeline Service Company to capture harmful fumes that escape during tanker loading operations at its terminal.

The Cook Inlet council, on the other hand, has had difficulty finding its niche. Funding problems and disagreements over purpose slowed the council in the first few years. But those growing pains are behind it now, says Coughenower. Recently the council has begun to tackle issues such as safety on offshore oil and gas platforms and environmental quality concerns.

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"We have begun to design an environmental monitoring program for the inlet, as required by federal law," says Coughenower. "That program will gauge the health of the environment so we can track how oil development may be affecting the inlet."

Still, citizen councils aren't without critics. Most vocal have been environmental groups such as Greenpeace, which accuses the Cook Inlet council of being too industry-friendly. The problem rests in part, says the group, with how the councils are funded. Both councils operate on money provided by the oil industry.

"It's apparent that they are influenced by industry," says Pamela Miller, a spokesperson with Greenpeace in Anchorage. "They're afraid to make statements that oppose the demands of industry. They make decisions that too often favor industry, in direct contradiction to their own policies."

Miller pointed to the Cook Inlet council's recent decision not to object to planned offshore oil lease sales in the inlet, and a decision to hire Arthur D. Little, a consulting firm that has worked for the oil industry, to design the inlet's environmental monitoring plan.

Coughenower discounts any suggestion of industry favoritism. "I don't know what the basis is for their [Greenpeace] accusations," he says. "I don't believe the consulting firm would change their results just to favor the people who hire them." As for the proposed inlet lease sale, Coughenower says federal and state agencies were notified of the council's policy that opposes development until a monitoring plan is in place.

Ginsburg says she isn't surprised by environmentalists' statements. They come, she says, from groups with only one point of view. Citizen councils by definition represent the views of many people, pro-environment and pro-industry.

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"There are people who aren't willing to work cooperatively with industry and regulators," says Ginsburg. "We are not radical environmentalists but we seek to protect the environment. We also are not oil industry toadies, but we understand that industry should make a profit, and that the oil industry is important to the state. All we ask is that industry do what is reasonable to protect the public interests, which are the interests we serve."

Knowing what those public interests are isn't easy. Too many people, says Coughenower, don't even know the councils exist.

"The councils haven't involved the public in their activities," laments Coughenower. "I would bet that if you did a survey of the public, most people wouldn't know what the councils were or what they do. We need to take the next step and involve the general public in our activities."

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END

Legislative Research Agency

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November 18, 1993

MEMORANDUM

TO: Senator Mike Miller

FROM: Maria Gladziszewski *mg*
Legislative Analyst

RE: **Questions Regarding the Oil and Hazardous Substance Spill Response Fund
Research Request 94.070**

You asked several questions regarding the Oil and Hazardous Substance Release Response Fund (the "470 Fund"). Each is answered below.

What is the current balance in the Spill Response Fund and the emergency spill reserve?

According to an administrative officer at the Department of Environmental Conservation, the response fund balance available for appropriation on June 30, 1993 was \$54,445,300. For fiscal year 1994 (FY 94), the legislature appropriated a total of \$16,857,000 to state agencies (Departments of Environmental Conservation, Military and Veterans Affairs, Transportation and Public Facilities, Natural Resources and the University of Alaska). The spill reserve balance, therefore, was \$37,588,300 at the beginning of FY 94. Between July 1, 1993 and November 17, 1993, DEC officials spent \$155,200 from the spill reserve. The current spill reserve balance, then, is approximately \$37,433,100.

Between July 1, 1993 and November 18, 1993, expenditures and encumbrances totaled approximately \$5,221,800 from the \$16,857,000 appropriated to state agencies.¹

¹According to the state accounting system (AKSAS), as of November 18, 1993, \$2,634,000 had been expended and \$1,696,000 had been encumbered for operating expenditures. As of November 18, 1993, \$891,800 had been encumbered for capital expenditures.

Senator Miller
November 18, 1993
Page 2

Please see Table One, a flow chart prepared by this agency, for a graphic representation of the response fund balance at the beginning of FY 94. In addition, Attachment A, prepared by DEC ("Oil and Hazardous Substance Release Response Fund"), contains additional details.

Is a legislative appropriation to the emergency spill reserve considered an expenditure for the purpose of AS 43.55.230 (suspension and reimposition of the \$0.05/bbl surcharge)?

According to Assistant Attorney General Breck Tostevin, an appropriation to the spill reserve is not considered an expenditure for the purpose of AS 43.55.230. Mr. Tostevin concluded in a memorandum of April 28, 1993 that "money that is simply appropriated to the spill reserve is not 'expended' for purposes of calculating whether to suspend the surcharge." A copy of Mr. Tostevin's memorandum is included as Attachment B.

What is the current status of *Exxon Valdez* settlement reimbursements to the state of Alaska and the Response Fund? How much has been reimbursed so far and how much is likely to be reimbursed in the future?

The settlement does not specify how much the state will receive directly. Except for reimbursement of certain expenses incurred by the state and federal government, the \$900 million in civil settlement money is to be managed jointly by both governments. State officials with whom we spoke were extremely reluctant to estimate the amount of additional reimbursements under the settlement that the state is likely to receive. The spending guidelines for the \$900 million in civil settlement payments are contained in the Memorandum of Agreement and Consent Decree dated August 28, 1991. Provisions in that agreement specify what costs qualify for reimbursement and limit certain reimbursements that can be made to the governments.²

The first installment of the \$900 million in civil payments was made by Exxon in December 1991. The state received approximately \$29.3 million of the \$90 million installment. The state's share of the second payment, received in December 1992, was \$29 million. The state's share of the third payment, received in September 1993, was \$20 million.

²In addition, the state received \$50 million in the fall of 1991, which is half of the \$100 million criminal penalty received by the Exxon Shipping Corporation and the Exxon Corporation. The \$50 million is currently in a segregated interest-bearing account of the general fund ("The Exxon Valdez Oil Spill Restitution Expendable Trust Fund").

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Alaska Statute 37.14.410 specifies that all money received as reimbursement for expenses related to the *Exxon Valdez* oil spill incurred by the state shall be deposited to the general fund.³ A percentage of each payment is to be credited to the oil and hazardous substance mitigation account. "That percentage is determined by dividing (1) the amount of expenses. . .that were paid from the oil and hazardous substance release response fund. . .by (2) the total amount of expenses for which the state may be reimbursed.

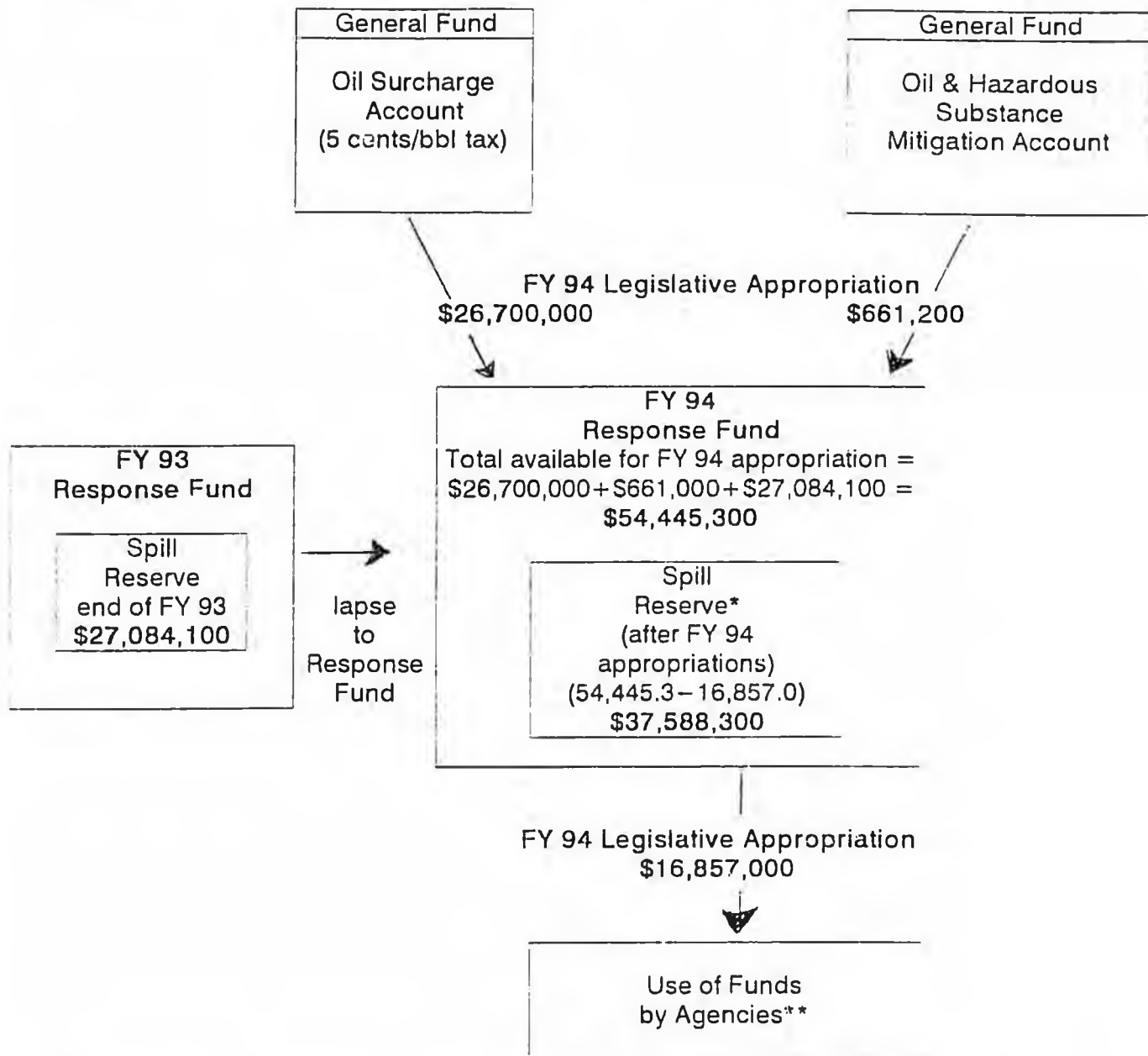
Of the first three settlement payments to the state totaling \$78.3 million, \$21.3 million has been or will be deposited into the oil and hazardous substance mitigation account and \$57 million has been deposited into the general fund. See Table Two, for additional information regarding the Exxon settlement reimbursements.

I hope this information is useful for your purposes. Please do not hesitate to contact this agency if you need further assistance.

Attachments

³The first \$50 million payment is considered restitution and not reimbursement to the state for expenses incurred. That money, therefore, is not subject to the provisions of AS 37.14.410.

TABLE ONE
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND



* The legislature can appropriate a specific dollar amount to the spill reserve or, as is often the case, appropriates the difference between the balance in the response fund and the amount otherwise appropriated from the response fund.

** Regardless of whether or not funds have been appropriated to the "spill reserve" subaccount, DEC is authorized to use Response Fund money for emergency response to sites which pose an imminent and substantial threat to human health or the environment. Historically, however, DEC has used very little of the Response Fund that has not specifically been appropriated to it by the legislature. Between July 1, 1993 and November 17, 1993, DEC officials expended \$155,200 from the spill reserve. These are the only DEC expenditures made without legislative approval. Authority to expend funds from the response fund/spill reserve for emergency response is found in AS 46.08.040(a)(1).

SOURCE: Alaska Department of Environmental Conservation, Division of Administrative Services

Prepared by the Legislative Research Agency, November 1993 (94.070A).

TABLE TWO
SCHEDULE OF PAYMENTS TO BE MADE BY EXXON SHIPPING CORPORATION & THE
EXXON CORPORATION RESULTING FROM THE EXXON VALDEZ OIL SPILL

DATE & TYPE OF PAYMENT	TOTAL PAYMENTS & DISPOSITION OF MONEY			
	TOTAL AMOUNT OF PAYMENT	TO THE STATE OF ALASKA	TO THE U.S. GOVERNMENT	TO THE JOINT TRUST FUND
Criminal Penalty May 1, 1991	\$100,000,000	\$50,000,000	\$50,000,000	\$0
Civil Payments				
December 1, 1991	\$90,000,000	\$29,300,000 *	\$24,500,000	\$36,200,000
December 1, 1992	\$150,000,000 **	\$29,000,000 *	\$24,500,000	\$56,500,000
September 1, 1993	\$100,000,000	\$20,000,000 *	\$11,600,000	\$68,400,000
September 1, 1994	\$70,000,000	Some deposits to state & federal treasuries are likely (as payment for certain costs incurred). SEE NOTE ***, BELOW.		\$70,000,000 ***
September 1, 1995	\$70,000,000			\$70,000,000 ***
September 1, 1996	\$70,000,000			\$70,000,000 ***
September 1, 1997	\$70,000,000			\$70,000,000 ***
September 1, 1998	\$70,000,000			\$70,000,000 ***
September 1, 1999	\$70,000,000			\$70,000,000 ***
September 1, 2000	\$70,000,000			\$70,000,000 ***
September 1, 2001	\$70,000,000		\$70,000,000 ***	
TOTAL	\$1,000,000,000 ****	\$128,300,000	\$110,600,000	\$721,100,000

* AS 37.14.410 specifies that settlement money received as reimbursement of incurred expenses be deposited into the general fund but that a percentage be credited to the oil and hazardous substance mitigation account. See the lower portion of this table for how these payments were distributed between the general fund and the mitigation account.

** This payment was actually approximately \$110 million because of \$40 million in credits for cleanup costs already paid by Exxon.

*** The MOA between the State of Alaska and the U.S. Government specifies that all money paid by Exxon be deposited into the joint trust fund unless reimbursements should be made to the state or federal governments for certain expenses incurred. The governments agreed that certain costs shall be "advanced or reimbursed to each Government, at its election, out of any natural resource damage recoveries related to the Oil Spill and shall not be placed in the joint trust fund. . ." Assistant Attorney General Craig Tillery expects the state to receive additional monies from Exxon settlement payments.

**** In addition, Exxon Shipping Corporation received a \$125 million fine, \$105 million of which was remitted. The U.S. Treasury received \$13 million from this fine, the North American Wetlands Conservation Fund [16 U.S.C. 4406(b)] received \$7 million. Also, the Exxon Corporation received a \$25 million fine, \$20 million of which was remitted. The North American Wetlands Conservation Fund received this \$5 million payment.

DEPOSITS TO THE STATE OF ALASKA GENERAL FUND

Criminal Penalty	\$50 million
1st Payment (December 1991)	\$25.3 million
2nd Payment (December 1992)	\$16.7 million
3rd Payment (September 1993)	\$15 million (approximately)
	\$107 million TOTAL

DEPOSITS TO ALASKA'S OIL SPILL MITIGATION ACCOUNT

1st Payment (December 1991)	\$4 million
2nd Payment (December 1992)	\$12.3 million
3rd Payment (September 1993)	\$5 million (approximately)
	\$21.3 million TOTAL

SOURCES: Alaska Department of Law (Craig Tillery); Alaska Department of Environmental Conservation.
 Prepared by the Legislative Research Agency, November 1994 (94.070B).

ATTACHMENT A
"Oil and Hazardous Substance Release Response Fund,"
Department of Environmental Conservation, November 1993

— ATTACHMENT A —

OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

Calculation of Current Available Balance of Spill Reserve (in thousands)

June 30, 1993 Lapse of the Unreserved/ Unobligated Spill Reserve to the Response Fund	27,084.1
(This number reflects the amount of spill reserve available that is not encumbered or reserved for prior year authorizations. This amount lapsed at the end of FY93 to the Response Fund and was available for appropriation in FY94.)	
FY94 Appropriation of 5 Cent Surcharge from the General Fund to the Response Fund	+ 26,700.0
FY94 Appropriation of Mitigation Account to the Response Fund	+ <u>661.2</u>
(This number represents a net amount after legislative appropriations from the mitigation account have been deducted.)	
TOTAL RESPONSE FUND AVAILABLE FOR FY94 APPROPRIATION	54,445.3
FY94 RF Appropriation DEC Budget	+ 11,513.6
FY94 RF Appropriation DEC - Other Agencies	+ 2,569.4
FY94 RF Capital Approp. (DMVA, DOT/PF, UA, DNR)	+ <u>2,774.0</u>
TOTAL FY94 RESPONSE FUND APPROPRIATIONS	<u>16,857.0</u>
SPILL RESERVE BALANCE AVAILABLE DURING FY94	37,588.3
(This number reflects the balance of the Response Fund after total FY94 Response Fund Appropriations are subtracted from the total FY94 Response Fund Available for appropriation. This amount is also considered what is available as the Spill Reserve. This is clarified by legislative appropriation of this balance to the Spill Reserve.)	
FY94 EXPENDITURES FROM SPILL RESERVE	155.2
(This represents year-to-date (11/17/93) expenditures for emergency response to sites which pose an imminent and substantial threat to human health or the environment. A detailed listing of these sites is available. Please note that these are the only DEC expenditures made without legislative approval. Authority to expend funds from the response fund/spill reserve for emergency responses is found under AS 46.08.040(c)(1).)	
AVAILABLE SPILL RESERVE BALANCE AS OF 11/17/93	<u>37,433.1</u>

ATTACHMENT B
Memorandum from Breck Tostevin to
Tracy Kramer Regarding Treatment of Spill Reserve
Appropriation Under AS 43.55.230(a)(2)

- ATTACHMENT B -

MEMORANDUM

State of Alaska
Department of Law

TO: Tracy Kramer
Office of Management and
Budget

DATE: April 28, 1993

FILE NO:

TEL. NO.: 269-5274

SUBJECT: Treatment of Spill
Reserve Appropriation
under AS 43.55.230(a)(2)

FROM:

BCT
Breck C. Tostevin
Assistant Attorney General
Environmental Section

You have asked whether an appropriation of funds from the oil and hazardous response fund (AS 46.08.010) to the Department of Environmental Conservation ("DEC") spill reserve (see, e.g. 1992 SLA Ch. 136 §22) is considered an expenditure under AS 43.55.230(a)(2) for purposes of the calculation used to determine whether to suspend the conservation oil surcharge.

For the reasons set forth below, I conclude that money that is simply appropriated to the spill reserve is not "expended" for purposes of calculating whether to suspend the surcharge.

In fiscal year 1993, the Legislature appropriated \$23,655,700 from the oil and hazardous substance release response fund ("response fund") to DEC as a spill reserve in order to serve as a source of funds for response to potential oil or hazardous substance releases. 1992 SLA Ch. 136, § 22. I understand that this sum represented the balance left in the response fund after other specific appropriations were made. I further understand that in past fiscal years, the majority of the funds in the spill reserve were not spent by DEC and these monies lapsed back into the general fund and were reappropriated to the response fund in the next fiscal year.

↓
Should say
"Response Fund"

AS 43.55.230 provides that:

(a) No later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

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

In determining whether an appropriation from the oil and

Tracy Kramer
Treatment of Spill
Reserve Appropriation

April 28, 1993
Page 2

In determining whether an appropriation from the oil and hazardous substance fund to DEC for use as a spill reserve is "expended" within the meaning of AS 43.55.230(a)(2), I have considered two factors.

First I have looked at technical accounting principles in determining whether money has been expended. Under this approach funds are not expended until they are unequivocally committed for specific purposes without the possibility of lapse. Even if moneys from the oil and hazardous substance fund are set aside or otherwise obligated for a specific purpose, the moneys are not yet expended until they are paid out to cover specific invoices or costs. Therefore moneys appropriated to the spill reserve would not be considered expended until they were disbursed to cover specific costs incurred in responding to a spill. This conclusion is further supported under this accounting approach because the spill reserve monies remain in the oil and hazardous substance fund until they are actually used by DEC. Therefore under fund accounting principles, the monies are not expended or paid out until DEC actually uses them to cover response expenses.]

The second factor focuses on the Legislature's purpose in adopting AS 43.55.230(a). In imposing the nickel a barrel conservation oil surcharge, the Legislature found that "the March 24, 1989, oil spill disaster in Prince William Sound demonstrates the need for the state to have an independent spill containment and cleanup capacity in the event of future discharges of oil or a hazardous substance." 1989 SLA Ch. 112, §1(a). In establishing the response fund in 1986, the Legislature found that "it is in the best interests of the state and its citizens to provide a readily available fund for the payment of the expenses incurred . . . in the protection of the environment of the state from the release of oil and hazardous substances." AS 46.08.005. This legislation specifically declared that "it is the intent of the Legislature and the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available." AS 46.08.030.

The spill reserve is an appropriation which remains available for the purposes of this legislation. The reserve is not obligated for specific, anticipated expenses.¹ Rather, the spill reserve acts as a contingency fund for response to potential

¹ I do not address the issue of whether funds that are obligated but not yet paid out for lawful expenses are "expended" under AS 43.55.230(a)(2).

Tracy Kramer
Treatment of Spill
Reserve Appropriation

April 28, 1993
Page 3

releases. The spill reserve funds have not changed in character by virtue of their appropriation. AS 46.08.040 specifically authorizes DEC to use response fund monies without a specific appropriation for response to a release of oil or hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment. Thus, DEC could use unappropriated money in the response fund for the same purposes as money in the appropriated spill reserve account. The spill reserve account simply allows for better accounting of the balance of the response fund.

In sum, the appropriation of response fund monies to the spill reserve has not changed the fundamental character of those monies. Rather, the transfer is made for technical accounting purposes. This consideration leads us to the conclusion that the transfer of the balance of the response fund to a spill reserve for accounting purposes should not be considered an expenditure of those funds.

In summary, both of these considerations indicate that an appropriation to the spill reserve is not an expenditure for purposes of AS 43.55.230.

BCT:vo

cc: Craig Tillery
Janice Adair
Deborah Behr

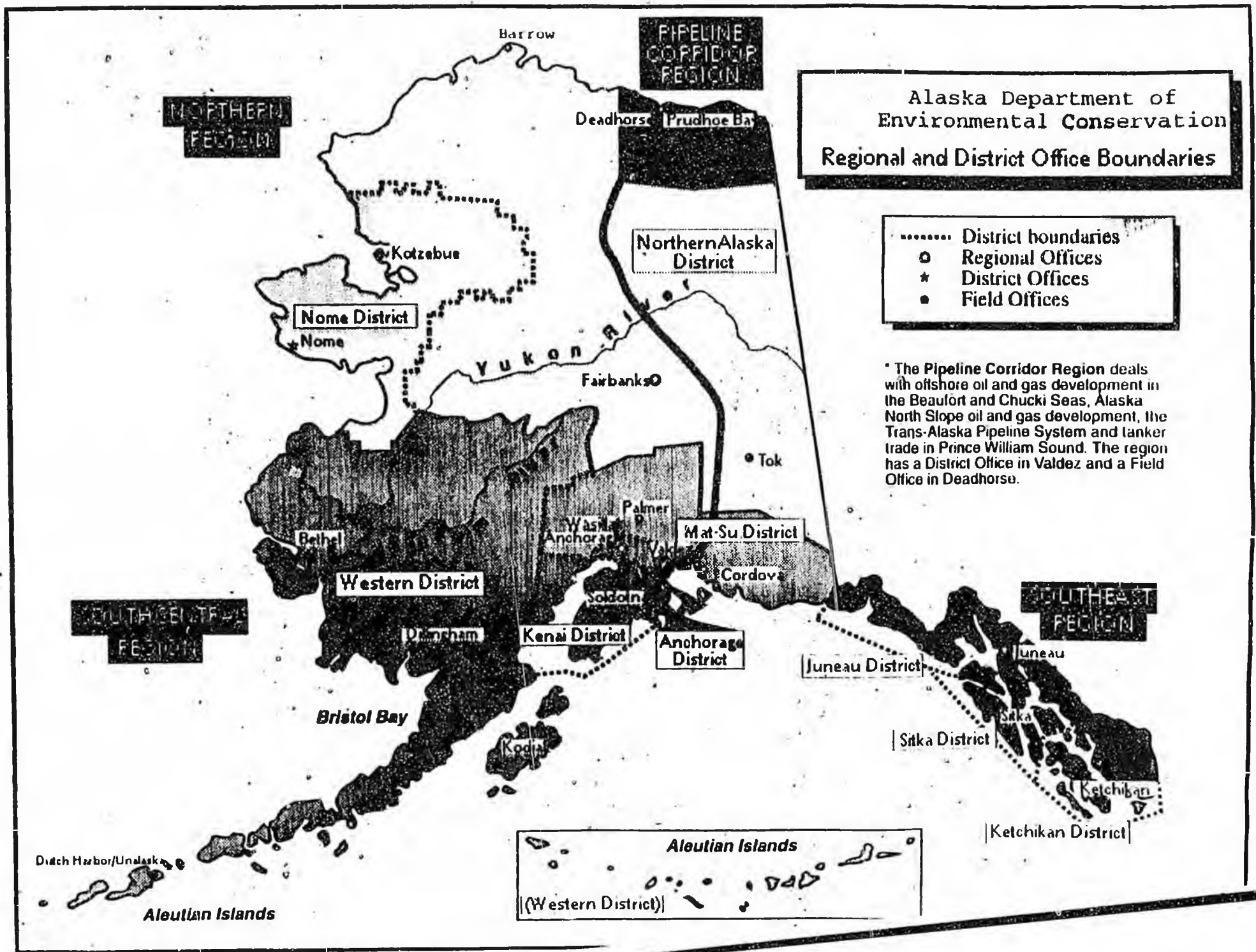
STATE OF ALASKA

Selected Oil and Hazardous Substance Pollution Control Statutes and Regulations



November, 1993

Alaska Department of Environmental Conservation



**Selected Alaska Oil and
Hazardous Substance
Pollution Control
Statutes and Regulations**



**Alaska Department of Environmental Conservation
Division of Spill Prevention and Response**

410 Willoughby Avenue

Juneau, Alaska 99801

(907) 465-5220

November, 1993

NOTICE TO READERS:

This is a compilation of selected Alaska Statutes and regulations which pertain to or are closely associated with the protection of public health and the environment from oil and hazardous substance pollution. The summary was excerpted from the official codes on file with the Lieutenant Governor. Portions may not be complete nor quoted verbatim from the current state law. There may be errors or omissions that have not been identified and changes that have occurred after printing. This booklet is intended as an informational guide only and has been simplified for your convenience. To be certain of the current laws refer to the official codes.

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GOVERNOR OF ALASKA

Walter J. Hickel

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REPORT ALL SPILLS

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ALASKA STATUTES

TITLE 24. LEGISLATURE.

CHAPTER 20. AGENCIES OF THE LEGISLATURE.

ARTICLE 1. LEGISLATIVE COUNCIL.

SECTION 24.20.600. CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES.

(a) There is created in the legislature the Citizens' Oversight Council on Oil and Other Hazardous Substances. The oversight council consists of five members appointed by the Alaska Legislative Council. The Alaska Legislative Council shall notify members of the public throughout the state that nominations for membership are being sought. Members of the oversight council serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(b) The oversight council shall elect a chair and other officers that the oversight council finds necessary to carry out its responsibilities.

(c) Members of the oversight council serve staggered terms of four years and, upon expiration of their terms, continue to serve until their successors qualify and are appointed. A member may serve no more than two consecutive terms.

(d) A member of the oversight council may not work as an independent contractor for or be employed by a federal, state, or municipal agency directly or indirectly involved in the oversight or regulation of industries engaged in the production, transport, or storage of oil or other hazardous substances; be an elected official of the state or of a political subdivision; or work as an independent contractor for or be employed by a person engaged in the production, transport, or storage of oil or other hazardous substances. The Alaska Legislative Council shall appoint as members of the oversight council persons who have an interest in and commitment to preventing oil and hazardous substance releases in the state.

(e) The oversight council shall make a formal request to the Alaska Legislative Council for money it considers necessary for staff, per diem, travel, and contractual expenses. Money distributed to the oversight council is to be disbursed and accounted for under procedures required by the Legislative Affairs Agency. The chair of the oversight council shall approve all expenditure documents.

SECTION 24.20.610 POWERS AND DUTIES OF THE OVERSIGHT COUNCIL.

(a) The oversight council shall

(1) determine whether state and federal agencies responsible for the prevention of the release of oil and other hazardous substances, and for responding to releases, are carrying out their duties in these areas;

(2) recommend to the legislature, the governor, agencies of the federal government, and private entities appropriate policies and actions to prevent releases of oil and other hazardous substances;

(3) assist the legislature and the governor in the development of interstate compacts and policy recommendations to the federal government regarding the prevention of releases of oil and other hazardous substances;

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(4) file an annual report with the legislature and the governor assessing the status of major areas of risk, the performance of state and federal regulatory agencies, and changes in the long-term options for improving environmental safety;

(5) request the attorney general to bring or request the attorney general to move to intervene in legal actions in order to ensure compliance with state laws and regulations regarding the release of oil and other hazardous substances;

(6) make recommendations to the legislature, the governor, and the federal government on the creation, funding, and composition of regional or local advisory committees and on the relationship between the oversight council, local advisory committees, and other citizens' oversight groups on oil and other hazardous substances; and

(7) schedule regular meetings with local and regional advisory committees as they are created to make sure that they complement each other and avoid overlap in oversight and advisory functions.

(b) The oversight council may

(1) hire an administrator and additional administrative staff, and enter into contracts for personal services that the oversight council finds necessary to carry out its responsibilities under this section; all employees of the oversight council are in the exempt service under AS 39.25.110;

(2) subpoena witnesses, administer oaths, take testimony, and require the production for examination and copying of books or papers relating to matters within the responsibility of the oversight council;

(3) conduct investigations, studies, and analyses necessary to enable the oversight council to carry out its duties under (a) of this section; and

(4) appoint advisory panels in specialized areas to include representatives of appropriate groups such as state and municipal regulatory agencies, oil spill prevention and response authorities, fishing and environmental groups, residents of areas of risk, scientists, and shippers and owners of oil and other hazardous substances produced or transported in the state.

SECTION 24.20.620 COOPERATION BY STATE AGENCIES.

Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the oversight council by providing information and assistance, including disclosure of records relating to the agency's enforcement of laws and regulations for the prevention of and response to releases of oil and other hazardous substances.

SECTION 24.20.630 DEFINITIONS.

In AS 24.20.600 - 24.20.630,

(1) "hazardous substance" has the meaning given in AS 46.08.900;

(2) "oil" has the meaning given in AS 46.08.900; and

(3) "oversight council" means the Citizens' Oversight Council on Oil and Other Hazardous Substances.

TITLE 43. REVENUE AND TAXATION.

CHAPTER 55. OIL AND GAS PRODUCTION TAXES AND OIL SURCHARGE.

ARTICLE 1. OIL AND GAS PROPERTIES PRODUCTION TAXES.

SECTION 43.55.200. SURCHARGE LEVIED.

(a) Every producer of oil shall pay a surcharge of \$0.05 per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

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

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

SECTION 43.55.210. DISPOSITION OF PROCEEDS OF SURCHARGE.

(a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.200 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge that are deposited into the general fund.

SECTION 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE.

The legislature may appropriate the annual estimated balance of the account established under AS 43.55.210 to the oil and hazardous substance release response fund established by AS 46.08.010.

SECTION 43.55.230. SUSPENSION AND REIMPOSITION OF THE SURCHARGE.

(a) Not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

(1) that has been deposited through that calendar quarter into the general fund under AS 43.55.210;

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

(b) Within 15 days after making the determinations required by (a) of this section, the commissioner of administration shall report to the commissioner the difference between the amount determined under (a)(1) of this section and amount determined under (a)(2) of this section.

(c) If the commissioner of administration reports that the difference determined under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.200. Suspension of the imposition and collection of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of a suspension authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be paying the surcharge under AS 43.55.200 that the surcharge will be suspended.

(d) Except as provided in AS 43.55.240, if the commissioner of administration reports that the difference determined under (b) of this section is less than \$50,000,000, the commissioner of revenue shall require imposition and collection of the surcharge authorized under AS 43.55.200. Reimposition of the surcharge begins on the first day of the calendar quarter next following the commissioner's receipt of the commissioner of administration's report under (b) of this section. Before the first day of reimposition of the surcharge authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who are known to the department to be required to pay the surcharge under AS 43.55.200 that the surcharge will be reimposed.

SECTION 43.55.240 SURCHARGE NOT IMPOSED.

The surcharge authorized by AS 43.55.200 is not levied during any fiscal year for which the estimated revenue from the surcharge would be sufficient to restore the balance of the oil and hazardous substance release response fund on the first day of the fiscal year to at least \$50,000,000, and

(1) the legislature does not, during the regular legislative session preceding the first day of the fiscal year, appropriate money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least \$50,000,000; or

(2) the legislature, during the regular legislative session preceding the first day of the fiscal year, appropriates money from the general fund to the oil and hazardous substance release response fund sufficient to restore the balance of that fund on the first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto or reduction in the amount of the appropriation, restoration of the balance of the fund to at least \$50,000,000 does not become law.

TITLE 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION.

CHAPTER 3. ENVIRONMENTAL CONSERVATION.

ARTICLE 1. DECLARATION OF POLICY.

SECTION 46.03.010. DECLARATION OF POLICY.

(a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

ARTICLE 2. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

SECTION 46.03.020. POWERS OF THE DEPARTMENT.

The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers, and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

- (7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;
- (8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;
- (9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;
- (10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for
 - (A) control, prevention, and abatement of air, water, or land or subsurface land pollution;
 - (B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;
 - (C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;
 - (D) collection and disposal of sewage and industrial waste;
 - (E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;
 - (F) *[Repealed, Sec. 12 ch 172 SLA 1978.]*
 - (G) control of pesticides;
 - (H) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;
 - (I) handling, transportation, treatment, storage, and disposal of hazardous wastes;
- (11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits that have been included or deleted;
- (12) *[Repealed, Sec. 92 ch 6 SLA 1990.]*
- (13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715.

ARTICLE 3. WATER POLLUTION CONTROL AND WASTE DISPOSAL.

SECTION 46.03.050. AUTHORITY.

The department has jurisdiction to prevent and abate the pollution of the waters of the state.

ARTICLE 8. PROHIBITED ACTS AND PENALTIES.

SECTION 46.03.710. POLLUTION PROHIBITED.

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

SECTION 46.03.740. OIL POLLUTION.

A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may

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by regulation permit or where permitted under art. IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended.

SECTION 46.03.742. RECKLESS OPERATION OF TANK VESSEL.

(a) A person commits the crime of reckless operation of a tank vessel when, by recklessly operating, navigating, or piloting a tank vessel, the person causes a release of a hazardous substance and the release causes serious physical injury to another person or damage to the property of another.

(b) Reckless operation of a tank vessel is a class C felony.

(c) In this section, "reckless" has the meaning given in AS 11.81.900.

SECTION 46.03.743. NEGLIGENT OPERATION OF TANK VESSEL.

(a) A person commits the crime of negligent operation of a tank vessel when, by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates an unjustifiable risk of a release of a hazardous substance or an unjustifiable risk of harm to a person or property.

(b) Negligent operation of a tank vessel is a class A misdemeanor.

(c) In this section, "criminal negligence" has the meaning given in AS 11.81.900.

SECTION 46.03.744. DEFINITIONS.

In AS 46.03.742 - 46.03.744,

(1) "hazardous substance" has the meaning given in AS 46.03.826;

(2) "tank vessel" means

(A) a vessel that is constructed or adapted to carry, or that carries, as a means of transportation by water, a hazardous substance in bulk as cargo or cargo residue;

(B) the vessel that propels the tank vessel if the tank vessel is a barge or other vessel that is not self-propelled.

SECTION 46.03.745. HAZARDOUS SUBSTANCE RELEASE.

Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

SECTION 46.03.750. BALLAST WATER DISCHARGE.

(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

SECTION 46.03.755. DISCHARGE REPORTING.

(a) A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of AS 46.03.740 or 46.03.750, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

SECTION 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL.

(a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and the state's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking that poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) \$1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint

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session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment; and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor will be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less, not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section.

(k) *[Repealed, Sec. 19 ch 59 SLA 1986.]*

(l) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

SECTION 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of \$500,000,000, in the amount of

(1) \$8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) \$12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the \$500,000,000 maximum set under (a) of this section the court shall assess four times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

(2) the defendant did not take reasonable measures to contain and clean up the discharged oil; or

(3) the defendant did not act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the State of Alaska or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

SECTION 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES.

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable; in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

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(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Except as determined by the court under (f)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(f) A person who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

SECTION 46.03.763. ATTORNEY FEES AND COSTS.

In an action to impose civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a discharge of oil, the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

SECTION 46.03.765. INJUNCTIONS.

The superior court has jurisdiction to enjoin a violation of this chapter, AS 46.04, AS 46.09, AS 46.14, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

SECTION 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES.

A vessel that is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). If the damages assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, and AS 46.04.030(g). The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.759, 46.03.760, 46.03.822, or AS 46.04.030(g).

SECTION 46.03.780. LIABILITY FOR RESTORATION.

(a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04, AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, AS 46.04, AS 46.09, or AS 46.14, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

(b) Liability for damages under (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or

degraded resource, or to otherwise restore the environment of the state to its condition before the injury

(c) Damages under (a) of this section shall be recovered by the attorney general on behalf of the state.

SECTION 46.03.790. CRIMINAL PENALTIES.

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence

(1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

(2) fails to provide information or provides false information required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.755, AS 46.04, or AS 46.09;

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued by the department or a local air quality control program under AS 46.14.

(b) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(c) Each day on which a violation described in this section occurs is considered a separate violation.

(d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of

(1) a class C felony if the oil discharge is 10,000 barrels or more;

(2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.

(e) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(f) *[Repealed, Sec. 5 ch 141 SLA 1990.]*

(g) In this section,

(1) "barrel" has the meaning given in AS 46.04.900;

(2) "criminal negligence" has the meaning given in AS 11.81.900;

(3) *[Repealed, Sec. 62 ch 21 SLA 1991.]*

(h) Notwithstanding AS 12.55.035(b), upon conviction of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate violation.

SECTION 46.03.820. EMERGENCY POWERS.

(a) When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the

people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected has the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section.

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

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

SECTION 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES.

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or

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a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

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

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

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(e), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

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

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

(C) an act of God; and

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

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

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

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

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

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

(3) the person is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85 - 508 (Alaska Statehood Act).

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

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

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

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

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

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

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

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

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

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) In this section, "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

SECTION 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS.

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance other than oil whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

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

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

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

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

(g) In this section, "response action" means an action taken in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance other than oil, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision.

SECTION 46.03.824. DAMAGES.

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

SECTION 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

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(A) approved under AS 46.04.030 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

(b) The limitation on liability contained in (a) of this section does not apply to (1) an action for personal injury or death or;

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 is in use.

(c) If the liability of an oil spill response action contractor is not limited under (a) of this section or if the provisions of (a) of this section do not apply because of (b) of this section, the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission of the oil spill response action contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection does not apply to an oil spill response action contractor who would have been liable for the initial release or threatened release of oil under AS 46.03.822 even if that contractor had not carried out a response action.

(d) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

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

(f) Nothing in this section is intended to amend AS 46.04.030(1) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor.

(g) In this section,

(1) "consistent" means in substantial compliance with a contingency plan;

(2) "primary response action contractor" has the meaning given in AS 46.04.035;

(3) "registered" means registered under AS 46.04.035;

(4) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, clean up, marine salvage, or removal of a release or threatened release of oil.

SECTION 46.03.826. DEFINITIONS.

In AS 46.03.822 - 46.03.828

- (1) "act of God" means an act of nature which is unforeseeable in kind or degree;
- (2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;
- (3) "facility"
 - (A) includes a
 - (i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;
 - (ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;
 - (B) does not include any consumer product in consumer use;
- (4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;
- (5) "hazardous substance" means
 - (A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;
 - (B) oil; or
 - (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);
- (6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;
- (7) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse, or another petroleum-related product or by-product;
- (8) "owner" and "operator"
 - (A) mean
 - (i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;
 - (ii) in the case of facility, any person owning or operating the facility;
 - (iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and
 - (iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the state or a political subdivision of the state, any person who owned, operated, or otherwise controlled the facility or vessel immediately beforehand;
 - (B) do not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility;
- (9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(A) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer; and

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel;

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

(A) the department;

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

(C) a federal agency with jurisdiction over the release or threatened release; or

(D) another person potentially liable for the release or threatened release under state or federal law;

(11) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release;

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

(C) a person who acts as a volunteer and is engaged in a response action.

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

(13) "transport" means the movement of a hazardous substance by any mode, including pipeline; in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, "transport" includes any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any stoppage of this type shall be considered as a continuity of movement and not as the storage of a hazardous substance;

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

(15) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska.

SECTION 46.03.828. OTHER RIGHTS OF ACTION NOT AFFECTED.

The provisions of AS 46.03.822 - 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury.

SECTION 46.03.850. COMPLIANCE ORDER.

(a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter, AS 46.04, or AS 46.14, or a regulation or lawful

order of the department, or a permit or certificate, or a term or condition of a permit or certificate issued by the department under this chapter, AS 46.04, or AS 46.14, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under AS 46.03.820.

(b) The recipient of the determination shall file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in AS 46.03.010. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

ARTICLE 9. GENERAL PROVISIONS.

SECTION 46.03.860. INSPECTION WARRANT.

The department may seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with AS 46.14 or this chapter or a regulation adopted under AS 46.14 or this chapter.

SECTION 46.03.865. AUTHORITY OF DEPARTMENT IN CASES OF EMERGENCY.

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land, or subsurface land of the state poses an immediate threat to the public health or welfare or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment. If there is an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 that is applicable to the situation for which the department issues an order under this subsection, the department's exercise of authority under this subsection shall be guided by the relevant provisions of the incident command system.

(b) A person to whom an order is directed shall comply with it immediately, but on application to the department shall be given a hearing under the Administrative Procedure Act (AS 44.62). Thereafter the department may affirm, revoke, or modify the order.

(c) During a period of emergency declared under (a) of this section, each state agency shall take whatever action the department finds necessary to meet the emergency and to protect the public health, welfare, or environment, consistent with the

responsibilities assigned to them under an incident command system established under AS 26.23, AS 46.04.200 - 46.04.210, or AS 46.13 if one is applicable to the situation.

SECTION 46.03.870. ACTIONABLE RIGHTS.

(a) Except as specified in AS 46.03.822 - 46.03.828, the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new or enlarge existing rights of persons or groups of persons in the state.

(b) Except as specified in AS 46.03.822 - 46.03.828, a determination or order of the department does not create a presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

(c) This chapter does not estop the state, persons, or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

SECTION 46.03.875. REMEDIES CUMULATIVE.

All remedies provided by this chapter, AS 46.04, or AS 46.14 are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, AS 46.04, or AS 46.14 does not stop the state from obtaining relief under any other section of this chapter, AS 46.04, or AS 46.14.

SECTION 46.03.880. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.

Except as otherwise specifically provided in this chapter, the Administrative Procedure Act (AS 44.62) governs the activities and the proceedings of the department.

SECTION 46.03.890. ENFORCEMENT AUTHORITY.

(a) The following persons are authorized to enforce this chapter:

- (1) a state employee authorized by the commissioner;
- (2) a police officer of the state.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.04, AS 46.09, and AS 46.14.

SECTION 46.03.900. DEFINITIONS.

In this chapter

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

(5) "commissioner" means the commissioner of environmental conservation;

(6) "department" means the Department of Environmental Conservation;

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(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and (C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.40.100;

(16) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(17) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other entity whatsoever;

(18) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides;

(19) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(20) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other

processes or purposes and includes the reuse of materials or products to conserve natural resources;

(21) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(22) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(23) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(24) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(25) "solid waste" means all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source;

(26) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(27) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(28) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(29) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(30) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(31) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes;

(32) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign munity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

(33) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means

(A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(34) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(35) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

CHAPTER 4. OIL AND HAZARDOUS SUBSTANCE POLLUTION CONTROL.

ARTICLE 1. OIL POLLUTION CONTROL.

SECTION 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES.

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

SECTION 46.04.020. REMOVAL OF OIL DISCHARGES.

(a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil shall be carried out in a manner approved by the department. Wastes generated as a result of containment or cleanup activities shall be disposed of in a manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of Sec. 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under Sec. 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

(e) The department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons in order to

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic

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control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures.

(f) In fulfilling its responsibilities under (e) of this section, the department shall consult with the governing bodies of municipalities and villages.

(g) In addition to existing obligations under state and federal law, and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holder and lessees of the right-of-way agreement for the trans Alaska pipeline shall

(1) immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; and

(2) provide services required in a response action under contract terms as provided under AS 46.04.030(r). The obligations imposed under this subsection do not affect the response action duties of another person or the liability of another person for a discharge or threatened discharge. Upon the request of the person required to respond to a discharge or threatened discharge under this subsection, the obligation imposed by this subsection may be transferred to another person required by law to respond to the discharge or threatened discharge if the transfer is approved by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has the meaning given in AS 46.04.030(r).

(h) A charge, contract term, or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the holders and lessees' common operating agent, or the agent or representative of either the holders and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal and related to containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed under (g) of this section

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to a financial responsibility requirement in excess of \$10,000,000, must

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge or threatened discharge of oil from that vessel before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following the discharge or threat of discharge; and

(B) vary among each vessel in proportion to the volume of oil carried by each vessel per voyage from a marine terminal; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.

(i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to

review and enjoin a charge, contract term, or financial responsibility requirement described under (h) of this section at the request of a vessel owner, operator, or charterer. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

SECTION 46.04.025. CONFIDENTIAL INFORMATION.

The department may maintain the confidentiality of a manufacturer's proprietary technical information relating to chemical and biological agents used to control or mitigate the effects of an oil discharge. The department may refuse to release the information unless the manufacturer authorizes its release or unless a court orders its release. The department may provide the information to the Department of Fish and Game and other state and federal agencies if the department or other agency requesting the information agrees to maintain its confidentiality.

SECTION 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every three years.

(e) *[Editor's note: oil spill primary response action contractor provisions of this subsection become effective January 1, 1994 -- other provisions are presently in effect. Consult the Department for clarification.]* The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. If a contingency plan submitted to the department for approval relies on the services of an oil spill primary response action contractor, the department may not approve the contingency plan unless the primary response action contractor is registered and approved under AS 46.04.035. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

(f) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of a facility or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification. The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan;
- (3) a term or condition of approval or modification has been violated; or
- (4) the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(h) The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section. The department shall exercise its power under this section in a timely manner. Except as provided in (i) of this section, it is not a defense to an action brought for a violation of (a) - (c) of this section that the person charged believed that a current contingency plan had been approved by the department.

(i) It is a defense to an action brought for a violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

(j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

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(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) - (3) of this subsection that enters a receiving environment other than open water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements

of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) *[Repealed, Sec. 1 ch 16 SLA 1993.]*

(q) In this section,

(1) "contingency plan" means an oil discharge prevention and contingency plan required under this section;

(2) "in compliance with the plan" means, with respect to a contingency plan, to

(A) establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(B) have access to and have on hand the quantity and quality of equipment, personnel, and other resources identified as being accessible or on hand in the plan;

(C) fulfill the assurances espoused in the plan in the manner described in the plan;

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

(4) "region of operation," with respect to the holder of a contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210.

(r) Except as provided in (n) of this section and in order to receive approval from the department for an oil discharge prevention and contingency plan submitted under this section, the owner, operator, or charterer of a vessel that intends to carry oil that has been transported by the Trans Alaska Pipeline System shall obtain by contract the services required in a response action from the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System. The contract must contain the following provisions: (1) the common operating agent, as a primary response action contractor shall, unless services required in a response action are transferred as provided in (3) of this subsection, provide services required in a response action for a discharge or a threatened discharge of oil to the owner, operator,

or charterer of the vessel while the vessel is berthed at, en route to, or transiting from the Trans Alaska Pipeline System marine terminal or traveling on waters within Prince William Sound; (2) that its coverage for any particular vessel may not be terminated by the common operating agent while that vessel is within Prince William Sound; this provision may not be interpreted to limit the department's authority to revoke approval under this section for an oil discharge prevention and contingency plan submitted by the owner, operator, or charterer of a vessel; and (3) the owner, operator, or charterer of the vessel shall accept a transfer of the services required in a response action to a discharge or threatened discharge, after receiving not less than 72 hours of advance notice and after the transfer has been approved by the federal and state on-scene coordinators. In addition to the requirements of this subsection, the department may require individual vessels to submit additional contingency plans to cover specific vessel response, prevention equipment, and procedures. Nothing in this subsection is intended to preclude the federal or state government from assuming management and control of an oil spill response to a discharge or threatened discharge from a vessel under appropriate circumstances. In this subsection, "Prince William Sound" means all marine waters within the boundary line established at Cape Puget, southeasterly to Cape Cleare, along Montigue Island to Zaikof Point, easterly to Cape Hinchinbrook, along Hinchinbrook Island to Point Bintinck, and easterly to Point Whittshed.

SECTION 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS.

(a) A person may apply to the department for registration as an oil spill primary response action contractor. The department shall adopt regulations governing the registration and approval of oil spill primary response action contractors. Regulations adopted by the department under this section must include

(1) minimum training standards for personnel;

(2) verification requirements that ensure the existence of resources, including personnel, equipment, services, and an adequate deployment plan necessary to a response action or as required by a contingency plan in which the contractor has agreed in writing to be listed and is listed;

(3) minimum professional response action standards and practices; and

(4) minimum planning standards for oil spill primary response action contractors listed in an oil spill contingency plan approved under AS 46.04.030.

(b) Notwithstanding (a) of this section, the department may substitute a primary response action contractor approval program, and a subsequent process to approve primary response action contractors who agree to be listed in a contingency plan approved under AS 46.04.030, for regulations required under (a)(1) - (3) of this section if the approval program and subsequent process are developed by the United States Coast Guard.

(c) The department shall establish fees applicable to registration under this section in an amount necessary to cover the costs of the registration program. The fees shall be collected by the department.

(d) The Administrative Procedure Act (AS 44.62) applies to regulations and registrations under this section.

(e) The department shall develop and maintain a list of oil spill primary response action contractors registered under this section. The department shall provide the list on request to interested persons.

(f) A primary response action contractor registered under this section shall annually provide to the department a list of all contingency plans approved under AS 46.04.030

in which the primary response action contractor has agreed in writing to be listed as a responder.

(g) Nothing in this section is intended to amend AS 46.04.030(l) or to create a cleanup or performance standard that must be met by a holder of a contingency plan or a response action contractor.

(h) In this section,

(1) "oil" has the meaning given in AS 46.03.826;

(2) "primary response action contractor" means a person who enters into a response action contract with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract relating to a release or threatened release of oil.

SECTION 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY.

(a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is \$50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is \$20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is \$5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) \$300, per incident, for each barrel of storage capacity or \$100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel of storage capacity or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) - (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other

proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility; however, the liability under this section of a third-party insurer is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility furnished to and approved by the department. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state. In this subsection, "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of an applicant under this section; "third-party insurer" does not include the applicant.

(f) Acceptance of proof of financial responsibility expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or

(3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in (f)(1) -

(3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the expiration date of the certificate.

(k) It is a defense to an action brought for violation of (a) - (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

(l) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not

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agree to be subject to direct action in state courts or to appoint an agent for service of process if

(1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;

(2) the applicant provides proof of \$50,000,000, or the amount required by (a) - (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and

(3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department.

[Editor's note: For provisions effective from June 1, 1992, to June 1, 1994, relating to proof of financial responsibility by certain noncrude oil operations, see Sec. 2, ch. 102, SLA, 1992 in the Temporary and Special Acts.]

*[Chapter 102, SLA 1992. Source: CSSB405 (O&G). APPROVED DATE: June 20, 1992. * Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant*

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

** Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.*

** Sec. 6. Section 2 of this Act is repealed June 1, 1994.*

** Sec. 7. This Act takes effect immediately under AS 01.10.070(c).]*