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Section 35. Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill. It reduces the DEC auditing requirements for uses of the fund.

Section 38 transfers the responsibility of maintaining emergency response depots to DEC.

Sections 39 reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

Section 40. Eliminates funding for the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Section 41 is a technical change consistent with the renaming of the fund adding the words "prevention and."

Sections 42, 43 and 45. These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 42 provides a technically revised definition of "release" and section 43 substantially amends the definition of "threatened release." In current statute, the definition of threatened release is "an imminent danger that a release will occur." 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 36 and 37** are conforming changes to these revised definitions. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

Section 45. Modeled after the definition made in bill section 44 mentioned earlier, this section revises the definition of the term "threatened release" applicable to AS 46.09. Similar to the change in section 43, this definition explicitly includes damages to the environment.

Section 46 moves the Alaska State Emergency Response Commission from DEC to DMVA.

Section 47. Repeals a number of provisions in law regarding activities for which the fund can be used to support including:

- state ferry construction, AS 19.65.025 and AS 46.08.040(d);
- the Citizens Oversight Council, AS 46.08.040(d)
- the repeal of the Conservation Surcharge on Oil replaced by this bill, AS 43.55.200-240---these three are the same as the previous "D" draft, plus
- removes DES's authority to contract for personnel to respond to releases, AS 26.23.195(b); and
- reference to the Division of Emergency services in AS 46.08.190(3), a technical change to reflect the shift in department assignments.

Section 48 is inserted to clarify how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures for the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or re imposition of the severance tax conservation surcharge. Since, in **bill section 5**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Section 49. Explains the applicability of the new definition of "catastrophic oil discharge."

Section 50 sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effective date of this Act.

Section 51 protects or "holds harmless" the terms of members of the response commission despite transfer of the commission by **bill section 47**.

January 23, 1994

Appendix B

Oil Spill U.S. Law Report
Legislative Research Agency Memorandum

U.S. LAW REPORT

in this issue ... march 1993, volume 3, number 3

on the proposed restoration plan. Cole said many people were concerned that the trustees and restoration team are "too closely associated with the state and federal agencies involved with the damage assessment and restoration process." Currently, each trustee appoints a member of the restoration team, whose purpose is to take on the day-to-day management and administrative functions of implementing the restoration program.

They raised interesting questions, Cole said, such as: Do the projects recommended by the restoration team include work that the government agencies should be doing as part of normal agency operations? Are the proposed projects related to the assessment of damage from the oil spill, or are they directed to the study of decreases in species observed before the spill? Is the amount of funding sought for the projects designed to supplement the agencies' legislative appropriations, particularly in the area of overhead? and Does the fact that restoration team members propose projects that will be performed by the agencies that employ them inhibit their ability to make critical evaluations of other projects?

"I think we should give consideration as trustees to providing more balance in the restoration team and perhaps having it composed of a lesser proportion of members from state and federal agencies," advised Cole. "If this restoration process is not viewed as wholesome by the public, it will not be successful."

Cole also reminded the audience that no one, by way of legislation or otherwise, can change the terms of the settlement. "I say that because there has been support, particularly in the environmental community, to have Congress enact legislation that would require the trustees as part of their duties under the agreement to spend between 70% and 80% of the available funds for the acquisition of habitat." Under the agreement, the trustee council can only deal with resources affected by the spill. "Unless lands were affected, we can't consider acquiring them," he said.

More States Are Charging Fees for Oil Spill Response

In response to a hotline call concerning a comparison of state fees on oil for spill response purposes, the *OSLR* staff decided to research the issue. We collected some interesting findings. For one, agencies in nearly all of the states charge some sort of fee on facility and/or vessel owners and operators for oversight activities (e.g., annual licensing fees), and the majority of states in the US charge a per-gallon or per-barrel fee on the oil itself (either on crude oil, motor fuels, or on all types of petroleum) to be used in the event of a leak or spill. (Unlike any other state, Oregon charges a substantial annual fee of $3,000 for facilities and a per-trip fee for vessels.)

As a general rule, the money from a state tax on oil is added to a fund that may be used for anything from administration costs to the reimbursement of cleanup/remediation expenditures. 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 could reach a cap at which point the fee would be shut off, while others are designed to generate the same amount of available money each year.

During our research, we also found that a number of states have bills in committee that deal, in some way, with the issue of fees on oil for spill response. Among them are: SB 228 in Montana that would charge ¾ of a cent per gallon on diesel and other oil products in addition to gasoline; HB 172 and HB 434 in New Hampshire that would allow the state to collect the fee at the time of import rather than at the time of sale to ease the collection process; HB 1739 in Virginia that would also change how the state collects the fee; HB 228 in Idaho that would impose an additional 1 cent-per-gallon fee on petroleum to finance the Idaho Petroleum Remediation Fund; and HB 1194 in Hawaii that 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 (officials expect that the fund will not reach the $7 million cap for eight years). (The Washington State Office of Marine Safety's legislative proposal to charge a per-trip fee on vessels coming into Puget Sound died in its early stages.)

The accompanying chart provides a run-down of each state's fee policies. Note: to keep things simple, we only included information concerning fees on oil (not on hazardous substances) and fees specifically meant for spill/leak response or remediation (we did not include information, for example, on New Mexico's fund for abandoned wells).

State Fees on Oil for Spill Response and Administration Costs*

State	Fee**	Who Must Pay	Where the Money Goes
Alabama	None	—	—
Alaska	5 cents per barrel	Every oil producer in the state	The Oil and Hazardous Substance Release Response Fund (now at about $40 million; capped at $50 million)
Arizona	1 cent per gallon of gasoline (all kinds), diesel, and kerosene	The UST owner when oil is purchased or when the annual tax return is due	10% goes into a Loan Account, the rest goes into the State Assurance Fund (now at about $40 million; no cap)
Arkansas	None	—	—
California	25 cents per barrel for response (this has not been collected since Feb 1991 when the fund reached its cap); 4 cents per barrel for administration (this may be reduced by the administrator in future years)	Every marine terminal operator for oil delivered through the terminal; every pipeline operator for oil transported into the state; and just the 25-cent fee for refinery operators for crude oil received at the refinery	The Oil Spill Response Trust Fund ($50 million) and the Oil Spill Prevention and Administration Fund (meant to generate about $20 million annually)
Colorado	None	—	—
Connecticut	None	—	—
Delaware	6/10 of a % of the gross receipts tax	The wholesaler of petroleum and petroleum products (an exemption is allowed for crude oil)	The DE Hazardous Substance Cleanup Act Fund (now at about $4 million; no cap)
Florida	2 cents per barrel	Any person who engages in the production or importation of oil	The Coastal Protection Trust Fund (now at about $18 million; capped at $50 million)
Georgia	None	—	—
Hawaii	None	—	—
Idaho	1 cent per gallon (42 cents/barrel)	The first licensed distributor who transfers a petroleum product to another legal entity within the state	The Petroleum Clean Water Storage Tank Trust Fund (now at about $20 million; capped at $30 million)
Illinois	None	—	—
Indiana	None	—	—
Iowa	None	—	—
Kansas	16 cents per barrel	The first purchaser of the oil	A portion funds the conservation division of the Kansas Corporation Commission, and the rest goes into the Conservation Fee Fund (now at least $500,000; capped at $1 million)
Kentucky	None	—	—
Louisiana	2 cents per barrel	Every person owning crude oil in a vessel at the time the oil is transferred to a marine terminal within the state (except for at LOOP)	The Oil Spill Contingency Fund (now at about $10-12 million; capped at $15 million, but only if that amount is reached through the collection of fees)

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

State Fees on Oil for Spill Response and Administration Costs*

State	Fee**	Who Must Pay	Where the Money Goes
Alabama	None	—	—
Alaska	5 cents per barrel	Every oil producer in the state	The Oil and Hazardous Substance Release Response Fund (now at about $40 million; capped at $50 million)
Arizona	1 cent per gallon of gasoline (all kinds), diesel, and kerosene	The UST owner when oil is purchased or when the annual tax return is due	10% goes into a Loan Account, the rest goes into the State Assurance Fund (now at about $40 million; no cap)
Arkansas	None	—	—
California	25 cents per barrel for response (this has not been collected since Feb 1991 when the fund reached its cap); 4 cents per barrel for administration (this may be reduced by the administrator in future years)	Every marine terminal operator for oil delivered through the terminal; every pipeline operator for oil transported into the state; and just the 25-cent fee for refinery operators for crude oil received at the refinery	The Oil Spill Response Trust Fund ($50 million) and the Oil Spill Prevention and Administration Fund (meant to generate about $20 million annually)
Colorado	None	—	—
Connecticut	None	—	—
Delaware	9/10 of a % of the gross receipts tax	The wholesaler of petroleum and petroleum products (an exemption is allowed for crude oil)	The DE Hazardous Substance Cleanup Act Fund (now at about $4 million; no cap)
Florida	2 cents per barrel	Any person who engages in the production or importation of oil	The Coastal Protection Trust Fund (now at about $18 million; capped at $50 million)
Georgia	None	—	—
Hawaii	None	—	—
Idaho	1 cent per gallon (42 cents/barrel)	The first licensed distributor who transfers a petroleum product to another legal entity within the state	The Petroleum Clean Water Storage Tank Trust Fund (now at about $20 million; capped at $30 million)
Illinois	None	—	—
Indiana	None	—	—
Iowa	None	—	—
Kansas	16 cents per barrel	The first purchaser of the oil	A portion funds the conservation division of the Kansas Corporation Commission, and the rest goes into the Conservation Fee Fund (now at least $500,000; capped at $1 million)
Kentucky	None	—	—
Louisiana	2 cents per barrel	Every person owning crude oil in a vessel at the time the oil is transferred to a marine terminal within the state (except for at LOOP)	The Oil Spill Contingency Fund (now at about $10-12 million; capped at $15 million, but only if that amount is reached through the collection of fees)

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
Maine	4 cents per barrel for coastal and inland cleanup; 44 cents (gasoline), 25 cents (#2, kerosene, jet fuel, and diesel), and 10 cents (#6) per barrel for groundwater cleanup	For coastal and inland cleanup: every person that first transports oil in Maine. For groundwater cleanup: terminal facilities that first transfer the products and any person that first transports oil into the state (no fee on exports)	The Maine Coastal and Inland Surface Oil Cleanup Fund (now at about $4 million; capped at $6 million), and the Groundwater Oil Cleanup Fund (now at about $12 million; capped at $15 million)
Maryland	¾ of a cent per barrel for cleanup; 5 cents per barrel for upgrading underground storage tanks	The tank owner	The Maryland Oil Disaster Containment, Cleanup, and Contingency Fund (capped at $5 million), and the Underground Storage Tank Upgrade and Replacement Fund (now at about $4.5 million; capped at $5 million)
Massachusetts	None	—	—
Michigan	⅞ of a cent per gallon of petroleum products (36.75 cents/barrel)	All those selling refined oil for resale	The MI Underground Storage Tank Financial Assurance Fund (now at about $52 million; no cap)
Minnesota	None	—	—
Mississippi	None	—	—
Missouri	$25 per 8,000 gallons	The tank owner upon delivery of gasoline	The Underground Storage Tank Insurance Fund (capped at $8 million)
Montana	¾ of a cent per gallon (the fee is currently shut off until the fund drops below $4 million)	The gasoline distributor	The Petroleum Tank Release Cleanup Fund (now at about $5 million; capped at $8 million)
Nebraska	3/10 of a cent per gallon on motor fuels (although now it is at 6/10 of a cent per gallon on motor fuels plus 1/10 of a cent per gallon on all other petroleum since the fund dropped down to $2 million; the fee will return to 3/10 of a cent when the fund reaches $4 million)	The refiner, importer, or distributor that first sells within the state	The Petroleum Release Remedial Action, and Reimbursement Fund (now at about $3.1 million; capped at $5 million)
Nevada	6/10 of a cent per gallon on most petroleum products (25.2 cents/barrel)	The refiner or importer	The State Petroleum Fund (now at about $4 million; capped at $7.5 million)
New Hampshire	6/10 of a cent per gallon for the ODD Fund; 1/10 of a cent per gallon for the OPC Fund	The distributor of motor fuels at the time of sale (for the 6/10 of a cent fee); the distributor of all oil at the time of sale (for the 1/10 of a cent fee)	The Oil Discharge, Disposal, and Cleanup Fund (the ODD Fund: now at about $9.1 million; capped at $10 million); The Oil Pollution Control Fund (the OPC Fund: now at about $3.5 million; capped at $5 million)
New Jersey	1½ cents per barrel for major facility owners	The operator or owner of the receiving or transferring major facility	The NJ Spill Compensation Fund (now at about $72 million; no cap)
New Mexico	None	—	—

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

State Fees on Oil for Spill Response and Administration Costs*, continued

State	Fee**	Who Must Pay	Where the Money Goes
New York	Currently at 4 cents per barrel for major facility owners	The major facility owner at the point of import or receipt	The NY Environmental Protection and Spill Compensation Fund (now at about $17 million; capped at $25 million)
North Carolina	None	—	—
North Dakota	None	—	—
Ohio	None	—	—
Oklahoma	1 cent per gallon (42 cents/barrel)	The fuel distributor	The OK Petroleum Underground Release Indemnity Fund (now at about $6-$7 million; no cap)
Oregon	$650 per trip for tank vessels; $28 per trip for barges; and $25 per trip for cargo vessels (facilities must pay $3,000 per year)	All vessels and facilities	The Oil Spill Prevention Fund (capped at $153,600)
Pennsylvania	None	—	—
Rhode Island	None (There is an Oil Release Response Fund)	—	—
South Carolina	½ cent per gallon on all petroleum (21 cents/barrel)	The refiner or tank owner that first sells the oil in the state	The State Underground Petroleum Response Bank (capped at $15 million)
South Dakota	1 cent per gallon	The oil distributors	The SD Petroleum Release Compensation Fund (now at about $100,000; capped at $5 million)
Tennessee	None	—	—
Texas	2 cents per barrel	Every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal	The Coastal Protection Fund (now at about $20 million; capped at $25 million)
Utah	None	—	—
Vermont	1 cent per gallon	Motor fuels distributors	The Vermont Petroleum Cleanup Fund
Virginia	⅕ of a cent per gallon	Any importer of gasoline, special fuels, and heating oil	The VA Petroleum Storage Tank Fund (now at about $17 million; no cap)
Washington	5 cents per barrel	The owner of the crude oil or petroleum product immediately after receipt into a storage tank of a marine terminal from a vessel	The State Oil Spill Response Account (now at about $4.5 million; capped at $25 million and the Administration's Account (no cap)
West Virginia	None	—	—
Wisconsin	1.4 cents of every 2 cents per gallon collected	—	The Petroleum Environmental Cleanup Fund
Wyoming	1 cent per gallon	Fuel consumers	The State Corrective Account (now at about $1.5 million) and the State Financial Responsibility Account (now at about $6.2 million); there must be a total of $20 million in both accounts before the fee is shut off

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.
**Fees are assessed only once for the same oil.

Alaska State Legislature

Legislative Research Agency

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April 16, 1993

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski and Paula d. Scavera
Legislative Analysts

RE: **Other States' Funds Similar to Alaska's Oil and Hazardous Spill Response Fund**
Research Request 93.186

You asked for information about funds established in other states that are similar to Alaska's Oil and Hazardous Spill Response Fund (the so-called "470 Fund"). We contacted six states (California, Florida, Louisiana, New Jersey, Texas and Washington) to obtain comparative information. Although other states have similar funds, these are a sample of those that tax oil, petroleum products or other pollutants to pay for a cleanup or response fund.

The attached table summarizes key features of oil spill funds in those states. We listed only those funds which are financed primarily by a tax and not by pollution fines or settlements. In a preliminary version of this memorandum, we provided copies of relevant statutes from the six states listed above and a report from Texas, *Oil Spill Prevention and Response Act Progress Report*.

Attached to this memorandum is an article from the *Oil Spill U.S. Law Report* (March 1993) containing information on a 50-state survey of state fees on oil for spill response and administrative costs.[1] This table, along with the information compiled by our office, show that state taxes on petroleum products for spill response vary from zero to the 87 cents per barrel in Florida.[2]

We hope this information is useful for your purposes. Please do not hesitate to contact us if you have additional questions.

Attachments

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[2]It appears that in Florida some petroleum products are taxed for three separate funds--80 cents per barrel plus 2 to 5 cents per barrel plus 2 cents per barrel (totaling 87 cents per barrel). No single state official in Florida seemed to know about all three funds listed on the table prepared by this agency. Florida officials with whom we spoke were able to speak only about the fund they administered and were unable to confirm with 100 percent certainty that petroleum fuels (gasoline, diesel, kerosene, aviation fuel, heating oil, etc.) were taxed by all three funds. They all, however, "thought it was true" that some petroleum products were taxed three times.

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
California Oil Spill Response Trust Fund	25 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	for cleanup of oil in marine waters or cleanup of oil that will impact marine waters	Fund has reached its cap of $50 million	Department of Fish and Game, Oil Spill Prevention and Response Office (916) 445-9338
California Oil Spill Prevention Administrative Fund	4 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline	administering, operating, managing, staffing, and plan reviewing of oil spills in marine waters or impacting marine waters	Approximate annual revenue = $20 million Approximate number of personnel funded = 190 Approximate annual expenditures = $18 million	
Florida Inland Protection Trust Fund (Chapter 376, Section 3071)	30, 60, or 80 cents/barrel tax on pollutants (petroleum fuels) produced or imported into the state (rate varies with unobligated balance of fund); tax is currently at the highest level and is expected to remain there indefinately (annual revenue at 80 cents is still not sufficient to pay all the claims against the fund)	cleanup of discharges of petroleum or petroleum products from stationary petroleum storage facilities; investigation and assessment of contaminated sites; restoration or replacement of potable water supplies; rehabilitation, maintenance and monitoring of contaminated sites; cost recovery expenses; administrative expenses including costs incurred by the Department of Health in providing field and laboratory services; some activities related to the removal and replacement of petroleum storage systems	Approximate annual revenue = $155 million Approximate number of personnel funded = 50 Approximate annual expenditures = $155 million	Department of Environmental Regulation, Division of Petroleum Cleanup (904) 487-3299
Florida Water Quality Assurance Trust Fund (Chapter 376, Section 307)	varies with type of product and amount in fund; $1 or $2/lead acid battery; 2.3 or 5.9 cents/gallon solvents; 1 or 2.5 cents/gallon motor oil; 2 to 5 cents/barrel petroleum products	to restore or replace potable water supplies; for the investigation, assessment, cleanup, restoration, maintenance, and monitoring of any site contaminated with hazardous wastes, hazardous substances as defined by CERCLA, pollutants, substances suspected to be carcinogenic or toxic to humans, or substances which pose a serious danger to public health or welfare	Approximate annual revenue = $25 million Approximate number of personnel funded = 35 Approximate annual expenditures = $25 million	Department of Environmental Regulation, Bureau of Waste Management (904) 488-0190
Florida Coastal Protection Trust Fund (Chapter 376, Section 11)	2 cents/barrel tax on pollutants (includes pesticides ammonia, chlorine, and other oil products) produced or imported into the state; tax suspended when fund reaches $50 million, reimposed at $40 million	to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages	Approximate annual revenue = n/a Approximate number of personnel funded = 17 Approximate annual expenditures = n/a	Department of Natural Resources, Office of Coastal Protection (904) 488-2974

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
Louisiana Oil Spill Contingency Fund (RS 30: 2451–2496)	2 cents/barrel fee on all crude oil transferred to or from a vessel at a marine terminal within the state; fee suspended when fund reaches $15 million, reimposed at $8 million; under certain conditions, fee can double to 4 cents until fund reaches $30 million	administrative expenses of the office of the coordinator (not to exceed $350,000 annually); removal costs and damages related to actual or threatened discharges of oil; removal costs related to abatement and containment of actual or threatened discharges of oil; protection, assessment, restoration, rehabilitation, or replacement of ormitigation of damage to natural resources; operating costs and contracts for response prevention (not to exceed $5000,000 annually); other costs and damages authorized by statute; grants to universities for Research and Development (not to exceed $750,000 annually)	Approximate annual revenue = $9 million Approximate number of personnel funded = 10 Approximate annual expenditures = $500,000	Office of the Louisiana Oil Spill Coordinator (504) 922–3230
New Jersey Spill Compensation Fund (NJSA 58:10–23.11)	1.5 cents/barrel tax on oil and petroleum products transferred within state; 1.75 to approximately 4 cents per barrel tax on all hazardous substances transferred within the state	all direct/indirect costs for oil and hazardous substance spills; research and development; administrative costs of oil spill plan reviews	Approximate annual revenue = $14 million Approximate number of personnel funded = 100 Approximate annual expenditures = $5 million Approximately $70 million currently in fund; interest from fund pays for research (approximately $500,000 annually)	Department of Environmental Protection, Bureau of Discharge Prevention (609) 984–4306
Texas Coastal Protection Fund (Texas Natural Resource Code, Section 40.152)	2 cents/barrel tax on all crude oil loaded or off–loaded in Texas ports; tax suspended when fund reaches $25 million, reimposed at $14 million	administrative expenses, personnel and training expenses, equipment maintenance, and operating costs related to implementation and enforcement of statute; response costs related to abatement and containment of actual or threatened discharges of oil; damages related to actual or threatened discharges of oil; assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources; interagency contracts (not to exceed $1.25 million annually); purchase of response equipment (not to exceed $4 million) and the purchase of replacement equipment as necessary; other costs and damages authorized by statute	Approximate annual revenue = $12 million Approximate number of personnel funded = 40 Approximate annual expenditures = $6 million	General Land Office, Oil Spill Prevention and Response (512) 463–5329

SELECTED STATE FUNDS SIMILAR TO ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND				
State Fund	**Primary Revenue Source**	**Purpose / Use**	**Comments**	**Contact**
Washington Oil Spill Response Account (RCW Chapter 90.56)	2 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for cleanup costs of oil and petroleum product spills, when the spill costs exceed $50,000	Approximate annual revenue = $3 million Approximate number of personnel funded = 0 Approximate annual expenditures = n/a	Department of Ecology, Response to Hazardous Material Spills (206) 459-6658
Washington Oil Spill Administration Account (RCW Chapter 90.56)	3 cents/barrel tax on all crude oil and petroleum products delivered to marine terminals in the state	for routine cleanup response, management, staff, enforcement, plan review, coordination and public outreach.	Approximate annual revenue =$4 million Approximate Number of personnel funded = 35 Approximate annual expenditures =$4 million	

n/a = not available at this time

Sources: Statutes of, and interviews with officials in, states listed.

Prepared by the Legislative Research Agency, April 1993 (93.196).

"State Fees on Oil for Spill Response and Administration Costs"
1993 Cutter Information Corp.
Oil Spill, U.S. Law Report
March 1993
Pages 12 - 15

Appendix C

Alaska North Slope Oil Profits Report

Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures

Richard A. Fineberg
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(Advance copy of a paper prepared for presentation at the 15th Annual North American Conference of the International Association for Energy Economics, Westin Hotel, Seattle, Washington, Oct. 11-13, 1993 [revised 8/18/93])

ABSTRACT

This paper describes a model that uses available public information on North Slope production economics to place proposed expenditures on environmental measures in the context of North Slope per-barrel costs and profits. It is estimated that after-tax profits from North Slope production and pipelining operations exceed $3 billion annually. If these operations were controlled by one firm (in fact, three companies control more than 90% of Alaska's production and pipeline facilities), that company would rank among the five most profitable industrial corporations in the nation. Using the per-barrel model and Alaska Department of Revenue forecast scenarios, it is also possible to estimate future North Slope profits. It is estimated that currently debated expenditures of $150 million for spill prevention and environmental mitigation measures would reduce industry profits in the year 2000 by approximately one cent per barrel, compared to total after-tax profits in excess of $5.00 per barrel.

INTRODUCTION

Alaska is often the reluctant host to intense public policy battles between environmental protection and development. These issues are frequently cast in economic terms: How much can the proponents of a proposed project afford to pay for environmental protection measures? Or: What will be the economic consequences of going forward with, delaying or halting the project? Because economics frequently frames these questions, it seems appropriate to ask whether economics can also provide answers. Certainly economics is the correct discipline for analyzing the costs. At the same time, it must be recognized that assessment of environmental risk is not turf on which economists are necessarily expert. With this background in mind, we will look at one manifestation of Alaska's perpetual debate: How much spending on environmental protection — principally on prevention of oil spills and mitigation of other potential environmental hazards — should the owners of the Trans-Alaska Pipeline[1] (TAPS) be required to bear?

This question frequently finds its way into the public policy arena, especially since March 24, 1989, when the tanker Exxon Valdez banged into Bligh Reef in Prince William Sound. The ruptured tanker caused the largest oil spill in the history of this nation.[2] It is widely understood by all but oil industry attorneys and officials that the oil companies that were charged with responsibility for safe shipment of Alaska North Slope (ANS) oil failed miserably on their long-standing promises to

build and operate the safest system in the world, and to respond promptly and effectively to any spill that should occur.[3] It is also undisputed that since 1989, the owners have spent hundreds of millions of dollars in repairing pipeline problems and upgrading their inadequate prevention and response systems.

Two currently debated proposed environmental mitigation measures are a vapor emissions recovery system to capture potentially toxic emissions vented during loading and off-loading tankers at Valdez and specially-designed tractor tugs to handle a disabled tanker. Both measures are in place at other ports, but not at the Alaska terminal that ships approximately 20 percent of the nation's domestic crude oil production. Together, it is estimated that these improvements would cost the North Slope owners up to $150 million. Should these measures be required, or has Alaska's leading industry and revenue producer spent enough? To answer this question requires balancing environmental risks against the costs of prevention and mitigation measures. This paper focuses on the second half of this equation.

THE PROBLEM: WILL ENVIRONMENTAL EXPENDITURES KILL ALASKA'S GOLDEN GOOSE?

Each year the nation's largest oil shipment facility, situated three miles across Port Valdez from the town of Valdez, puts one million pounds of benzene, a known carcinogen, into the atmosphere. Alyeska asserts that no serious documentable health risk exists from the pipeline terminal. Unpersuaded by its review of the industry-funded scientific study on which Alyeska relies, in September 1992 the Congressionally-mandated Prince William Sound Regional Citizen's Advisory Council passed a unanimous resolution asking Alyeska to install immediately a vapor recovery system to capture and incinerate the gasses vented when tankers deballast and load at Valdez. Alyeska declined. In his response to the oversight group, Alyeska's then-President J.B. Hemmiller cited current regulations that do not require the venting system, current health risk information and the $120 million cost as the driving factors in his rejection of the petition.[4]

Special escort vessels known as tractor tugs have been commissioned to accompany tankers in and out of port at the Louisiana Off-Shore Oil Port facility (LOOP), Puget Sound and San Francisco Bay. With a special, mid-ship propulsion system that allows the tractor tug to apply power in any direction, not just forward, the tractor tug is judged by many experts as superior to the conventional tug because it can provide both retarding forces and effective steering assistance. Two tractor tugs would cost approximately $25 million. Alyeska's owners have deferred obtaining for Prince William Sound the vessels they have procured for other ports.[5]

The motivation for these decisions is reflected in the statements of Alyeska officials, who have warned repeatedly that the costs of the environmental protection measures at Port Valdez and on the TAPS line itself must be weighed carefully against the fact that oil production is now declining and increased costs will cut into long-term North Slope production, inevitably hastening the demise of Alaska's golden goose. For example, speaking at an international conference on energy issues in Anchorage in July 1992, Alyeska Vice President for Environment and Contingencies M.F.G. Williams pointed out that "there comes a time when all of those small costs [on environmental measures] become factors in future operating or investment decisions." As an example, Williams turned to his experience in coal mining to suggest that foreign coal producers seemed to undercut their U.S. competitors "by the amount we had to pay to the U.S. for end of mine reclamation."[6]

In a January 6, 1992 speech to the Anchorage Chamber of Commerce, Alyeska's Hermiller warned that North Slope production was declining and put out his usual strong plug for a cost-benefit approach to environmental regulation. "If the state imposes excessive financial burdens on the owners of the production going through the line or on the pipeline system itself," Hermiller said, "the line will close sooner than later." As an example of a cost Alyeska should not be asked to bear until unacceptable harm to the environment or to public health is shown, Hermiller cited the vapor recovery system he later rejected.

"We must live within our means," Hermiller said. "If as throughput declines one third over the next six years and our costs are reduced by less than one third during the same period, our cost per barrel will increase. Accordingly, we must find ways to reduce costs to be able to keep the pipeline a viable economic enterprise for as long as possible in the coming years."[7]

To assess the economic validity of the Alyeska position, it is necessary to ask what level of expenditures might — or might not — be within the means of Alyeska and its owner companies.

ANS PRODUCTION AND PIPELINE PROFITS

Although profits from Alaska North Slope production and pipelining are not reported by the producing companies or any government entity, using a variety of published sources it is possible to estimate average profits with a fair degree of precision. Once the data are assembled, profits to the North Slope owners can be estimated by subtracting production and shipping costs, taxes and royalties from the market price of oil. An example of profit calculations for 1991 is provided in Table 1 on the following page. That table begins with the Lower-48 sales price of oil (line 1), then subtracts pipeline charges (lines 4 and 5) and marine transportation (line 12) to establish a field or basis price (line 13) for calculating state royalties and production and property taxes (line 14). After those payments are calculated, operating and capital costs (line 15) are removed. State income tax, estimated from published figures (line 17), is then subtracted. The resulting net revenue figure is the basis for estimating federal income tax (line 18). The producers also own TAPS and the feeder pipelines in shares roughly equal to their production shares, with the exception of Conoco (which produces the Milne Point field — less than two percent of total ANS production — but has no ownership share in TAPS). To develop a comprehensive picture of North Slope profitability, TAPS profits (line 11) and feeder line profits (line 8) therefore must be added to production profits. The resulting total appears at line 22. To account for different market and transportation prices for West and Gulf Coast oil, calculations are made for each destination. The weighted average of West Coast and Gulf Coast ANS dispositions appears at line 23.[8]

Where official data are not available or are in dispute, the model relies on conservative estimates that tend to understate ANS profits. For example, the property tax is based on a gross Alaska tax figure that includes Cook Inlet facilities and therefore overestimates the tax on ANS production and, correspondingly, underestimates industry profits. Similarly, the federal income tax is estimated at 32.1% -- very near the nominal rate of 34% and much higher than the rate that the limited information available from published studies indicates that oil companies actually pay.[9]

Table 1. Estimated Alaska North Slope Production & Pipeline Profits for 1991

North Slope Profit Analysis: ALL FIELDS	/ - - ANS Avg. ($/bbl.) - - / Gulf Coast	W. Coast	Notes
1 Average Price for ANS (Spot)	$18.35	$17.21	Alaska Dept. of Revenue (ADOR) data
2 Quality Adjusted Price			[Used for individual field analysis]
3 Production / Disposition *MM bbls. yr./day*			
a Production 664.870 / 1.822			Alaska Dept. of Natural Resources data
b. Volume to East / West Coast (%)	21.93%	78.07%	From ADOR data
4 Feeder Pipeline Tariffs	($0.10)	($0.10)	Wghtd. avg. sum of items 4a thru 4g
a Operating & capital costs	($0.04)	($0.04)	Alaska Dept. of Law (ADL 7/29/92) less 4b
b State & local property tax (pipelines)	$0.00	$0.00	30% of total ADOR property tax
c State income tax (pipelines)	$0.00	$0.00	4d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	($0.01)	($0.01)	ADL (7/29/92) less item 4c
e After-tax margin	($0.02)	($0.02)	ADL (7/29/92)
f Recovery of deferred return	($0.01)	($0.01)	"
g DR&R allowance	$0.00	$0.00	"
5 TAPS Pipeline Tariff	($3.41)	($3.41)	Sum of items 5a thru 5h
a Operating & capital costs	($1.31)	($1.31)	Alaska Dept. of Law (ADL; 7/29/92) less 5b
b State & local property tax (pipelines)	($0.15)	($0.15)	30% of total ADOR property tax
c State income tax (pipelines)	($0.09)	($0.09)	5d * (eff. state tax rate / eff. fed. tax rate)
d Federal income tax (pipelines)	($0.65)	($0.65)	ADL (7/29/92) less item 5c
e After-tax margin	($0.49)	($0.49)	ADL (7/29/92)
f Recovery of deferred return	($0.64)	($0.64)	"
g DR&R allowance	($0.08)	($0.08)	"
h Pumpability Charge			[Used for individual field analysis]
6 State Share (Feeder Lines)	($0.01)	($0.01)	Sum of items 4b, 4c
7 Federal Share (Feeder Lines)	($0.01)	($0.01)	Item 4d
8 Industry Profit (Feeder Lines)	$0.03	$0.03	Sum of items 4e, 4f
9 State Share (TAPS)	($0.25)	($0.25)	Sum of items 5b, 5c
10 Federal Share (TAPS)	($0.65)	($0.65)	Item 5d
11 Industry Profit (TAPS)	$1.13	$1.13	Sum of items 5e, 5f
12 Tanker (to Gulf / West Coast)	($3.83)	($1.07)	USFRA data (ADOR)
13 Wellhead value	$11.02	$12.64	Sum of items 1, 4, 5, 12
14 State Royalties, Production & Property Taxes	($3.01)	($3.41)	Sum of items 14a thru 14d
a Royalty	($1.30)	($1.50)	Item 13 less field costs * est. field royalty
b Severance tax	($1.31)	($1.51)	Item 13 *.875 * nominal severance* ELF
c Spill Response & Conservation Taxes	($0.05)	($0.05)	$.054 * .875
d State & local property tax (production)	($0.36)	($0.36)	70% of total DOR property tax
15 Production costs	($3.49)	($3.49)	Sum of items 15a, 15b
a Lifting Costs	($1.19)	($1.19)	Derived from trade publication estimates
b Depletion., Depreciation & Amortization	($2.30)	($2.30)	Derived from trade publication estimates
16 Net Revenue (production)	$4.52	$5.74	Sum of items 13, 14, 15
17 State Income Tax (production)	($0.15)	($0.15)	From ADOR Spr. 92 fcst. less items 4c, 5c
18 Federal Income Tax (production)	($1.40)	($1.79)	Est. 32.1% of items 16 + 17
19 Industry Profit (production)	$2.96	$3.79	Sum of items 16 thru 18
20 Total State Share (production + pipelines)	$3.42	$3.82	Sum of items 6, 9, 14, 17
21 Total Federal Share (production + pipelines)	$2.06	$2.45	Sum of items 7, 10, 18
22 Total Industry Profit (production + pipelines)	$4.12	$4.95	Sum of items 8, 11, 19
23 CY 91 Industry Avg. per-barrel ANS Profit		$4.77	(Gulf [line 22 * line 3b] + West Coast [line 22* line 3b])

[From: North Slope Profits and Production Prospects, p. 43]

As Table 1 indicates, in 1991 after all costs, royalties and taxes were paid, North Slope owners earned an estimated profit of $4.77 per barrel on their Alaska production and pipeline operations. TAPS profits accounted for approximately $1.13 per barrel, or 23.7 percent of this total.[10]

Daily profits can be derived from Table 1 by multiplying the daily per-barrel estimated profits (line 23) by the average daily production (line 3a). At an average 1991 daily production rate of 1.82 million barrels per day, after-tax net profits on Alaska operations totalled approximately $8.7 million per day. Of this amount, TAPS profits of $1.13 per barrel contributed approximately $2.0 million per day. Total ANS production and pipeline profits for 1991, estimated by multiplying the daily average by 365 days, were $3.17 billion.

Insofar as the profits from ANS production and pipelining are concerned, was 1991 a typical year? As indicated above, profitability of North Slope operations is not tabulated in any form that will answer that question. ANS production and pipeline profits for the years 1977 through 1987 were estimated in a 1989 accountancy study commissioned by the Alaska Department of Revenue. That report was prepared by Dr. Edward Deakin, Price-Waterhouse Professor of Petroleum Accounting at the University of Texas. The per-barrel profits model was tested against Deakin's results for 1987 and the results tracked quite closely, producing a nearly identical division of the economic rents.[11] To fill the gap between 1988 and the present, a simplified version of the model in Table 1 was created for the years 1988-90 and 1992.[12] The results of this exercise are shown, with the Deakin's 1977-87 figures and the 1991 estimate, in Tables 2 and 3 on the following pages.

From these data, it is clear that the 1991 results were not unusual. As Table 3 indicates, estimated ANS production and pipeline profits for the seven-year period between 1986 and 1992 averaged approximately $3. 7 billion in 1993 dollars.

When the 1977-87 profits estimates from the earlier study are summed with the 1988-92 profits estimated in this report, the North Slope producers have earned a cumulative after-tax profit of approximately $58.6 billion (nominal) from their Alaska production and pipeline operations since 1977. Of this sum, $42.3 billion is from production and $16.3 billion is from pipeline operations.

Expressed in inflation-adjusted (1993) dollars, estimated North Slope production and pipelining profits exceed $85 billion.

Table 2.

Estimated Alaska North Slope Production and Pipeline Profits (Nominal $)

(1)	(2)	(3)	(4)
Year	North Slope Production & Feeder Line Profits	TAPS Profits	North Slope Production & Pipeline Profits (Nominal $)
1977	$260,000,000.00	$0.00	$260,000,000.00
1978	$639,000,000.00	$570,000,000.00	$1,209,000,000.00
1979	$3,030,000,000.00	$1,019,000,000.00	$4,048,000,000.00
1980	$3,212,000,000.00	$949,000,000.00	$4,161,000,000.00
1981	$3,443,000,000.00	$1,046,000,000.00	$4,490,000,000.00
1982	$3,483,000,000.00	$1,250,000,000.00	$4,733,000,000.00
1983	$4,026,000,000.00	$1,457,000,000.00	$5,483,000,000.00
1984	$4,313,000,000.00	$1,686,000,000.00	$5,999,000,000.00
1985	$3,468,000,000.00	$1,386,000,000.00	$4,854,000,000.00
1986	$1,250,000,000.00	$1,768,000,000.00	$3,018,000,000.00
1987	$1,989,000,000.00	$1,226,000,000.00	$3,215,000,000.00
1988	$1,806,922,980.00	$877,278,080.00	$2,684,201,060.00
1989	$2,591,784,520.00	$811,221,680.00	$3,403,006,200.00
1990	$3,966,079,950.00	$790,558,650.00	$4,756,638,600.00
1991	$2,420,126,800.00	$751,303,100.00	$3,171,429,900.00
1992	$2,357,119,971.00	$709,052,349.00	$3,066,172,320.00
1993			
Totals:	$42,255,034,221.00 (or) $42.3 billion nominal $	$16,296,413,859.00 (or) $16.3 billion nominal $	$58,551,448,080.00 (or) $58.6 billion nominal $

Notes

(2) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Table III-1, III-3); 1988-92 profits calculated by the author from published sources..

(3) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Table IV-3); 1988-92 profits calculated by the author from published sources.

(4) = (Col. 2) + (Col. 3)

Table 3.

Estimated Alaska North Slope Production and Pipeline Profits (Nominal and Inflation-Adjusted $)

(1)	(2)	(3)	(4)		(5)
Year	Inflation Rate	Index Factor	N. Slope Production & Pipeline Profits (Nominal $)		N. Slope Production & Pipeline Profits (1993$)
1977	6.5%	2.4636	$260,000,000.00	=	$640,533,059.05
1978	7.6%	2.3132	$1,209,000,000.00	=	$2,796,693,638.12
1979	11.3%	2.1498	$4,048,000,000.00	=	$8,702,555,990.47
1980	13.5%	1.9316	$4,161,000,000.00	=	$8,037,275,842.70
1981	10.3%	1.7018	$4,490,000,000.00	=	$7,641,201,239.06
1982	6.2%	1.5429	$4,733,000,000.00	=	$7,302,579,412.79
1983	3.2%	1.4528	$5,483,000,000.00	=	$7,965,875,475.50
1984	4.3%	1.4078	$5,999,000,000.00	=	$8,445,287,367.71
1985	3.6%	1.3497	$4,854,000,000.00	=	$6,551,655,202.82
1986	1.9%	1.3028	$3,018,000,000.00	=	$3,931,974,942.87
1987	3.6%	1.2785	$3,215,000,000.00	=	$4,110,534,516.59
1988	4.1%	1.2341	$2,684,201,060.00	=	$3,312,627,556.22
1989	4.8%	1.1855	$3,403,006,200.00	=	$4,034,312,887.15
1990	5.4%	1.1312	$4,756,638,600.00	=	$5,380,785,880.80
1991	4.2%	1.0733	$3,171,429,900.00	=	$3,403,768,854.47
1992	3.0%	1.0300	$3,066,172,320.00	=	$3,158,157,489.60
1993	–	1.0000			
Total Profits (ANS Production and Pipelines):			$58,351,448,080.00	=	$85,415,819,355.91
			(or)		(or)
			$58.6 billion nominal $	=	$85.4 billion 1993 $

Notes

(2) Consumer Price Index (CPI-U); annual % change from previous annual U.S. city average, all items (U.S. Department of Labor, CPI Detailed Report: Data for January 1993, p. 80).

(3) = (Subsequent year index factor) * (current year inflation)

(4) 1977-87 profits from: Edward B. Deakin, Oil Industry Profitability in Alaska 1969 thru 1987 (Alaska Dept. of Revenue, March 15, 1989, Appendix E); 1988-92 profits calculated by the author from published sources.

(5) = (Col. 3) * (Col. 4)

DISCUSSION

This analysis indicates that the disputed vapor recovery system could be purchased at a cost of approximately four percent of one year's after-tax profits. Tractor tugs could be purchased for less than one percent — approximately three days' profits. Put otherwise: Spread across the 6.8 billion barrels forecasted North Slope production between now and 2010,[13] the combined expenditure for these environmental amenities would come to less than $0.0225 (2-1/4 cents) per barrel.

How big is the 1986-93 average annual ANS production and pipelining profit of $3.7 billion, anyway? To answer that question, it will be useful to look at the annual "Fortune 500" ranking of the nation's largest industrial corporations. If ANS production and pipelining profits were controlled by one firm instead of three, that company would have equalled the performance of the second most profitable company on the Fortune 500 in 1991 and would have ranked fourth in 1992.[14]

What about the thesis of Alyeska's Hermiller's that the pipeline operator must cut costs in order to "keep the pipeline a viable economic enterprise" because production is declining? First of all, since the TAPS line is wholly owned by the North Slope producers, its sole function is to transport ANS and there is no alternative means of transport, it is fatuous to consider TAPS on a stand-alone basis. The pipeline is an integral part of North Slope operations.[15] Hermiller's warning, then, is properly analyzed in terms of production and pipeline profits together, as shown in the previous tables. To examine Hermiller's argument, ANS operations for the year 2000 can be analyzed in terms of Table 1, using the Alaska Department of Revenue's forecast assumptions for price and volume.[16] The results are summarized in Table 4.

Table 4. Estimated ANS Production and Profits in 2000 A.D.
(1992 $ per barrel)

Forecast Production 355.4 million barrels (971,000 barrels per day)

Forecast Price	$19.54
Forecast TAPS, Feeder Line Tariffs	($2.80)
Forecast Tanker Costs	($1.44)
State Royalties, Production & Property Taxes	($3.87)
Production Costs	($4.45)
State, Federal Income Tax	($2.36)
Industry Production Profit	$4.62
Industry TAPS, Feeder Line Profit	$0.71
Total Industry Profit per-barrel	$5.34

Source: North Slope Profits and Production Prospects. p. 72 (using Alaska Dept. of Revenue Spring 1992 forecast assumptions for state fiscal year 2000).

In the year 2000, additional costs of $0.0225 (2-1/4 cents) per barrel for hard-piping and tractor tugs would have a negligible effect on profits. Because these costs are effectively shared with state and federal governments, the loss to the producers would

amount to approximately one cent per barrel, compared to estimated tax-paid North Slope production and pipeline profits of $5.34 per barrel. Over the course of that year, those expenditures would result in a reduction of less than $4 million to estimated net profits totalling $1.9 billion. In making long-term production decisions, a two to three cent per-barrel change in costs is apt to be lost in the noise of the much larger uncertainty about prices. Long-range planning forecasts often consider price changes in $5-per-barrel increments. Finally, these data indicate that in terms of net income, at the end of the century profits from North Slope operations would still be on a par with the seventh most profitable corporation in the nation in 1991.

In the absence of information the industry treats as proprietary, it is difficult to make useful internal rate of return calculations. However, it is interesting to note that Deakin's accountancy study estimated the internal rate of return through 1987 at 43.7% if 75 percent of the total investment were financed with debt. Asuming 100% equity financing, Deakin estimated an after-tax rate of return on cash flow of 29.7%.[17] These data indicate that Hermiller's thesis, although logically correct, is practically useless. Due to the extraordinary profit from ANS operations, the environmental costs against which Alyeska officials habitually rail are virtually irrelevant to long-term planning.

Many pieces of the oil market price puzzle are not reported publicly. Even those that are published are often subject to dispute. These results should therefore be regarded as estimates rather than precise statements of North Slope profits. After reviewing the effects of changing key factors, Deakin estimated that with better public information, his estimate might range downward by 4% or upward by 10%.[18] Similar revisions to the 1985-92 numbers are possible, although upward revision in industry profits seems much more likely than downward. In sum, while the North Slope producers have consistently declined to make profit figures public, it is believed that the data used in this analysis produce an estimate of profits that is quite conservative.

This analysis considers only the profits earned from North Slope production, feeder line shipments to Prudhoe Bay and TAPS shipments to Valdez. These figures do not include the profits North Slope producers derive from transportation from Valdez to the Lower 48, or from refining and marketing of ANS. One reason for excluding these downstream profit sources is that even without ANS, the producers arguably could realize similar profits using non-ANS crude oil sources to run equivalent transportation and essentially identical refining and marketing operations.

Two other values of ANS have been identified. One is the value of a stable supply of crude oil that North Slope development provides the owner companies. Without ANS, the companies would have to rely for their oil supply on the shifting sources of the open market. Ownership of ANS production enables the major North Slope producers to plan and design their refineries with an assured supply. Quantification of this advantage, however, would require the introduction of assumptions whose bases would be difficult to validate.

The second additional benefit of North Slope operations resides in the collection by TAPS owners, through the TAPS tariff, of funds for the eventual dismantling and removal and restoration (DR&R) of the 800-mile pipeline corridor. This is the item cited by Alyeska's Williams as the kind of environmental cost that could cause

Alaska's golden goose to cackle its last. In fact, DR&R has turned into a hidden or off-book cash cow for the North Slope producers of uncelebrated but astonishing proportions. Instead of requiring that the funds collected against this vague legal obligation be held in an identifiable reserve account or placed in escrow to ensure their availability for future use, the 1985 TAPS tariff settlement[19] allows the TAPS owners to co-mingle this money with internal accounts, re-invest it for profit or distribute it to shareholders. According to the terms of the 1985 settlement, the money collected for DR&R was supposed to equal the amount required to restore the pipeline corridor to its previous condition. Due to changes in calculating factors such as inflation, tax rates and estimated corporate earnings on internally-held funds over the 35-year estimated life of the pipeline, it has been estimated that if dismantling actually takes place in the second decade of the next century, TAPS DR&R collections will exceed requirements by $11.7 to $22.1 billion in 1992 dollars.[20] This projected gain to the TAPS owners from TAPS DR&R is in excess of — over and above — the annual after-tax profits calculated in this report. Many industry observers believe the pipeline will be in operation for a much longer period, further increasing the value of the precollected DR&R payments to the owner companies.

One of the surprising facets of North Slope economics is that its extraordinary profitability is so dimly understood by the public. In a lengthy front-page report in May 1993, the Anchorage Daily News explained ARCO's presence and prospects in Alaska this way:

> ARCO is here, [CEO Lodwrick] Cook and analysts said, because it has to be: because it understands Alaska and Alaskans, because it owns so many oil leases in the state and because its enormously profitable refining and retailing system is geared for North Slope crude.[21]

All of this may be true, but the article omitted all reference to North Slope profits, which are roughly twice that of the company's "enormously profitable refining and retailing system."

CONCLUSIONS

Alaska is the frequent scene of intense debates in which environmental and economic values are pitted against each other. In those debates, crucial facts about energy and the environment are frequently obscured. The public, groping blindly in the absence of meaningful data, looks to its elected officials and bureaucrats for leadership and information. Public officials, in turn, seem perpetually impaled on the horns of the environment v. development dilemma. Even development spokesmen sometimes seem to be confused about key facts that underlie the central issues.

A straight-forward approach to North Slope profitability cuts through rhetoric to produce estimates of the extraordinary per-barrel net profitability of Alaska's North Slope operation. These data indicate that the North Slope producers have ample room to make additional environmental expenditures, if warranted, despite public pronouncements to the contrary by industry officials.

Decisions involving energy and the environment inevitably involve a balancing of economic and ecological factors. In view of the statements of Alyeska Pipeline Service Co. officials on Alaska North Slope economics, it is to be hoped that industry's environmental assessments are better than its public economic analyses.

NOTES

1. Seven major oil companies own the 800-mile TAPS pipeline, which transports Alaska North Slope crude oil from Prudhoe Bay to Valdez, where the oil is loaded on tankers for the Lower 48 states. Three companies — ARCO, BP and Exxon — own approximately 91.5% of TAPS and 93% of ANS production (the latter figure is net of royalty). For specific field and TAPS ownership percentages, see British Petroleum, Prudhoe Bay and Beyond [7th Edition; n.d.], p. 2.

2. Damage from the Exxon Valdez spill is the subject of debates among oil spill specialists. See, for example, "Information on Valdez Oil Spill — Scientific Studies Sponsored by Exxon" (Exxon press packet summarizing materials presented at the Symposium on Environmental Toxicology and Risk Assesment, sponsored by the American Society for Testing And Materials), April 26-29, 1993 and "NOAA Response to Exxon Challenge to Exxon Valdez Natural Resource Damage Assesament Database" (National Oceanic and Atmospheric Administration), April 27, 1993.

3. In 1971, British Petroleum's head of Environmental Studies promised "[f]or any oil spill . . . prompt and effective containment. . . . .The best equipment, materials and expertise . . . will make operations and Port Valdez and in Prince William Sound the safest in the world." In subsequent years industry officials frequently made similar promises. However, by 1989 Exxon had entrusted the newest and largest ship in its Alaska fleet to a Captain who had been barred from driving in two states for drunk driving. The Captain, in turn, left the supertanker in control of an inexperienced and overworked Third Mate with a helmsman at the wheel who was felt by colleagues to be incapable of painting a wall without close supervision. When the spill occurred, the Valdez-based response barge, which was supposed to have been ready to go on immediate notice, was out of the water for repairs. Key response equipment, such as pumps and containment boom, were either unavailable or buried under several feet of snow. (For promises: Alyeska Pipeline Service Co., Hearing Testimony [at U.S. Department of Interior hearings, Anchorage, February 1971], pp. 32-33. For spill and botched response, see: National Transportation Safety Board, Hearings May 1989 and Marine Accident Report—Grounding of the U.S. Tankship EXXON VALDEZ on Bligh Reef, Prince William Sound, near Valdez Alaska, March 24, 1989, esp. Findings and Probable Cause, pp. 166-170 [Report No. NTSB/MAR-90/04] and Alaska Oil Spill Commission, Final Report [State of Alaska, Feb. 1990], pp. 5-59.)

4. See: Regional Citizens Advisory Council, Resolution 92-2, Sept. 28, 1992; and letter from J.B. Hemmiller, President, Alyeska Pipeline Service Co., to Scott Sterling, President, Regional Citizens Advisory Council, Nov. 16, 1992.

5. See: Analysis of Tanker Escort Services for San Fraciaco Bay, July 1992 (prepared for Harbor Safety Committee of the San Francisco Bay Region by Robert Allan Ltd.); Foss/ARCO Tanker Escort Study (Puget Soud), Sept. 1991; Crowley Maritime Corporation, "Crowley Marine Services to Purchase Eight New 9,000 h.p. Tractor Tugs," Feb. 9, 1993 (press release).

6. M.F.G. Williams, "Economic Regulations and Development" (Conference on Energy Issues for the 1990s [University of Alaska Anchorage School of Business and Organization of Petroleum Exporting Countries conference], Anchorage, July 23-24, 1992), p. 2. Mr. Williams omitted mention of the fact that TAPS owners have already collected a sizable fortune for this purpose through the liberal terms of the 1985 TAPS tariff settlement (see "Discussion," below).

7. Anchorage Times, Jan. 12, 1992 (speech reprinted in its entirety by Alyeska Pipeline Service Co.]

8. For a more detailed discussion of the sources and factors employed in this spreadsheet, see the author's North Slope Profits and Production Prospects (report to the Alaska State Senate Finance Committee, Nov. 11, 1992), pp. 30-41. The approach used in this analysis is similar to the model of per-barrel profitability laid out by Charles Logsdon, Ph. D., Alaska Dept. of Revenue Chief Economist, in a July 1992 paper. ("Alaska's Relationship with the Major Oil Producers," Conference on Energy Issues for the 1990s [University of Alaska School of Business and OPEC; Anchorage, July 23-24, 1992], p. 6.) However, Dr. Logsdon's table delineates production revenue and therefore omits pipeline profits.

9. A 1984 study found the North Slope's three major producers paid an average of 23.25% in federal taxes from 1981 to 1983. In a 1988 update, ARCO and BP were not reported but Exxon paid approximately 23% from 1981 through 1987. (Robert S. McIntyre ad Robert Folen, Corporate Income Taxes in the Reagan Years: A Study of Three Years of Legalized Tax Avoidance [Citizens for Tax Justice, 1984], pp. 32-33, 36; Robert S. McIntyre, Johathan M. Crystal and David C. Wilhelm, The Corporate Tax Comeback [Citizens for Tax Justice and the Institute on Taxation and Economic Policy, 1988], p. 43.

10. TAPS profits include both the after-tax margin and the recovery of deferred return (lines 5e and 5f, Table 1).

11. Edward B. Deakin, Oil Industry Profitability in Alaska, 1969 through 1987 (Alaska Dept. of Revenue, March 15, 1989). For a comparison of the results produced by the two models, see North Slope Profits and Production Prospects, p. 60.

12. The 1991 data in Table 1 were produced from separate calculations for each of the five major North Slope producing fields, each of which has its own operating, capital and pipelining costs, as well as its own market value (based on the quality of the oil produced). A simplified version of the model was developed, using estimating factors to produce average North Slope profit figures for 1988 through 1990, and for 1992. Results from the 1992 field model closely matched those of the simplified version.

13. Alaska Department of Revenue, Spring 1993 Revenue Source Book, mid-scenario simulated oil production, p. 47.

14. According to the Fortune 500, the five most profitable companies in the United States in 1991 and 1992 (followed by their net after-tax income, in millions of dollars) were: 1992: (1) Phillip Morris, $4,939.0; (2) Exxon, $4,770.0; (3) General Electric, $4,725.0; (4) Merck, $1,984.2; (5) Bristol Meyers-Squibb, $1,962.0. 1991: (1) Exxon, $5,600.0; (2) Phillip Morris, $3,006.0; (3) General Electric, $2,636.0; (4) Merck, $2,121.7; (5) Bristol Meyers-Squibb $2,056.0.

15. In fact, it is conceivable that TAPS profits, which are guaranteed in the tariff agreement, could enable the owners to continue producing profitably despite short-term production revenue losses due to relatively low oil prices. Whether Alyeska officials actually misperceive TAPS as a stand-alone economic entity, as their public pronouncements indicate, is beyond the scope of this paper.

16. The price and production assumptions used in this analysis, from the Alaska Department of Revenue's Spring 1992 forecast, are rather conservative. For example, that forecast assumed a 50% production decline at Kuparuk by the year 2000 with little or no replacement production from the West Sak reservoir. ARCO, which has the major interest in both fields, has indicated that Kuparuk will probably hold at current levels through the end of the century, and that West Sak production may be brought on line when Kuparuk does slow down. (For a detailed look at the assumptions used and the results, see North Slope Profits and Production Prospects, pp. 69-79.)

17. Oil Industry Profitability in Alaska, 1969 through 1987, pp. T74-75.

18. Oil Industry Profitability in Alaska, 1969 through 1987, pp. 20, T58-T63.

19. "Settlement Agreement between the State of Alaska and ARCO Pipe Line Co. [et al.]," June 28, 1985, p. 14.

20. For the history of the DR&R provision in the TAPS settlement and an analysis of its economic consequences, see the author's Hidden Billions: The TAPS DR&R Provision (report prepared for Stan Stephens, PO Box 1297, Valdez, Alaska, 99686, August 21, 1992).

21. Kim Ferraro, "Stuck on Alaska: Arco's bet pays off for state, company," Anchorage Daily News (May 23, 1993), p. A-1.

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(Resume)
Date: August 15, 1993

Date of Birth: September 9, 1941
Place of Birth: St. Louis, Missouri, USA
Nationality: U.S.A.

Sex: Male
Marital Status: Single
SS#: 489-46-2462
Alaska Bus. License #: 118587

Present Position:

Freelance research and writing (October 1989 - present). Primary focus: Alaska North Slope oil and gas economics, production prospects and environmental policy.

Previous Positions:

Policy Analyst, Office of Management and Budget, Office of the Governor of Alaska (1987-89). Duties: special advisor to the governor on oil and gas issues; member of state oil and gas litigation policy working group; member of state revenue forecasting group; special assignments.

Senior Analyst, Office of Management and Budget, Office of the Governor of Alaska (1983-1987). Duties: compilation of state revenue and budget totals, preparation and publication of annual report on same; special assignments.

Freelance investigative reporting and research (1976-1982).

Resources and Staff Investigative Reporter, Fairbanks Daily News-Miner (1975-1976).

Freelance investigative reporting (19

Assistant Professor of Political Science, University of Alaska (1969-71). Duties: Teaching undergraduate and graduate courses in government; setting up and leading Master's in Public Administration Program at the University's Juneau branch.

Academic Training: Beloit College, B.A., 1964; Claremont Graduate School, M.A., 1967; Claremont Graduate School, Ph.D., 1970 (all degrees in government). Major areas of focus include Contemporary China and comparative politics, public administration. Doctoral dissertation on "Green Card" Labor and the 1968 California Grape Strike in the San Joaquin Valley; master's essay on the sociological theory of collective behavior.

Academic Awards: National Defense Foreign Language Fellowship, 1966-67; National Endowment for the Humanities Post-Doctoral Fellowship, 1971 (declined); Danforth Fellowship for Economic Reporting, University of Missouri School of Journalism, 1976.

Print Journalism (partial list of publications):[1] Articles on a wide range of subjects ranging from the use of chemical and biological warfare in Southeast Asia to investigation of a U.S. Senator's mismanagement of the bank he previously headed have appeared in magazines such as Alaska, Alaska Business, Lithopinion, The Nation, The New Republic, The Progressive, Saturday Review / World and newspapers including The All-Alaska Weekly, The Anchorage Daily News, The Boston Globe, The Chicago Tribune, The Miami Herald, The St. Louis Post-Dispatch and The Washington Star.

Print Journalism (awards): Amos Tuck Award for Excellence in Economic Reporting ($5,000 first prize, 1979, for a series on the Northwest Energy Co.'s efforts to build a natural gas pipeline from Alaska's North Slope to the Lower 48); best weekly column, Alaska Press Club (1975, for coverage of construction of the trans-Alaska oil pipeline); best reporting (weekly) and second best reporting (daily), Alaska Press Club (1979, for reporting on workers' compensation problems).

Research Reports, Monographs:

"Cook Inlet Oil Platform Hiring Practices," Alaska State Legislature (1980);

"Fatalities during Construction of the Trans-Alaska Pipeline," Alaska Science Conference (1980);

"Workers' Compensation Problems in Alaska," Alaska State Legislature (1981);

"Chaos in the Capitol: The Alaska State Budget System in Crisis," Alaska Public Interest Research Group (1982);

"Oil and Gas Revenue Disputes: Status Report and Recommendations," Alaska State Legislature (1990);

"The 1985 TAPS Tariff Settlement: A Case Study in the Effects of Confidentiality on Information Available to Decision Makers" (supplemental report to "Oil and Gas Revenue Disputes"), Alaska State Legislature (1990);

"Corexit 9580: Report and Recommendations," Alaska Department of Environmental Conservation Oil Spill Response Center (1990);

"North Slope Production Prospects, 1990-2010," Alaska State Legislature (1990);

"Worker Safety and the Dutch Harbor Fishery Boom," Alaska State Department of Labor (1991);

"Alyeska Pipeline Terminal Ballast Water Treatment and Northbound Shipments: Final Report," Prince William Sound Regional Citizens' Advisory Council (1991);

"Hidden Billions: The TAPS DR&R Provision," under contract to Stan Stephens, Valdez, Alaska (1992);

"North Slope Profits and Production Prospects," Alaska State Legislature (1992);

"Alaska North slope Oil Profits and Proposed Environmental Mitigation Measures," for presentation to the N. Amer. Conference, International Association for Energy Economics (1993).

Book chapters:

"Cambodia: The Struggle Continues," in Vietnam: What Kind of Peace? (Washington, D.C.: Indochina Resource Center, 1973);

"The Press in Alaska," in McBeath and Morehouse (eds.), Alaska State Government and Politics (Fairbanks, Alaska: University of Alaska Press, 1987).

Additional Experience in Oil & Gas:

1. Legal and Accounting: In addition to extended field trips to assist the Alaska Department of Law and its consultants on disputes over payments to the state due from (or related to) North Slope oil production and income taxes, royalties and pipeline tariffs while working for the State of Alaska, I furthered my professional training in these areas by attending the following meetings or professional conferences of special note:

Oil Pipeline Ratemaking Workship, Executive Enterprises, Inc. (Houston, Texas, May 1985);

Short Course on the Fundamentals of Oil and Gas Law and Taxation , Southwestern Legal Foundation (Dallas, Texas, May 1988);

OPEC Meeting (observer for State of Alaska; Vienna, Austria, November 1988).

2. Environmental: In 1989 I spent more than a month in Prince William Sound assisting the State Department of Environmental Conservation in the cleanup of the Exxon Valdez oil spill. In addition to frequent follow-up visits to Prince William Sound, I subsequently attended the following major conferences (partial list);

Arctic Marine Oil Pollution Conference (Calgary, Alberta, June 1989; and Vancouver, B.C., June 1991);

International Oil Spill Conference (Prevention, Behavior, Control, Cleanup), American Petroleum Institute, U.S. Coast Guard and U.S. Environmental Protection Agency (San Diego, California, March 1991;

Third American Society for Testing and Materials (ASTM) Symposium on Environmental Toxicology and Risk Assessment — Exxon Valdez oil spill (Atlanta, Georgia, May 1993).

References: Available on Request.

Conference Announcement and Call for Papers

International Association for Energy Economics
15th Annual North American Conference

Westin Hotel, Seattle, Washington
October 11-13, 1993

Conference Theme:

Energy and the Environment

Panels and topics for consideration include:

Energy/Environment Balance
- Externalities in planning and operation
- Command and control vs. marketable rights
- Structure of pollution markets
- Mitigation options

Energy Conservation Forecasting
- Utility incentives
- Conservation lifecycle costs
- Energy system impacts

Electricity/Gas Markets & Regulation
- Transmission
- Retail competition
- Incentive regulation
- Nonutility suppliers

Energy Development
- Energy and economic growth
- Developing nations' energy strategies
- Privatization

Energy Taxes
- BTU tax impacts
- Carbon tax options
- Import fees
- State royalties and severance taxes
- Credits for renewables

Pacific Rim Energy Trade

Emerging Energy Technologies
- Alternate fuel vehicles
- Distributed production
- Renewable technologies
- Electro-technologies

Energy Modeling and Forecasting
- Integrated energy planning
- Industrial customer demands
- Full fuel cycle analysis

Energy Planning Computer Technologies
- User-friendly forecasts
- Oil and gas trading
- Project analysis

Frontier Oil & Gas Development
- Alaska
- Canada
- International

West Coast Energy Issues
- Pacific NW and California energy plans
- PADD V oil and gas

NAFTA and Energy Markets
- Mexican oil and gas exports
- Canadian gas exports
- U.S. energy exports and imports

Submit abstracts of less than 250 words by June 4, 1993 to:

Sam Van Vactor and Bill Kemp
Program Co-Chairmen
IAEE North American Conference
1101 Fourteenth St., NW, Suite 1100
Washington, DC 20005-5601
Fax (202) 371-1090

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Gen. Info.
File 2

AS 46.08.030

Says:

It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available. (§ 1 ch 59 SLA 1986)

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)

Funding History - Division of Spill Prevention and Response

Prior to Fiscal Year 91 no permanent staff of DEC were charged directly to the Oil andd Hazardous Substance Release Response Fund (Response Fund). In FY90 and 91 DEC experienced large staff growth bringing existing programs to core level and adding additional staff associated with new legislation. Beginning in FY 91 and continuing to present, general funding of the Spill Prevention and Response functions has been gradually eliminated. In addition, regional staff have been shifted from other projects to the Spill Prevention and Response projects commensurate with the work load in the respective regions.

STAFFING - FISCAL YEAR 89

FY 89 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
SPPM	19.5	758.5	0.0	226.2
Csites	24.8	1,213.8	0.0	1,457.1
Total	44.3	1,972.3	0.0	1,683.3

LEGISLATION ENACTED 89 SESSION

SLA89 Chapter 29 SB256

Required Department of Law to seek cost recovery at the request of DEC.
Clarified Municipal reimbursements from Response Fund.

SLA 89 Chapter 39 HB68

Authorized DEC to use liens against property as security for State expenditures.

SLA 89 Chapter 112 SB260

Established nickel a barrel surcharge on regulated industry production.

SLA 89 Chapter 90 SB261

Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay costs of State Master Plan and Regional Plans.
Expanded the uses of the Response Fund to include restoration of the environment by addressing the effects of a release or threatened release.

SLA 89 Chapter 113 SB264

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 uses of Response Fund to pay for Response Office and Depot and Corps.

SLA 89 Chapter 41 SB271

Clarified civil penalty for the unpermitted discharge of oil and the failure to implement an oil discharge contingency plan.

STAFFING - FISCAL YEAR 90

FY 90 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
SPPM	25.0	1,013.3	0.0	235.6
Csites	36.3	876.4	0.0	1,863.5
Total	61.3	1,889.7	0.0	2,099.1

Analysis of Staffing Change from FY 89 to FY 90

The FY90 operating budget request included a structural change from multiple components for individual programs such as Air, Oil, Water to the large single component Environmental Quality (EQ) Projects. The SPPM and Csites projects were included in the EQ Projects component.

Staff increased in the SPPM project in FY 90 due to DEC implementation of a multi year plan to increase staffing to core level necessary to meet statutory, regulatory and legislative intent requirements. Prior to these increases, DEC was not meeting those requirements. The FY 90 increment established a small capacity for spill response and seasonal positions to inspect tankers and facilities for compliance with contingency plan requirements.

Contaminated Sites staff increased in FY 90 due to inclusion of Kenai cleanup project staff previously funded as non permanent or in the CIP budget in the operating budget request. These staff identify and cleanup existing contaminated sites on the Kenai Peninsula which pose a threat to public health.

LEGISLATION ENACTED 90 SESSION

SLA90 Chapter 141 HB315

Categorized environmental crimes and determined appropriate level of criminal behavior for each.

SLA90 Chapter 142 HB316

Established the level of criminal damages to be assessed in fines against organizations for damages caused by environmental crimes.

SLA90 Chapter 190 HB566

Added incident command system requirement to State and Regional Plans.
Required DEC to use the State plan to designate depot and response corps 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 Division of Emergency Services.
Expanded uses of Response Fund to include DES reimbursement for depots and corps.
Established State Emergency Response Commission (SERC).
Established Local Emergency Planning Committees(LEPCs).
Established Hazardous Substance Spill Technology Review Council (HSSTRC).

* SLA90 Chapter 191 HB567

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.
Clarified DEC inspections of regulated industries.
Established DEC participation in structural integrity of vessels, barges, pipelines and facilities.
Expanded uses of Response Fund to include:

Review of oil discharge prevention and contingency plans
Conduct training, response exercises, inspections and tests to verifiy inventories and ability of state, municipality or parties required to have an approved contingency plan
Verification of financial responsibility

SLA90 Chapter 199 HB578

Established Citizen's Oversight Council
Expanded uses of Response Fund to include Oversight Council costs.

STAFFING - FISCAL YEAR 91

FY 91 (est)	FTEs	Gen Fund	Resp Fund.	Other Funds
SPPM	72.0	1,860.1	3,203.6	0.0
SRO	14.0	0.0	2,703.5	0.0
Csites	41.0	457.8	715.1	1,804.3
Stg Tank Program	11.0	6,009.2	0.0	0.0
Total	138.0	8,327.1	6,622.2	1,804.3

Analysis of Staffing Change from FY 90 to FY 91

FY 91 was the final year of increments to bring the Spill Prevention and Response projects to core level funding. An increment was requested and approved for both the SPPM and Contaminated Sites projects.

The Spill Response Office and Storage Tank Assistance Program were identified as separate projects.

Funding was requested and approved for the Environmental Investigation and Enforcement unit. This unit is responsible for the specialized investigatory and legal resources associated with determination of responsible parties for a release or a contaminated site.

Fiscal notes were attached to HB 566 and HB 567 increasing staffing an additional 22 FTEs to provide resources to perform the additional work necessary to meet the statutory obligations enacted in HB 566 and HB 567.

Additional staff were approved for the Prince William Sound District Office.

LEGISLATION ENACTED 91 SESSION

SLA91 Chapter 48 SB165

Expanded uses of Response Fund to include refurbishment or construction of marine response vessels.

SLA91 Chapter 83 SB25

Expanded uses of Response Fund to municipal grants.

SLA91 Chapter 31 HB194

Required the Board of Marine Pilots to cooperate with DEC in the review and approval of training programs for pilots of tanker vessels.

SLA91 Chapter 92 HB196

Required the Citizen's Oversight Council to submit a report on whether State laws for response action contractor civil liability and vessel contingency plan requirements should be amended.

SLA91 Chapter 09 SB263

Provided a one-year delay to June 1, 1992 for compliance of non crude oil operations with the financial responsibilities in AS 46.04.040.

Authorized DEC to issue interim approval for contingency plan amendments that substantially comply with the requirements of Chapter 191, SLA90.

STAFFING - FISCAL YEAR 92

FY 92 (est)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	6.0	248.7	182.1	0.0
SPPM	69.0	981.8	4,661.5	77.0
SRO	14.0	0.0	1,107.5	0.0
Csites	40.0	414.8	1,182.4	1,949.4
Stg Tank Program	9.0	0.0	0.0	6,700.0
Total	138.0	1,645.3	7,133.5	8,726.4

Analysis of Staffing Change from FY 91 to FY 92

FY 92 budget structure recognized the creation of the Division of Spill Prevention and Response. The Director's Office and Storage Tank Program were separate components in the FY 92 budget request, but, the projects (SPPM, SRO and Csites) continued as a part of the EQ projects budget request.

Overall staffing levels did not increase, but, were re-aligned commensurate with the needed level of effort in the two components and three projects. The process of shifting funding for Spill Prevention and Response work from General Funds to Response Funds began in FY 92 with central office staff.

LEGISLATION ENACTED 92 SESSION

SLA92 Chapter 83 SB540

Required DEC to develop regulations governing the registration and approval of oil spill primary action contractors.

Required DEC to collect fees in the amount necessary to cover the costs of this program.

STAFFING - FISCAL YEAR 93

FY 93 (actual)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	12.0	115.6	1,459.2	0.0
SPPM	72.5	90.8	9,027.5	0.0
Csites	53.5	351.8	4,717.1	2,582.7
Stg Tank Program	7.0	0.0	0.0	3,822.7
Total	145.0	558.2	15,203.8	6,405.4

Analysis of Staffing Change from FY 92 to FY 93

The FY 93 budget structure established the Division of Spill Prevention and Response as a separate BRU with the projects above as separate components. The Spill Response Office was decentralized with expert spill responders in each region. Administrative Support, Safety and Data Management were transferred from the programs to the Director's Office.

Staff were added for Response Fund Management (1), the Department of Defense cooperative agreement (2), Geographic Information Systems (1 - non perm) and the Leaking Underground Storage Tank program (1 - non perm).

Conversion of the Spill Prevention and Response effort from General Funds to Response Funds continued focusing on regional efforts leaving the Division with 393.0 in General Funds and 165.2 in General Fund Match.

STAFFING - FISCAL YEAR 94

FY 94 (request)	FTEs	Gen Fund	Resp Fund	Other Funds
Director	13.0	0.0	1,296.7	36.4
SPPM	75.2	0.0	8,105.2	225.0
CSites	57.2	165.2	3,727.5	2,225.0
Stg Tank Program	10.0	0.0	0.0	6,621.9
Total	155.4	165.2	13,129.4	9,108.3

Analysis of Staffing Change from FY 93 to FY 94

Non permanent staff previously off budget were included in the FY 94 budget request. Historically the department had not included those positions in budget requests and requested revised programs to move monies from contractual to personal services to pay for non perms.

Non permanent staff are included in the FY 94 operating budget request as follows:

Director's Office - 1 Non Perm Student Intern
Spill Prevention Planning and Management - 1 Non Perm Environmental Specialist
Contaminated Sites - 3 Non Permanent Environmental Specialists
Storage Tank Program - 2 Environmental Specialists (seasonal) and 1 Clerk Typist (seasonal)

A permanent position was added in the Contaminated Sites Program (Site Discovery) and a long term non permanent position in the Underground Storage Tank Program was brought on budget as a permanent part time position.

Regional budgets included an additional .4 FTEs not previously assigned to Spill Prevention and Response projects.

All general funds were eliminated leaving 165.2 in general fund match in the budget request.

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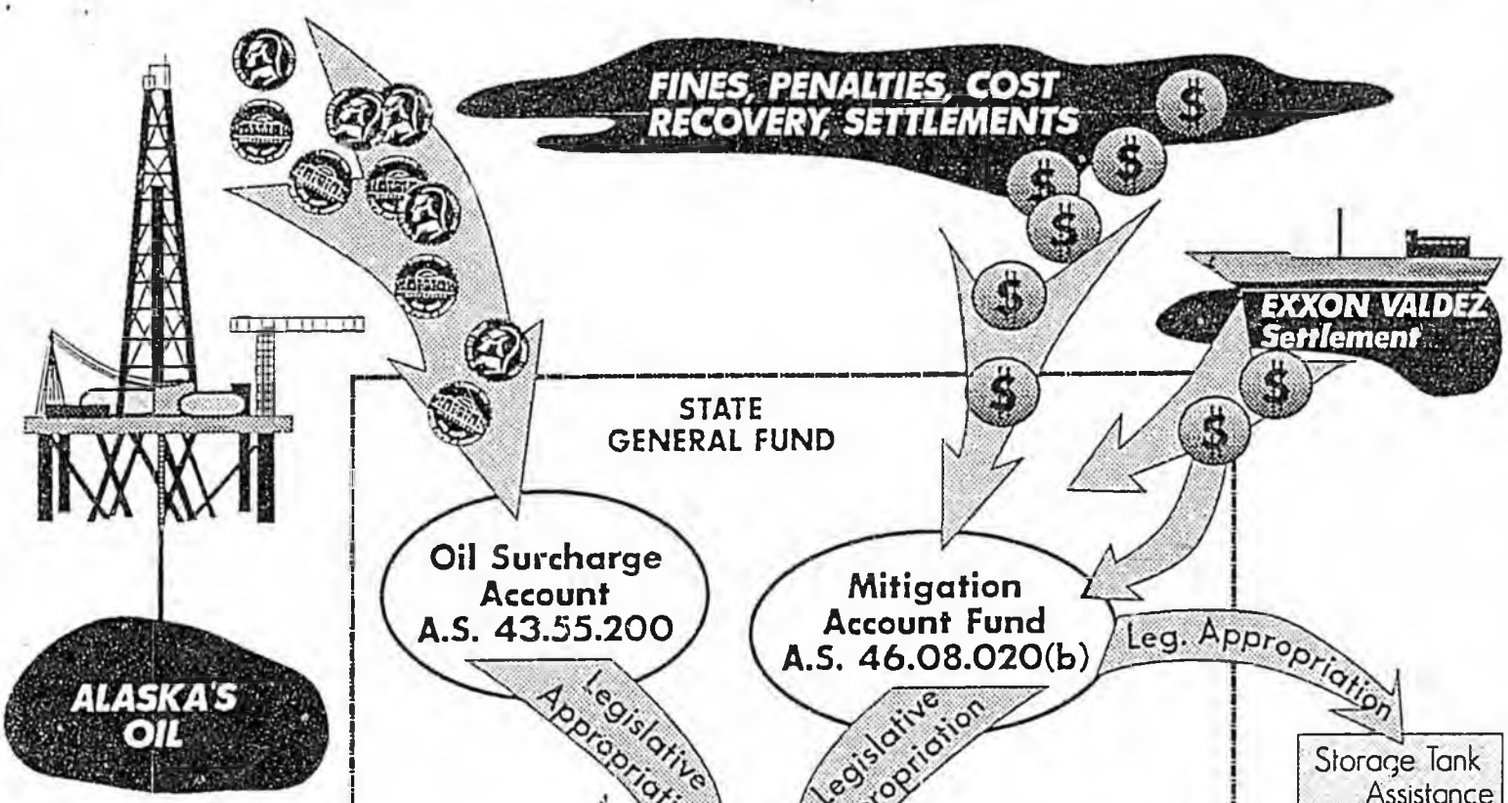

OTHER AGENCIES

Military and Veterans Affairs (DES)
- Response Preparedness & Planning
- Response Depots & Corps
- Hazards Analysis

Transportation and Public Facilities
- Oil Response Ferries

Law
- Cost Recovery
- Regulations/Guidance

Public Safety
- Environmental Crimes
- 24-Hour Dispatch

Fish and Game
- Contingency Plan Reviews

Natural Resources
- Contingency Plan Reviews

Administration
- Telecommunications Installation/Maintenance

State Emergency Response Commission

Citizens' Oversight Council - not funded in FY94

ENVIRONMENTAL CONSERVATION

State Emergency Response Commission
Local Emergency Planning Committees
Hazardous Substance Spill Technology Review Council
Contaminated Sites
Government Preparedness and Response
Industry Preparedness and Response
Pollution Prevention
Geographic Information Systems

SPILL RESERVE (Emergency Reserve)

Alaska's Oil and Hazardous Substance Release Response Fund — Prepared by ADEC 4/93

SPILL RESERVE EXPENDITURES BY FISCAL YEAR

(in thousands)

	FY 90	245.5
	FY 91	256.8
	FY 92	71.4
	FY 93	299.3
(to date 11/22)	FY 94	272.5
	TOTAL	1,145.5

*note: Expenditures for FY 94 include 156.7 for Project Chariot which will be reimbursed by a federal grant.

SPILL RESERVE AS A PERCENTAGE OF TOTAL RESPONSE FUND EXPENDITURES

0.9 %

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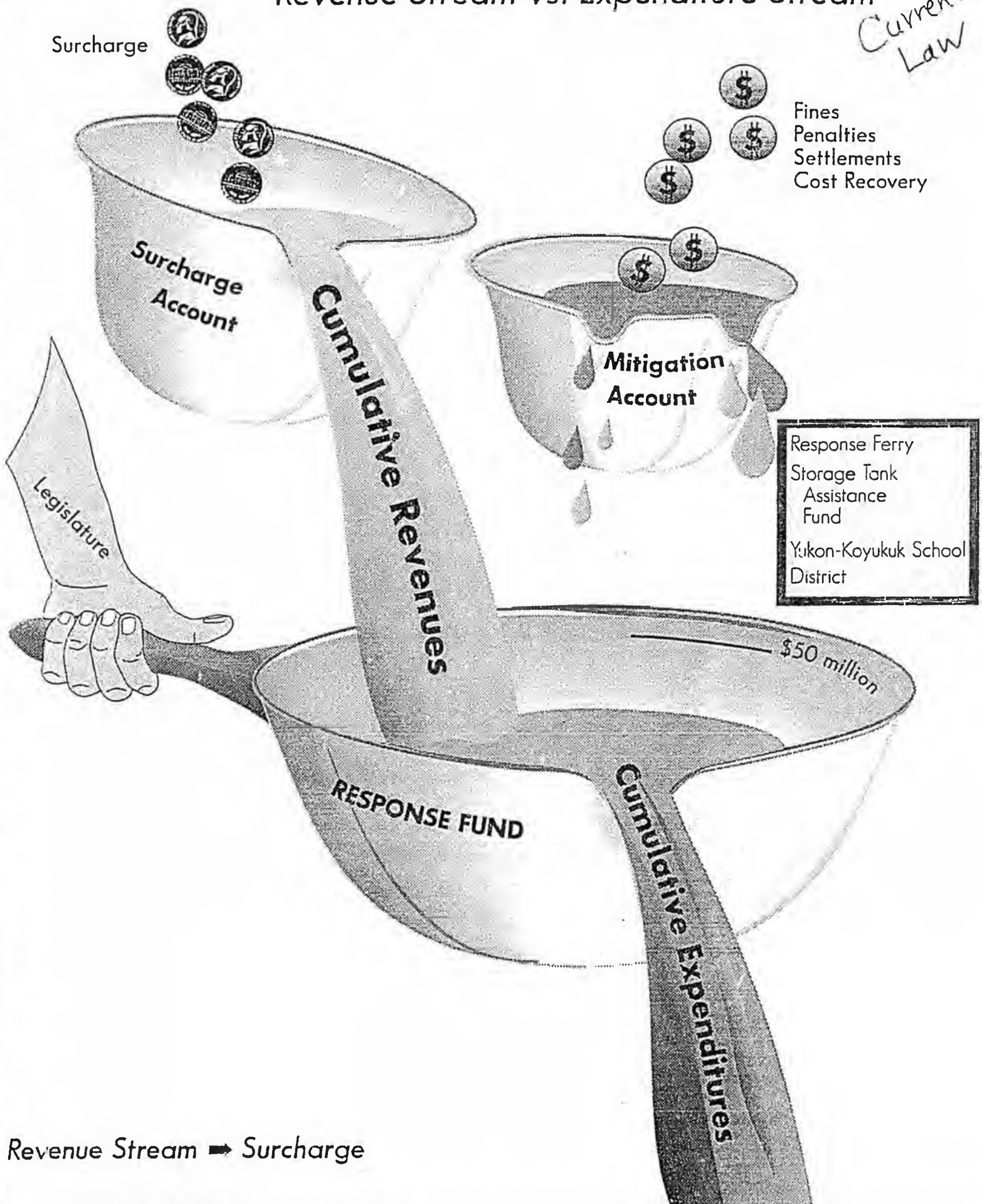
Response Fund Summary as of November 5, 1993

	AS 43.55.230(b) Calculation	Response Fund
Cummulative Surcharge Collected	112,085,145	109,200,000
Cummulative Expenditures	-127,190,873	-127,190,873
Difference	-15,105,728	-17,990,873
Cummulative Other Deposits		
General Fund	0	44,447,000
Program Receipts	0	30,000,000
Mitigation Account	0	5,007,800
Miscellanous/Accounts Receivable	0	-3,048,952
Reserve For Encumbrances	0	-8,690,862
Reserve For Capital Appropriations	0	-3,191,125
Reserve for FY 94 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-9,302,319
Balance or Spill Reserve	-15,105,728	37,229,869

OIL CONSERVATION SURCHARGE TAX

Revenue Stream vs. Expenditure Stream

Current Law



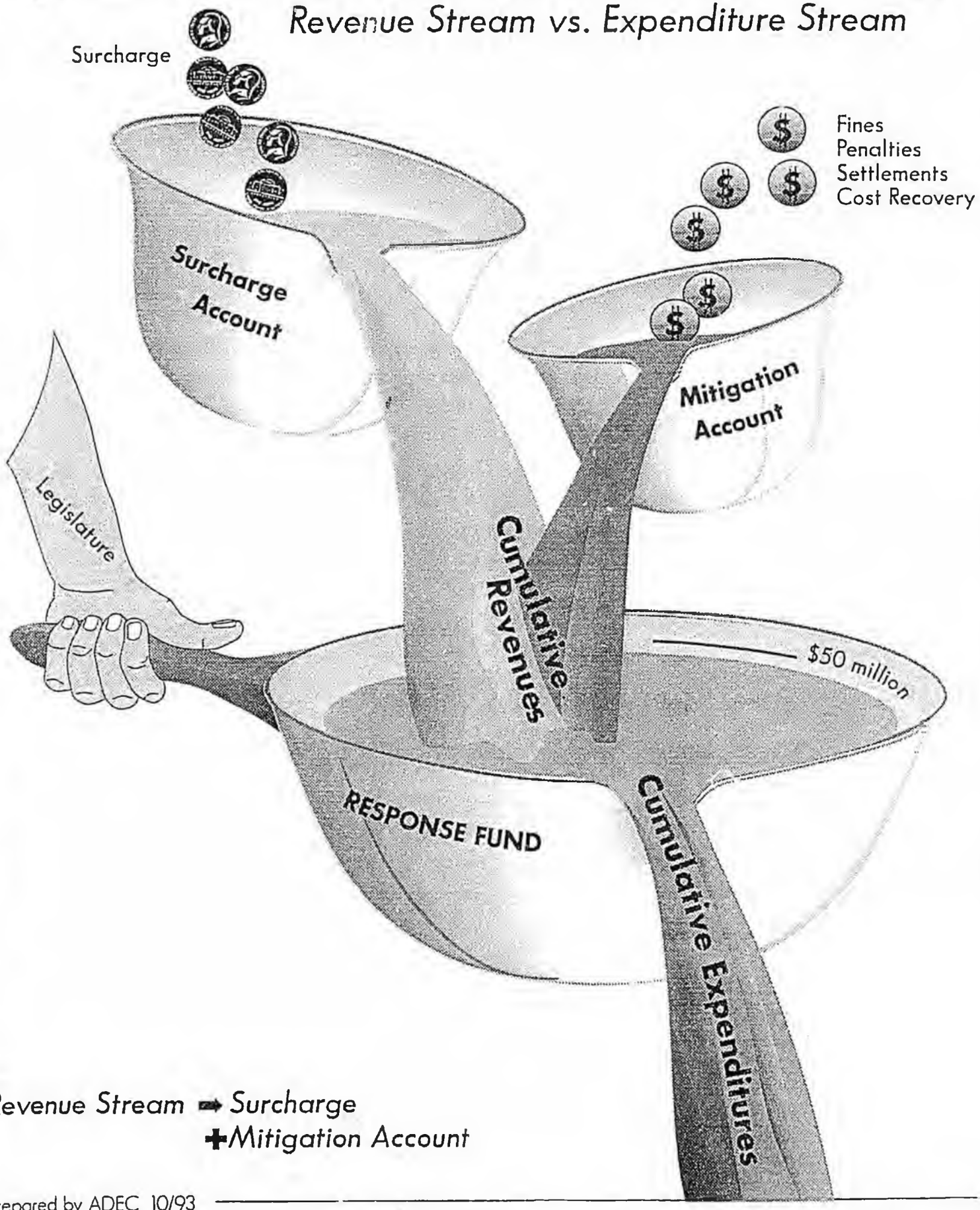
Revenue Stream ➡ Surcharge

Prepared by ADEC 10/93

Proposed Statutory Change (DEC's ~~new proposal~~)

OIL CONSERVATION SURCHARGE TAX

Revenue Stream vs. Expenditure Stream

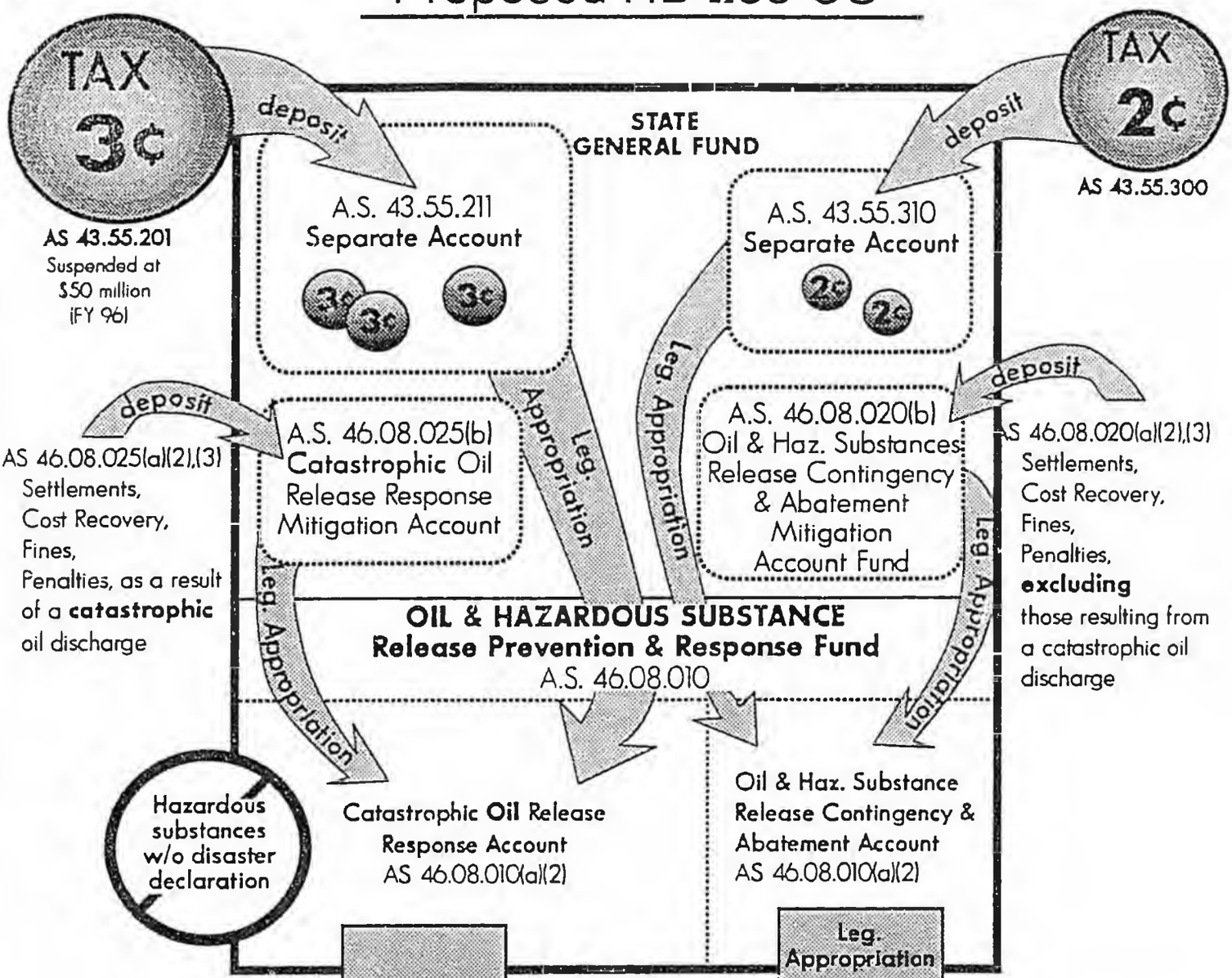


Revenue Stream ➡ Surcharge
➕Mitigation Account

Prepared by ADEC 10/93

HB 238-Version D

Proposed HB 238 CS



4,200,000 gallons!

30 day max. w/o concurrent resolution; may require special session

Accessed ONLY in the event of a catastrophic oil spill - over 100,000 barrels AS 46.04.900(2)(a)

OR

Declaration of a disaster emergency by the Governor - oil and hazardous substances AS 46.04.900(2)(b)

RESTORATION ???

~~RESEARCH & DEVELOPMENT~~

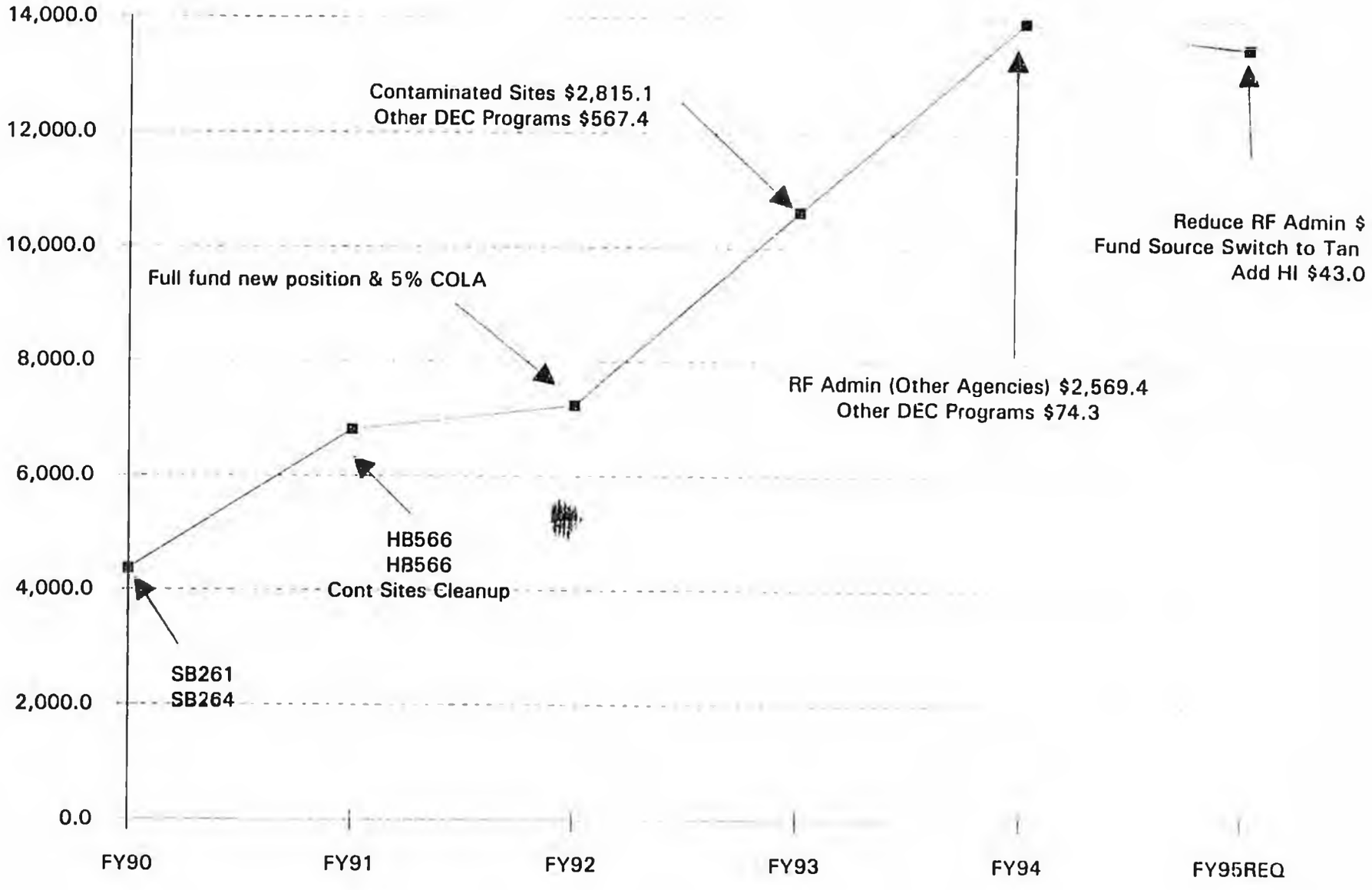
- Investigate and evaluate release or threatened release of oil or a hazardous substance (non-catastrophic)
- Cost recovery
- State master plan
- Oil and Hazardous Substance Response Office
- Contingency plan review
- Response preparedness and training
- Depots & corps DMVA/DES

RESTORATION ???

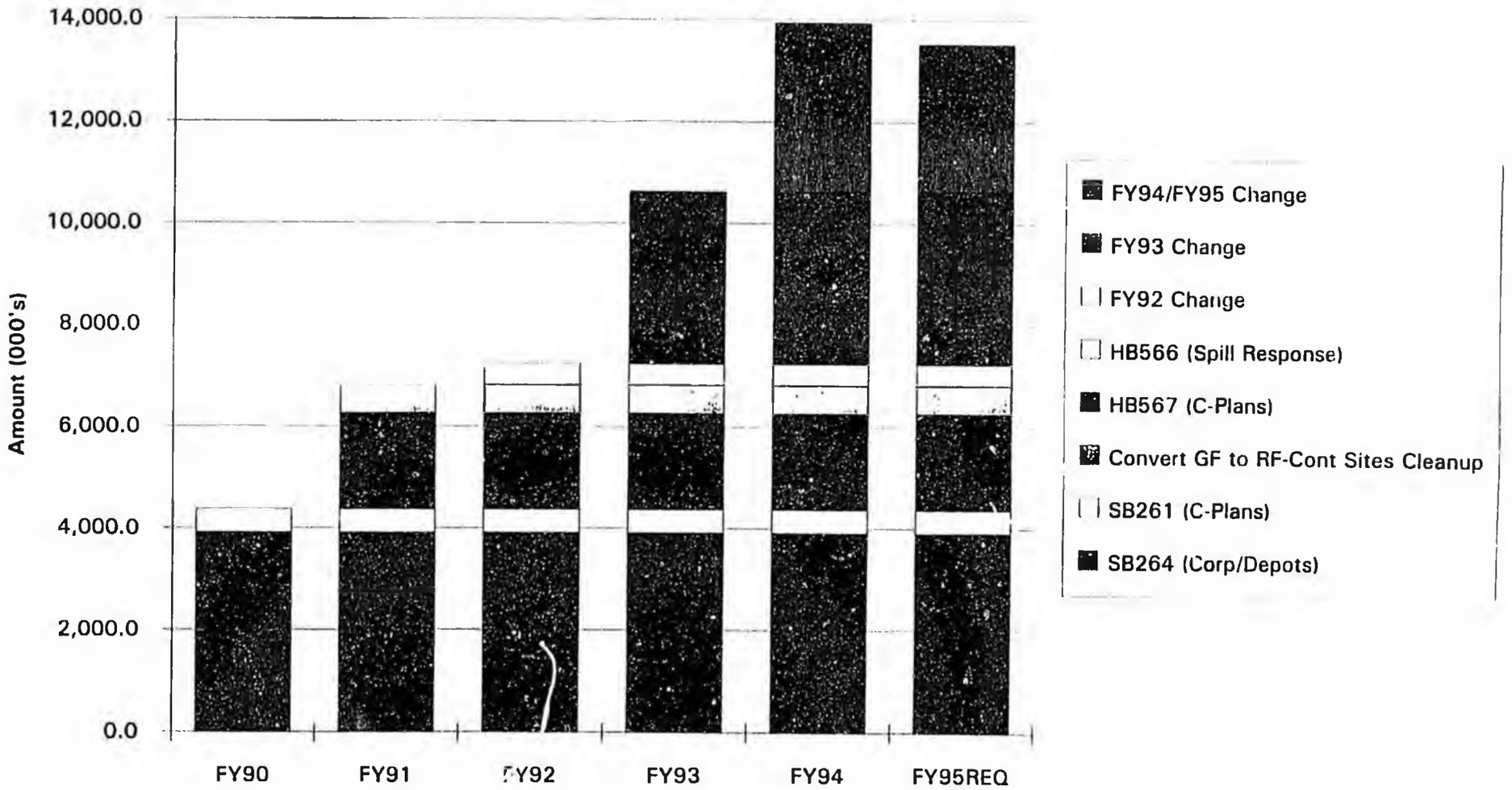
~~RESEARCH & DEVELOPMENT~~

Prepared by ADEC 4/93

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**

Audit Report

DEC

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
OIL AND HAZARDOUS SUBSTANCE
RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number:

18-4463-94

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

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

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit

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(907) 465-3830
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January 10, 1994

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

January 10, 1994

Audit Control Number

18-4463-94

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

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

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

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

Objectives

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

1. Review the history of the Response Fund; including the original purposes of the fund, the reasons for establishing a 5¢ per barrel of oil surcharge, and the current purposes of the Response Fund.

2. Determine the criteria DEC uses in its decisions to fund certain projects and whether the criteria is consistent from project to project.

3. Determine what accounting procedures are currently in place that allow the legislature to track where and how Response Funds are being spent.

4. Recommend possible statutory changes that will clarify how Response Fund monies should be administered by agencies outside of DEC.

Scope

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

Methodology

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

1. Alaska Statute 46.08, Oil and Hazardous Substance Releases.

2. Information pertaining to 1986's House Bill 470 which eventually passed as Chapter 59, SLA 1986.

3. Information pertaining to 1989's Senate Bill 247 which eventually passed as Chapter 13, SLA 1989.

4. Information pertaining to 1989's Senate Bill 256 which eventually passed as Chapter 29, SLA 1989.

5. Information pertaining to 1989's House Bill 68 which eventually passed as Chapter 30, SLA 1989.

6. Information pertaining to 1989's Senate Bill 261 which eventually passed as Chapter 90, SLA 1989.

7. Information pertaining to 1989's Senate Bill 260 which eventually passed as Chapter 112, SLA 1989.

8. Information pertaining to 1989's Senate Bill 264 which eventually passed as Chapter 113, SLA 1989.

9. Information pertaining to 1990's House Bill 566 which eventually passed as Chapter 190, SLA 1990.

10. Information pertaining to 1990's House Bill 567 which eventually passed as Chapter 191, SLA 1990.

11. Information pertaining to 1990's House Bill 578 which eventually passed as Chapter 199, SLA 1990.

12. Information pertaining to 1991's Senate Bill 165 which eventually passed as Chapter 48, SLA 1991.

13. Information pertaining to 1991's Senate Bill 25 which eventually passed as Chapter 83, SLA 1991.

14. Fiscal Years 1991, 1992, 1993, and 1994 budget documents related to the Response Fund.

15. Fiscal Years 1991, 1992, and 1993 Reimbursable Services Agreements between DEC and other agencies and between divisions within DEC for use of Response Funds.

16. Response Fund Annual Reports for FY 87 through FY 93.

17. DEC Policy Statements on the Response Fund.

18. Attorney General Opinions and memorandums on the Response Fund.

19. Industry contingency plans and corresponding documentation maintained at DEC.

20. Documents pertaining to DEC spill responses through November 8, 1993.

21. DEC database information and other documentation related to contaminated sites.

22. Oil Spill Commission Final Report.

23. A pamphlet put out by the Prince William Sound Regional Citizens' Advisory Council entitled "*Then and Now: Changes Since the Exxon Valdez Oil Spill.*"

24. Newspaper coverage regarding the Response Fund and its usage.

Additionally, we interviewed the following:

1. Staff within DEC.

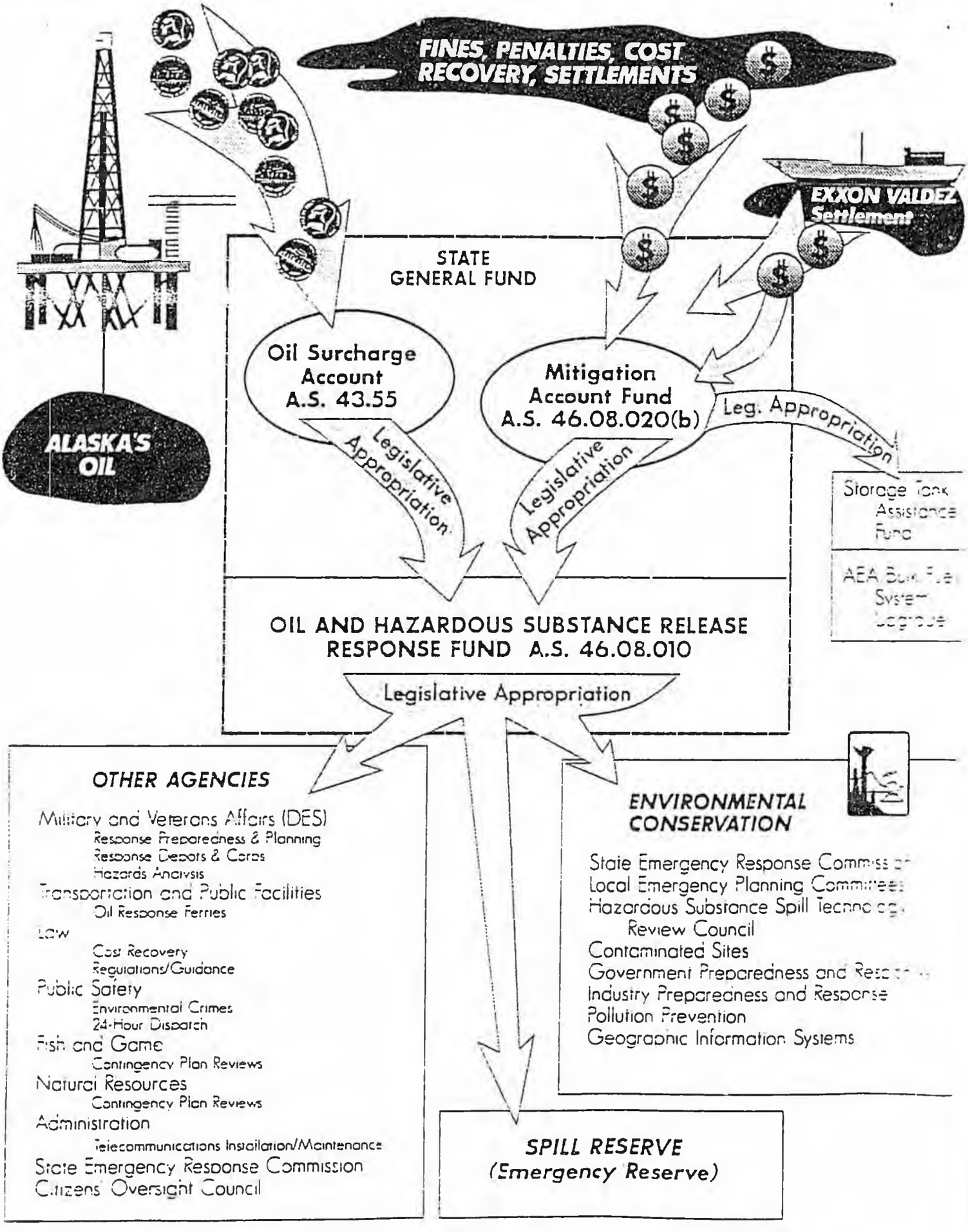
2. Staff within Department of Military and Veterans Affairs.

3. Staff within Division of Legislative Finance.

4. Staff of Office of the Governor, Office of Management and Budget.

5. Staff within Division of Legal Services.

6. Chairman of the former Alaska Oil Spill Commission and current chairman of Hazardous Substance Technology Review Council.



Alaska's Oil and Hazardous Substance Release Response Fund

Prepared by ADEC

ORGANIZATION AND FUNCTION

The 1986 Alaska State Legislature passed House Bill (HB) 470 (Ch 59, SLA 86), a bill relating to the release of oil and hazardous substances. This legislation established an Oil and Hazardous Substance Release Response Fund (Response Fund) on July 1, 1986 with appropriations from three different sources totalling $680,666: $158,677 from the balance of the Oil Spill Mitigation Account, $221,989 from the balance of the Oil Spill Expense [illegible] and a [illegible]0,000 FY 87 capital budget appropriation. The facing page illustrates flows into and out of the Response Fund.

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

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

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

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

Spill Prevention and Response Division

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

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

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

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

2. The Industry Preparedness Program (IPP) focuses on the oil industry's ability to prevent and respond to releases or threatened releases of oil. Statute requires industry to submit proof they have both the financial ability and physical ability to respond to releases. Their physical ability is demonstrated by a contingency plan which must be approved before obtaining a permit to operate. Contingency plan requirements apply to oil tank vessels, barges, crude oil pipelines, and onshore and offshore oil exploration and production facilities. In addition, oil terminal facilities that contain an amount of product specified in statute must have a contingency plan. IPP is responsible for reviewing, approving, and testing contingency plans as well as ensuring operators meet the financial responsibility requirements set out in statute.

3. The Contaminated Sites Remediation Program was created to abate threats to public health and the environment posed by sites contaminated by improper disposal or discharges of hazardous substances. The number of contaminated sites is large and ever increasing. The program attempts to identify and assess contaminated sites and

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

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

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

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

PURPOSES OF THE RESPONSE FUND
AS 46.08.040

Senate Bill 25 [Ch 83, SLA 91]	(a) In addition to money in the fund that is transferred to the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the commissioner of environmental conservation may use money from the fund to
Senate Bill 261 [Ch 90, SLA 89]	(1) investigate and evaluate the release or threatened release of oil or a hazardous substance and
House Bill 470 [Ch 59, SLA 86]	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;
Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]	(2) pay all costs incurred to (A) establish and maintain the oil and hazardous substance response office;
House Bill 567 [Ch 191, SLA 90]	(B) review oil discharge prevention and contingency plans submitted under AS 46.04.030; (C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and (D) to verify or establish proof of financial responsibility required by AS 46.04.040;
Senate Bill 264 [Ch 113, SLA 89] reworded by: HB 567 [Ch 191, SLA 90] HB 566 [Ch 190, SLA 90]	(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;

House Bill 470 (Ch 59, SLA 86)	(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); (5) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;
Senate Bill 261 (Ch 90, SLA 89)	(6) prepare, review, and revise (A) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and (B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and (7) restore the environment by addressing the effects of an oil or hazardous substance release.
House Bill 566 (Ch 190, SLA 90)	(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency. (c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)--(7) and (d)(2) of this section unless money is available from an appropriation made specifically for that purpose.
House Bill 578 (Ch 199, SLA 90)	(d) Upon request from (1) the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600; and
Senate Bill 165 (Ch 48, SLA 91)	(2) the commissioner of transportation and public facilities, the commissioner shall transfer money from the fund to the Department of Transportation and Public Facilities to pay for the construction or refurbishment of one or more vessels of the Alaska marine highway system that have the capability to assist in responding to spills of oil and hazardous substances; in expending money in the fund whose use for vessels of the marine highway system is authorized by AS 19.65.025 and this paragraph, the commissioner shall give priority to construction of one or more new vessels that have the characteristics required by this paragraph.

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BACKGROUND INFORMATION

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

Original uses of the Response Fund

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

1. Contain and clean up, which includes monitoring, assessing, investigating, and evaluating, the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.

2. Provide matching funds for participation in federal oil discharge cleanup activities.

3. Recover the cost to the State or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

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

Original methods to finance the Response Fund

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

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

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

Legislature reacts to *Exxon Valdez* grounding

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

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

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

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

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[2]Prior to the statute amendment, the municipality could only be reimbursed if the agreement had been entered into before the expenses were incurred.

Senate Bill 261 added a state master plan and regional master plans to the duties of DEC. The State Master Plan, which was to be addressed in AS 46.04.200, included requiring or scheduling unannounced oil spill drills to test the sufficiency of an oil terminal facility discharge prevention and contingency plan. The preparation, review, and revision of the state master plan and regional master plans were added as the fourth authorized use of the fund. In addition, the first use of the fund was amended to include investigate and evaluate as well as the contain and clean up previously allowed. A fifth purpose allowed the Response Fund to be used to restore the environment by addressing the effects of an oil or hazardous substance release.

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

Imposition of a 5c per barrel conservation surcharge

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

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

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

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

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

> *(a) The legislature finds that the March 24, 1989, oil spill disaster in Prince William Sound demonstrates a need for the state to have an independent spill containment and cleanup capability in the event of future discharges of oil or a hazardous substance.*
>
> *(b) It is the purpose of this Act to provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substance releases of a magnitude that presents a grave and substantial threat to the economy and the environment of the state.*

Uses of Response Fund continue to expand

House Bill 567 (Ch 191, SLA 90) extended the number of the purposes of the fund which were to review oil discharge prevention and contingency plans; to conduct training, response exercises, inspections, and tests in order to verify state, municipality, and industry preparedness; and to verify or establish proof of financial responsibility. The bill also clarified DEC's reporting requirements on the Response Fund to include describing each personal services position and total compensation for the position, each contract in excess of $20,000, and each purchase in excess of $10,000.[1]

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

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

A Hazardous Substance Spill Technology Review Council,[1] which was to review and recommend research topics to DEC, was created under SERC. The bill clarified that the Response Fund was to pay expenses incurred by DMVA, DES for response corps and depots when presented with appropriate documentation by the division. This bill allowed the Response Fund to be used for response to a declared disaster emergency related to an oil or hazardous substance discharge.

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

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

Legislature plays active role in shaping purpose of fund

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

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

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

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[1]The Division of Legislative Audit conducted a Sunset Audit on the Department of Environmental Conservation, Hazardous Substance Spill Technology Review Council, dated November 29, 1993.

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

Various budgeting procedures used to track Response Fund expenditures

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

Different budget processes were used in FY 93 and FY 94

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

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

Except for two notable appropriations,[1] there were no direct operating appropriations to agencies other than DEC in FY 93. However, direct capital appropriations were made to other agencies for cleanup of contaminated sites. In FY 94, no "front section" appropriations were made to DEC except for the transfer from the oil surcharge and mitigation accounts to the Response Fund. The SPAR division is the direct recipient of the funds. SPAR is responsible for RSAs between DEC and other agencies.

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

Reimbursable Services Agreements extensively used for Response Funds expenditures

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

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

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REPORT CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

Spill reserve balance and the 5c surcharge suspension formula are unrelated

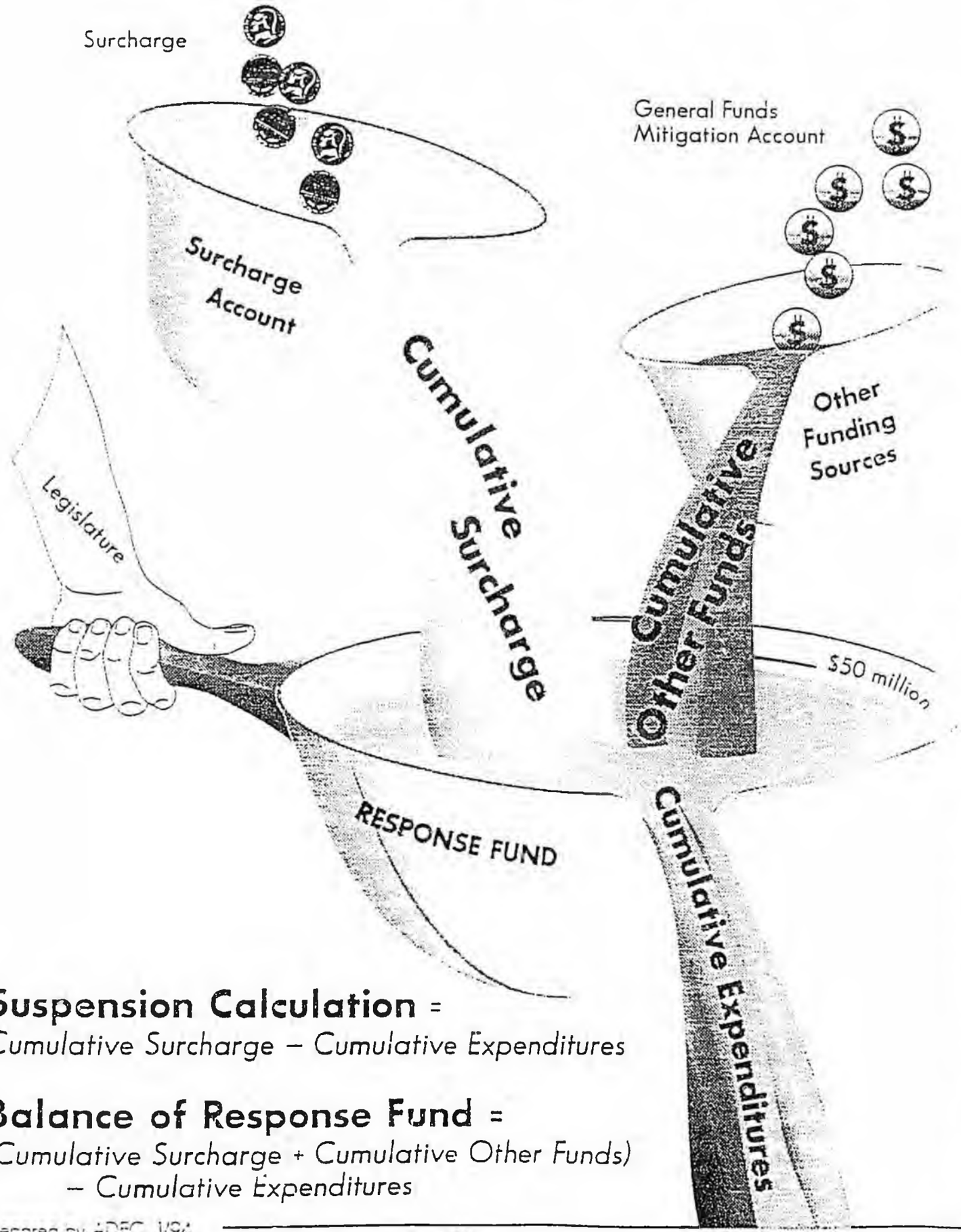
As discussed above, the State had over $27 million set aside in the spill reserve to respond to future spills as of the end of FY 93. The calculation for determining the suspension of the 5c surcharge had a deficit balance of over $8.5 million as of the same time. It should be recognized that there is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

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

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

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

SURCHARGE SUSPENSION vs. RESPONSE FUND BALANCE



Suspension Calculation =
Cumulative Surcharge – Cumulative Expenditures

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

Prepared by ADEC 1/94

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

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

1. a listing of each position control number (PCN) with title and the amount compensated the position;

2. copies of all contracts in excess of $20,000 and all subsequent amendments, and copies of all RSAs with the University of Alaska in excess of $20,000 and all subsequent amendments;

3. documentation of each purchase in excess of $10,000;

4. the amount paid to each municipality, community, or village; and

5. RSAs to other state agencies funded by the RSA must also report the information requested in items 1 through 4.

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

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

Criteria for allocating resources within SPAR varies by program

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

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

1. Response depends on the risk posed by a spill: The Government Preparedness and Response Program within SPAR is charged with responding to spills that pose an imminent and substantial threat to public health or the environment. No preset policy exists as to which spills will be responded to in a region. Determining if a spill poses an imminent and substantial threat is a subjective process. Every region and district has taken into consideration a myriad of factors and developed its own method for deciding whether a spill warrants a response. Common criteria for response among regions include proximity of a spill to populations and water source, size of spill, and type of spill. The level of response can vary from responding via telephone, to monitoring the cleanup, to taking the lead in response through a contractor.

2. Progress in reviewing contingency plans has lagged behind agency projections: As discussed in Background Information, the *Exxon Valdez* oil spill caused major revisions to the statutes that set forth requirements for oil discharge prevention and contingency planning. As a result of the new statutes, SPAR's IPP was required to draft new regulations. These regulations forced affected operators to either prepare contingency plans or make amendments to their existing plans. The new regulations also created the need for technical assistance to be provided to those operators who were either drafting amended, or developing new, contingency plans. IPP has focused their resources on drafting new regulations, providing technical assistance to operators and reviewing contingency plans.

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

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

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

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

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

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

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

Hazard Ranking Model

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

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

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

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

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

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

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

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

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

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

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

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

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

(1) shall maintain accounting records showing the income and expenses of the fund; and

(2) shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

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

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

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

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

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

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

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

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

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

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

Recommendation No. 2

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

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

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

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

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

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

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

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

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