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(b) The department will, in its discretion, require analysis of oil for a component listed in (a) of this section, using methods prescribed on the surface oiling permit application form. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020 AS 46.03.299
AS 46.03.296 AS 46.03.740

18 AAC 75.730. DECISION ON APPLICATION FOR SURFACE OILING PERMIT; PERMIT TERM AND CONDITIONS.

(a) The department will, in its discretion, grant or deny an application submitted under 18 AAC 75.700. The department will consider the following criteria before issuing a decision under this section:

(1) the potential for pollution of adjacent waters, including groundwater;

(2) the potential for pollution of vegetation;

(3) the need for the oiling, including local public opinion, and considerations of air quality as addressed by 18 AAC 50;

(4) the predicted weather conditions for the time of the oiling; and

(5) effects on the environment.

(b) In addition to the specific terms and conditions set out in the permit, a surface oiling permit is subject to the following terms and conditions:

(1) oil or other petroleum-derived dust retardants may not be applied to wet surfaces, frozen surfaces, or snow-covered surfaces; however, oil or other petroleum-derived dust retardants may be applied to a damp surface if deliberate dampening of the surface is part of the normal oiling procedure;

(2) oil or other petroleum-derived dust retardants may be applied only in the minimum amounts necessary and may not be allowed to stand in ponds on the surface;

(3) there may be no runoff of oil or other petroleum-derived dust retardants from the surface receiving the application;

(4) oil or other petroleum-derived dust retardants may not be applied to any surface during precipitation or when precipitation is imminent;

(5) there must be equipment such as brooms and mops on the job to prevent oily runoff and to spread any ponded oil or other petroleum derived dust retardants;

(6) unless specifically allowed in the permit, in order to avoid drifting of droplets to adjacent vegetation and property, oil or other petroleum-derived dust retardants may not be applied if local wind speed is 15 miles per hour or greater;

(7) the permittee shall inspect immediately the freshly-treated surface for oily runoff and ponding of oil or other petroleum-derived dust retardants;

(8) to avoid offensive odors, only nonodorous oils and other petroleum-derived dust retardants may be used on surfaces near residential areas or on surfaces that receive considerable pedestrian traffic; odorous oils may be used only on rural surfaces where the odor is less likely to be noticeable and pedestrian traffic is minimal; and

(9) no oil or other petroleum-derived dust retardants may be allowed to enter state waters or to enter upon private property. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

ARTICLE 8. Oil Discharge for Scientific Purposes

18 AAC 75.800. PERMIT FOR OIL DISCHARGE FOR SCIENTIFIC PURPOSES. Notwithstanding 18 AAC 70.020, 18 AAC 72.010, and 18 AAC 75.700 -- 18 AAC 75.730, the department will, in its discretion, issue a permit for the discharge of oil, asphalt, bitumen, or a residuary product of petroleum onto the land or into state waters for research and scientific purposes. The department will issue a permit under this section only after it has evaluated the proposed project and found that

(1) the benefits from the information that will be developed outweigh the potential environmental damage that might result;

(2) the project has the written approval of all potentially affected landowners and persons with appropriated water rights for the water to be affected;

(3) the person proposing the project will, upon completion of the project, restore the environment affected by the project to a condition as near to the original condition as feasible;

(4) the person proposing the project has sufficient expertise and resources to conduct the project in a responsible manner; and

(5) the proposed project is otherwise in the public interest. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020.
AS 46.03.740

18 AAC 75.810. PERMIT PROCEDURES.

(a) An application for a permit under 18 AAC 75.800 must be made on forms supplied by the department. The application must be sent to the department at least 60 days before the proposed discharge is to begin. The application must include

(1) the name, address, and telephone number of the applicant;

(2) a detailed description of the proposed project, including plans for restoration;

(3) a description of the geographical area involved; and

(4) a description of the expected flow pattern of any water to be affected by the project.

(b) The department will

(1) send a copy of a completed application received under this section to the departments of fish and game, natural resources, commerce and economic development, and health and social services; and

(2) publish notice of the application as provided in 18 AAC 15.050.

(c) The department will attach terms and conditions to the permit which it finds are necessary to protect the environment and potentially affected property owners. A permit is further subject to the permittee's stipulation and agreement to

(1) modify activities if served with a notice under 18 AAC 75.820; or

(2) immediately cease all permitted activities if served with a notice to terminate under 18 AAC 75.830. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.820. MODIFICATION OF PERMIT.
The department will, in its discretion, and after giving notice to the permittee, modify the terms and conditions of a permit issued under 18 AAC 75.810 if the department finds that modification is necessary to protect the environment.
(Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

18 AAC 75.830. TERMINATION OF PERMIT.
The department will, in its discretion, and after giving notice to the permittee, terminate a permit issued under 18 AAC 75.810 if the department finds that

(1) the permit was obtained by misrepresentation of a material fact or by failure of the applicant to fully disclose the facts;

(2) there has been noncompliance with a term or condition of the permit; or

(3) based on information received after issuance of the permit, the permit should not have been granted. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.740

ARTICLE 9. General Provisions.

18 AAC 75.905. FALSIFICATION PROHIBITED.
No person may falsely state information submitted under AS 46.03, AS 46.04, AS 46.09, or this chapter. (Eff. 5/14/92, Register 122)

Authority: AS 46.03.020
AS 46.03.790
AS 46.04.070

18 AAC 75.990. DEFINITIONS.
Unless the context indicates otherwise, in this chapter

(1) "approved" means approved by the department;

(2) "area of public concern" means a geographic area that, in the department's judgment, deserves special protection from an oil discharge, including

(A) an area of unique cultural value, historical significance, or scenic importance;

(B) an area of substantial residential or public recreational value or opportunity;

(C) an area where fish hatcheries or other facilities primarily dependent upon the use of potentially affected water are located;

(D) an area significantly used for commercial, sport, or subsistence hunting, fishing, and gathering; and

(E) an area where concentrations of terrestrial or marine mammals or bird populations primarily dependent on the marine environment are located;

(3) "barge" means oil barge;

(4) "barrel" has the meaning given that term at AS 46.04.900;

(5) "best available technology" means equipment, supplies, and other resources which, in the department's judgment, meet or exceed the current level of demonstrated available technology;

(6) "capacity" means storage capacity;

(7) "cargo volume" means storage capacity;

(8) "catastrophic oil discharge" has the meaning given that term at AS 46.04.900;

(9) "catch tank" means the container that collects well fluids, muds, and oil from drilling;

(10) "cleanup" means removal of oil or another hazardous substance from the environment, restoration, and other measures that the department considers necessary to mitigate or avoid further threat to the land, waters, or air of the state;

(11) "contain" means to surround a discharge with booms, berms, dikes, or other barriers to prevent the further spread of the discharge;

(12) "control" means to stop, restrict, or deflect the movement of a discharge;

(13) "department" means the Alaska Department of Environmental Conservation;

(14) "discharge" has the meaning given that term at AS 46.04.900; for purposes of this chapter, the term applies to an unpermitted discharge into the environment;

(15) "dispersant" means a chemical agent used to enhance the breakup of concentrations of discharged oil into droplets, thereby promoting mixing of oil into the water column and accelerating dilution and degradation rates;

(16) "environmentally sensitive area" means a geographic area that, in the department's judgment, is especially sensitive to change or alteration, including

(A) an area of unique, scarce, fragile, or vulnerable natural habitat;

(B) an area of high natural productivity or essential habitat for living resources;

(C) an area of unique geologic or topographic significance which is susceptible to a discharge;

(D) an area needed to protect, maintain, or replenish land or resources, including floodplains, aquifer recharge areas, beaches, and offshore sand deposits;

(E) a state or federal critical habitat, refuge, park, or other designated refuge or preserve; and

(F) an area that merits special attention as defined at 6 AAC 80.170;

(17) "estuarine" or "estuary" means a semi-enclosed, coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(18) "existing installation" means storage and surge tanks, secondary containment, piping and any other operational appurtenances constructed and installed before the effective date of this section; existing storage and surge tanks that have been reconstructed, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992, are considered a new installation for the purposes of this chapter;

(19) "exploration facility" has the meaning given that term at AS 46.04.900;

(20) "facility" or "facility or operation" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, endeavor, or act, and includes an oil terminal facility, tank vessel, oil barge, pipeline, and an exploration or production facility;

(21) "freshwater wetlands" means those environments characterized by rooted vegetation that is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;

(22) "groundwater" means water in the zone of saturation, which is the zone below the water table, where all interstices are filled with water;

(23) "hazardous substance" has the meaning given that term at AS 46.03.826;

(24) "hazardous waste" means wastes within the scope of 18 AAC 62.010 -- 18 AAC 62.020;

(25) "impermeable" means using a layer of manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure, sufficient to contain a discharge until it is detected and cleaned up;

(26) "inside waters of Southeast Alaska" includes all those marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(27) "lightering" means the pumping or transferring of oil from the cargo compartment of one vessel, barge, storage tank, or container to another vessel, barge, storage tank, or container;

(28) "liquefied petroleum gas" means natural gas converted to a liquid state by pressure and cooling, butane, propane, and other light ends which at 70 degrees Fahrenheit and atmospheric pressure revert to the gaseous state;

(29) "local government" means any borough, city, town, village, or other political subdivision of the state, any Indian tribe or authorized tribal organization, and includes any rural community or unincorporated town or village;

(30) "major discharge" means a discharge of oil

(A) over 10,000 gallons on inland waters;

(B) over 100,000 gallons on coastal waters; or

(C) in any amount that results in a release that

(i) might require evacuation or sheltering of nearby residents or businesses; or

(ii) causes a serious environmental threat;

(31) "marine waters" means all saltwater environments, including saltwater wetlands, estuaries, and the intertidal zone;

(32) "mechanical response method" means the use of containment booms, skimmers, and other apparatus and equipment required for mechanical containment and removal of a discharge;

(33) "new installation" means storage and surge tanks, secondary containment, piping and any other operational appurtenances constructed, installed, or placed into service after the effective date of this section, including reconstructed storage and surge tanks, as defined in API Standard 653, First Edition, 1991, and Supplement 1, January 1992;

(34) "noncrude oil" means any refined petroleum product derived from crude oil;

(35) "oil" has the meaning given that term at AS 46.04.900;

(36) "oil barge" has the meaning given that term at AS 46.04.900;

(37) "oil storage tank", for the purposes of 18 AAC 75.065 and 18 AAC 75.075 means all containers, including storage and surge tanks, used to store bulk quantities of oil which have a capacity greater than 10,000 gallons, but does not include process pressure vessels or underground storage tanks;

(38) "oil terminal facility" has the meaning given that term at AS 46.04.900 and includes vessels classified as oil terminal facilities under 18 AAC 75.280;

(39) "oily waste" means any material, including water, that has been contaminated by or mixed with oil in other than naturally occurring circumstances;

(40) "open burning" means the burning of any material so that the products of combustion are emitted directly into the ambient air without passing through a stack or flare;

(41) "open water" means marine waters below mean low low water and freshwaters of the state, excluding wetlands and the wetland or shoreline perimeter of lakes, rivers, and streams;

(42) "operator" has the meaning given that term at AS 46.04.900;

(43) "owner or operator" means the owner or operator of a facility or operation that is subject to the requirements of AS 46.04.030, 46.04.040, or this chapter;

(44) "permafrost" means soil or other earth material supporting vegetation with a temperature that remains below 32 degrees Fahrenheit for two or more years;

(45) "persistent product" means a refined oil product with a common name such as bunker C, Number 6, Chevron Residual, lube oil, or any other product with similar viscosity, degradability, and dispersibility;

(46) "person" has the meaning given that term at AS 46.04.900;

(47) "person in charge," in addition to the person causing or permitting a discharge, includes

(A) for a vessel, the master;

(B) for a vehicle, the operator; and

(C) the person exercising a possessory interest in the facility or operation at the time of the discharge, unless the possessory interest is being exercised solely for the purpose of providing a place of residence for the person;

(48) "pipeline" has the meaning given that term at AS 46.04.900;

(49) "plan" means an oil discharge prevention and contingency plan approved under this chapter;

(50) "plan holder" means an applicant who has received department approval for an oil discharge prevention and contingency plan and who is responsible for compliance with the plan as approved;

(51) "ppm" means parts per million;

(52) "Prince William Sound" includes all marine waters lying inside the boundary line established in 42 Federal Register 35791 (July 11, 1977);

(53) "Prince William Sound towing package" means a towing gear assembly that consists of

(A) 400 feet of $2^1/_4$ inch tow reaching wire;

(B) 720 feet of six-inch polypropylene floating pickup line;

(C) one floating pickup buoy; and

(D) a "D" shackle, $2^1/_4$ inches in diameter, with a $4^1/_8$ inch jaw opening, and a breaking strain of 55 tons, to connect the floating line to the tow reaching wire;

(54) "production facility" has the meaning given that term at AS 46.04.900;

(55) "realistic maximum operating limitation" means the upper limit of a combination of environmental factors that might occur at a facility or operation beyond which an operator would be unable to mount a mechanical response to a discharge event;

(56) "response planning standard" means a planning standard against which the adequacy of an oil discharge prevention and contingency plan will be judged by the department and does not constitute a cleanup standard that must be met by the holder of a contingency plan;

(57) "resource agencies" means, in addition to the Alaska Department of Environmental Conservation, the Alaska Department of Natural Resources and the Alaska Department of Fish and Game;

(58) "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(59) "sensitive gauging system" means the best demonstrated available gauging technology at the time of tank construction or substantial reconstruction, or initial gauging system installation;

(60) "sensitive receiving environment," for the purposes of 18 AAC 75.075(d), means fresh or marine waters supporting anadromous fish or used for drinking or food processing, waters susceptible to eutrophication, a stream with low or intermittent flow, tundra, or lands which permit exposure of wastewater to the public;

(61) "significant change" means

(A) a change in operational readiness or removal from designated storage of significant equipment or materials;

(B) a management or ownership change resulting in new chain-of-command or lead response personnel;

(C) a change in response contractors;

(D) a change in spill control or cleanup strategies; or

(E) any factor that significantly alters or reduces the ability of the plan holder to respond according to the provisions of the approved contingency plan;

(62) "state waters" means waters of the state;

(63) "storage capacity," means, for a vessel, the maximum amount of oil that the vessel can legally carry as cargo while in state waters, or as certified by the American Bureau of Shipping, Certificate of Inspection by United States Coast Guard, or an equivalent classification by a society or agency in a foreign country or a lesser amount upon proof and verification to the department's satisfaction; for a tank, "storage capacity" means the full physical volume of the tank; the storage capacity of pipes at a facility is considered part of the storage capacity of that facility;

(64) "sufficiently impermeable" means, for a secondary containment system, that the design and construction of the system is such that it has the impermeability necessary to protect groundwater from contamination and to contain a discharge until it can be detected and cleaned up; for design purposes for a new installation, this means using a layer of natural or manufactured material of sufficient thickness, density, and composition to produce a maximum permeability for the substance being contained of 1×10^{-6} cm per second at a maximum anticipated hydrostatic pressure, unless an alternate design standard is approved by the department;

(65) "surety" includes a surety bond;

(66) "tank vessel" has the meaning given that term at AS 46.04.900;

(67) "transmission pipeline" means a pipeline, whether interstate or intrastate subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through October 1, 1990, through which crude oil moves in transportation, including line pipe, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units; "transmission pipeline" does not include gathering lines, flow lines, or facility piping;

(68) "ultimate disposal" includes disposal into or upon the waters or the surface or subsurface land of the state;

(69) "vessel" has the meaning given that term at AS 46.04.900; and

(70) "waters of the state" has the meaning given that term at AS 46.04.900.

(71) "oil spill primary response action contractor," for the purposes of 18 AAC 75.425 and 18 AAC 75.445, has the meaning given at 18 AAC 75.500(a). (Eff. 5/14/92, Register 122; am 9/25/93, Register 127)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.070
	AS 46.03.050	AS 46.04.030	
	AS 46.03.710	AS 46.04.035	

Alaska Department of Environmental Conservation

Discharge Notification and Reporting Requirements

AS 46.03.755 and 18 AAC 75.300-.307

Notification of a discharge must be made to the **nearest DEC office** during working hours

or

24-Hour Emergency Reporting Number during non-working hours

1-800-478-9300 In-state

907-269-5711 Out-of-state

Notification Requirements

DISCHARGE TO WATER

Any discharge of Hazardous Substance	—As soon as the person has knowledge of any discharge.
Any discharge of Oil	—As soon as the person has knowledge of any discharge.

DISCHARGE TO LAND

Any discharge of Hazardous Substance	—As soon as the person has knowledge of any discharge.
Any discharge of Oil in excess of 55 gallons	—As soon as the person has knowledge of any discharge.
Any discharge of Oil in excess of 10 gallons but 55 gallons or less	—Within 48 hours after the person has knowledge of any discharge.
Any discharge of Oil from 1 to 10 gallons	—A person in charge of a facility or operation shall maintain, and provide to the department on a monthly basis, a written record of any discharge including a cumulative discharge.

DISCHARGE TO IMPERMEABLE SECONDARY CONTAINMENT AREAS

Any discharge of oil in excess of 55 gallons	—Within 48 hours after the person has knowledge of any discharge.

Reporting Requirements

A written final report must be submitted to the Department for any discharge within 15 days after cleanup is completed or, if no cleanup occurs, within 15 days after the discharge. The Department may require interim reports until cleanup is completed.

rev. 8/92

ALASKA LAW REQUIRES THE REPORTING OF ALL

OIL AND HAZARDOUS SUBSTANCES SPILLS

During normal working hours call the nearest office of the

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Southeast Region	
Juneau District	465-5340
Ketchikan District	225-6200
Sitka District	747-8614

Northern Region	
Interior District	451-2360
Nome District	443-2600
Tok District	883-4381

Pipeline Region	
Coordinator's Office	278-8595
Prince William Sound District	835-4698

Southcentral Region	
Anchorage District	349-7755
Kenai District	262-5210
Matanuska Susitna District	376-5038
Valdez Field Office	835-4698
Cordova Field Office	424-4385
Western District	349-7755
Bethel Field Office	543-3215
Kodiak Field Office	486-6760
Unalaska Field Office	581-1822

Or Call: 1-800-478-9300 In State

(907) 269-5711 Out of State

24 hours/day

Alaska Department of Environmental Conservation
410 Willoughby Ave., Suite 105
Juneau, AK 99801-1795

Alaska Statute 46.03.755

History of the 470 Fund by the Sponsor

By Mike Davis

There have been a number of editorials, advertisements and statements to the press regarding the original intent of the "470" fund (the Oil and Hazardous Substance Release Response Fund). Much of the information is misleading and inaccurate. As the original sponsor of HB 470 which passed in 1986, I thought I should set the record straight.

In 1985, during my second term in the legislature, I was Chairman of the Special Committee on Oil and Gas. A young woman came to me with an issue: A number of people on the Kenai Peninsula had polluted wells which were located near gravel pits containing drilling muds caused by previous oil and gas development.

I agreed to conduct a hearing to see if the state was doing everything possible to protect the water supply of Kenai residents. At the hearing we heard from concerned citizens, the Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC). We found that the Kenai did have significant contamination in some areas and that the state had spent few resources to address the problem. However, we also found that the money in the existing Oil Spill Fund probably could not be used to assist these people even though the problem was directly related to the oil and gas industry.

As a result of the hearing, my staff and I spent the summer and fall reviewing statutes in other states, as well as federal laws, to develop legislation that would begin to address issues which we, as an oil and gas state, were beginning to face.

I decided to introduce a bill that expanded the existing oil spill fund to include hazardous substances. This would then enable us to address situations such as those on the Kenai or tank car spills in my home town.

The legislation received broad-based support. Mayors from Anchorage, Kenai and Fairbanks all supported the legislation, as did firefighters, citizens groups, Native, fishing and environmental groups. I also got enthusiastic statewide support from both Democratic and Republican legislators.

There were a number of incidents in the communities of key legislators which illustrated the need for such a fund. These included a chemical spill from the Railroad in Moose Pass and a problem with benzene in an Eagle River subdivision. The only public opposition to the fund came from Chevron.

In spite of Chevron's concerns, the legislation received overwhelming support. The legislation addressed the need to have a comprehensive approach to spills and other releases that occur in our oil-producing state. We were not able to pass legislation providing for funding during that session. In actuality, there was very little money appropriated to the 470 Fund from fiscal year 1987 to fiscal year 1989. Not an adequate amount to deal with all of the problems that we knew existed in Alaska. Unfortunately, it wasn't until 11 million gallons of oil were spilled in Prince William Sound that a funding mechanism was put in place.

In 1989, after the *Exxon Valdez* oil spill, the legislature adopted SB 260 that placed a nickel per barrel surcharge on every barrel of oil going through the pipeline. All SB 260 did was to set up the funding mechanism for the already existing 470 Fund, it did not in any way alter the fund or the original purposes for which it was established. The funding mechanism was set up such that the tax would be temporarily suspended when the 470

fund reached $50 million but re-imposed when the fund fell below $50 million. The legislative record shows that the legislature agreed that funding should be available for both oil and hazardous substance spills that pose a threat to public health or the environment. Other legislation passed in 1989 and 1990 that expanded the uses of the 470 fund to include, review of oil spill contingency plans, spill drills and inspections. In addition, a bill requiring annual review and revision of the state master spill contingency plan and regional plans and the establishment of a spill response office, equipment depots and response corps were all passed as a result of the *Exxon Valdez* oil spill and were are funded by the 470 Fund.

Now, perhaps because the climate is right and the spill occurred almost five years ago, history is being re-written. Industry is presenting arguments regarding what the fund should and shouldn't be used for. They are saying that the fund was not intended to be used for hazardous waste site clean ups -- that is not true. They are arguing that the 470 fund is supposed to be only an emergency fund used for cleaning up catastrophic oil spills -- that is not true. They are saying the surcharge was supposed to be a temporary one -- that, again is not true.

Senate Bill 215 and House Bill 238 were introduced based on these untruths. These bills were introduced on behalf of the oil industry by Representative Joe Green in the House and Senator Mike Miller in the Senate. These bills reduce the surcharge and therefore jeopardize funding for the critical spill prevention and response programs funded by the 470 Fund. We currently have something that works and we should continue to be prepared for all types of oil and hazardous spills. It took a catastrophic oil spill for us to put in place a funding mechanism to prevent and respond to spills. Only five years later the legislature is proposing to dismantle the important programs put in place after the spill.

One has to ask, who gains from the passage of SB 215 and HB 238? I think, upon examination, you would find that only the oil industry gains and the citizens of Alaska lose. I join the chorus of Alaskans opposing SB 215 and Joe Green's version of HB 238. If you share this concern write the legislature or call the Legislative Information Office at 452-4448 and send a public opinion message.

Mike Davis

P.O. Box 81435

Fairbanks, AK 99708

455-6430

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

December 29, 1993

Mark Prussing
Department of Revenue
Treasury Division
P.O. Box 110405
Juneau, AK 99811-0405

Don Wanie
Department of Administration
Division of Finance
P.O. Box 110204
Juneau, AK 99811-0204

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Charlie Hunter	From Mark Pfeffer
Co. DEC Finance	Co. Finance
Dept.	Phone # 5606
Fax #	Fax #

Re: EXXON VALDEZ Reimbursement

Dear Gentlemen:

On September 1, 1993, the State received a reimbursement payment of $20,000,000 from Exxon pursuant to the terms of the Exxon Consent Decree and the Memorandum of Agreement between the State and United States ("MOA"). As provided in AS 37.14.410, these reimbursements are to be initially deposited in the general fund with a percentage to be credited to the oil and hazardous substance release mitigation account ("mitigation account"). That percentage is determined by dividing the amount of reimbursed expenses which were initially paid from the oil and hazardous substance release response fund ("470 Fund") by the total amount of the reimbursed expenses.

To determine these numbers I requested Peterson Consulting, the firm under contract with the Department of Law to perform oil spill accounting services, to evaluate the expenses to which this reimbursement should be attributed. Specifically, we took those expenses subject to the $75 million cap found in paragraph VI.B.2. of the Memorandum of Agreement ("base allowed expenses" and expenses for response and cleanup costs incurred by the State before January 1, 1991), deducted that portion reimbursed in previous payments and thereby determined that $7,852,407 remained to be reimbursed under the $75 million cap. The amount of that remainder originating with the 470 Fund is $4,899,882 and the amount originating from other sources is $2,952,525.

The remaining $12,147,593 from this year's reimbursement is for post-cap expenses authorized by the MOA to be reimbursed to the State. In attributing this sum to specific expenses we were

cc:CSLH

mindful of the legislature's preference, as expressed in sec. 13 ch 79 SLA 1993, that $15,000,000 in general fund reimbursements this year be appropriated for design, engineering work and construction of a road connecting the Seward Highway and the Port of Whittier. Accordingly, in attributing these post-cap reimbursements, we first elected to reimburse those expenses originally paid from a source other than the 470 Fund and therefore required to be reimbursed to the general fund. That amount was $11,810,175. The remaining $337,415 in reimbursements for post cap expenses came from 470 Fund expenditures.

Therefore, of the $20,000,000 reimbursement, $5,237,297, should be credited to the mitigation account and $14,762,703 should remain in the general fund. Please contact me if any questions arise regarding this allocation.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Craig J. Tillery
Craig J. Tillery
Assistant Attorney General

CJT:akb

House Finance Committee Action - Section 20 (a), (b)

Front Section	FY94 Auth	FY95 Gov	FY95 Gov Amd	FY95 House
3/30/94 Balance of the OHSRRF Mitigation Account:				5,751.2
Section 20 (b) - Gov. proposed OHSRRF Mitigation Acct to STAF	4,991.5	5,545.0	5,545.0	5,545.0
246.1 to DEC for Environmental Crimes				(246.1)
1,500.0 to DOT/PF M&O-Highways and Aviation				(1,500.0)
1,000.0 for deficit reduction				(1,000.0)
Total House Action: STAF back to OHSRRF Mitigation Acct.				*(2,746.1)*
Section 20(b) House Action to Date - from Mitigation Acct. to STAF:	4,991.5	5,545.0	5,545.0	2,798.9
Adjust for House Finance Subcommittee decrements to Underground StorageTanks component, STAF (return to OHSRRF Mitigation Account)				(336.3)
Total necessary STAF balance per House action to date:				2,462.6
Section 20 (a) 3/30/94 OHSRRF Mitigation Account balance to be transferred to the OHSRRF after House action on section 20(b) ($5,751.2 - $2,462.6)				**3,288.6**

MEMORANDUM

STATE OF ALASKA
Department of Administration

To: Darrel J. Rexwinkel
Commissioner
Department of Revenue

Date: January 25, 1994

File Ref:

From: Nancy Bear Usera
Commissioner
Department of Administration

Phone: 465-2200

Subject: Fourth Quarter 1993 Report for the Oil Surcharge Account

AS 43.55.230(b) requires that I report to you the difference between the cumulative amount received in the General Fund Oil Surcharge account and the cumulative amount expended from the Oil and Hazardous Substance Release Response Fund (OHSRRF) on a quarterly basis.

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by $50,000,000. As of December 31, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by $12,992,160. The calculation is as follows:

Oil Surcharge Account cumulative revenue	$115,704,042
Oil and Hazardous Substance Release Response Fund cumulative expenditures	128,696,202
Difference AS 43.55.230 (b)	($ 12,992,160)

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2240.

cc: John A. Sandor
Commissioner
Department of Environmental Conservation

Don Wanie, Director
Division of Finance
Department of Administration

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

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

(2) pay all costs incurred to

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

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

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

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

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

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

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(6) prepare, review, and revise

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

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

(7) restore the environment by addressing the effects of an oil or hazardous substance release.

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

NEWS CLIPPINGS IN
Anchorage Daily News

Audit finds spill fund used correctly

By IAN MADER
The Associated Press

JUNEAU — The state has properly spent its oil-spill response fund on spill prevention, small waste-site cleanups and related programs, contrary to industry claims, a legislative audit says.

But the audit also criticizes the Department of Environmental Conservation for its inability to keep adequate track of what other agencies spend from the fund. And the agency has been lax in recovering money from polluters for cleanup costs paid from the fund, the audit says.

The recently released audit says DEC's programs to protect against future spills through inspections, contingency plan reviews and drills are staffed at bare-bones levels.

Further staff reductions in the Spill Prevention and Response Division would be dangerous and would reflect the kind of complacency that allowed the Exxon Valdez disaster to occur five years ago, the audit says.

"We wonder whether complacency is again taking root," auditors wrote.

Please see Back Page, SPILL

SPILL: Legislative audit finds funds used correctly on prevention, cleanups

Continued from Page A-1

The industry, led by the Alaska Oil and Gas Association, has charged that nonemergency expenditures were improper as part of its campaign to get rid of a nickel-a-barrel tax on oil production. The tax goes into the fund and can be repealed after years when spending from the fund is below a certain level.

But of the $120 million spent from the fund since the tax was created in 1989, only $200,000 spent on an advisory panel was inappropriate, the audit determined.

Industry-supported bills introduced last year would phase out some of the tax and save companies as much as $114 million in the next five years. The tax raises about $26 million a year. DEC says it needs at least about half that amount to run prevention programs properly.

The industry has said many of those expenses are not supposed to come out of the fund.

"There have been abuses to the oil-spill fund since it was established in 1989," Ardie Gray, spokeswoman for the association, wrote to a newspaper in November. "Money from the fund has been used for cleaning up state campgrounds, state airports, privately owned greenhouses, responding to chlorine leaks and buying new ferries. These may be important concerns, but they are not oil-spill emergencies."

The fund was created by the legislature in 1986, before the tax existed, the audit notes. It not only was intended for cleaning up future oil spills, but also to investigate and deal with past hazardous waste sites, the audit says. The tax was added after the Exxon Valdez oil spill in 1989.

The audit also notes that the legislature vastly expanded the uses of the fund to include reviews of spill-contingency plans, research, grants to municipalities for cleanup expenses, and payments on ferries that would have spill-response capabilities.

"It clearly shows that nothing the DEC has done through the years was illegal or improper," DEC administrator Bob Poe said Wednesday.

What has led to the oil industry claim and confusion over the fund is wording of the legislation that created the tax, the audit says.

It indicates the legislature's intent was for the "state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance."

But state law and legislation to expand the uses of the fund were the "overriding authority on appropriate uses of the fund," the audit says.

"I think the oil companies have a legitimate point," auditor Jim Griffin said. "This may be a situation where both parties may be right. But again, the wording they point to was slid into legislation that had an earlier intent."

The issue of the intent of a tax is moot anyway, the audit says. The legislature can use tax revenue any way it pleases.

Gray said the oil industry nonetheless feels it is inappropriate to spend a tax on crude oil on cleanups unrelated to the oil industry. But the industry is supporting legislation that would keep part of the tax indefinitely to help pay for such cleanups and for prevention programs.

WILLIAMS

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Telephone No. (907)465-5050
FAX No. (907)465-5070

March 15, 1994

The Honorable Bill Williams
Chairman, House Resources Committee
Room 128, Capitol Building
Juneau, AK 99801

Dear Representative Williams:

I want to thank you for the amount of time you have given to HB 238, and the issues surrounding the Oil and Hazardous Substance Release Response Fund. Throughout the hearings, the public testimony has been at times pointed, but reflective of a concern that deserves the attention you have given it.

There have been a number of statements (paraphrased below in italics) made regarding the uses to which the Fund has been put that require clarification.

•*We have heard that the Fund has been used to cleanup a campground.* In fiscal year 1993, $38,000 from the Response Fund was appropriated to DNR to address drinking water contamination at the Tok River Campground. A water sample showed 0.35 ppm (parts per million) petroleum hydrocarbons and trace amounts of xylene, and the source was suspected to be an old military fuel line between Haines and Fairbanks. Because this site is owned by the state and is used by both residents and tourists, it was included in the state owned contaminated sites to be addressed through the State Memorandum of Agreement. Whether the military fuel line is the source of contamination and the federal government is responsible for the associated cleanup costs has not yet been determined. If it is, we will seek cost recovery.

• *We have heard that the Fund was used to cleanup a greenhouse.* The state, through DNR, leased land for a commercial greenhouse in Soldotna. In 1984, the site was foreclosed upon, and management reverted back to DNR. The site is contaminated with dioxin, PCB, lead, and pesticides. There are also miscellaneous drums of waste oil. Starting in FY 90 under Kenai Special Projects funding (which were general funds) and continuing through FY 94, a total of $306,191 has been spent on remediation, with $219,000 coming from the Response Fund. There have been no funds expended on the construction of the greenhouse, as has been implied. All funds were expended on site assessment and cleanup of hazardous substances. The responsible party is insolvent.

• *We have heard that the Fund was used to build an airport.* In 1993, DNR removed underground fuel tanks at the airport in McGrath, and discovered extensive soil and groundwater contamination. In FY 93, $42,613 from the Response Fund was appropriated to do a site assessment. In FY 94, $123,000 from the Fund was appropriated to begin remediation, but this has not been spent while the project's priority is being conducted by DNR, who would be responsible for cost recovery. No drinking water wells appear to be threatened by this contamination but adjacent freshwater habitat may be impacted.

• *We have heard that the Fund was used to build a fish hatchery.* The only project we can identify is a project funded by the Exxon Valdez oil spill restoration fund. As part of the legislation which passed last session appropriating Exxon Valdez oil spill settlement funds (HCS CSSB 183 (FIN)), $3,250,000 was included for development of a shellfish hatchery on the lower Kenai Peninsula, $4,000,000 was included for a water delivery system connecting the Anchorage Municipal Water Utility with the Fort Richardson hatchery, and $2,000,000 was included as a grant to the Prince William Sound Aquaculture Corporation for upgrade of the Main Bay Hatchery.

• *We have heard that only the oil companies pay for all oil and hazardous substance release cleanups.* In fact, all cleanup activities that take place using the Response Fund are subject to cost recovery, even when the activity is overseeing the remediation efforts of the party responsible for the release. Where the state is the responsible party, cost recovery is not sought.

While the responsible party is notified immediately that they will be required to repay the state's costs, demand letters are normally generated at the end of the project, once most or all the state's costs are known. Therefore, it can be several months before a demand letter is sent. For example, Defense Fuels (DFSC) was the responsible party for a spill that occurred in Indian last August. The demand letter, for more than $64,000, was sent to the DFSC just a few weeks ago.

• *Finally, we have heard that the Response Fund has been mis-managed by DEC, and that it has been used as the Department's "slush fund."* To these charges, I would simply ask that you read the Audit recently completed by the Division of Legislative Audit on the Response Fund (Audit Control Number 18-4463-94). A copy has been sent to you and the members of this committee under separate cover. What the Audit will show you is that in fact the Fund has been used by DEC appropriately and within both the bounds of the statutes which govern it and the appropriations made by the Legislature.

I trust this information will be useful to the Committee as it continues its deliberations. If anything additional is needed, please do not hesitate to let me know.

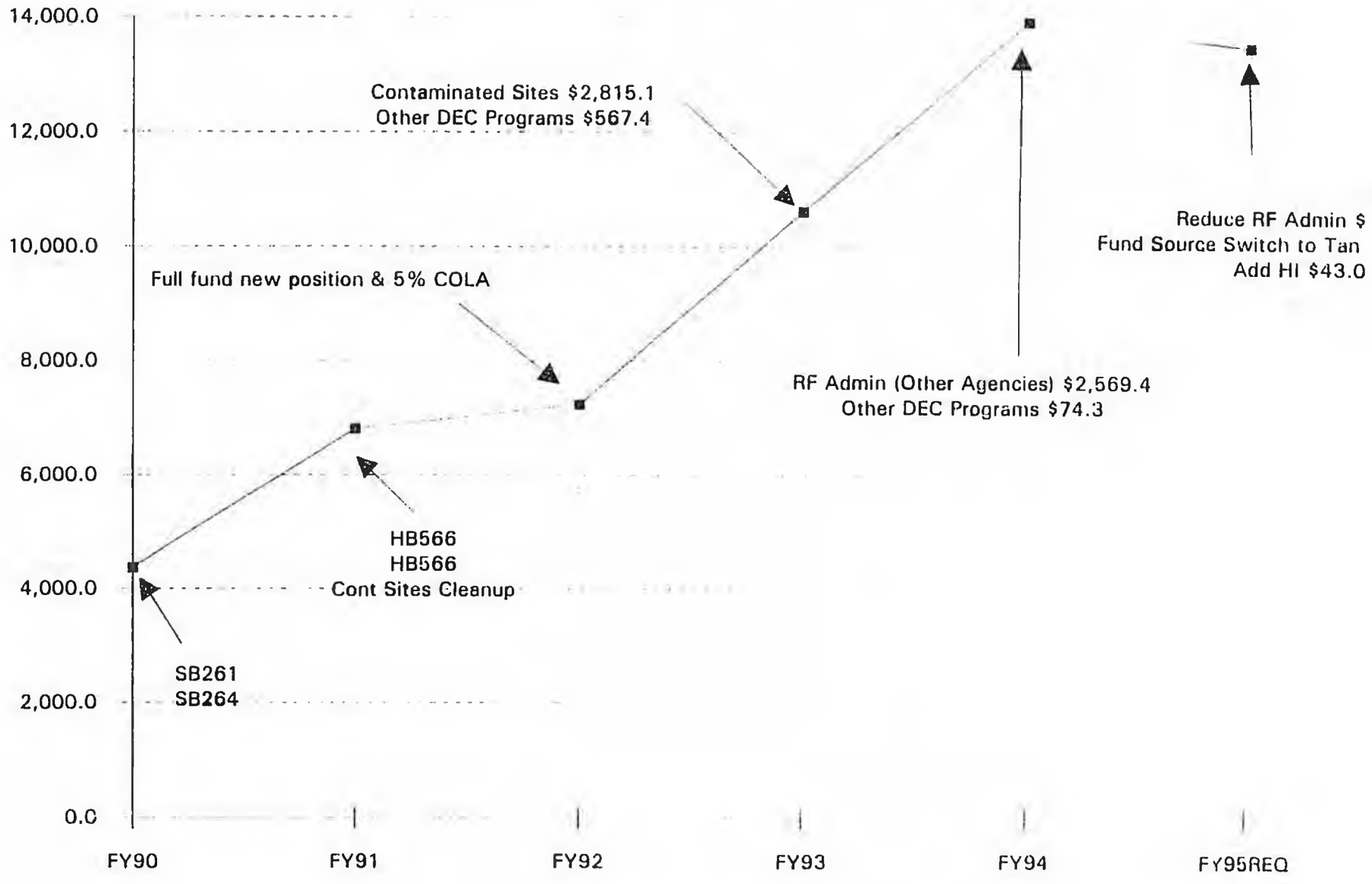
Sincerely,

John A. Sandor
Commissioner

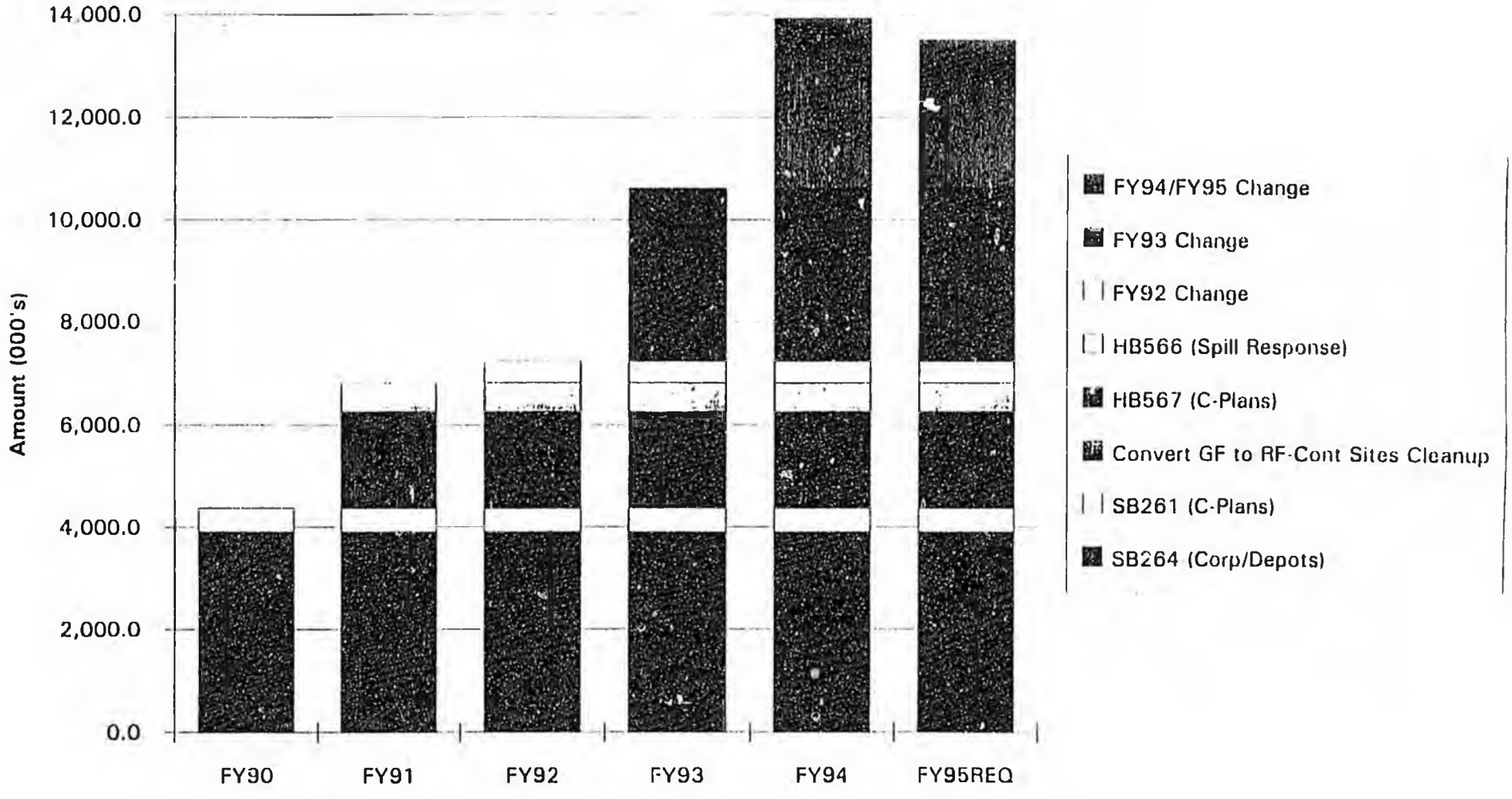
JA/MT/re (CO-COMM\REFUTE.RF)

cc: All Members, House Resources Committee
All Members, Senate Finance Committee
Pat Ryan, Chief of Staff, Office of the Governor
Shelby Stastny, Director, OMB
Raga Elim, Office of the Governor
Dick Eliason, Legislative Liaison, Office of the Governor

Department of Environmental Conservation
Response Fund Operating Budget Growth



Department of Environmental Conservation
Response Fund Operating Budget Growth



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Response Fund Appropriations
Department of Environmental Conservation
3/1/94

Operating Budget Only

Funding Auth	Operating Budget Items RF	GF	OTHER	Comments
FY90	4,371.8			
	3909.9			SB264(Corps & Depots)
	461.9			SB261(C-Plans)
FY91	2,439.0			
	518.0	(518.0)		Convert GF to RF for Cont Sites cleanup
	1,371.0			HB567(C-Plans)
	550.0			HB566 (Spill Response)
FY92	434.3			
	485.2			Full fund new fiscal note positions & 5% COLA
	182.1	(182.1)		Convert GF to RF for SPAR Director component
	(233.0)			Move Kenai cleanup to front of budget($280.0), $47.0 other miscellaneous
FY93	3,382.5			
	1,582.7			Contaminates Sites conversion from Non-operating to operating budget
	639.1	(639.1)		IAS Component conversion from GF to RF
	181.3	(181.3)		SPAR Director Component conversion from GF to RF
	102.3			SRO(Spill Response Office) component increment for response preparedness, safety & equipment
	(355.3)			SPPM(Spill Prevention/Planning Mgt) component -reduce projects/delete 1PFT to STR Council
	1,232.4			Contaminated Sites
FY94	3,312.4			
	101.5			IAS Component
	123.0			EQ Director Component-Pollution Prevention
	186.5			EQ Monitoring & Lab Component
	108.0			Storage Tanks
	224.0			Increment to SouthCentral Region for Cont Sites & Spill Response
	2,569.4			Response Fund Administration Component-other Agency funding
FY95 Request	(417.4)			
	(358.4)			Reduce RF Admin Component $358.4
	(102.0)		102.0	Fund Source switch to Tanks $102.0
	43.0			Increase Health Insurance - all Components
RF Total	13,522.6			**Less Projected Spill Reserve $49,686.8**

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	702.7		$135.5	$197.6	$1,695.1	$30.1	$1,823.3	$661.2	$4,847.5
General Fund Transfers In	80.7	$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

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EXECUTIVE SUMMARY

The Nickel-Per-Barrel Conservation Surcharge: A Review of Legislative History and Intent

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF). Similar legislation, Senate Bill 215, was introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the $0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for ***catastrophic crude oil*** spill response;
- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;
- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

It is clear from the legislative history of Senate Bill 260, which created the $0.05 per-barrel surcharge, that the intent of the legis - lation was to use the $0.05 per-barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances All versions of the legislation, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the "spill bill" package funded with the nickel-per-barrel surcharge.

In addition, **Senate and House committees did not limit use of the response fund based on the size of the spill nor did the final version of the bill.** No amendments were considered in either body to limit use of the Fund based on spill size. It was also clear that the **legislation was intended to be used to fund DEC annual operating costs of spill prevention programs for oil and hazardous substances.**

It appears that **despite recognition that the mechanism for calculating the response fund cap was complicated, there was no discussion regarding how the calculation would work under different appropriation scenarios** . All examples of the surcharge on/off switch assumed that the only source of funds into the OHSRRF would be appropriations of surcharge proceeds. However, it was recognized that in the initial years there would be insufficient revenue generated from the surcharge to pay for the other spill prevention and response legislation passed accompanied by fiscal notes showing the OHSRRF as the funding source. There was no discussion regarding the impact on fund cap calculations of general fund appropriations into the OHSRRF to fund these programs or "loans" made to the OHSRRF to pay for *Exxon Valdez* clean-up efforts.

Since 1989, the legislature has passed a number of pieces of legislation that have expanded the use of the response fund . These include development, review and revision of state and regional spill response master contingency plans; verification of financial responsibility; review of vessel and facility discharge prevention and contingency plans; conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans; development and operation of response corps and depots; grants to communities impacted by spills; operation of the Spill Response Office and the Citizens' Oversight Council on Oil and other Hazardous Substances; and construction of marine response vessels.

A 50-state survey of **other states' response funds** found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms.

Given North Slope producers' profits, **the $0.05 per barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993** . Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

TABLE OF CONTENTS

INTRODUCTION

On March 19, 1993, House Bill (HB) 238 was introduced in the Alaska House of Representatives by the House Special Committee on Oil and Gas. The bill was referred to the House Resources and State Affairs Committees. The legislation as introduced would drastically alter the purposes and uses of the Oil and Hazardous Substances Release Response Fund (OHSRRF).

Considerable opposition to the bill was expressed by the Alaska Departments of Law and Environmental Conservation at the bill's first hearing on March 24 before the House Resources Committee. With the exception of brief remarks from a representative of British Petroleum, no public testimony was heard. As a result agency concerns, Representative Green, chair, House Special Committee on Oil and Gas, proposed a new committee substitute for HB 238 (the "D" draft) on April 13, 1993.

A House Resources Committee hearing on this proposed committee substitute was held in the on April 17. Again, the Alaska Departments of Law and Environmental Conservation (DEC) voiced concerns regarding the proposed draft which was also strongly opposed by fishing organizations, environmental groups and other members of the public. As a result of continued opposition to the bill, another proposed committee substitute (the "M" draft) was released on April 20. No additional House Resource Committee hearings occurred during the legislative session. During the interim, the House Resource Committee held a hearing on HB 238, "M" draft on November 12. To date, the House Resources Committee has not adopted any of the proposed committee substitutes as the committee's working draft.

The "M" draft of HB 238 forms the basis for Senate Bill 215, introduced May 8, 1993 by Senator Miller, chair, Senate Resources Committee, and referred to the Senate Resources and Finance Committees. The Senate Resources Committee held a hearing on SB 215 on November 19, 1993. **At this hearing, Senator Miller announced that the Senate Resources Committee would meet and pass SB 215 before the end of January 1994. The Senate Resources Committee is currently holding subcommittee work sessions on SB 215**. Background on this legislation is contained in Appendix A.

A number of issues continued to surface at the hearings on HB 238 and SB 215. These include whether:

- the $0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for ***catastrophic crude oil*** spill response;

- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;

- the OHSRRF accounting mechanism for calculating the fund cap functions as intended;
- the surcharge legislation intended the OHSRRF to be used for operating expenses of the Alaska Department of Environmental Conservation (DEC), spill prevention programs and OHSRRF administration; and
- Alaska's response fund surcharge rate is excessive compared to that of other states.

This report provides information to address these issues. The first section provides an overview of the development of oil spill response funds in Alaska, including the OHSRRF. The second section examines in more detail the legislative history and intent of Senate Bill 260 which created the severance tax conservation surcharge.[1] The third section examines legislation that impacts the purposes, uses, and annual appropriation from the OHSRRF. The fourth section presents information on response funds in other states. The final section reviews the $0.05 per-barrel surcharge in the context of North Slope oil producers' per barrel profitability.

BACKGROUND ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

In 1976, the Alaska Legislature passed its first major legislation addressing the potential risk of oil spills posed from oil and gas exploration, development and production in Cook Inlet and Prudhoe Bay. This legislation, Senate Bill 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products" (Chapter 266, SLA 1976), required oil spill contingency plans and proof of financial responsibility for clean up efforts, as well as provisions for charges to be paid by terminal users and oil tanker operators based on the degree of spill risk posed by their equipment and operations. Funds collected from the program were deposited into the Coastal Protection Fund, which served as a reserve to meet cleanup costs in the event of a major spill. Also deposited into the fund were penalties collected from spillers.[2]

In 1977, the Oil Spill Mitigation Account (Chapter 129, SLA 1977) was established within the general fund. Civil penalties for discharges of oil received by the state were to be deposited into the account. The legislation provided that the Legislature may annually appropriate funds received during

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[1] Information on the legislative history is based on a thorough review of the House and Senate Journals, committee minutes of all hearings, and committee bill packets on SB 260 and other bills in the "spill bill package."

[2] Alaska Department of Environmental Conservation, memorandum from Keith Kelton to Bill Ross, "Spill Expense Reserve Account History and Status Report," February 19, 1985.

the prior calendar year for the purpose of restoring and enhancing environments affected by oil pollution.[3]

In 1978, the Coastal Protection Fund was found to be in violation of the constitutional prohibition against the dedication of funds. As a result, in 1979 Governor Hammond introduced House Bill 265, "An Act relating to the prevention and control of oil pollution." The program was to be funded by levying an assessment on oil terminal facilities. However, provisions for the assessment on terminal facilities was deleted prior to passage of House Bill 205 in 1980 (Chapter 116, SLA 1980). As a result of dedication of funds prohibitions, the non-lapsing fund was to be capitalized by annual appropriations and cost recovery from responsible parties.[4]

In 1986, House Bill 470 and Senate Bill 375, both entitled "An Act relating to the release of oil and hazardous substances" were introduced. That same year, the Alaska Legislature enacted House Bill 470 (Chapter 59, SLA 1986) which added two new chapters within Alaska Statutes (AS) 46. Alaska Statutes 46.08 established the Oil and Hazardous Substance Release Response Fund, and AS 46.09 established a Hazardous Substance Release control chapter. The legislation also repealed the pre-existing "oil spill mitigation account" and created the "oil and hazardous substance mitigation account."

Purposes of the Oil and Hazardous Substance Release Response Fund

The original purposes of the Oil and Hazardous Substance Release Response Fund (OHSRRF), commonly referred to as the "470 Fund," as stated in AS 46.08.040 were:

1) to contain, cleanup and take other necessary actions, such as monitoring, assessing, investigating and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or the environment;

2) to provide matching funds for participation in federal oil discharge cleanup activities under CERCLA for hazardous waste site investigation, evaluation, and clean up; and

3) to recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

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[3] "Oil Pollution Control Programs in Alaska: Legislative and Fiscal History," House Bill 470, House Finance Committee Bill File, March 10, 1986.
[4] Ibid.

The legislation directed the Alaska Department of Environmental Conservation (DEC) to manage the Fund, and required DEC to maintain accounting records to document income and expenditures from the Fund and provide an annual report to the legislature.

Financing of the Oil and Hazardous Substance Release Fund

House Bill (HB) 470 identified several sources of potential revenue for the OHSRRF including:

- federal and state revenues;
- moneys recovered by the state from responsible parties to cover the state's cost in the cleanup of oil and hazardous substance releases; and
- fines, penalties, and damage awards.

Under the terms of HB 470, money recovered by the state from responsible parties or as a result of fines, penalties or damage awards were to be deposited into the state general fund and credited to the newly created "Oil and Hazardous Substance Release Mitigation Account." Once in the Mitigation Account, these funds could be appropriated to the OHSRRF.

Under the terms of the original law and consistent with the Alaska constitutional prohibition against dedicated funds, it was left to the legislature to determine appropriate funding levels on an annual basis. Appropriations could be made from the general fund, the Oil and Hazardous Substance Release Mitigation Account or other sources, as needed, to the OHSRRF. However, HB 470 included a statement of legislative intent in AS 46.08.030, which states, "It is the intent of the legislature and declared to be public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available."

IMPOSITION OF THE SEVERANCE TAX CONSERVATION SURCHARGE

On April 4, 1989, following the March 24 *Exxon Valdez* oil spill in Prince William Sound, Senate Bill (SB) 260, "An Act levying a severance tax on oil" was introduced. The sponsors of the legislation were Senators Kertulla and Szymanski. In the Senate, the bill was referred to the Senate Special Committee on Oil and Gas and the Resources and Finance Committees. In the House of Representatives the bill was referred to the Resources and Finance Committees. Senate Bill 260 was one of numerous pieces of oil spill related legislation introduced after the *Exxon Valdez* spill.

As introduced, the stated purpose of the Act was "to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger." The fee was $0.05 per barrel on all crude oil produced in the state. The fee was to be deposited in to the general fund and then appropriated on an annual basis by the legislature to the OHSRRF. There was no cap on the collection of the fee.

From the date of SB 260's first committee hearing to its transmittal to the governor was less than one month; this bill moved quickly through the legislature. However, it should be noted that many of the issues currently before the Eighteenth Legislature in House Bill 238 and Senate Bill 215 were deliberated by the legislature in 1989. Committee and floor actions on Senate Bill 260 are discussed in the next section of this report.

Committee Action on Senate Bill 260

The **Senate Special Committee on Oil and Gas** , chaired by Senator Drue Pearce, met April 11, 12 and 13, 1989 on SB 260. At these hearings, SB 260 was discussed in the context of SB 271, SB 261, HB 68, SB 264 and SB 266 which pertained to civil penalties for oil spills, state and regional oil and hazardous substances contingency plans, liability for oil and hazardous substances spills, oil and hazardous substances spill response corps and depots, and an oil spill emergency containment fund, respectively. These bills are commonly referred to as the "spill bill package."[5]

The Senate Oil and Gas Committee made three major changes to SB 260. First, it adopted the funding mechanism contained in Senator Halford's SB 266. Second, a $100 million maximum fund balance was added. Third, Senator Halford's SB 266 "blackmail clause" that sought to insure appropriations from future legislatures was also added. The blackmail clause would suspend the $0.05 per-barrel fee if the legislature failed to appropriate proceeds of the fee to the OHSRRF, or if the governor vetoed the appropriation and the veto was not overridden by the legislature. With the exception of the amount of the cap, these changes remained part of SB 260 when it was passed by the Legislature.

Senate Bill 266, sponsored by Senator Rick Halford, was another oil spill related bill before the Legislature in 1989. It imposed a $0.02 per barrel levy on crude oil production to be paid to the general fund then appropriated to the oil spill emergency containment fund. The surcharge would be suspended when the fund balance reached $20 million. The fund was to be used for oil spill emergency containment of catastrophic oil spills and to support an oil spill containment strike team. This bill had provisions similar to SB 260, the

[5]Senate Special Committee on Oil and Gas minutes, April 11, 1989, pp. 1-6; April 12, 1989, pp. 1-8; April 13, 1989, pp. 1-15.

surcharge bill, and SB 264, the response corps and response depots bill. Senate Bill 266 was passed by the Senate Special Committee on Oil and Gas and the Senate Resources Committee, then withdrawn by the sponsor. When passed, however, SB 260 contained many of the provisions originally contained within SB 266. However, **provisions of Senator Halford's SB 266 which limited response to catastrophic spills and could have been interpreted to limit response to crude spills (language in the bill was unclear) were not part of SB 260.**

Another of the spill bills considered by the legislature was SB 261, relating to state and regional contingency planning. Initially, SB 261 was to have its own separate tax levy to fund state and regional master contingency plan review. The Senate Special Committee on Oil and Gas also adopted the funding mechanism from SB 266 (Senator Halford's bill) for the funding of the development and review of state and regional master contingency plans. This was later removed and the nickel per barrel conservation surcharge, 470 Fund, became the source of funding for state and regional contingency planning.

The **Senate Resources Committee**, chaired by Senator Bettye Fahrenkamp, heard SB 260 on April 19 and 21, 1989. Compared to the Senate Oil and Gas and Finance Committees, there was relatively little discussion on the bill at the Senate Resources Committee meetings. Some discussion of increasing the levy to $1 per barrel and increasing the cap to $200 million did occur. Conceptual changes were suggested for the bill but it was passed out of committee before a new committee substitute could be drafted. It was also noted by the committee chair that the set of bills---SB 260, 261, 264, 266, 271 and HB 68 would need to be changed and better coordinated by future committees. The fund maximum was set at $100 million by the Senate Oil and Gas Committee. The Senate Resource Committee contemplated increasing the cap to $200 million but informally adopted a $25 million cap which was contained in the proposed draft resources committee substitute recommended to the Senate Finance Committee.[6]

The **Senate Finance Committee** heard SB 260 on April 22 (?) and 28.[7] At the April 22 (or 26) meeting, Senator Fahrenkamp, chair, Senate Resources Committee, came before the Finance Committee and directed her remarks to SB 260, SB 261, SB 264 and SB 266. She explained that the Senate Resources Committee had a proposed draft committee substitute for SB 260 that the Resources Committee had not adopted because of insufficient time to draft the changes. Senator Uehling, co-chair of the Senate Finance Committee assigned

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[6]Senate Resources Committee bill packets and minutes, April 19, 1989, pp. 1-6; April 21, 1989, pp. 1-9.

[7]There is some confusion because the Senate Finance Committee minutes indicate that the meeting occurred on April 22, 1989 but the proposed CS is dated April 26. It is likely that the committee meeting was actually on April 26.

SB 260 to a Finance subcommittee chaired by Senator Pearce and consisting of Senators Duncan and Uehling.[8]

At the April 28 Finance Committee hearing, SB 260 was heard with SB 261, SB 264, and SB 271. There was a more in-depth overview and lengthy discussion of the bill. The proposed Resources Committee Substitute was adopted as a working document. Principal points of discussion were as follows:

- The purpose section ("....to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger.") was expanded to a findings and purpose section that was similar to the findings and purpose sections contained in the other oil spill bills. It added the finding 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 clean up capability in the event of future discharges of oil or hazardous substances." The purpose was expanded to "provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substances releases of a magnitude that presents a grave and substantial threat to the economy and environment of the state."

- The fee would not be charged to fuel barges on rivers because they transport refined products rather than crude oil.

- Senator Pearce explained that Sections 42.59.050 and 42.59.60, the "blackmail clause sections," were included to ensure that the legislature appropriate money into the response fund on a long-term basis--that in the past **the legislature has not demonstrated "a great deal of staying power"** when it comes to setting up a new fund and ensuring annual appropriations as evidenced by the current balance of the oil and hazardous substance release response fund.

- Jack Chenoweth, legislative council, gave a lengthy explanation of how the "on/off" provisions of the bill would work. This was explained in the context of the fiscal notes for SB 261 and SB 264 which would use approximately $4.5 million annually during the initial years.

- Senator Uehling noted that 13 different pieces of legislation were pending, and that if they all passed, more than $4.5 million would be needed from the fund.

- Senator Pearce noted that the effect of additional expenditures would be that the tax would remain on for a longer period of time. If the cap were

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[8]Senate Finance Committee bill packet and minutes, April 22, 1989, pp. 1 and 17-26; April 28, 1989, pp. 1-2, 6-21, and 31-32.

raised from $25 million to $70 million, as discussed, it would have the same effect.

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statutes.

- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.

- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the wellhead and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.

- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.

- Senator Zharoff voiced that the $25 million cap was inadequate. He suggested that the cap be $50 million. Following a review of Department of Revenue projection of revenues, the $50 million cap was adopted without objection.

- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

Senate Bill 260 was passed out of the Senate Finance Committee on April 28, 1989. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The final finance committee substitute changed the title, the findings and purpose section, defined the levy more

specifically as a surcharge, established the fund cap at $50 million, clarified that the surcharge does not diminish the liability of a responsible party, and added a severability section.

The only **public testimony presented to the Senate Finance Committee** was by the Alaska Environmental Lobby which voiced support for the bill but preferred the original bill. In addition, they preferred a larger fee as well as a higher cap.

Senate Bill 260 was passed by the **Senate** on April 29, 1989. Three amendments were offered and two were passed on the floor. The first amendment was offered by Senator Adams to increase the surcharge to $0.50 per barrel. This failed on a vote of 2 yeas and 18 nays. Amendment number two, removing the severability clause, was offered by Senators Pearce, Halford and Faiks.[9] It passed on a vote of 12 yeas and 8 nays. Amendment number three, inserting the surcharge amount of $0.05 per barrel in the bill title was offered by Senator Pearce. This amendment passed by a vote of 13 yeas and 7 nays. The effect of the title change amendment was to make it more difficult for the House to change the per barrel amount of the surcharge because it would require a three-quarters vote to change a senate bill title in the house.[10]

Senator Halford gave a notice of reconsideration. At reconsideration, Senator Adams asked to return to second reading for the purpose of a specific amendment. Senator Adams offered amendment number four, which would delete the $0.05 per barrel reference from the title, establish an interim surcharge of $0.50, and make the law effective immediately. Amendment number four failed 8 yeas to 12 nays.

The **House Resource Committee** heard SB 260 on May 4, 1989. There was little discussion on the bill and no changes. The one topic of discussion was the complicated mechanism for the surcharge to be imposed or suspended depending on the fund balance. There was a memorandum from the Legislative Affairs Agency, Division of Legal Services in the committee packet explaining how the mechanism worked. An indeterminate fiscal note dated April 28, 1989 by the Department of Revenue was attached to the bill. The Alaska Environmental Lobby testified in support of the bill; no other public testimony was presented.[11]

The **House Finance Committee** heard SB 260 on May 6. The bill was heard with SB 261, state and regional master plans, and SB 264, response corps and depots. There was relatively little discussion regarding SB 260. Senate Bill

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[9]Severability allows a portion of law that is found to be invalid by the courts, to be "severed" from the remainder of the law. Specifically regarding SB 260, the Senate Finance Committee was concerned that the blackmail clause may be found invalid.

[10]Information on floor debate is from the Senate Journal, 1989, pp. 1526-1529, 1536-1538.

[11]House Resources Committee bill packet and minutes, May 4, 1989, pp. 1, 6-7, 14-15.

260 was identified as the funding source for the programs contained in other pieces of legislation. There was discussion regarding whether the planning and response corps and depot programs should be funded with general funds or response funds (i.e. whether the funding should be contained with the rest of DEC's annual budget or be in the front section of the annual budget where funding for the 470 Fund is located). A motion to amend SB 261's fiscal note to identify general funds as the funding source failed.[12]

Senator Kertulla, prime bill sponsor of SB 260, gave a brief overview of the legislation. Representative Koponen asked if the "blackmail clause" was constitutional; he was told that legal counsel had advised that the bill would be viable without the severability clause that was removed on the Senate floor. The bill was moved from committee with a do pass recommendation. The same April 28 "indeterminate" (uncertain) fiscal note from the Department of Revenue was attached. No public testimony occurred.

Senate Bill 260 was scheduled on the **House Floor** on May 8, 1989. It passed with a vote of 26 yays and 10 nays and received a notice of reconsideration.[13] On reconsideration, the bill passed 30 yeas and 10 nays. No amendments were offered on the House floor.

It is clear that the intent of the legislation was to use the $0.05 per - barrel surcharge to fund prevention and response programs for all types of oil and hazardous substances. All versions of SB 260, including the final version, include the words "oil and hazardous substances" throughout. The reference to "oil and hazardous substances" is also contained throughout the related bills in the spill package funded with the nickel-per-barrel surcharge .

In addition, the legislation that passed the Senate and House did not limit use of the response fund based on the size or type of the spill. It was also clear that the legislation was intended to be used to fund DEC spill prevention programs for oil and hazardous programs because the 470 Fund is the funding source on the fiscal notes attached to the legislation that created these programs. This topic was also discussed at the Senate Special Committee on Oil and Gas,[14] and in the context of the other spill bills in the other committees of referral.

It is also clear that **despite recognition that the mechanism for calculating the fund cap was complicated, there was no discussion as to how the calculation would work if mitigation money or general funds were appropriated to the OHSRRF. All examples of the**

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[12]House Finance Committee packet and minutes, May 6, 1989, a.m., pp. 1-12.

[13]Information on floor debate is from the House Journal, 1989, pp. 1629, 1722, 1737-1738, 1774, 1776-1777, 1846-1848.

[14]Senate Special Committee on Oil and Gas, minutes, April 12, 1989, p. 6.

surcharge on/off switch assumed that the only source of funds appropriated to the OHSRRF would be proceeds of the surcharge .

However, Senator Bettye Fahrenkamp recognized that in the first years there would be insufficient revenue generated from the surcharge to fund the other pieces of legislation passed with fiscal notes showing the OHSRRF as the source of funds. In addition, at the April 22, 1989 Senate Finance Committee hearing, Senator Halford also raised concerns as to whether enough thought had gone into the funding mechanism--that he perceived there could be problems. He stated that if others wanted to adopt sections of his SB 266, that was fine but he was disassociating himself with SB 266 and the other bills. **There was no discussion of the impact of general fund appropriations into the OHSRRF on fund cap calculations.**

Public Testimony on Senate Bill 260

There was relatively little public testimony on the bill. The only oil industry testimony on SB 260 occurred on April 13, 1989 in the Senate Special Committee on Oil and Gas when persons representing Exxon, Alyeska and ARCO Alaska testified generally in opposition to the surcharge. It was recommended that causes of the *Exxon Valdez* spill be studied before the Legislature enact any new legislation. In contrast, Jim Palmer, representing British Petroleum testified that penalties for spillers could be increased to support a spill containment fund. Testimony from the public and environmental groups generally advocated increasing the per barrel surcharge and the cap on the fund; this was expressed at most of the hearings.

LEGISLATION EXPANDING USE OF THE RESPONSE FUND

In 1986 the legislation which created the OHSRRF stated that it was the intent of the legislature that "funds for the abatement of a release of oil or a hazardous substance will always be available." Until FY 89, the Response Fund received money from the general fund and from responsible parties of spills. After the *Exxon Valdez* accident in March 1989, special appropriations were made including money from program receipts (money loaned from the general fund). Since fiscal year (FY) 91, however, the primary funding source has been the $0.05 per barrel conservation surcharge (AS 43.55.200).

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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Amendments to Uses of the Fund

The legislature made changes to the fund in 1989, 1990, and 1991. These changes expanded use of the OHSRRF to include funding for:

- spill response during emergency disasters declared by the governor;
- operation of the spill response office;
- preparation of state and regional discharge prevention and contingency plans;
- development and operation of response corps and depots managed by the state Division of Emergency Services, Department of Military and Veteran Affairs;
- review of vessel and facility discharge prevention and contingency plans;
- grants issued by the Alaska Department of Community and Regional Affairs for spill impacted communities;
- state Emergency Response Commission and the Local Emergency Planning Committees;
- conducting training, response exercises, inspections and tests to verify response capability stated in contingency plans;
- verification of proof of financial responsibility;
- operation of the Citizens' Oversight Council on Oil and Hazardous Substances; and
- refurbishment or construction of marine response vessels by the state Department of Transportation and Public Facilities.

Table 1 shows the year, session law, bill number and primary impact of the legislation passed.

Table 1

Legislation Expanding the Uses of the Oil and Hazardous Substance Release Response Fund, 1989 through 1991.

Legislation Enacted 1989 Session

SLA 89 Chapter 29 **SB 256**
Expanded Municipal reimbursements for Response Fund

SLA 89 Chapter 112 **SB 260**
Established nickel-per-barrel surcharge on oil industry production.

SLA 89 Chapter 90 **SB 261**
Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay cost of Sate and Regional Plans.
Expanded use of the Response Fund to include restoration of the environment.

SLA 89 Chapter 90 **SB 264**
Established Response Office in DEC for catastrophic or declared emergency spills.
Established emergency response equipment depots in DEC's Response Office.
Established emergency response volunteer corps in DEC's Response Office.
Expanded use of the Response Fund to pay for Response Office and Depot and Corps.

Legislation Enacted 1990 Session

SLA 90 Chapter 190 **HB 566**
Added incident command system requirement to State and Regional Plans.
Required DEC to use State plan to designate depot and response office locations.
Required DEC to submit the State Master and Regional Plans and revisions to the State Emergency Response Commission for review and approval.
Transferred responsibility to establish depots and corps to the Dept. of Military & Veteran Affairs, Division of Emergency Services (DES).
Established Sate Emergency Response Commission (SERC).
Established Local Emergency Planning Committees (LEPCs).
Established Hazardous Substance Spill Technology Review Council (HSSTRC).

SLA 90 Chapter 191 **HB 567**
Required industry contingency plans to include prevention measures.
Added certification requirement for approved contingency plans.
Clarified proof of financial responsibility and limits liability for tank vessel or oil barge operations.
Established DEC participation in structural integrity of vessels, barges, pipelines and facilities.

Table 1 continued

Expanded use of Response Fund to include:

Review of oil discharge prevention and contingency plans
Conduct training, response exercises, inspections, tests to verify approved contingency plans.
Verify financial responsibility.

SLA 90 Chapter 199 **HB 578**
Established Citizens' oversight council.
Expanded use of Response Fund to include Citizens' Oversight Council costs.

Legislation Enacted 1991 Session

SLA 91 Chapter 48 **SB 165**
Expanded use of Response Fund to include construction of marine response vessels.

SLA 91 Chapter 83 **SB 25**
Expanded uses of Response Funds to municipal grants.

SLA 91 Chapter 31 **SB 194**
Required the Board of Marine Pilots to cooperate w/ DEC in the review and approval of training programs for pilots of tanker vessels.

SLA 91 Chapter 92 **SB 196**
Required the Citizens' Oversight Council to submit a report on response action contractor liability.

SLA 91 Chapter 90 **SB 263**
Provided a one-year delay for compliance of non-crude oil operation with financial responsibility requirements.
Authorized DEC to issue interim approval for contingency plans.

Source: Alaska Department of Environmental Conservation, unpublished funding history information.

OTHER STATES' RESPONSE FUNDS

In March 1993, the *Oil Spill U.S. Law Report* published an article containing information from a 50-state survey entitled "State fees on oil for spill response and administrative costs." In April 1993, the Alaska Legislative Research Agency released a research memorandum containing the *Oil Spill U.S. Law Report* article as well as results of interviews conducted with spill response fund administrators in California, Florida, Louisiana,, New Jersey, Texas, and Washington. These reports are contained in Appendix B. This section summarizes the results of the survey and interviews and provides additional analysis.

In summary, the 50-state survey found that **agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the U.S. charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.**

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administrative costs to the reimbursement of cleanup/remediation expenditures.[15] Some funds are treated as insurance policies, while others are financed primarily through the collection of penalties. Likewise, some fee/fund systems are designed so that the fund can reach a cap at which point the fee is shut off, while others are designed to generate the same amount of available money each year.[16]

At the time of publication, the states of Montana, New Hampshire, Virginia and Idaho were either changing the mechanism for collecting the fee or increasing or expanding the applicability of the charge. In addition, Hawaii House Bill 1194 would establish a 6-cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at $7 million.

Types of Response Funds

Of the 28 states that assess a per-gallon or per-barrel fee, the types of fees generally fall into three categories. The first type is assessed by nine of the states (Alaska, California, Florida, Louisiana, New Jersey, New York, Oregon, Texas, and Washington) that are major oil producers and/or processors. In addition, all of these states are coastal states, most of which have extensive programs to protect their marine environments and communities from potential oil spill impacts. These states assess a per-barrel charge on oil produced in, entering, or transported through the state. The volume of oil transported through these states or along their coastlines is significantly greater than other states which increases the risk of spills.

The second type of state program is a broader-based assessment charged on a per-gallon basis for all petroleum products entering or sold in the state. These funds appear to be used for a wider range of cleanup activities as opposed to the third type of program that is directed primarily toward leaking underground storage tanks. Twelve states (Delaware, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, South Dakota, Vermont, Wisconsin and Wyoming) have this second, broader type of program.

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[15] *Oil Spill U.S. Law Report*, March 1993, p. 12.
[16] Ibid.

The third type of program is primarily a per-gallon assessment on all petroleum products entering or sold in the state but the proceeds of the funds are directed primarily toward underground storage tank release clean up. Seven (Arizona, Idaho, Maryland, Michigan, Missouri, Oklahoma, South Carolina, and Virginia) of the 28 states have this type of program.

Of the latter two types of programs, Wyoming is the only state that assesses the fee directly on retail fuel consumers. Most of the states charge the fee to the first importer of fuels into the state or to fuel distributors. The latter two types of fees are primarily assessed on non-crude products because that is the predominate, if not only, form of petroleum products in the state.

Nine states (Arizona, California, Florida, Kansas, Maine, Maryland, New Hampshire, Washington, and Wyoming) have more than one account or fund. In five of the nine states (California, Florida, Maine, Maryland, and New Hampshire), separate assessments are collected to provide revenue to the different accounts. In the remaining states, the assessments are funneled into separate funds or accounts to be used for different purposes.

The next sections on other states' response funds focuses on the nine states with the first type of fund discussed above. Alaska's OHSRR Fund is included in this first type.

Response Funds Tax Rates

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.**

Florida and New Jersey have variable rate assessments. In Florida, the two cent charge can be increased to ten cents in the event of a major spill. Similarly, in New Jersey the one and one half cent assessment can be increased to four cents. Calculation of the mean rate using the Florida and New Jersey maximum rates results in an average charge of 7.1 cents per barrel. Similarly, if California's combined fee (29 cents) and Florida and New Jersey's maximum fee are used to calculate the average fee, the average increases to 7.6 cents per barrel. It should be noted that Oregon is not included in these calculations because it assesses a per-trip, as opposed to a per-barrel, fee.

Types of Products Assessed Response Fees

The states of Alaska, Louisiana and Texas per-barrel charges are only on crude oil; in each of these states, spill prevention and response programs

include crude oil, other petroleum products and hazardous substances. In California, Florida and Washington, all petroleum products are assessed the per-barrel fee and are included in response. The state of New Jersey's per-barrel assessment includes charges on hazardous substances as well as crude and refined petroleum products. Oregon's assessment, as well as its spill prevention and response programs, is on both crude and non-crude products.

Uses of Response Funds

In all of the nine states, **the charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs** . In California and Washington, a separate assessment is charged for operating costs while a response fund with a maximum balance is collected under a separate assessment. **None of these states limit use of response funds based on the size of a spill.** The only exception to this is Washington where spill responses costing less than $50,000 total are to be paid from agency operating budgets. Alaska's fund has a similar provision for DEC response costs below $25,000.

Of the nine states with a primary revenue source being a per-barrel assessment on crude oil, the purposes of the funds include spill clean up, as well as operating prevention programs and administering the fund. **In none of the nine states is spill response limited to crude oil or to catastrophic spills.**

CONSERVATION SURCHARGE IN THE CONTEXT OF NORTH SLOPE PROFITABILITY

In October 1993, Dr. Richard A. Fineberg presented a paper entitled "Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures" at the 15th Annual North American Conference of the International Association for Energy Economics (Appendix C). This paper was a continuation of Mr. Fineberg's research for the Alaska Senate Finance Committee completed in November 1992 and a study by Dr. Edward B. Deakin for the Alaska Department of Revenue completed in March 1989.[17]

The focus of the October 1993 study is the **balancing of environmental risks against the costs of prevention and mitigation measures** . Specifically, Dr. Fineberg's study compares the costs of 1) installation of a vapor emissions recovery system to capture potentially toxic emissions vented

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[17]Richard Fineberg, "North Slope Profits and Production Prospects," report to the Alaska Senate Finance Committee, November 11, 1992 and Edward B. Deakin, "Oil Industry Profitability in Alaska 1969 through 1987," prepared for the Alaska Department of Revenue, March 15, 1989.

during loading and off-loading tankers at Valdez, and 2) specially designed tractor tugs to handle a disabled tanker. These costs are reviewed within the context of North Slope oil producer profits. The North Slope profit calculations presented in Dr. Fineberg's study are used to review the relative impact of the severance tax conservation surcharge on North Slope producers' profits.

In summary, Dr. Fineberg estimates that for the calendar years (CY) 1987 through 1992, the average profit on North Slope production was approximately $5.05 per-barrel. Total North Slope producers' profits for the years 1986 through 1992 are estimated to be $25.9 billion, or $3.7 billion per year (in 1993 dollars). In CY 1991, the industry average profits are estimate to be $4.77 per-barrel (Table 3). In CYs 1992 and 1993, profits are estimated to be $4.80 and $4.11 per-barrel, respectively. Using December 1993 Alaska Department of the Revenue data and an average price per-barrel of $10.40, Dr. Fineberg's recent estimate of North Slope profits is $1.62 per-barrel.

For comparison, Dr. Deakin estimated 1969 through 1987 average profits of $6.69 per barrel and 1977 through 1987 average profits of $5.81 per barrel. His 1986 "low-price estimate" was an average profit of $2.40 per barrel.

Given North Slope producers' profits, the $0.05 per-barrel severance tax conservation surcharge is equivalent to approximately one percent or less of North Slope oil producer average per-barrel profits from 1987 through 1993 (Table 3). Even with oil prices at historic lows, the surcharge accounts for only three percent of per-barrel profits in December 1993.

Table 2.
Nickel-per-Barrel Surcharge in the Context of Estimated North Slope Profits

Year	Estimated Average Price /---------1993 $ / barrel---------/	North Slope Production and Pipeline Profits	Conservation Surcharge % of Profits
CY 1987-92		$5.05	1.0%
CY 1992	$17.66	$4.80	1.0%
CY 1993	$15.40	$4.11	1.2%
Dec-93	$10.40	$1.62	3.1%
FY 2000 (low)	$17.86	$4.94	1.0%
FY 2000 (mid)	$20.20	$5.90	0.8%
FY 2000 (high)	$21.17	$6.39	0.8%

Source: Fineberg 1992, 1993 and recent estimates by Fineberg for December 1993 oil prices.

CONCLUSION

In conclusion, the OHSRRF was developed in 1986 to respond to releases and threatened releases of oil and hazardous substances, to fund clean up of sites contaminated by oil and hazardous substances, and to recover costs of response and clean up from responsible parties. After the *Exxon Valdez* oil spill, the nickel-per-barrel conservation surcharge legislation was enacted to ensure adequate funding would be available in the OHSRRF for response to any future spills.

While the surcharge is a per-barrel tax on crude oil production in Alaska, it is clear from the legislative history that the surcharge levy is not intended to fund only crude oil response. Nor is response limited to large or "catastrophic" spills.

A number of pieces of legislation have been passed since 1989 that expand the Alaska Department of Environmental Conservation spill prevention, clean up, and oversight programs. These pieces of legislation have expanded the purposes and use of the OHSRRF and increased expenditures from the fund.

A 50-state survey of other states' response funds found that agencies in nearly all the states charge some sort of fee on facility and/or vessel owners and operators to fund oversight activities. The majority of states (28 states) in the United States charge a per-gallon or per-barrel fee on oil itself (either on crude oil, motor fuels, or on other types of petroleum) to be used in the event of a leak or spill.

Of the nine states that are major producers, refiners or transporters of petroleum products, the response fund charges range from one and one half cents per barrel in New Jersey to 25 cents per barrel in California (or 29 cents in California if the two separate fees collected on each barrel of oil are combined). **The mean rate is 5.8 cents per barrel.** If California's combined fee (29 cents) and Florida and New Jersey's maximum fees are used to calculate the average, the average increases to 7.6 cents per barrel.

The charges provide revenues for spill prevention programs, spill response and the administrative costs of operating these programs. None of these states limit use of response funds based on the size of a spill. None of the states limited response action or use of response funds by crude or non-crude product forms. In the context of other states' response funds and Alaska North Slope producers' profits, Alaska conservation surcharge is not unreasonable.

Appendix A

Senate Bill 215 and Background Information

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR MILLER

Introduced: 5/8/93
Referred: RES, FIN

A BILL

FOR AN ACT ENTITLED

"An Act relating to and redesignating the oil and hazardous substance release response fund and to its use in the event of a disaster emergency; repealing the authority in law by which marine highway vessels may be designed and constructed to aid in oil and hazardous substance spill cleanup in state marine water using money in the oil and hazardous substance release response fund; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures related to oil or hazardous substances; amending the authority to contract to provide personnel to respond to a release or threatened release of oil or a hazardous substance and to contract to conduct spill related research; reassigning responsibility for the oil and hazardous substance response corps and for the emergency response depots to the Department of

Environmental Conservation, and for the operation of the state emergency response commission and its attendant responsibilities for the local emergency planning commissions to the Department of Military and Veterans' Affairs; and modifying definitions of terms relating to the preceding provisions; terminating the nickel-per-barrel oil conservation surcharge; levying and collecting two new oil surcharges; and providing for the suspension and reimposition of one of the new surcharges; and providing for an effective date."

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

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

(g) In addition to any other powers conferred upon the governor by law, the governor may, under AS 26.23.010 - 26.23.220,

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

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

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

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

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

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

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

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

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

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

(11) use money from the oil and hazardous substance release **prevention and** response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

*** Sec. 2.** AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster,

(1) in the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance release prevention and response fund, and thereafter the governor may have second recourse to money regularly appropriated to state and local agencies and third recourse to money available in the disaster relief fund;

(2) if the disaster does not involve an oil or hazardous substance release or discharge,

(A) the **governor shall have** first recourse [SHALL BE] to money regularly appropriated to state and local agencies**; and**

(B) the governor shall have further [. THE SECOND] recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE

DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED BY AS 37.07.080(e),

(1) TRANSFER AND SPEND MONEY APPROPRIATED FOR OTHER PURPOSES; OR

(2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO YEARS].

* Sec. 3. AS 26.23.050 is amended by adding a new subsection to read:

(d) If money available from a source identified in (b) of this section is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

(1) transfer and spend money appropriated for other purposes; or

(2) borrow money for a term not to exceed two years.

* Sec. 4. AS 29.60.510(a) is amended to read:

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

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

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

(3) the governor finds that

(A) the release of the oil or hazardous substance into the environment presents a real and substantial threat to the economy and public

welfare of the municipalities and villages that are affected by the release and by the resultant activities to contain and clean up the release; and

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

* **Sec. 5.** AS 29.60.510(b) is amended to read:

(b) For each disaster emergency declared by the governor under AS 26.23.020 **that involves a catastrophic oil release or threatened catastrophic oil release**, and subject to agreement with the commissioner of environmental conservation as to the amount of money in the fund that may be used by the department to make grants, the commissioner may expend not more than $10,000,000 [OF THE BALANCE OF THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the unrestricted balance of the **catastrophic oil release response account in the** fund for grants authorized under this section. **For each disaster emergency declared by the governor under AS 26.23.020 that involves a release or threatened release of oil or a hazardous substance, except a catastrophic oil release, and subject to appropriation of money in the fund that may be used by the department to make grants, the commissioner may expend not more than the amount appropriated from the oil and hazardous substances release contingency and abatement account in the fund for grants authorized under this section.** If the commissioner and the commissioner of environmental conservation do not agree on the amount of money in the **catastrophic oil release response account in the** fund that may be used by the department to make grants under AS 29.60.500 - 29.60.599 **for a catastrophic oil release or threatened catastrophic oil release**, the governor shall make the determination.

* **Sec. 6.** AS 29.60.560(e) is amended to read:

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

(1) the commissioner and the commissioner of environmental conservation mutually agree that payment may be made from money in the oil and

hazardous substance release **prevention and** response fund not transferred under AS 29.60.510(c); or

(2) the commissioner pays them from another source.

* **Sec. 7.** AS 29.60.599(4) is amended to read:

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

* **Sec. 8.** AS 37.14.410 is amended to read:

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

(b) A percentage of each payment deposited in the general fund under (a) of this section shall be credited to the **oil and hazardous substances release contingency and abatement account established in** [OIL AND HAZARDOUS SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020. That percentage is determined by dividing

(1) the amount of the expenses for which the state may be reimbursed under (a) of this section that were paid from the [OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

(2) the total amount of expenses for which the state may be reimbursed under (a) of this section.

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

Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay a surcharge of $.03 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

(1) and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and

(2) the surcharge imposed by AS 43.55.300 - 43.55.320.

(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.

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

Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 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.

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

Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The legislature may appropriate the annual estimated balance of the account established under AS 43.55.211 to the catastrophic oil release response account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

* **Sec. 12.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE SURCHARGE. (a) Except when a different time for making a determination is required under (f) of this section, not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money that has been

(1) deposited through that calendar quarter, or was received through that calendar quarter and is subject to deposit, into the catastrophic oil release response account of the oil and hazardous substance release prevention and response fund established by AS 46.08.010;

(2) deposited through the calendar quarter, or was received through the calendar quarter and is subject to deposit, into the catastrophic oil release response mitigation account under AS 46.08.025(b);

(3) expended through that calendar quarter from the catastrophic oil release response account of the oil and hazardous substance release prevention and response fund.

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

(1) add the amounts determined under (a)(1) and (2) of this section;

(2) determine the difference between the amount determined under (1) of this subsection and the amount determined under (a)(3) of this section; and

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

(c) In making the determination required by (b) of this section, the commissioner of administration may not consider within the calculation money described in (a) of this section that was received subject to a dedication imposed by the federal government that restricts the use of the money to a specific purpose.

(d) 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 43.55.201. 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 43.55.201 that the surcharge will be suspended.

(e) Except as provided in AS 43.55.241, 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 43.55.201. 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 43.55.201 that the surcharge will be reimposed.

(f) Notwithstanding the requirement of (a) of this section that the cumulative determination of receipts and expenditures be made quarterly, when the amount determined under (b) of this section is $45,000,000 or more, the commissioner of

administration shall make the determinations required by this section not later than 30 days before each calendar quarter and every 30 days thereafter.

* **Sec. 13.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by AS 43.55.201 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 prevention and 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 catastrophic oil release response account in the oil and hazardous substance release prevention and response fund sufficient to restore the balance of that account 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 catastrophic oil release response account in the oil and hazardous substance release prevention and response fund sufficient to restore the balance of that account 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.

* **Sec. 14.** AS 43.55 is amended by adding new sections to read:

ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay a surcharge of $.02 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

(1) and shall be paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and

(2) the surcharge imposed by AS 43.55.201 - 43.55.241.

(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.

Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into the general fund.

(b) The commissioner of administration shall separately account for all proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general fund.

Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The legislature may appropriate the annual estimated balance of the account established under AS 43.55.310 to the oil and hazardous substance release contingency and abatement account in the oil and hazardous substance release prevention and response fund established by AS 46.08.010.

* Sec. 15. AS 43.55.900(3) is amended to read:

(3) "catastrophic oil discharge" **means**

(A) an oil release or discharge in excess of 100,000 barrels; or

(B) any other oil release or discharge that the governor determines presents a grave and substantial threat to the economy or environment and for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c) [HAS THE MEANING GIVEN IN AS 46.04.900];

* Sec. 16. AS 43.55.900(15) is amended to read:

(15) "surcharge" means

(A) when used in AS 43.55.201 - 43.55.241, the surcharge levied by **AS 43.55.201** [AS 43.55.200]**;**

(B) when used in AS 43.55.300 - 43.55.320, the surcharge levied by AS 43.55.300;

* Sec. 17. AS 46.04.030(e) is amended to read:

(e) 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 **take containment and cleanup and**

other necessary action 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. 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.

* **Sec. 18.** AS 46.04.030(e) as amended by sec. 11, ch. 83, SLA 1992, is amended to read:

(e) 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 **take containment and cleanup and other necessary action 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.

* **Sec. 19.** AS 46.04.200(a) is amended to read:

(a) The department shall

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

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

(3) revise the statewide master oil and hazardous substance discharge prevention and contingency plan; the department shall revise the statewide master plan whenever, in the judgment of the commissioner, revision is necessary.

* **Sec. 20.** AS 46.04.200(c) is amended to read:

(c) In preparing and annually reviewing the state master plan, the commissioner shall

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

(2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW AND COMMENT;

(3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

(4)] require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section [; AND

(5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW AND APPROVAL UNDER AS 46.13.045].

* **Sec. 21.** AS 46.04.200 is amended by adding a new subsection to read:

(d) In preparing a revision of the statewide master plan, the commissioner shall submit

(1) the draft plan to the

(A) public for review and comment; and

(B) Alaska State Emergency Response Commission for its review and approval under AS 46.13.045; and

(2) the proposed revision of the plan to the legislature for review not later than the 10th day following the convening of each regular session.

* Sec. 22. AS 46.04.210(a) is amended to read:

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

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

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

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

* Sec. 23. AS 46.04.210(b) is amended to read:

(b) The provisions of **AS 46.04.200(b) - (d)** [AS 46.04.200(b) AND (c)] apply to preparation and review of a regional master plan under this section.

* Sec. 24. AS 46.04.900(2) is amended to read:

(2) "catastrophic oil discharge" means

(A) an oil **release or** discharge in excess of 100,000 barrels; [,] or

(B) any other **oil release or** discharge **that** [WHICH] the governor determines presents a grave and substantial threat to the economy or environment **and for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c)** [OF THE STATE];

* Sec. 25. AS 46.08.005 is amended to read:

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the

catastrophic release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a [READILY AVAILABLE] fund **containing two accounts. Within the fund,**

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the Department of Environmental Conservation **during an emergency first response to a catastrophic release or threatened** [AND THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE STATE FROM THE] release of oil **and for related purposes intended to address catastrophic oil releases;**

(2) the other account consists of money that the state may use during a response to a release or threatened release of oil or a hazardous substance, other than a catastrophic oil discharge, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law [OR HAZARDOUS SUBSTANCES].

*** Sec. 26.** AS 46.08.010(a) is amended to read:

(a) There is established in the state general fund the oil and hazardous substance release **prevention and** response fund. The fund shall be administered by the commissioner. **The fund is composed of two accounts,**

(1) the oil and hazardous substances release contingency and abatement account;

(2) the catastrophic oil release response account.

*** Sec. 27.** AS 46.08.010(b) is amended to read:

(b) Money from an appropriation made to **an account in** the fund remaining in **that account** [THE FUND] at the end of a fiscal year remains available for expenditure in successive fiscal years.

*** Sec. 28.** AS 46.08.010(c) is amended to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in **AS 46.08.040(a)(2)(D)(ii) for the equipment that is required for and placed in the oil and hazardous substance response depots** [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

* **Sec. 29.** AS 46.08.020 is amended to read:

Sec. 46.08.020. FINANCING OF THE **OIL AND HAZARDOUS SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT** [FUND]. (a) The legislature may appropriate from the following sources to the **oil and hazardous substances release contingency and abatement account in the** fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site**, to the extent that the money recovered or otherwise received had been paid out of the oil and hazardous substances contingency and abatement account**, but excluding

(A) money recovered or otherwise received due to a catastrophic oil discharge; and

(B) money [FUNDS] from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action; **and**

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance**, but excluding fines, penalties, or damages recovered or otherwise received due to a catastrophic oil discharge**.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous **substances** [SUBSTANCE] release **contingency and abatement** mitigation account." The legislature may annually appropriate to the **oil and hazardous substances release contingency and abatement account in the** fund from **the oil and hazardous substances release contingency and abatement mitigation** [THIS] account a sum equal to the amount received under (a)(2) and (a)(3) of this section

during the calendar year preceding the legislative session in which the appropriations are to be made.

* **Sec. 30.** AS 46.08 is amended by adding a new section to read:

Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE RESPONSE ACCOUNT. (a) The legislature may appropriate from the following sources to the catastrophic oil release response account in the fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of a catastrophic oil discharge, but excluding money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 - 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil discharge.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "catastrophic oil release response mitigation account." The legislature may annually appropriate to the catastrophic oil release response account in the fund from the catastrophic oil release response mitigation account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

* **Sec. 31.** AS 46.08.040(a) is amended to read:

(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money

(1) from the **catastrophic oil release response account in the** fund to

(A) [(1)] investigate and evaluate **a catastrophic oil** [THE] release or threatened **catastrophic oil** release [OF OIL OR A HAZARDOUS SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take **containment and**

cleanup and other necessary action, such as monitoring and assessing, to address a catastrophic oil release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(B) [(2) PAY ALL COSTS INCURRED TO

(A) ESTABLISH AND MAINTAIN THE OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE;

(B) REVIEW OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

(C) CONDUCT TRAINING, RESPONSE EXERCISES, INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY, OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN; AND

(D) VERIFY OR ESTABLISH PROOF OF FINANCIAL RESPONSIBILITY REQUIRED BY AS 46.04.040;

(3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY THE DIVISION;

(4)] provide matching funds in the event of a catastrophic oil release for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) [(5)] recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the catastrophic oil release or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE];

(2) from the oil and hazardous substances release contingency and abatement account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a catastrophic oil release, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a catastrophic oil release, that poses an imminent and substantial threat to the public health or welfare;

(B) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance, except a catastrophic oil release;

(C) pay all costs incurred to

(i) establish and maintain the oil and hazardous substance response office;

(ii) review oil discharge prevention and contingency plans submitted under AS 46.04.030;

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

(iv) verify or establish proof of financial responsibility required by AS 46.04.040;

(D) pay the expenses incurred by the department for

(i) the oil and hazardous substance response corps;

and

(ii) the oil and hazardous substance response depots:

(E) provide matching funds in the event of the release of oil or a hazardous substance, except a catastrophic oil release, for participation

(i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(F) [(6)] prepare, review, and revise

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

(ii) [(B)] a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210

[; AND

(7) RESTORE THE ENVIRONMENT BY ADDRESSING THE EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

*** Sec. 32.** AS 46.08.040(b) is amended to read:

(b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF THE DISASTER EMERGENCY,] use money from the catastrophic oil release response account in the fund to respond to a [THE] disaster emergency based upon a release or discharge of oil or a hazardous substance

(1) in circumstances when the actual or imminent occurrence of a catastrophic oil discharge constitutes a condition of disaster emergency, as authorized by AS 46.04.080(a); or

(2) when the governor has declared a condition of disaster emergency under AS 26.23.020(c).

*** Sec. 33.** AS 46.08.040(b) is amended to read:

(b) **The** [WHEN THE GOVERNOR DECLARES A DISASTER RELATED TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF THE DISASTER EMERGENCY,] use money from the **catastrophic oil release account in the** fund to respond to **a** [THE] disaster emergency **based upon a release or discharge of oil or a hazardous substance when the governor has declared a condition of disaster emergency under AS 26.23.020(c)**.

*** Sec. 34.** AS 46.08.040(c) is amended to read:

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in **(a)(1)(B) - (D) or (a)(2)** [(a)(2) - (7) AND (d)(2)] of this section unless money is available from an appropriation made specifically for that purpose.

*** Sec. 35.** AS 46.08.060(a) is amended to read:

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

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020 **and 46.08.025**;

(3) a summary of municipal participation in the department's responses that were **paid for** [FUNDED] by the fund;

(4) a detailed summary of department activities in responses **paid for** [FUNDED] by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH, "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION, EACH CONTRACT IN EXCESS OF $20,000, AND EACH PURCHASE IN EXCESS OF $10,000;] and

(5) the projected cost to the department for the next fiscal year of

monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

* **Sec. 36.** AS 46.08.075(a) is amended to read:

(a) The state has a lien for expenditures by the state from the oil and hazardous substance release **prevention and** response fund, or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance **release or** spill, or, with respect to response costs, **for the costs of response to a threatened** [THE SUBSTANTIAL THREAT OF A] release of oil or a hazardous substance, against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

* **Sec. 37.** AS 46.08.075(e) is amended to read:

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release **or spill,** or **from the threatened** [THREAT OF] release, of oil or a hazardous substance.

* **Sec. 38.** AS 46.08.110 is amended to read:

Sec. 46.08.110. RESPONSE CORPS. (a) The **department** [DIVISION OF EMERGENCY SERVICES, DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS,] shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the **department** [DIVISION] and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the **department** [DIVISION] for training and for days spent in service to the state in containment and cleanup actions.

*** Sec. 39.** AS 46.08.120 is amended to read:

Sec. 46.08.120. RESPONSE DEPOTS. The **department** [DIVISION] shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

*** Sec. 40.** AS 46.08.150 is amended to read:

Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS APPLICABLE,] may

(1) enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(A) [(1)] provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness; **and**

(B) [(2)] train members of response corps; and

(2) contract with persons to provide personnel, including members of the emergency response corps, to assist them with a nongovernmental response to a release or threatened release of oil or a hazardous substance [(3) CONDUCT RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY; THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

*** Sec. 41.** AS 46.08.900(5) is amended to read:

(5) "fund" means the oil and hazardous substance release **prevention and** response fund;

* **Sec. 42.** AS 46.08.900(9) is amended to read:

(9) "release"

(A) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(B) [, EXCEPT THAT "RELEASE"] does not include

(i) a permitted release; or

(ii) an act of nature;

* **Sec. 43.** AS 46.08.900(11) is amended to read:

(11) "threatened release" means [AN IMMINENT DANGER] that a release **is imminent; a release is imminent if**

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to cause personal injury, other injury to life, or loss of or damage to property, including the environment [WILL OCCUR];

* **Sec. 44.** AS 46.08.900 is amended by adding a new paragraph to read:

(13) "catastrophic oil discharge" and "catastrophic oil release" have the meaning given the term "catastrophic oil discharge" in AS 46.04.900.

* **Sec. 45.** AS 46.09.900(8) is amended to read:

(8) "threatened release" means [AN IMMINENT DANGER] that a release **is imminent; a release is imminent if**

(A) it is impending, or on the point of happening; or

(B) though not impending, in the judgment of the commissioner

(i) the incident or occurrence may reasonably be expected to culminate in an actual release; and

(ii) that actual release may reasonably be expected to

cause personal injury, other injury to life, or loss of or damage to property, including the environment [WILL OCCUR].

* **Sec. 46.** AS 46.13.010(a) is amended to read:

(a) There is established in the Department of Military and Veterans' Affairs [ENVIRONMENTAL CONSERVATION] the Alaska State Emergency Response Commission.

* **Sec. 47.** AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

* **Sec. 48.** TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the reference to which is repealed by sec. 5 of this Act, is not an expenditure.

* **Sec. 49.** APPLICABILITY. The definition of "catastrophic oil discharge" in AS 46.08.900, added by sec. 44 of this Act, applies to discharges occurring after the effective date of this section.

* **Sec. 50.** TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the effective date of this section, every producer of oil who is required by AS 43.55.200 - 43.55.240, repealed by this Act, to pay the oil conservation surcharge of $.05 per barrel of oil shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received after June 30, 1993, and before the effective date of this section, if so appropriated by the legislature and notwithstanding any other provision of law relating to the deposit of and accounting for those receipts,

(1) on the effective date of this section, the commissioner of revenue shall allocate

(A) 60 percent of the amount received to the catastrophic oil release response account established by AS 46.08.010(a)(2), added by sec. 26 of this Act; and

(B) 40 percent of the amount received to the oil and hazardous substances release contingency and abatement account established by

AS 46.08.010(a)(1), added by sec. 26 of this Act; and

(2) the allocations made under (1) of this section are credited to the respective accounts for purposes of determination of the suspension and reimposition of the surcharge under AS 43.55.231 and 43.55.241, added by secs. 12 and 13 of this Act.

*** Sec. 51.** TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response Commission from the Department of Environmental Conservation to the Department of Military and Veterans' Affairs made by sec. 46 of this Act does not affect the term of office of a person serving as a member of the commission on the effective date of this section.

*** Sec. 52.** Section 33 of this Act takes effect only if Senate Bill 90 am H becomes law.

*** Sec. 53.** If sec. 33 of this Act takes effect, sec. 32 of this Act does not take effect.

*** Sec. 54.** Section 18 of this Act takes effect January 1, 1994.

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Overview of Senate Bill 215 (5/8/93)

In its basic mission of restricting the use of the Oil and Hazardous Substance Release Response Fund and replacing the Fund with a new fund composed of two accounts, Senate Bill (SB) 215 differs slightly from HB 238, 4/20/93 "M" draft which differs little from the HB 238, 4/13/93 "D" draft. Specifically, the 2-cent, 3-cent split is maintained. This overview discusses the principle features of SB 215. Sections of the bill are included to facilitate reference. This is followed by a brief discussion of the three predominant difference between SB 215 and HB 238.

Purposes of the Fund. The purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release." [sections 25, 26]

"Two Cent" and "Three Cent" Accounts. The proposal divides the new fund into two accounts---the "catastrophic oil release account" and the "oil and hazardous substances release contingency and abatement account." The catastrophic account would receive 3 cents of the surcharge. Uses of this account would be restricted to crude oil catastrophic spill response [section 25]. Catastrophic oil spills are defined as those equal to or greater than 100,000 barrels or 4.2 million gallons [section 15, 24]. When the $50 million cap is reached, the 3 cent portion of the surcharge would be suspended [section 12].

The contingency and abatement account would receive 2 cents of the 5-cent surcharge [section 14]. Spill response for all non-crude oil and hazardous substances spills, and crude oil spills less than 100,000 barrels or 4.2 million gallons would be paid for from this account. In addition, all funding for spill prevention programs would be from this account. The 2-cent surcharge would be paid indefinitely with no capping mechanism.

There are two major problems with this proposal. The first is that the 2 cent portion of the surcharge is insufficient to fund DEC spill prevention programs. It is insufficient with current oil production levels and the problem becomes more acute as North Slope production continues to decline. The proposal would force a continued reduction in DEC programs or the supplementing of general fund money at the same time state revenues are also declining.

The second major problem is that a spill reserve for "smaller" spills would not exist. Given the definition of "catastrophic oil spill," it is highly probable that most spills would be below the catastrophic threshold. To access the catastrophic account would require a governor's disaster declaration. To continue use of the account after 30 days would require a special legislative session (unless the legislature were in session). This is hardly an efficient system.

In addition to these two major problems, the proposal makes little sense given the $1 billion response fund established under the federal Oil Pollution Act of 1990 (OPA 90). The Act provides funding in the event of catastrophic oil spills. Given this spill reserve, it makes the

most sense for Alaska to focus its spill reserve funds on the statistically more likely sub catastrophic spills.

Fiscal Impact. According to a Alaska Department of Environmental Conservation (DEC) analysis, the 2 cent account is insufficient to fund the department's core prevention and response programs. This analysis was conducted using the DEC's FY 94 budget, which was significantly reduced from prior years. According to DEC, inverting the allocation of surcharge revenues to provide 3 cents of each nickel for core spill prevention programs is still insufficient.

Contingency Plan Review. An **important change** in SB 215 is contained in Section 17, a new section that **modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans**. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

State and Regional Plan Review and Revision. Senate Bill 215 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Senate Bill 215 leaves revision to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision [sections 19 and 22). Public review is limited to plan revisions [sections 20, 21, 23].

Definition of Threatened Release. In current statute, the definition of threatened release is "an imminent danger that a release will occur." In both proposals, the new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." [sections 43, 45]

Response Corps and Depots. Senate Bill 215 transfers the response corps and depots from the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to the Alaska Department of Environmental Conservation (DEC) [sections 38, 39] and the state emergency response commission and the local emergency planning commissions from DEC to DMVA [section 47]. Despite transferring the response depots authority to DEC, SB 215 limits purchases of response depot equipment from the contingency and abatement account [section 31].

Restricted Mitigation Funds. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account [section 30].

Restoration. Under both proposals, **funds may not be used from either account for restoration of the environment** "by addressing the effects of an oil or hazardous substance release." [section 31]

Comparison with House Bill 238

Senate Bill 215 is almost identical to the "M" draft of the proposed House Resource committee substitute for HB 238. However, there are three important differences. The first is in SB 215 **section 15** ("M" draft section 15) where the **definition of "catastrophic oil discharge" is changed**. This change 1) limits the use of the catastrophic oil release response account (the three cent account) to oil, excluding hazardous substance discharges and 2) requires that when the "governor determines that an oil discharge less than 100,000 barrels presents a grave and substantial threat to the economy or environment," that the governor "issue a proclamation declaring a condition of disaster emergency under AS 26.23.020(c)." The issuing of a proclamation results in a series of potential actions including a special session of the legislature.

Under both SB 215 and the "M" draft of HB 238, the oil and hazardous substances contingency and abatement account is used to pay for all hazardous substance releases regardless of size. The catastrophic oil release response account is used only for oil release or discharges.

The second difference is in **section 29** ("M" draft section 31) regarding the **financing of the oil and hazardous substances release contingency and abatement account** (the two cent account). The insertion of "to the extent that the money recovered or otherwise received had been paid out of the oil and hazardous substances contingency and abatement account" on lines 13 through 15 results in cost recovery going to the two cent account only if money had been paid out of the account for containment and cleanup at the specific site. There is no parallel restriction on financing of the catastrophic oil release response account (the three cent account).

The third difference is **section 31** ("M" draft section 33) regarding the **uses of the catastrophic oil release response account**. In the "M" draft of HB 238, this account can be used to **purchase equipment for the response depots**. In SB 215, operating costs of response corps and depots would be paid for from the oil and hazardous substances contingency and abatement account. Purchase of equipment for the response depots could be paid for by the catastrophic account.

January 23, 1994

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Sectional Analysis of Senate Bill 215, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund (5/8/93)

Section 1. This is a technical change amending the powers of the Governor to allow for use of money from the oil and hazardous substance release *prevention and* response fund, consistent with the renaming of the fund adding the words "prevention and." Similar renaming occurs in sections 4, 6, 7, and 41.

Section 2. In this version, the changes revise the priority order in which the governor may have access to money to respond to a disaster. In the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance prevention and response fund, then money regularly appropriated to state and local agencies and the disaster release fund.

Section 3. This section makes a drafting change relating to section 2 in order to address circumstances in which there may be insufficient money available for response. It authorizes the governor to spend money appropriated for other purposes or to borrow money for a term not to exceed two years.

Section 4. Similar to section 1, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

Section 5. Makes additional changes reflecting the division of the fund into two accounts. However, direct access to local impact grants are restricted to catastrophic oil releases. If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated· significantly limiting access to local impact grant money.

Sections 6 and 7 that provide technical changes resulting from the renaming of the fund, adding the words "prevention and."

Section 8 is consistent with the renaming of the accounts within the funds.

Section 9. This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

Section 10 carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge.

Section 11 directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

Section 12. Requires the commissioner of administration to determine the balance of the catastrophic oil release account within 30 days after the end of each calendar year, for the purpose of computing the $50 million account cap. Once the $50 million cap is reached, the $0.03 per barrel portion of severance tax conservation surcharge deposited into the general fund is suspended.

This section alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account.

This amended provision to calculating the fund balance also reflects the substitution of the catastrophic oil release account. Under subsection (e), in lieu of quarterly determination of the trigger mechanism, when the catastrophic oil release account reaches $45 million, the determination is to be made more frequently.

This section relates also to **section 48** of the bill, which clarifies how appropriations, if any, made to the spill reserve fund mentioned within the context of former AS 29.60.510(b), are to be treated for purposes of determining the suspension or re imposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

Section 13 amends the mechanism by which the surcharge on/off trigger shall be computed.

Section 14 imposes a 2 cents per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substances release contingency and abatement account."

Section 15 is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges. The redrafting of this version tends to emphasize that a catastrophic spill can be less than 4.2 million gallons if "the governor determines it presents a grave and substantial threat to the economy or environment."

Section 16 provides a revised definition for the term "surcharge."

Section 17 modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

Section 18 is consistent with **section 17** and addresses the review and approval of contingency plans when a response action contractor is identified in a contingency plan for the provision of containment and clean up services.

Section 19 removes the requirement to annually revise the state master oil and hazardous substance discharge prevention and contingency plan. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Plan revision is left to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision.

Section 20 would eliminate the participation of the public and other agencies in the annual review of the state master plan. Federal, state, and Oil Spill Commission recommendations all identified the necessity of public input to eliminate complacency in spill prevention. This was the premise for the federal and state laws establishing citizens' advisory councils. Due to the diverse and unique coast line and communities potentially affected by oil and hazardous substance spills, site specific community input is essential in creating a workable plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

Section 21 allows for public and SERC review when a revision is made to the state plan. Current statute allows for public input during the annual review and revision process.

Section 22 essentially does for regional plans what section 21 did to the state master plan. Again, plan revision occurs at the discretion of the commissioner of DEC.

Section 23 is a technical amendment that incorporates the changes made in section 21 for master plans to the regional plan changes in section 22.

Section 24 offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 4.2 million gallons of oil.

Section 25. Amends the statement of purpose of the oil and hazardous substance release response fund in light of the amendments made to the chapter and related provisions by this bill. Specifically, the purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."

This section allows for use of the fund "to pay for expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law."

Section 26 identifies the two accounts that constitute the fund.

Section 27 makes a related substitution of a reference to "account" for fund.

Section 28. Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 31. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. This section allows the fund to be used for the purchase of equipment to be placed in the oil and hazardous substance response depots.

Section 29 amends AS 46.08.020 and the financing of the Oil and Hazardous Substances Release Contingency and Abatement Account. It excludes money recovered or received due to a catastrophic oil discharge and money from performance bonds, and fines, penalties, and damages recovered by the state. These funds are to be deposited into the general fund and credited to the oil and hazardous substances release contingency and abatement mitigation account. Funds from the mitigation account can be appropriated annually to the oil and hazardous substances release contingency and abatement account.

Section 30. Similar to section 29 which requires non-catastrophic spill cost recovery to be credited to a mitigation account, with the exception of performance bonds, all fines, penalties, or damages recovered from catastrophic oil spills are credited to the catastrophic oil release response mitigation account and may be appropriated annually to the catastrophic oil release response account.

Section 31. This section eliminates the authority to use funds in the catastrophic oil release response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response preparedness; and 4) verification of financial responsibility. These functions are to be funded by the oil and hazardous substances release contingency and abatement account. This section repeals use of funds by Alaska Department of Military Affairs, Division of Emergency Services for the Oil and hazardous substances response corps and depots. Section 38 authorizes DEC use of funds for response corps and depots.

Money from the catastrophic oil release response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release, and 4) purchase of equipment for response depots.

Funds may not be used from either account for restoration of the environment "by addressing the effects of an oil or hazardous substance release."

Sections 32 and 33 relate to the governor's use of money in the oil and hazardous substance release prevention and response fund in the face of a disaster emergency. The sections are alternatives to each other, with appropriate related contingency provisions set out in **bill sections 52 and 53**, relating to whether Senate Bill 90 is passed. As SB 90 was passed, section 33 would be effective and section 32 would not be.

Section 33. Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

Section 34. Requires specific appropriation for the following uses of the fund. Money for federal matching or cost recovery from the catastrophic oil release response account or ***all*** uses of the oil and hazardous substances release contingency and abatement account can not be used unless an appropriation has been made specifically for that purpose.