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...although the 1989 herring spawning population was the largest seen since the early 1970s ...(it) produced the fewest offspring ever observed.

similar to those found by investigators studying impacts from other oil spills and from scientists conducting laboratory experiments. In 1989, stress-related hemorrhaging around the vent and enlarged bright gall bladders were found in adult herring, and oil was found in samples of bile and whole herring. Even parasites of adult herring in oiled areas migrated from the gut into muscle tissue to avoid toxic hydrocarbons. Internal tissue damage found in adult herring samples in 1989 and 1990 suggested that this toxic event may have weakened the fish's ability to resist diseases and parasites. Juvenile herring growth was probably stunted during 1989 as a result of having to flush toxins from their tissues after encountering and ingesting oil while feeding.

Reasonable Doubts?

What do these injuries mean to short-term and long-term health of the herring population? There is no doubt that many of the eggs deposited in 1989 did not survive to produce adult herring. Three-year-old herring in the 1992 spawning migration were noticeably lacking, although the 1989 herring spawning population was the largest seen since the early 1970s. In fact, the spawning population in 1989 produced the fewest offspring ever observed. Yet herring survival is known to vary tremendously, even in the absence of man-made disasters. This makes it difficult to cite the oil spill as the main cause of such poor herring production.

The herring population is made up of several age classes, often with offspring of a single spawning year (referred to as a year class) dominating. Large year classes have occurred every four years in Prince William Sound since 1976. The year class currently dominating the Prince William Sound population hatched in 1988 and represented 65% of the herring in 1992. Members of the 1988 year class were one year old during the summer of the oil spill, growing rapidly and feeding voraciously in nearshore bays, many of which were oiled. Juvenile herring, while never directly studied, were caught incidentally during studies on juvenile pink salmon investigations. These studies showed that juvenile pink salmon in oiled areas grew more slowly, and therefore probably survived less well, than juveniles in unoiled areas. Since juvenile herring appear to feed in the same areas as juvenile pink salmon, their growth and survival may have been similarly depressed.

In 1992 four-year-old herring of the 1988 year class were actively spawning. Preliminary investigations show that hatching success of eggs collected from an oiled area was less than half that of eggs collected from an unoiled area. If this difference was due to genetic damage from oil exposure, the herring population's ability to produce offspring will be reduced and may result in a long term decline in abundance.

Is Restoration Needed?

Direct restoration is not reasonable since herring are difficult to culture in large numbers, factors affecting larval survival are not well understood, and cost-effectiveness of any restoration measures would be questionable. Additionally, injuries to the herring population are not totally understood and have not been fully quantified, making targeted restoration measures difficult. The only reasonable restoration tool at this point is manipulation of human use through management of commercial fisheries. This will only work, however, if precise stock assessment tools can be developed and maintained.

We hope we have all learned some valuable lessons from this event. Much of the injury we have documented is sublethal and, therefore, did not result in immediate death of exposed life stages. Such injuries are subtle and not always obvious when looking at the animal. Lethal injuries can only be documented when an animal is found shortly after death. Incredible luck would be required. But we have learned that since eggs and larvae are extremely sensitive to oil, response efforts must be quick and effective to minimize exposure of these life stages to spilled oil and other toxic substances. Agencies have a formidable task in improving oil spill prevention measures as well as developing more effective responses to such emergencies. Response plans should probably include injury assessment studies designed to ensure that the types of data collected will accurately define natural resource injuries. Such plans, similar to Alaska's Emergency Medical System response plan for natural disasters, could focus multi-agency efforts.

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Assessment and Restoration of Dolly Varden and

Two lesser known salmonids that inhabit the Prince William Sound are Dolly Varden and cutthroat trout. Although not as famous as their Pacific salmon cousins, such as pinks and silvers, Dolly Varden and cutthroat trout are vital, renewable resources in their own right. These species provide important diversity in sport fishing opportunity that ranges from kids' catching their first fish at Eyak Lake in Cordova to remote fly-in fishing in pristine wilderness settings. Cutthroat trout are a particularly rare resource in this part of the world; Prince William Sound is the northwestern limit of their range.

Injury Assessment

Injury assessment was a thorny problem for Dolly Varden and cutthroat trout because we had no pre-spill assessment data with which to compare post-spill performance. However, the timing of the spill coincided with an important aspect of the complicated life history of these species. Most Dolly Varden and cutthroat trout in Prince William Sound are *anadromous* which means that they spawn in fresh water but migrate to sea as adults. Both species are born in freshwater streams, and juvenile fish remain in fresh water from one to four years. They migrate to sea during May and June when they attain a length of approximately 6 inches and are referred to as *smolt*. For the remaining years or their lives, (usual life span is 6 to 10 years), these fish enter freshwater in the fall, winter in freshwater lakes, exit freshwater in the spring, and summer in the ocean. Another important aspect of their life history is that these fish return, or *home*, to the same lake to winter. A group of Dolly Varden or cutthroat trout which return to the same lake are referred to as a *stock* or *population*.

Researchers theorized that potential impacts of oiling would be manifested in reduced survival or growth. The assessment program was designed to measure and compare the annual survival and growth of oiled and nonoiled stocks. Immediately following the spill, we selected five freshwater lake systems that were known to contain both Dolly Varden and cutthroat trout: two tributaries to oiled marine waters and three tributaries to nonoiled marine waters. A fence, or *weir*, was constructed on each stream so that all fish exiting the system for ocean waters could be counted and sampled. Each fish was tagged and measured for length, and some were sampled for age. This program was repeated in the spring of 1990 and 1991. From these data, we estimated and compared survival and growth of oiled and nonoiled fish. Adult fish of both of these species naturally suffer higher spawning mortality and exhibit slower growth than do juveniles. Therefore, we estimated survival and growth for adults (fish greater than 270 mm, or 10 1/2 inches) and subadults (fish that have smolted but not yet spawned which are between 200 mm and 270 mm, or 8 and 10 1/2 inches).

Is It Possible to Isolate Impacts from Oiling?

An important consideration in this study design was to determine whether any measured differences between oiled and nonoiled stocks could, in fact, be attributed to the oil spill. Our study design addressed this concern in several ways.

We sampled more than one stock within each of the oiled and nonoiled categories. This is usually referred to as *replicate sampling*. Adherence to this type of sampling allows researchers to apply results from the sampled populations to the rest of the unsampled populations. It makes it possible to test whether differences in attributes, such as survival or growth, are greater among stocks within a category than the level of typical differences between stocks across categories. Replicate sampling also addresses the diversity in lake systems across the Sound. We sampled both large and small mainland and island lakes.

Our sampling of fish as they exited the lake systems in spring 1989 also provided pre-spill growth data. The spill occurred in March, a time at which both juvenile and adult Dolly Varden and cutthroat trout were still in freshwater and had not yet encountered oil. Length-at-age data could be compared to see if there were inherent differences in growth prior to the spill. Finally, there were many other injury assessment studies that provided supporting evidence. Studies were conducted to measure hydrocarbon content of marine waters, sediment, prey items, and the fish themselves.

Results

In the 12 months immediately following the spill (1989-1990), both survival and growth of Dolly Varden and cutthroat trout were significantly lower for stocks from oiled systems. Differences in survival were greatest for Dolly Varden: 37% lower for subadults and 38% lower for adults. Cutthroat trout adults from oiled systems had 29% lower survival than did fish from nonoiled systems. Similar rates of reduced growth for oiled stocks were sustained for both species. For oiled stocks of

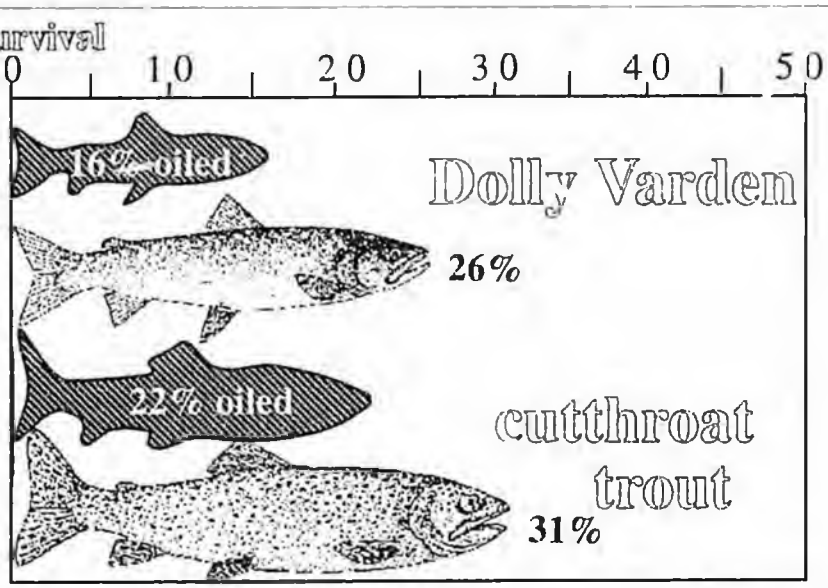
Cutthroat Trout

by Douglas N. McBride and Kelly Hepler

Dolly Varden, growth was reduced 24% for subadults and 22% for adults. Oiled stocks of cutthroat trout exhibited 36% and 43% reduced growth for subadults and adults, respectively.

Interestingly, differences in growth persisted into the next year (1990-1991) for both species. Growth of oiled stocks of subadult and adult Dolly Varden was reduced 7% and 9%, respectively. Reductions in growth for subadult and adult cutthroat trout were greater and were similar to the year immediately following the spill: 30% and 47%, respectively. Incomplete sampling at some of the weirs in 1991 due to flooding precluded estimates of survival for the period 1990 to 1991.

How confident are we in these results? These conclusions are based on large sample sizes: approximately 65,000 Dolly Varden and 4,000 cutthroat trout were sampled and tagged during the 3 years of study. There were no pre-spill differences in growth between any of these stocks as evidenced by the similarity in length-at-age data from the spring 1989 sampling. Differences in survival from 1989 to 1990 cannot likely be attributed to differential commercial fishing due to fishery closures during 1989. Nor can differences in survival be attributed to differential sport fishing: no tagged fish were recovered from creel surveys conducted in 1989, and recreational anglers voluntarily reported catching few tagged fish of either species. Sampling of water, sediment, prey species, and adult Dolly Varden all showed hydrocarbon contamination



Percent survival of adult fish from oiled and nonoiled stocks of Dolly Varden and cutthroat trout in Prince William Sound from 1989 to 1990.

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How do we think that Dolly Varden and cutthroat trout encountered oil? Direct exposure to lethal levels of crude oil is unlikely. By June 1989, concentrations of soluble aromatic hydrocarbons in marine waters had declined to sublethal levels. We believe some fish ingested oil; most likely through contaminated prey. Other studies also showed that prey items such as small invertebrates declined in abundance in oiled waters. A reduction in the forage base for Dolly Varden and cutthroat trout could also translate into reduced survival and growth.

(Continued on next page)

Restoration

The likelihood that oil impacts will persist for some years compels us to recommend active restoration solutions to alleviate this problem. We identified two approaches to restore oiled Dolly Varden and cutthroat stocks in the Sound: stocking and fishery management.

Stocking


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Stocking fish to increase abundance of impacted populations is appealing in several respects. Technology exists to do it. Also, adding to affected populations should, if successful, provide measurable results — more fish in a timely manner.

However, stocking has several disadvantages that need to be considered. First, the intrinsic value of these resources lies in the wild or natural state in which these populations existed prior to the spill. Introduction of hatchery fish compromises this situation. In some situations outside of Alaska, stocking of salmonids in systems already supporting viable wild stocks has resulted in reduced viability of those wild stocks. Also, stocking is usually an expensive solution in comparison to other options. Stocking as a tool in sport fisheries management in Alaska is usually done to maintain or increase sport fishing effort. To justify the high cost of stocking usually requires extremely high levels of fishing effort.

Fishery Management

Fishery management appears to be the most effective restoration solution. In the absence of a pollutant such as oil, mortality of exploited fish populations is partitioned into fishing mortality and natural mortality. With additional mortality due to oil, we recommend reducing fishing mortality on oiled stocks and responsibly developing alternate recreational fishing opportunities on nonoiled stocks of these species.

How do we reduce fishing mortality on oiled stocks? The most drastic way is to close areas to fishing for affected species. The Alaska Department of Fish and Game has already taken this measure for oiled populations of cutthroat trout due to the fragile nature of cutthroat populations in the Sound; they are the most northern and westerly cutthroat trout in the world, and the natural stocks are small. A conservative management approach will most likely be taken until or unless restoration of these stocks is demonstrated.

How do we responsibly develop fishing opportunities on nonoiled stocks? One way is to conduct similar stock assessment programs for Dolly Varden and cutthroat trout in the nonoiled parts of the Sound with the objective of estimating sustained yield of these populations. We could simultaneously survey potential fishing sites for land status, facilities, and accommodations. Such information will provide the basis for a management plan for Dolly Varden and cutthroat trout fisheries in the Sound. Concerns that must be addressed include conservation of wild stocks, diversity of opportunity, and accessibility to the fishing public. In Alaska, fishery management plans are promulgated through a public process so that all concerns and issues can be thoroughly addressed. Such a management plan should provide a "blueprint" by which orderly fisheries can be responsibly developed and managed for the Sound's wild stocks of Dolly Varden and cutthroat trout.

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Above: An ADF&G biologist with a sea-run Dolly Varden.

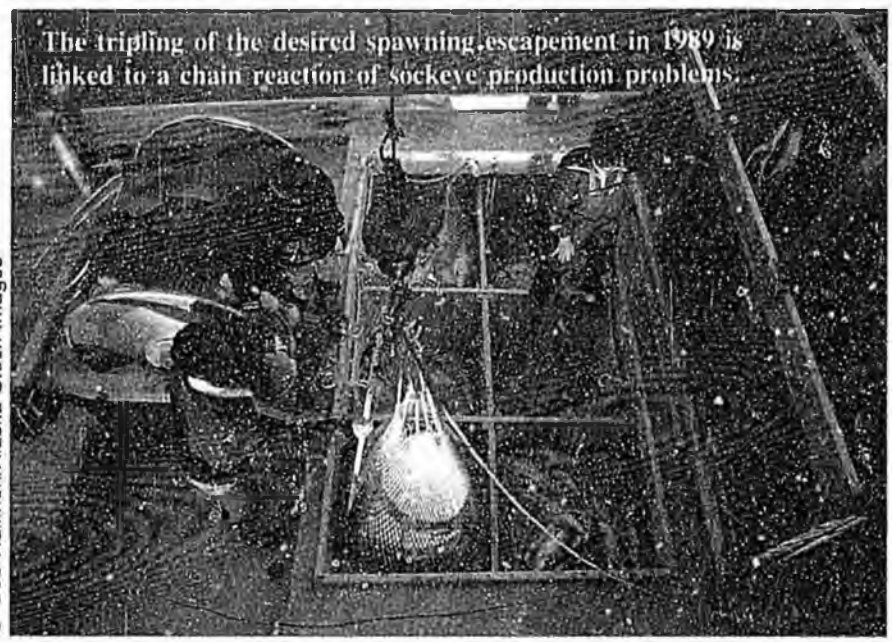
Kenai River Sockeye Salmon - The Problem with Too Many Fish

by Jeffery Koenings, Dana Schmidt, Stephen Fried, Kenneth Tarbox, and Linda Brannian

The Oil Spill

Upper Cook Inlet had previously been subjected to a 0.1 million gallon oil spill from the tanker *Glacier Bay* which ran aground in Cook Inlet during the summer of 1987. When the oil tanker *Exxon Valdez* went aground on Bligh Reef in Prince William Sound in the spring of 1989, few expected that any of the 11 million gallons of oil leaking from the damaged hull would end up in Upper Cook Inlet. Although seas were calm for several days, a large amount of oil was swept out of the Sound and up into Cook Inlet by the prevailing water currents. Soon tar balls and thick mousse (a slurry of oil and water) entered the marine waters of Upper Cook Inlet, forcing commercial fishing activity to be curtailed.

The reduction in commercial fishing potentially allowed 1.4 million sockeye salmon to spawn in the Kenai River system. This was about three times greater than the desired spawning escapement goal of about half a million fish. Similar large escapements had also occurred in the two preceding years: 1.4 million sockeye had spawned in the Kenai in 1987, partly as a result of fishery restrictions after the *Glacier Bay* spill; and 0.9 million sockeye had spawned in 1988. Since excessive numbers of spawners have been linked to lowered adult production in other Alaskan systems, biologists and fishers quickly became concerned about possible adverse effects of over escapements on the valuable Kenai River sockeye resource.



The tripling of the desired spawning escapement in 1989 is linked to a chain reaction of sockeye production problems.

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Dual Ecological Roles of Sockeye

Sockeye salmon have two important ecological roles, as both forager and forage, in freshwater and marine ecosystems. Sockeye salmon returning from their North Pacific feeding grounds to spawn in the Kenai River system are important prey items for marine mammals such as beluga whales, land mammals such as brown bears, and raptors such as bald eagles. Also, over the last several years, approximately 3 out of 4 sockeye salmon have been harvested prior to entering the river so that spawning grounds and food supplies for young salmon were not overtaxed.

The cycle of life continues after spawning: char and rainbow trout feast on sockeye salmon eggs, and even dead and dying adult sockeye serve as food for various insects, birds, land mammals, and fishes. Decomposition of carcasses provides a mechanism to deliver valuable nutrients from the ocean into nutrient-poor freshwater systems. Thus, the distinctive smell of decaying sockeye carcasses in the fall is as much the aroma of new beginnings as it is the smell of death.

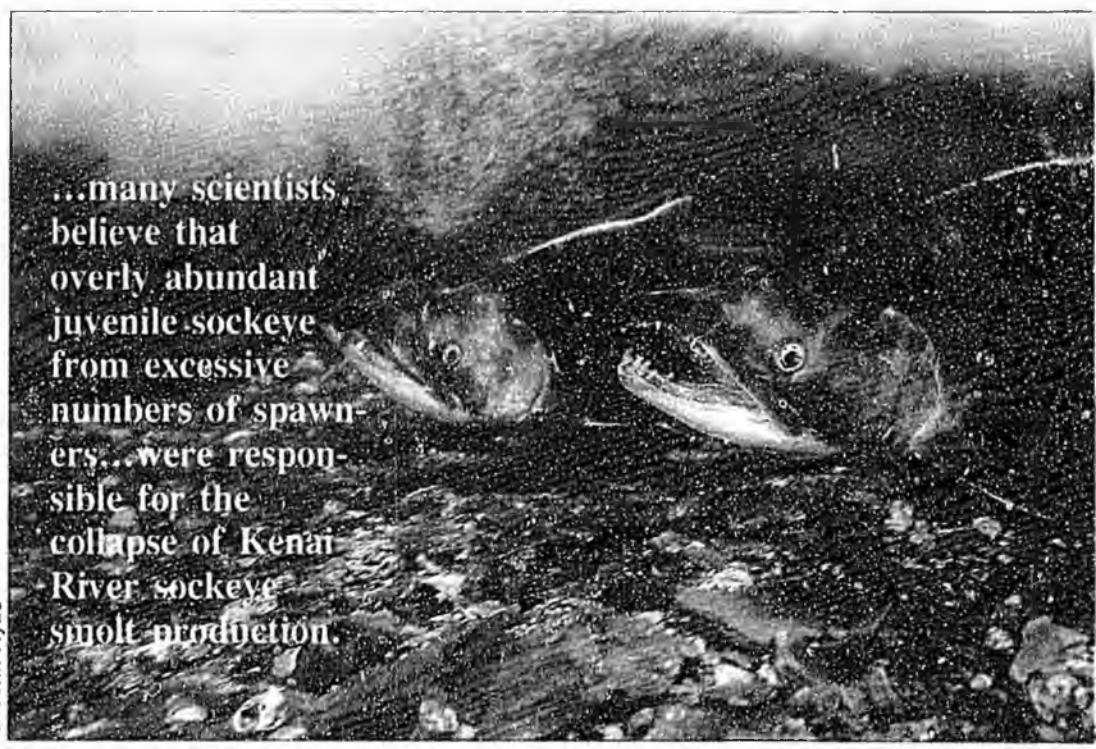
Life for sockeye salmon is an eat-or-be-eaten existence, especially for juvenile salmon in Kenai and Skilak Lakes. Only about 1 out of every 10 eggs survive over the winter. Young sockeye that do hatch feed nearshore on insects prior to moving offshore to forage on zooplankton. Sockeye are voracious feeders that can soon eat up their available food supply if allowed to enter the feeding grounds in uncontrolled numbers. Without sufficient food during the summer, juvenile sockeye die when stressed over winter. Generally, only 1 out 5 juvenile sockeye manage to avoid predators and find enough food during the summer to grow large enough to survive the winter to become smolt and migrate to the ocean.

The Importance of Sockeye to People

While sockeye salmon are fascinating to study in their own right, they have great economic value wherever they occur. The Kenai River system produced the bulk of the 4 to 5 million sockeye harvested annually over the last decade in Cook Inlet commercial fisheries. Indeed, the $30 to $120 million commercial sockeye fisheries provide much of the economic base for several cities and towns on the Kenai Peninsula, while tourism from sport fishing also brings large amounts of money into local economies. Also, subsistence and personal use fisheries for sockeye salmon fulfill food and social needs of many people in the area.

Future Production

Production of adult sockeye can be thought of as a simple function of the number of spawners: increase the number of spawners into the system and reap the reward in future years. But, in fact, ever increasing numbers of spawners do not result in ever increasing adult production since there are limits on available spawning and rearing areas. Finding the limits is very difficult and time consuming, but despite the difficulties, studies have shown that biologically based escapement goals generally produce the greatest sustained production with the least risk to the resource.



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Too Many Sockeye in a Harsh Environment

The dramatic declines in both numbers of rearing juveniles and seaward migrating smolt have been shocking. The nearly 30 million smolt produced from the first escapement of 1.4 million spawners in 1987 has dropped steadily to number fewer than 3 million from the 1989 oil spill year escapement of 1.4 million spawners. Worse yet, a post-spill escapement in 1990 of sockeye nearer the goal has failed to produce even a million smolts. Recovery was not effected by a simple backstepping to a lower escapement for one year. Indications are that most of the annual adult run to the Kenai River in 1994, 1995, and possibly in additional years would be needed just to satisfy the existing escapement goal. At the same time, sockeye smolt production from nearby Tustumena Lake has been relatively stable. This has led many scientists to believe that overly abundant juvenile sockeye from excessive numbers of spawners, not harsh environmental conditions on the Kenai Peninsula, were responsible for the collapse of Kenai River sockeye smolt production.

The collapse of sockeye smolt production pointed to a troublesome problem in the Kenai and Skilak Lakes, the primary nursery grounds for sockeye. Nearby Tustumena Lake fills the same role for sockeye of the Kasilof River watershed. These three lakes are fairly unique in that all receive vast quantities of

ground rock or flour from the meltwater of glaciers making up the Kenai ice fields. The flour turns the lakes turbid, imparting a brilliant whitish-green color. Turbid glacial lakes are uniquely harsh environments for rearing juvenile sockeye, the dynamics of which biologists are just beginning to understand.

Abundant But Unavailable Prey

It was extremely puzzling to limnologists that the overall zooplankton biomass appeared great enough to support a large population of rearing sockeye, yet evidence indicated the young sockeye were dying during the winter! Apparently they did not have enough fat reserves from summer feeding to survive the winter.

Copepods, the only food organism for sockeye in these lakes, are nearly transparent and have evolved other finely tuned responses to escape being eaten. Female copepods with their twin clusters of fatty eggs, perhaps because they are easier to see as well as high in energy, are the most commonly eaten prey of foraging sockeye. Biologists think that most sockeye feeding occurs at the surface during the day where prey are more visible. So it is the surface water component of the total copepod population that is critical for sockeye salmon production.

Limnologists are suggesting that the distribution of egg-bearing copepods in Skilak Lake has recently changed in response to extremely large numbers of foraging juvenile sockeye. Egg-bearing copepods may now avoid sockeye predation by descending deeper into the water column during the day. In darker waters, they would be much less visible to sockeye salmon. If so, then juvenile sockeye are no longer able to eat enough egg-bearing copepods to achieve the growth or body fat stores necessary to survive the long winter months; prey is abundant, but essentially unavailable.

Research and Restoration

Only through research can scientists understand how large escapements caused the decline in Kenai River sockeye salmon production, and how best to reverse this trend. But, even without a full understanding of what factors are at work, better tools will be needed to regulate future spawning escapements. Accurate methods of identifying major sockeye stocks mixed in marine waters may allow the department to better manage human use of this resource by focusing commercial harvest efforts either away from or onto Kenai River sockeye salmon. Scientists also need to determine how many spawners the system can now support and whether the system can return to its former level of sockeye production. If a return to former production levels cannot be quickly effected, it may be necessary to use tools such as lake enrichment or rearing fry in hatcheries for later release as smolts to maintain sockeye salmon harvests by people at reasonable economic and social levels. No matter what future course of action is taken, there is a continued need for monitoring the status of the zooplankton as well as juvenile sockeye and smolt production. A regional salmon planning process, with participants from various user groups, aquaculture associations, and state agencies, was in place prior to the oil spill. Appropriate actions to protect, and restore Kenai River sockeye will be reviewed by the Cook Inlet Regional Planning Team for discussion and recommendations. Can the sockeye salmon of the Kenai River be brought into full production again? It may take a long time to tell, but the answers must be found.

Above: Copepods from glacial lakes have evolved a pale blue camouflage where they are subject to predation by sockeyes. The contrast with copepods from systems which lack predators is shown here.

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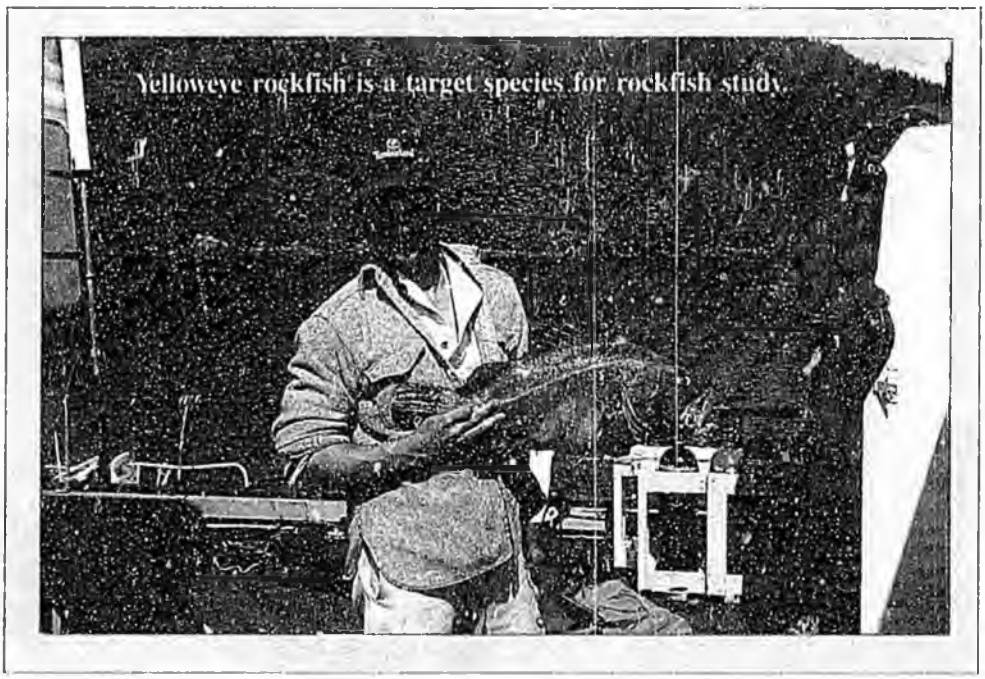
Rockfish: Caught Between a Reef and a H

by Douglas N. McBride, Andrew Hoffmann, a

Why Rockfish? The *Exxon Valdez* oil spill killed thousands of sea birds and marine mammals. But what about fish? With all of the concern expressed for the spill area's fish resources, the only "body count" of dead fish from the oil spill was for rockfish. Under normal conditions, sighting or recovery of rockfish carcasses is rare; however immediately after the spill, fishers and boaters throughout the oiled areas of the Sound reported sightings and recoveries of dead rockfish. Many dead rockfish were refused at collection sites due to limited storage facilities. Nevertheless, twenty adult yelloweye rockfish (commonly called red snappers) were received by biologists after being found dead on the surface in or near oil slicks. Only five of these rockfish were sufficiently preserved to effectively necropsy (autopsy on animals).



Yelloweye rockfish is a target species for rockfish study.

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Cause of death: oil ingestion.

That all five fish examined died from oil ingestion is curious when one considers the life history of rockfish. The term rockfish refers to approximately 70 species of the genera *Sebastes* and *Sebastolobus*, approximately half of which are found in Alaskan waters. Commonly known species include yelloweye, black, China, silvergray, quillback, and Pacific ocean perch. Rockfish are late-maturing and extremely long-lived; yelloweye rockfish reach sexual maturity around age 15 and can live for over 100 years. Most rockfish dwell near reefs or other bottom structures at depths of 30 to 1,800 feet and prey on small fish and crustaceans. Why, then, were bottom-dwelling creatures the only fish known to be immediate casualties of the oil spill?

This question compelled biologists with the Alaska Department of Fish and Game (ADF&G) to sample rockfish as part of the oil spill natural resource injury assessment studies. Incompletely understood stock structure and expensive sampling logistics precluded population assessment of the Sound's rockfish resources. However, samples were collected from over thirty locations, including both oiled and nonoiled sites in Prince William Sound and along the outer Kenai Peninsula from 1989 to 1991. Fish were collected by jig, long line, and spear fishing and analyzed by several methods. Liver bile was examined for metabolized hydrocarbons, since fish ingesting non-lethal levels of a toxin, such as crude oil, concentrate the metabolized hydrocarbons in the liver. A more complicated analysis called MFO (mixed function oxidase enzyme system) examined one of the fish's natural defense mechanisms which is activated in response to certain types of pollutants, including oil. A third analysis looked for histological and pathological abnormalities of selected organs. Exposure of organs such as the gills, kidney, or liver to pollutants, such as oil, can result in lesions.

Oil Spill Impacts

Samples from 1989 confirmed that rockfish were being exposed to oil pollution. Over 31% of the samples collected from oiled sites in 1989 and none of the samples from nonoiled sites tested positive for hydrocarbon contamination. In 1990, some

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Villiam Bechtol

samples from both treatment and control sites tested positive for hydrocarbon contamination, but between-site differences were insignificant. However, the incidence of two of the four types of liver and kidney lesions attributable to oil pollution was significantly greater in fish from oiled sites. By 1991, rates of hydrocarbon contamination were again similar between treatment and control sites; only one type of liver lesion was more common in fish from oiled sites; and some rockfish from both treatment and control sites showed a response to a contaminant detected by the MFO analysis.

How do we interpret these results?

Without question, rockfish were exposed to oil, some at lethal levels. Oil contamination and injury have also persisted for at least 2 years. The concept of nonoiled or control sites, selected on the basis of shore and surface oiling patterns, has probably been compromised in recent years by either subsurface movements of oil or hydrocarbon transport within the food chain. Sub-lethal levels of hydrocarbon contamination have not yet been shown to pose a threat to human health. However, the threat to the rockfish themselves is an open question; other studies have indicated an impact on reproduction. Thus, while the initial slick has dispersed, the effects of oil pollution appear insidious, especially given the long-lived nature of rockfish. The result is a large degree of uncertainty regarding the long-term viability of the rockfish resources. This uncertainty is fueled by questions about the increased harvest of rockfish in Prince William Sound and the outer Kenai Peninsula since the oil spill.

Effective Restoration

In the face of uncertain effects of oil, uncertain stock status, and the life history of these old, slow-growing fish, the Alaska Department of Fish and Game believes that conservative fishery management is the most readily applicable restoration tool. With only limited biological evaluation of the rockfish resources, the department's approach is an attempt to stabilize the harvest.

Douglas McBride is Regional Research Supervisor for Southcentral Alaska, Division of Sport Fish, ADF&G, Anchorage; Andrew Hoffmann is a Fishery Biologist with the Division of Sport Fish, ADF&G, Anchorage; William Bechtol is Regional Groundfish Biologist with the Division of Commercial Fisheries, ADF&G, Homer.

In the Wake of the Spill

(Continued from page 3.)

vice, and Department of the Interior. It has worked for the past three years to identify restoration needs, conduct studies to explore and define restoration actions, and to develop a restoration plan.

As a step in the development of a restoration plan, the Trustee Council released the "Restoration Framework" document in April 1992 to inform the public of the progress that was being made toward a restoration plan that will guide restoration activities over the next several years. The Framework describes a number of aspects of the process, including public participation, a summary of injury, and possible restoration options.

By spring 1993, the Trustee Council will release a draft restoration plan and a companion environmental impact statement. The public will be invited to comment on these documents. The Trustee Council will take actions to restore and enhance the resources and services of the spill-affected region according to the approved final restoration plan. This will be done through annual work plans, which will be available for public review and comment.

Mark Fraker is Restoration Program Manager in the Habitat and Restoration Division, ADF&G, Anchorage.

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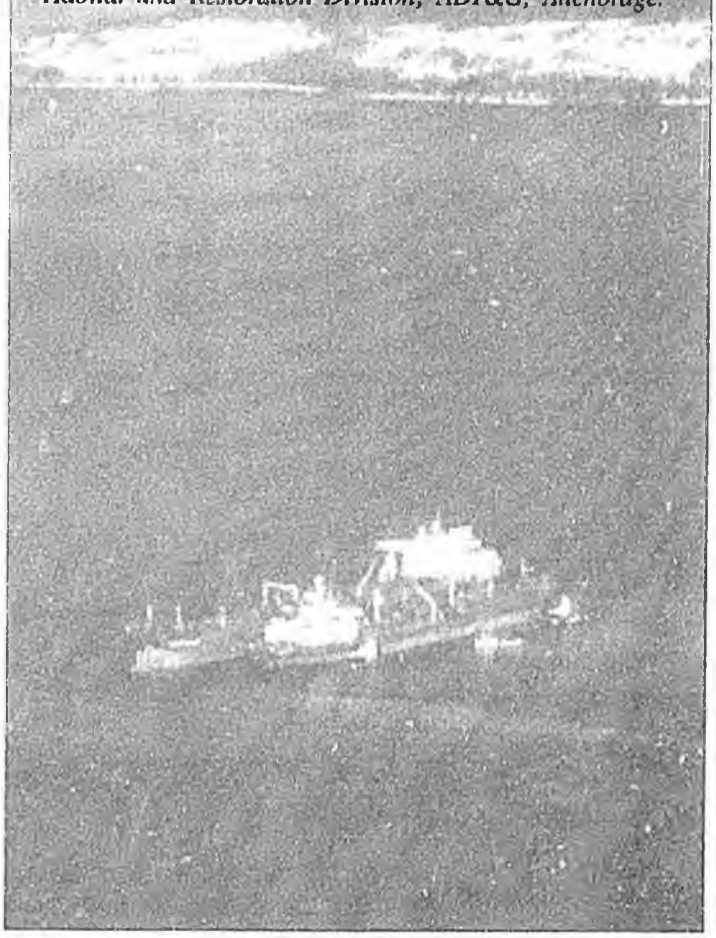
By spring 1993, the Trustee Council will release a draft restoration plan and a companion environmental impact statement. The public will be invited to comment on these documents. The Trustee Council will take actions to restore and enhance the resources and services of the spill-affected region according to the approved final restoration plan. This will be done through annual work plans, which will be available for public review and comment.

Mark Fraker is Restoration Program Manager in the Habitat and Restoration Division, ADF&G, Anchorage.



How You Can Get Involved In The Restoration Program

by Peg Kehrer

1. READ

Read information about the findings of the natural resource injury assessment program and about the plans for restoration. Materials which summarize this information are:

Draft Restoration Plan for the *Exxon Valdez* Oil Spill Restoration Program - expected out in the spring of 1993.

Draft Environmental Impact Statement to accompany the draft plan.

Restoration Framework (4/92) and Restoration Framework Supplement (7/92). The supplement provides details on the Habitat Protection and Acquisition Option of the Plan.

Yearly Work Plans. These outline injury assessment studies and restoration projects carried out from 1989 to the present and public comments received on those plans. The 1993 Draft Plan was released October 1992.

Get on the mailing list. If you or your organization has not already been receiving draft documents and notices of public meetings, you can get on the mailing list by contacting the Restoration Program (see addresses at the end of this article).

To obtain more detailed information about an injured resource, a restoration option, or the decision process being followed in planning restoration, you may also contact the Oil Spill Public Information Center (OSPIC). OSPIC is a library created to support ongoing study around the oil spill and to inform the public about the effects of the spill and resource restoration. OSPIC is the repository of all final scientific reports on injured resources and all official documents of the Trustee Council process. The library is located in Anchorage, but documents are available at many public libraries in Alaska and nationally (see listing below) and in other western states through the Western Library Network inter-library loan system.

2. ATTEND

Attend the Oil Spill Symposium in Anchorage, February 2-5, 1993. This will be the first opportunity for all researchers who have worked on natural resource injury assessment projects to discuss their findings with each other and with the public.

Attend the periodic Trustee Council meetings and other public information meetings in spill-affected communities. Meetings are announced in local newspapers. You may obtain the meeting schedule by contacting OS.

3. VIEW

There is available a variety of videos on the oil spill and on restoration. Contact the Oil Spill Public Information Center for information.

4. CONTACT

Contact the members of the newly created 17 member Public Advisory Group (PAG). These individuals were selected from a pool of nominees representing major interest groups affected by oil spill injury to natural resources and services: aquaculture, commercial fishing, commercial tourism, environmental, conservation, subsistence, scientific/academic, recreation users, local government, public at large, native landowners, sport hunting & fishing, and forest products. There are also ex-officio seats for representatives from the Alaska State House of Representatives and the Alaska State Senate.

By contacting those members who represent your particular areas of interest, you can help them advise the Trustee Council on what actions should be taken to restore injured resources and services. All Public Advisory Group meetings will be public and will be advertised. A list of members and the interests they represent is available from the Restoration Program offices or from OSPIC.

5. COMMENT

Tell the trustees what you think. Written public comments on the restoration program are welcome at any time and will be shared with the Trustee Council and with staff working on the issues you address. If you would like to testify in person, you can do so during the public comment period which is scheduled for part of every full meeting of the Trustee Council. Such meetings and the times for public comments are advertised at least one week ahead of time in newspapers in the spill-affected communities, and are usually teleconferenced.

Get involved now - enjoy forever.

PUBLIC PARTICIPATION 1993

February 2-5, 1993, *Exxon Valdez* Oil Spill Symposium, The Egan Center, Anchorage, Alaska.

Public comment periods on the Draft Restoration Plan and related Environmental Impact Statement will run for 45 days following release of these documents, which are due out in March 1993.

In 1993 the public will also be asked for ideas on the projects to be included in the draft 1994 Work Plan and for comments on that draft plan when it is released.

ADDRESSES
Exxon Valdez Oil Spill Restoration Program
645 G St., Anchorage, AK 99501
(907) 278-8012

Oil Spill Public Information Center (OSPIC)
645 G St., Anchorage, AK 99501
(In Anchorage) 278-8008
(In Alaska) 1-800-478-7745
(Outside Alaska) 1-800-283-7745

The Oil Spill Public Information Center (OSPIC) has two sets of the *Exxon Valdez* Oil Spill Science Studies. Additional sets and the basic public documents of the restoration program are available at the following libraries:

Public libraries in Alaska: Anchorage, Kodiak, Cordova, Valdez, as well as Kuskokwim Consortium Library in Bethel, and the University of Alaska libraries on the Fairbanks and Anchorage campuses.

Government agency libraries in Anchorage: ADF&G Habitat and Restoration Division Library; Alaska Resources Library, Bureau of Land Management; Minerals Management Service Library; U.S. Fish and Wildlife Service Library; U.S. District Court Library.

Government agency libraries in Juneau: Alaska State Library; Alaska Department of Environmental Conservation Library; Marine Fisheries Service Library (Auke Bay).

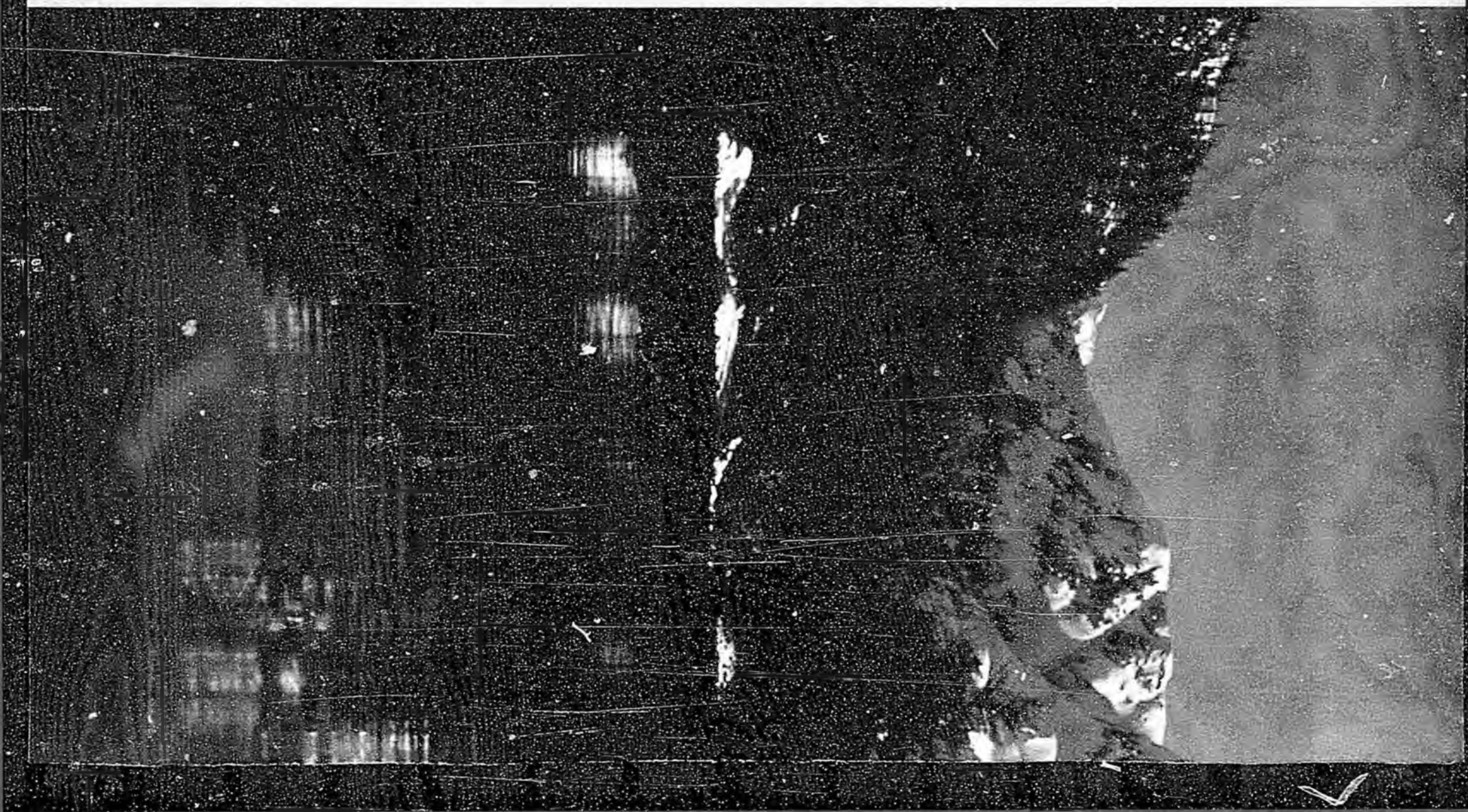
Outside of Alaska: Library of Congress, Exchange & Gifts Division, Washington, D.C.; National Library of Canada, Ottawa; University of Washington Library, Seattle; Washington State Library, Olympia.

Peg Kehrer is a Project Assistant with the Habitat and Restoration Division, ADF&G, Juneau.

The

Exxon Valdez Oil Spill

What Have We Learned?



Division of Spill Prevention and Response

Government Preparedness & Response

Alaska Department of Environmental Conservation

410 Willoughby Avenue, Suite 105
Juneau Alaska 99801
465-5050

John A. Sandor
Commissioner

Mead Treadwell
Deputy Commissioner

Bob Poe
Director, Information & Administrative Services Legislative Liaison

Mike Conway
Director, Division of Spill Prevention and Response

Lynn Kent
Manager, Government Preparedness and Response Program
456-5220

Issues

The Alaska Department of Environmental Conservation (DEC) is responsible for responding to all oil and hazardous substance spills and ensuring their containment control and cleanup. DEC also defines the extent of contamination and assesses damages and recovery of costs to the state. DEC must work with local government agencies and the public to establish Local Emergency Planning Committees (LEPCs). Training and guidance will be provided to the LEPCs for the development of response plans for oil and hazardous substance releases. The Department will develop State and Regional plans (coordinated with federal agencies) to insure responding personnel from all federal, state and local agencies understand their roles and responsibilities when responding to a release. In addition, the Department must train response teams and improve the response resources available for a major spill.

Major Features

- Mobilize the Department resources to ensure responsible parties respond appropriately to spills. In the absence of adequate responsible party action, respond to, contain, control, and clean up releases and recover the state's costs.
- Establish a response structure to safely carry out the Department's responsibilities for spill response.
- Ensure that local plans under development are coordinated and integrated with other relevant plans and comply with requirements specified in state and federal law.
- Develop guidelines for the State Emergency Response Commission (SERC) and LEPCs and hold quarterly meetings with each.
- Complete compilation of hazards analysis for the state.
- Develop a unified response plan with the federal government and conduct drills to test adequacy.
- Establish and maintain minimum training standards for responders and the positions in the Incident Command System (ICS).

Program Background

Title 46 of the Alaska Statutes and Title III of the federal Superfund Amendments and Reauthorization Act (SARA) tasked DEC with facilitating local, regional and statewide response preparedness for oil and hazardous substance releases to minimize the impact on human health and the environment. DEC's Government Preparedness and Response program assists with local planning and also prepares, reviews and revises the state and regional plans for oil and hazardous substance discharge prevention and response. The program provides staff support to the SERC and funding, staff support, and administration to LEPCs.

Program Benefits

Prevention and response plans constructed on the local, regional and state level, as well as response training for responders, help prevent spills and improve the response quality, time, and cost. Department response to spills decreases adverse impacts to public health and the environment.

Division of Spill Prevention and Response

Industry Preparedness Program

Alaska Department of Environmental Conservation

410 Willoughby Avenue, Suite 105
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465-5050

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Mead Treadwell
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Bob Poe
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Mike Conway
Director, Division of Spill Prevention and Response

Mike Mansker
Manager, Industry Preparedness and Response Program
456-5250

Issues

This program ensures that oil industry operators take specific steps to prevent and respond to releases or threatened releases of oil. The effective implementation of laws relating to oil pollution prevention and response is a continuing priority. Regulations establishing a Response Action Contractor Registration Program recently took effect, and work has begun on registration of those contractors listed in industry oil spill prevention and response plans. Review and approval of these plans continues to require extensive technical assistance and consultation with industry, affected Coastal Districts and citizens' groups, and other agencies. Ongoing plan review notwithstanding, DEC emphasis will shift to plan verification through spill drills and inspections during fiscal year 1995. Insurance policies, submitted to demonstrate adequate plan holder financial responsibility for spills, require continuous monitoring as national financial responsibility issues are resolved.

Major Features

- Provide technical assistance, conduct program development and monitoring, and ensure statewide consistency in:
  - the review by regional office staff of approximately 175 oil discharge prevention and contingency plans for oil operations statewide;
  - facility and vessel inspections and spill drills, including participation in major Department- and industry-initiated drills; and
  - application of prevention requirements to oil industry operations and use of prevention credits to modify the response planning standard for contingency plan holders.
- Administer the statewide Financial Responsibility program to ensure that oil operators in the state demonstrate sufficient proof of financial resources to respond to releases or threatened releases of oil.

Program Background

Title 46 of the Alaska Statutes and Title 18, Chapter 75 of the Alaska Administrative Code set forth requirements for oil spill prevention, financial responsibility and oil discharge prevention and contingency planning for the oil industry. The requirements apply to oil terminal facilities, oil tank vessels and barges, crude oil pipelines and onshore and offshore oil exploration and production facilities throughout the state. The Department of Environmental Conservation, through the Industry Preparedness Program, applies and enforces these statutes and regulations. Primary program services include administration and development of the oil discharge prevention and contingency plan review program, facility and vessel spill drill and inspection programs, and a financial responsibility program.

Program Benefits

By upgrading the state's regulation and inspection of oil industry vessels and facility prevention measures and response preparedness, the program can prevent spills, improve response and reduce cleanup costs.

Division of Spill Prevention and Response

Contaminated Sites Remediation

Costs federal $ & misc some 470 $

Alaska Department of Environmental Conservation

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Mike Conway
Director, Division of Spill Prevention and Response

Rich Cormack
Manager,
Contaminated Sites Remediation Program
456-5200

Issues

The Contaminated Sites program abates threats to human health and the environment posed by past improper disposal or discharges of hazardous substances. The program has begun to develop hazardous substance cleanup regulations that would help solve some of the ambiguity currently experienced by the regulated community. In consultation with an external advisory working group composed of the public stakeholders who will be most affected, the program will put major focus on development of regulations to address cleanup standards and program structure. DEC intends that the regulations will encourage voluntary cleanup, minimize the need for Department oversight, stress cost-effectiveness, encourage innovative technologies, and ensure public involvement.

Major Features

- Identify and assess sites to determine their potential threat to public health and the environment and rank sites to determine the priority in which they should be addressed.
- Ensure that contaminated sites undergo investigation and cleanup in a priority order.
- Use term contractors and the Oil and Hazardous Substance Spill Response fund to assess or clean up sites of imminent and substantial threat and which lack a responsible party.
- Develop hazardous substance cleanup regulations and standard operating procedures for all phases of contaminated sites work.
- Negotiate cooperative agreements with the Department of Defense and U.S. Environmental Protection Agency to enable staff oversight of DOD and CERCLA (federal Comprehensive Environmental Restoration, Compensation & Liability Act) sites and participation of staff in assessment of sites within the Superfund system.
- Chairs the State agency MOA working group.
- Negotiate and oversee term contracts.

Program Background

The Contaminated Sites program began 1986, when House Bill 470 established the Oil and Hazardous Substance Release Response Fund and broadened the use of the previously existing response fund to include hazardous substances. The department drew information on known contaminated sites from various programs and began to compile an inventory database in 1988. The program was officially designated in January 1990. It also now encompasses activities under cooperative agreements with the Department of Defense and EPA, which allow funding of staff oversight of military restoration activity and Superfund site projects. The universe of historical contaminated sites under the jurisdiction of the program are defined using the contaminated sites database inclusion criteria, excluding leaking underground storage tanks, which are managed under a separate program.

Program Benefits

The rapid cleanup of contaminated sites before pollutants have reached aquifers is vital to the health of Alaskans and our wildlife.

Division of Spill Prevention and Response

Underground Storage Tank Program

about 1/100.0 of the funding for this comes from 470 Fund

Alaska Department of Environmental Conservation

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Mike Conway
Director, Division of Spill Prevention and Response

Jim Hayden
Manager, Underground Storage Tank Program
456-5200

Issues

The Underground Storage Tank Program protects public health and the environment from the consequences of leaking fuel from underground storage tanks and assists underground storage tank owners and operators in tank cleanup, upgrade, and closure by providing state-funded grants and loans. The program has a diverse set of objectives, funding sources, standards and regulations, and interested parties. Prevention of leaking tanks is a great priority, accomplished through upgrading existing tanks to new standards and making the Financial Assistance program accessible to tank owners. The grant application process has recently been streamlined to expedite dollars to the owners/operators. Financial assistance also assists tank owners with cleanup and upgrade of tanks, as well as tank testing. This allows them to obtain insurance and thus meet financial responsibility requirements. Response to leaking tanks is the program's other main focus, through cleanup of leaking tank sites. Also important is training of personnel to perform work on tanks according to state and federal regulations while following all standard safety practices. Regulations are currently being developed for accreditation of private testing laboratories. DEC is now seeking full UST program delegation from the federal government: although DEC has its own regulations, EPA still has full authority in Alaska, particularly for enforcement.

Major Features

- Immediately respond to reports of leaking underground tanks and set their priority for further departmental action.
- Provide financial assistance grants and loans to upgrade/close, cleanup and test tanks and facilities.
- Facilitate worker certification/training/testing with the Alaska Department of Commerce and Economic Development.
- Provide public and technical information concerning installation, closure, upgrading of tanks as well as up-to-date information on the latest cleanup technologies. Mechanisms include UST hotline, quarterly newsletter, lending library (13 locations) and to day-to-day technical assistance.
- Conduct enforcement pilot project.
- Coordinate with the Board of Storage Tank Assistance.
- Conduct annual tank registration/invoicing program, including late fee collection.
- Promote, develop and participate in numerous workshops for the public, tank owners/operators and contractors.
- Maintain UST database of all tanks in operation and their current status.

Program Background

In 1984, Subtitle I of the federal Resource Conservation and Recovery Act established a regulatory program for the control of underground storage tanks (USTs). The Department of Environmental Conservation participates in the program and receives federal grants to support both the prevention of spills and the cleanup of leaking underground storage tanks. The federal regulations require that new tank installations meet national standards and that

tanks already in operation "phase-in" to meet those standards. Additionally, each facility must show that they have some form of "financial responsibility" in the event of a spill, and must follow standard procedures for reporting and cleanup of spills. Alaska's Petroleum Underground Storage Tank Bill (HB 220) became effective in 1990, and the following year Alaska UST regulations were approved (18 AAC 78). The state law and regulations mirror the federal program but also established the State Tank Assistance program, which offers grants and loans to owners and operators of UST facilities to test, cleanup, upgrade and close their facilities.

Program Benefits

Underground storage tanks which leak oil and other hazardous substances endanger the safety, health and well-being of humans and other life which live in or visit the area. Prevention of leaks and the spread of contamination help protect water supplies vital to the health of Alaskans and their environment.

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 verify 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.

Additiional 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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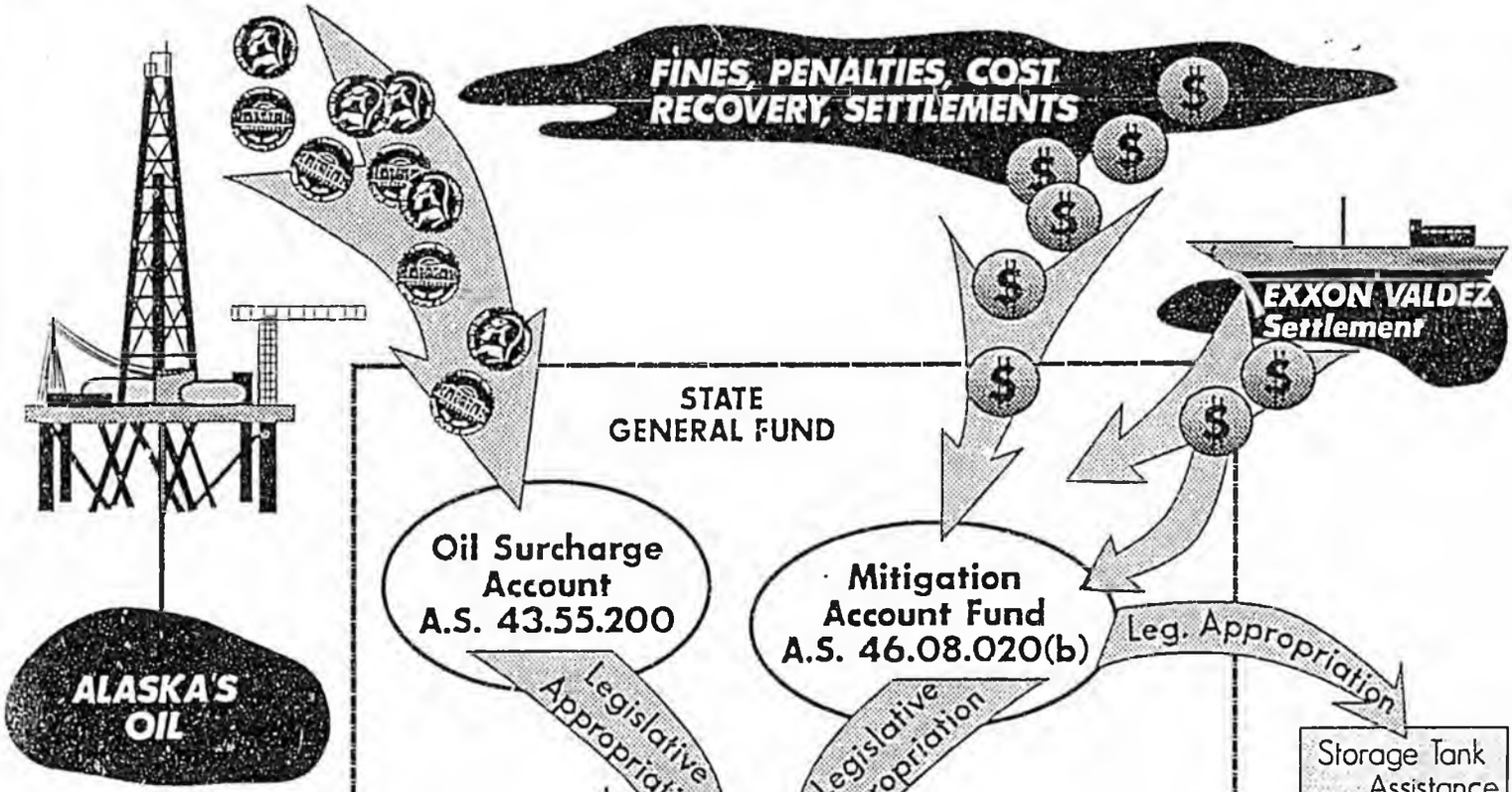

OTHER AGENCIES

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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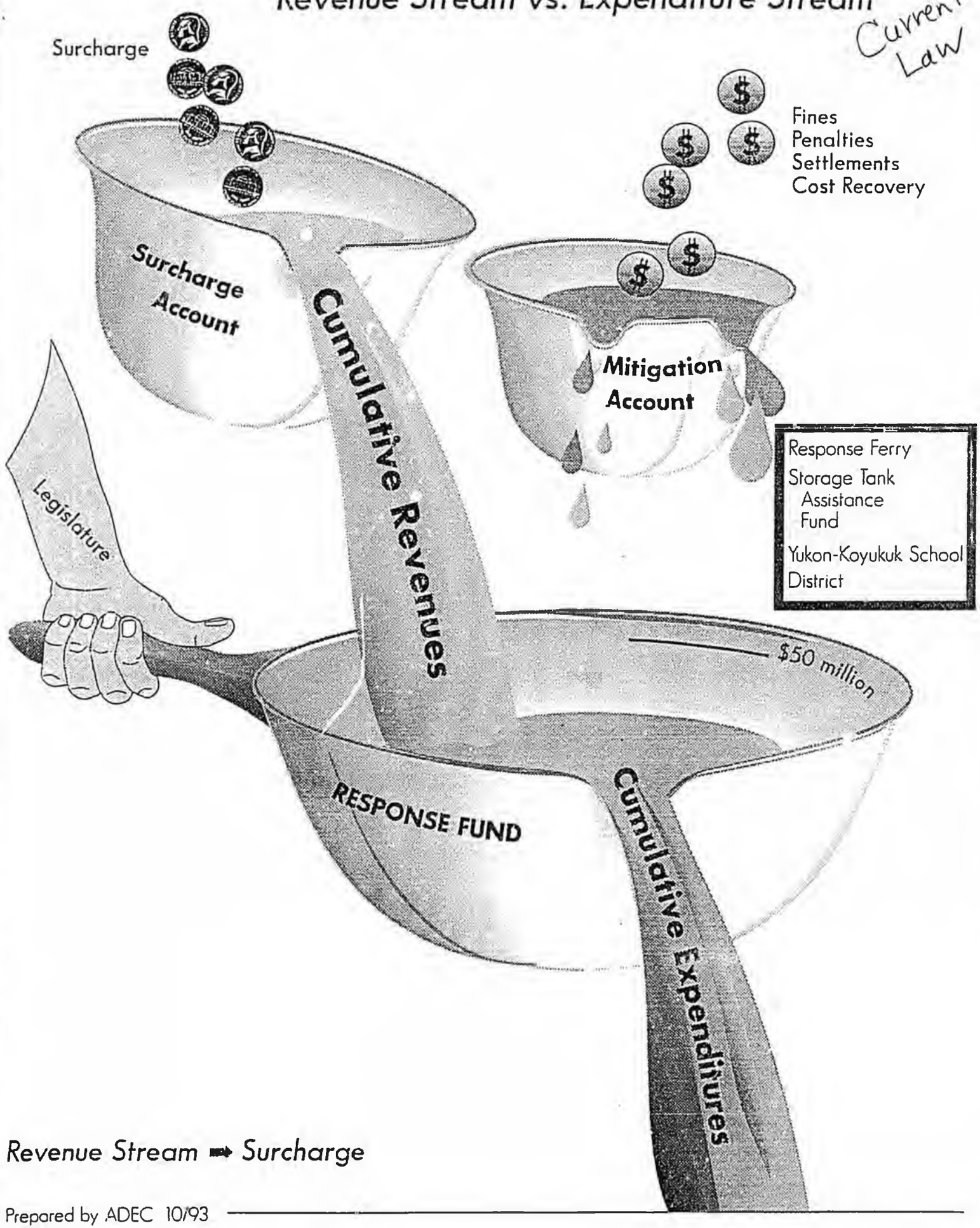
Response Fund Summary as of November 5, 1993

	AS 43.55.230(b) Calculation	Response Fund
Cummulative Surcharge Collected	112,086,145	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	-8,880,862
Reserve For Capital Appropriations	0	-3,181,125
Reserve for FY 94 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-9,302,318
Balance or Spill Reserve	-15,105,728	37,229,869

OIL CONSERVATION SURCHARGE TAX

Revenue Stream vs. Expenditure Stream

Current Law



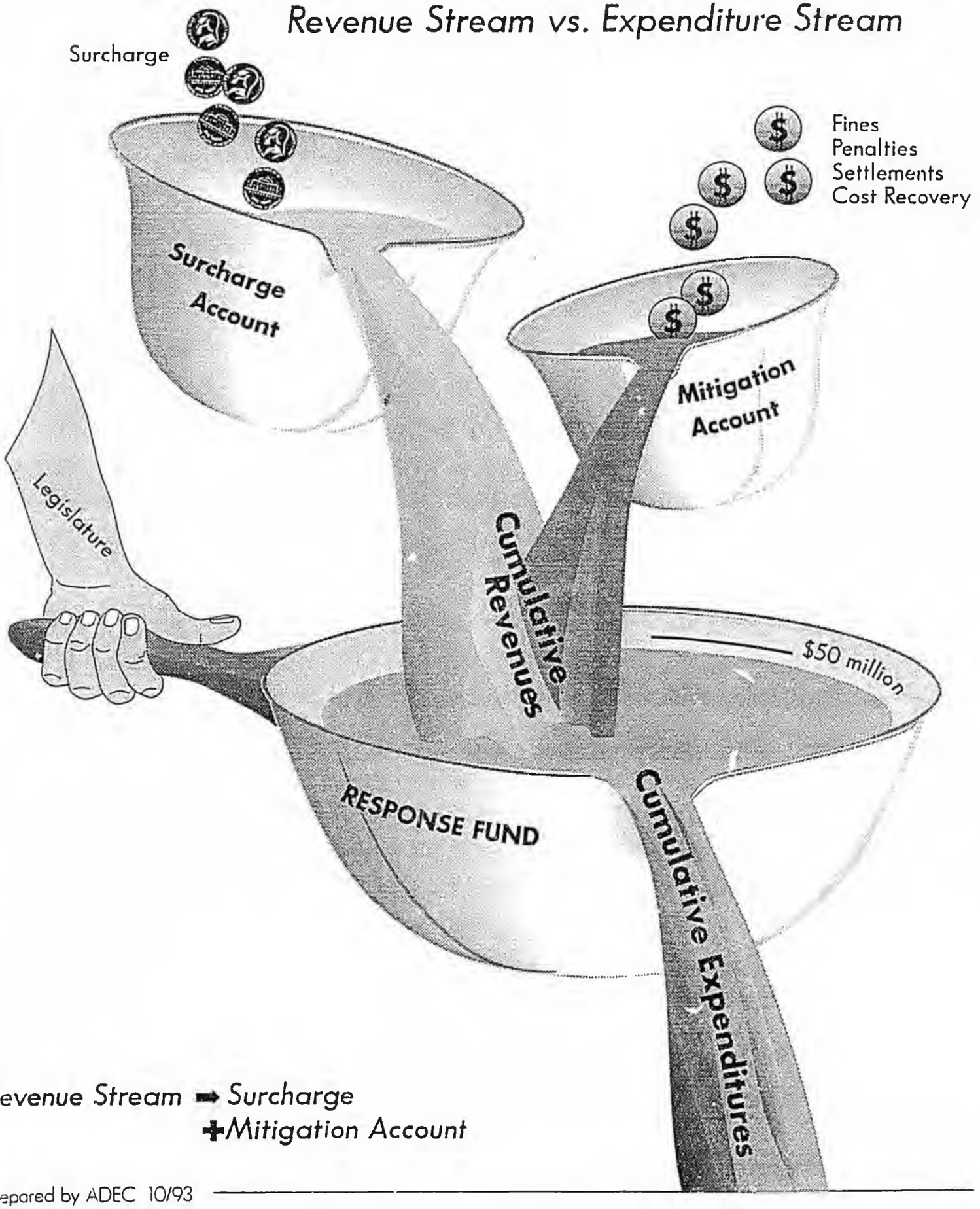
Revenue Stream ➡ Surcharge

Prepared by ADEC 10/93

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

OIL CONSERVATION SURCHARGE TAX

Revenue Stream vs. Expenditure Stream

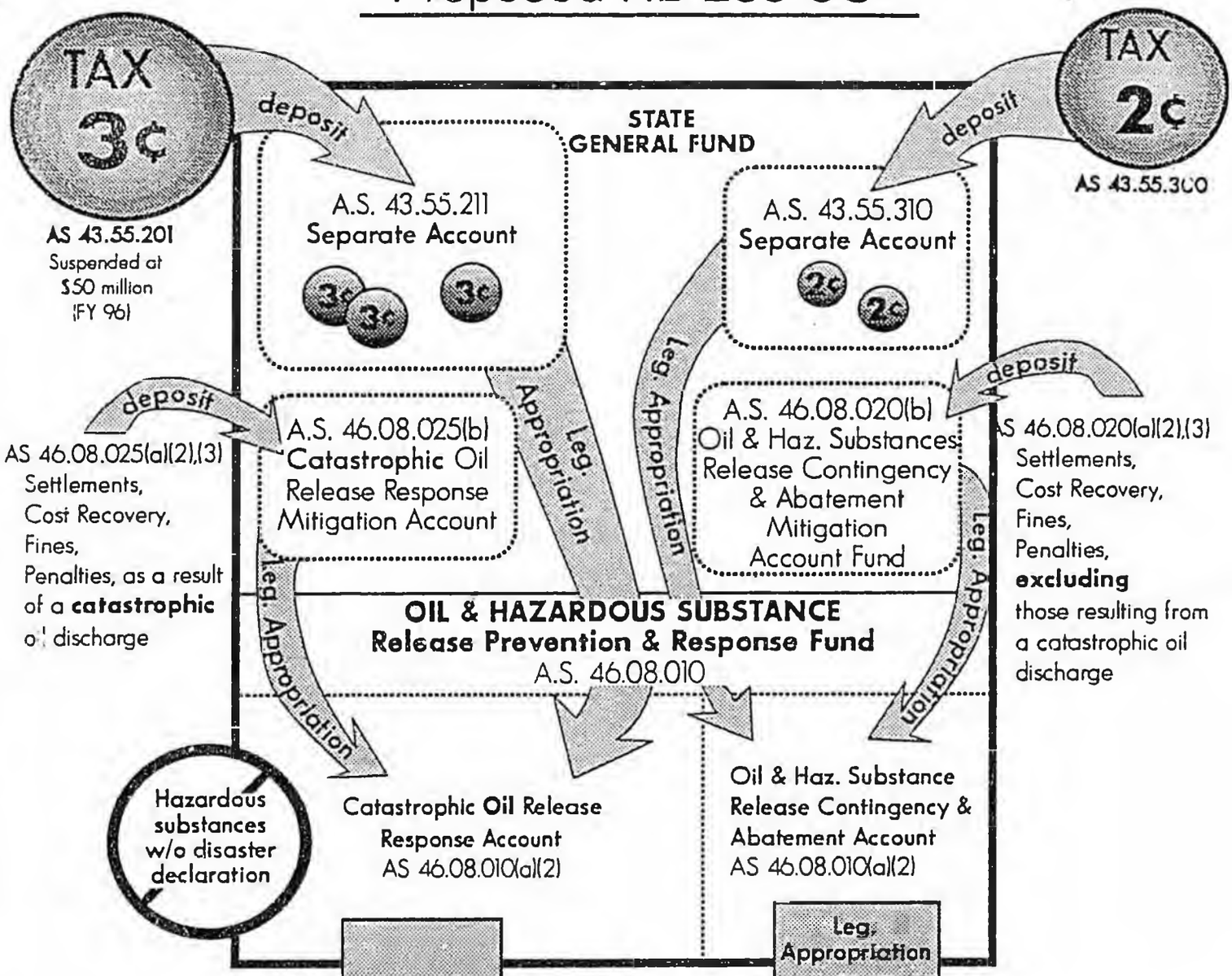


Revenue Stream ➡ Surcharge
➕Mitigation Account

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

Talking paper for House Resources Committee Workshop on Response Fund Issues

November 12, 1993
Mead Treadwell, Deputy Commissioner, ADEC
Opening statement

Mr. Chairman, at the end of the last session of the legislature, we and the Committee agreed to work during the interim on improvements to the laws behind the Oil and Hazardous Substance Spill Respond Fund.

With this statement is a talking paper. It represents an attempt to put the facts on the table, and to work to build consensus in an otherwise contentious issue.

We have met with members of public interest groups who were established by law to serve as "watchdogs" to keep spill prevention and response programs strong. We have also met with representatives of those companies who are primary taxpayers of the tax. In both cases, we agreed to continue these discussions toward a consensus, which may be possible.

Alaska's spill prevention and response programs are vital to our health, safety, environment, and economic future. The size of DEC programs to meet these end is one debate. The perception today of secure but unequitable funding is another debate. We believe that finding secure, equitable, and appropriate funding for needed spill prevention and response programs is an achievable goal.

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Principles for concensus on Response Fund Funding

Goals:

*Maintain strong State-led spill prevention and response program.

*Build and maintain $50 million spill reserve.

*Attempt to achieve greater equity in funding sources for non-crude/hazardous substance prevention and response.

Strategy:

*Expand Response Fund Sources, including cost recovery.

*Simplify accounting mechanism to impose/suspend crude oil surcharge.

*Don't diminish the Response Fund's capability to fund necessary programs until other sources are in place for non-crude/hazardous substance prevention and response.

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Specific concerns to meet when applying the Strategy:

*Even though the Spill Reserve approaches $37 million, and thus just $13 million would be necessary to reach a reserve figure of $50 million, the formula for suspending the tax requires at least $65 million more be collected, above additional expeditures, before the tax is suspended.

*There are now no built-in incentives for the legislature to credit repayments to the state from fund expenditures to the fund in collecting the tax.

*There is a perception that some authorized fund expenditures should be unauthorized or further limited. Further checks and balances may be necessary.

*The size of the spill prevention and response program seems to grow to match funds available from the tax, and should instead be set to meet needs for the environment and safety and funded from an equitable series of sources on the "polluter pays" principle.

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Other possible funding sources:

*Receipts from cost recovery/reimbursement

*Mitigation: damages, fines, etc.

*Fees: possible fee for contingency plan review by non-crude facilities, financial responsibility submissions, etc. Loading fees have been discussed as possible UST funding source.

*Substitution of general funds -- interest on the spill reserve, use of other tax revenues.

Method to suspend the tax and include other sources:

*Amend the tax law to state, simply, that the tax is collected when the balance of the fund, less obligations appropriated by the legislature or spent from the spill reserve as provided by law, is less than $50 million.

*Consider an incentive clause to state that the tax will not be collected in such a year unless other named sources (any the legislature chooses from the list above) are also appropriated to the fund.

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Method to further limit fund expenditures:

*Remove full funding for the SERC by making an all-hazards SERC.

*Repeal the provision that allows ferries to be built with the Fund.

*Further checks and balances, such as requiring review of capital and operating expenditures by a body such as the SERC in case of spill prevention and response plans, and the HSSTRC in case of research.

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Projected trends in current cost components:

SPAR Director -- Maintain Response Fund; some GF.

Industry Preparedness -- Program may need to grow to cover unregulated facilities or substances, as evidenced by Indian Spill and chlorine leaks statewide that required evacuation. Non-crude facilities could be asked to pay a fee for c-plan review.

Government Preparedness -- Convert SERC to Disaster Planning; primarily GF/Federal Funds. Other agencies' funding for SERC participation would follow suit.

Contaminated Sites -- Program attempts cost recovery; loading fees or other GF could increase equity; EPA is considering allowing states access to superfund; Coast Guard has given state access to oil pollution fund.

UST Program Administration -- Costs could be borne by same source as the UST grant program. Program should have reduced grant requirements as insurance deadlines take hold late in decade. General funds, loading fees are possible sources. Mitigation account is current source for grant program.

Other DEC Divisions -- Maintain Response Fund.

Other Departments -- Maintain Response Fund or alternate funding source for c-plan review by ADF&G, DNR. Maintain Response Fund for Dept. of Law, DMVA on cost sharing, Public Safety for investigations.

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If surcharge is split ($.03/.02), what is available?

[At a nickel a barrel, revenue estimates are $25 million collected in 1993 available for FY 1995]

	.02	.03
FY 95	$10,400	$15,600
FY 96	9,840	14,760
FY 97	9,040	13,560
FY 98	8,240	12,360
FY 99	7,560	11,340
FY 00	6,800	10,200

Spill Reserve Projected at end of FY 1994: $36,588.3

Mitigation account revenues projected:

FY95	FY96	FY97	FY98	FY99	FY00
5,300	8,300	8,600	8,900	9,000	1,000

Funding need:
$14.1 million/yr.

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Oil and Hazardous Substance Prevention and Response Fund

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DEC Proposal 11/93

Revised 11/9/93

	FY94	FY95	FY96	FY97	FY98	FY99	FY2000
Revenue (In Thousands)							
Balance Forward Unreserved/Unobligated Spill Reserve	27,034.1	36,683.3	53,705.3	47,822.3	50,000.0	50,000.0	50,000.0
.05 Surcharge Necessary to Maintain Spill Reserve	26,700.0	26,000.0	.0	7,760.7	5,283.0	5,183.0	13,183.0
Mitigation Account Transfers	661.2	5,300.0	8,300.0	8,600.0	8,900.0	9,000.0	1,000.0
TOTAL AVAILABLE IN FUND	54,446.3	67,983.3	62,005.3	64,183.0	64,183.0	64,183.0	64,183.0
PROJECTED EXPENDITURES							
SPAR Director's Office	985.7	992.0	992.0	992.0	992.0	992.0	992.0
Industry Preparedness Program	2,221.8	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0	2,579.0
Government Preparedness and Response Program	4,097.4	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3	3,682.3
Contaminated Sites Program	2,949.3	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0	2,839.0
Underground Storage Tank Program	103.3	108.0	108.0	108.0	108.0	108.0	108.0
Division of Information and Administrative Services	748.5	748.5	748.5	748.5	748.5	748.5	748.5
Division of Environmental Quality (Lab, Pol Prev.)	309.5	334.0	334.0	334.0	334.0	334.0	334.0
Response Fund Administration (Other Agencies)							
Fish and Game	180.7	184.2	184.2	184.2	184.2	184.2	184.2
Natural Resources	108.0	108.0	108.0	108.0	108.0	108.0	108.0
Law (Cost Recovery, Prosecution, Enforcement)	1,350.2	750.0	750.0	750.0	750.0	750.0	750.0
Labor	9.5	.0	.0	.0	.0	.0	.0
Community and Regional Affairs	13.5	.0	.0	.0	.0	.0	.0
Health and Social Services	12.0	.0	.0	.0	.0	.0	.0
Public Safety	39.0	50.0	50.0	50.0	50.0	50.0	50.0
DOT/PF	8.5	.0	.0	.0	.0	.0	.0
DMVA	611.0	210.0	210.0	210.0	210.0	210.0	210.0
University of Alaska/Research	200.0	200.0	200.0	200.0	200.0	200.0	200.0
Capital Budget	2,774.0	400.0	400.0	400.0	400.0	400.0	400.0
Estimate of Spill Reserve Use	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
SUBTOTAL PROJECTED EXPENDITURES	17,857.0	14,183.0	14,183.0	14,183.0	14,183.0	14,183.0	14,183.0
Spill Reserve Balance	36,583.3	53,705.3	47,822.3	50,000.0	50,000.0	50,000.0	50,000.0

ASSUMPTIONS:

FY93 Revenues are based on appropriations made in FY94 budget.

FY94 projected is based on FY94 Adjusted Budget.

Transfers from Mitigation Account from Exxon settlement are $5.0 million/yr for FY93-FY99.

Cost recovery will begin to increase based on enhanced procedures and efforts.

Mitigation Account is appropriated to the Response Fund.

State Owned Sites are cleaned up using General Funds (134 is projected FY95 Cost).

Average annual expenditures for emergency response from the spill reserve will be 1,000.0.

FY95 Other sources cover 400.0 of SERC in Govt. Preparedness Program and in other agencies.

FY95 reduce DOL $180.0 eliminate Exxon Project. Dept. of Law expenditures will fall or come, as needed, from Spill Reserve.

Total Surcharge Collected reflects amount needed to cover Projected Expenditures. The Mitigation Account transfers count toward the $50.0 million spill reserve balance. The Mitigation Account transfers are estimates projected.

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OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

HB 238 Version "M" work draft
compared to
DEC proposed changes

HB 238 Features	DEC Proposal (11/93)
◆Change name of fund to include "prevention" (sec. 1,4,6,7, 28,37,42)	☞ Include this change
◆Amend the Alaska Disaster Act by changing the pricrity in which the Governor may have access to money to respond to a disaster (sec. 2,3)	☒ Leave current statute which gives first recourse to money regularly appropriated to state agencies
◆Create catastrophic oil release fund and contingency abatement fund to replace response fund (sec. 27,28)	☒ Leave current statute which establishes OHSRR Fund as a single account
◆create separate mitigation account for each account above (sec. 31,32)	☒ Leave current statute which establishes a single mitigation account
◆divide surcharge - 2¢ and 3¢ with 2¢ to be deposited into the abatement account and 3¢ to be deposited into the catastrophic acct. (sec. 9,11,14)	☒ Leave surcharge at 5¢ whole ☒ Include provision which would allow any other fund sources appropriated to be used for the prevention and response program, so as to increase equity on the "polluter pays" principle.
◆catastrophic acct. cap $50.0 m (sec. 12,13)	☒ Amends provision that suspends the surcharge to includ[illegible]ounts recovered as reimbursement for monies

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page

previously expended from the fund, considers spill reserve balance. (Tax in a given year is amount needed to replenish spill reserve to $50.0 million after reimbursements are put in and annual funding requirement is taken out.)

☞begin calculating the balance of the spill reserve with a "clean slate"

◆remove requirement that DEC annually revise the statewide master plan, commissioner makes the determination when revision is necessary (sec. 21)

☞Include this change

◆remove requirement that the statewide master plan be submitted to the public, Legislature and SERC for annual review (sec. 22)

☞Include this change

◆when DEC revises the statewide master plan that it go through public comment and SERC approval (sec. 23)

☞Include this change

◆remove requirement that DEC annually revise the regional contingency plans, commissioner makes the determination when revision is necessary (sec. 24)

☞Include this change

◆provides same procedures for review and revision of statewide plans apply to regional plans (sec. 25)

☞Include this change

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◆amend definition of "catastrophic oil discharge" as >100,000 barrels or a release for which the governor has declared a disaster (sec. 26)	☞Include a portion of the change which adds the term "release" as well as "discharge", a disaster declaration is not necessary to access spill reserve for spills and contaminated sites ☒Include technical amendment to ensure that the definition of "containment and cleanup" includes other permutations of these words
◆delete restoration, and research and development as authorized uses of the fund (sec. 41)	☒Leave current statute which allows these uses ☒Delete provision for the fund to pay for the ferry
◆repeals use of fund for the Citizen's Oversight Council (sec. 48)	☞Include this provision
◆clarify equipment purchase for depots and corps as authorized use of the fund (sec. 30)	☞Include a definition elsewhere in statute to make certain these equipment purchases are included as a use of the fund
◆deletes the following reporting requirements: PCNs, contracts>20.0, purchases>10.0 (sec. 36)	☞Include deletion of PCN reporting requirement
◆amend definition of "threatened release" to require a determination by the commissioner if it is not impending (sec. 44,46)	☒Leave current definition which defines "threatened release" to mean there is an imminent danger that a release will occur
◆move SERC to DMVA (sec. 47)	☒Leave current status

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11/5/93

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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
Miscellenous/Accounts Receivable	0	-3,049,862
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Reserve for FY 94 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-6,302,319
Balance or Spill Reserve	-15,105,728	37,229,869

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MEMORANDUM

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STATE OF ALASKA
Department of Administration

To:	Darrel J. Rehkinkel Commissioner Department of Revenue	Date:	November 10, 1993
		File Ref:	
From:	Nancy Usera Commissioner Department of Administration	Phone:	465-2200

Subject: Third Quarter 1993 Report for the Oil Surcharge Account

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

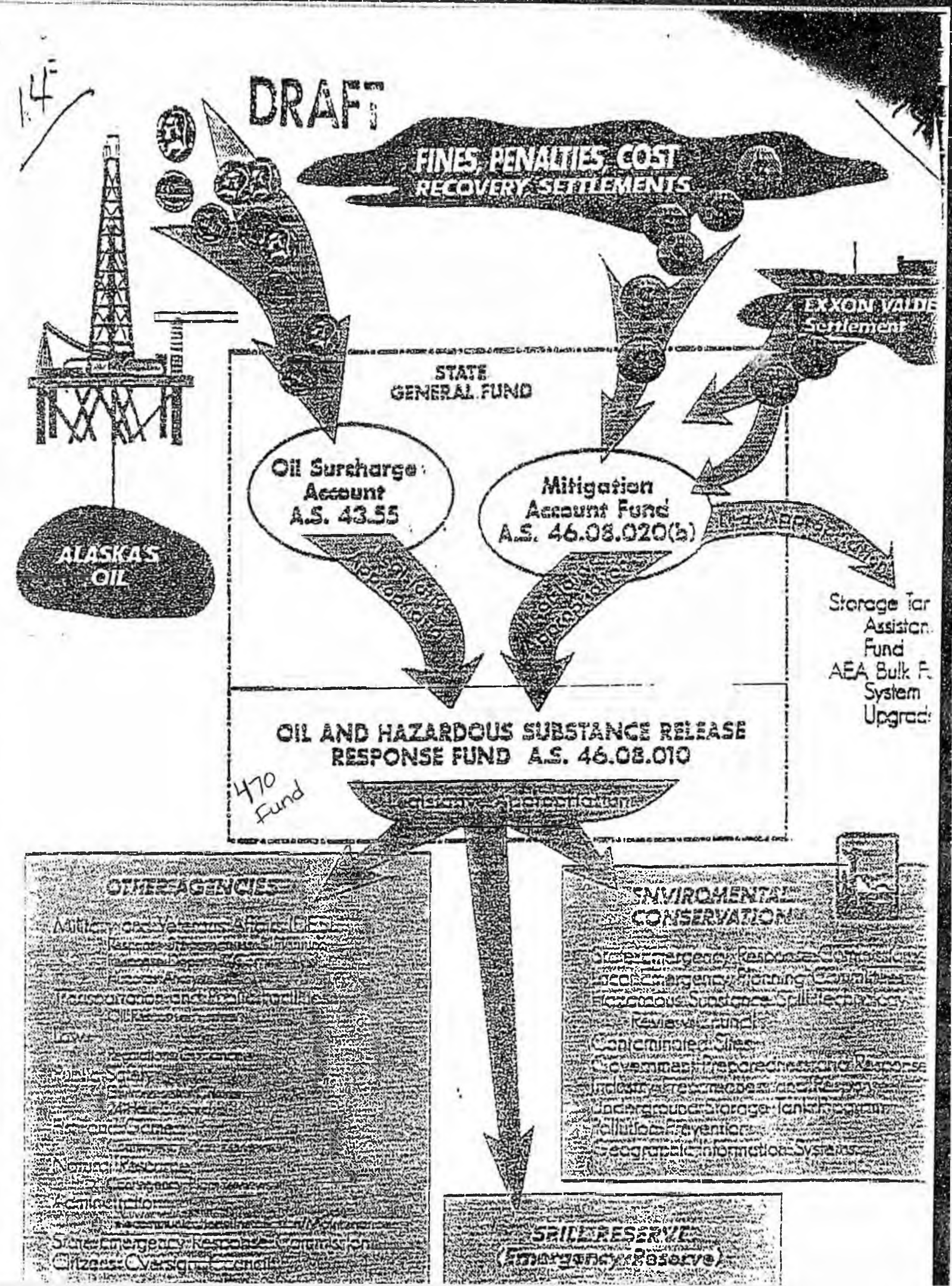
AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by $50,000,000. As of September 30, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by $13,014,244. The calculation is as follows:

Oil Surcharge Account cumulative revenue	$112,083,148
Oil and Hazardous Substance Release Response Fund cumulative expenditures	125,098,389
Difference AS 43.55.230 (b)	($ 13,014,244)

If you have any questions, please call Weldon Blackwell of the Division of Finance at 465-2340.

cc: John A. Sandor
Commissioner
Department of Environmental Conservation

Don Wanie, Director
Division of Finance
Department of Administration



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FINES, PENALTIES, COST RECOVERY SETTLEMENTS
EXXON VALDE
Settlement
ALASKA'S OIL
STATE GENERAL FUND
Oil Surcharge Account A.S. 43.55
Mitigation Account Fund A.S. 46.08.020(b)
Storage Tar
Assistan
Fund
AEA Bulk F.
System
Upgrad
OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND A.S. 46.08.010
470 Fund
OTHER AGENCIES
ENVIROMENTAL CONSERVATION
Contaminated Sites
SPILL RESERVE
(Emergency Reserve)

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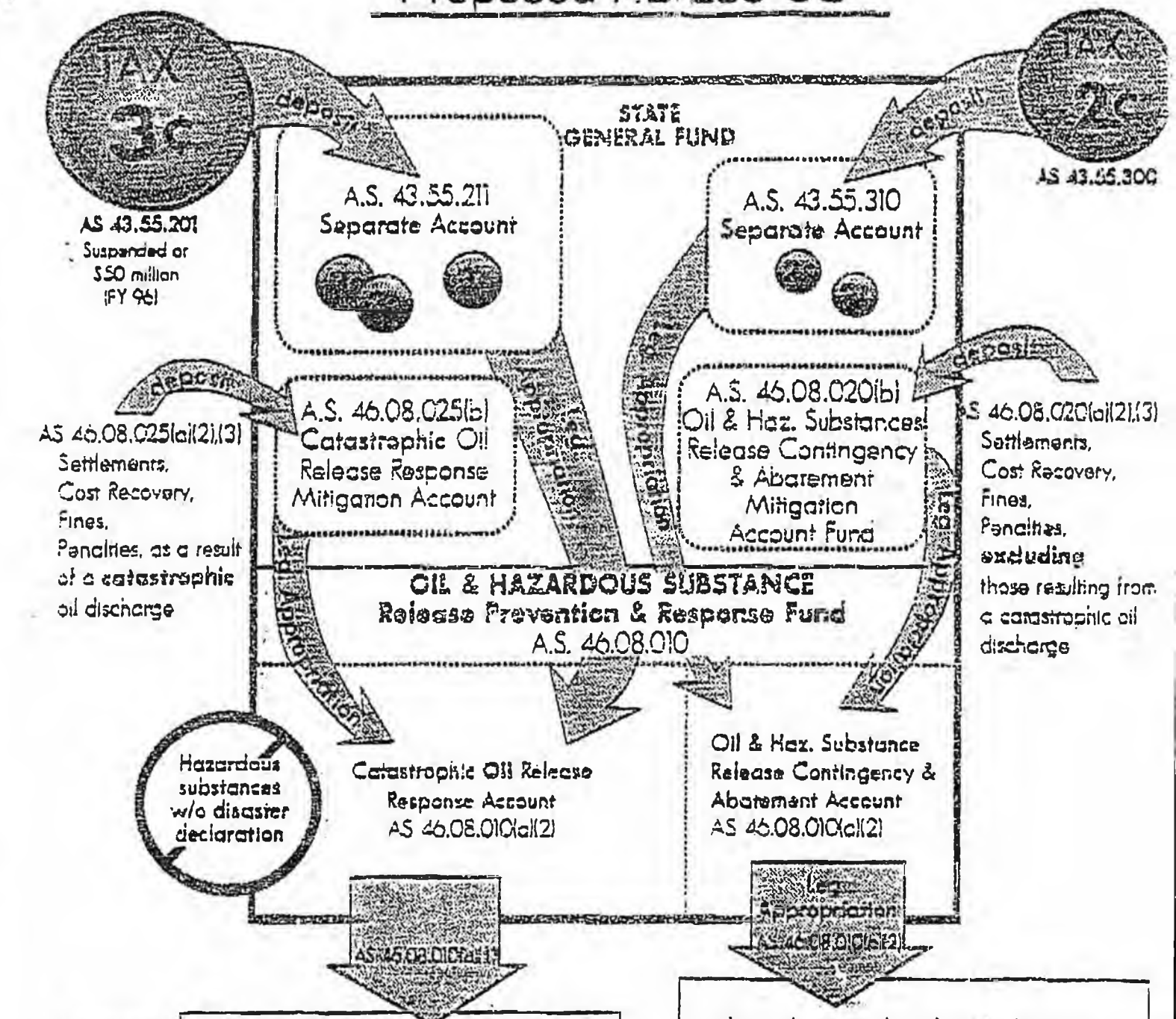
Proposed HB 238 CS



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

MEMORANDUM

STATE OF ALASKA
Department of Administration

To: Darrel J. Rexwinkel
Commissioner
Department of Revenue

Date: April 2, 1993

File Ref:

From: Nancy Bear Usera
Commissioner
Department of Administration

Phone: 465-2200

Subject: First Quarter 1993 Report for the Oil Surcharge Account

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

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by $50,000,000. For the quarter ended March 31, 1993, the amount expended from the OHSRRF exceeded the revenue of the General Fund Oil Surcharge account by $12,001,425. The calculation is as follows:

Oil Surcharge Account cumulative revenue	$100,830,066
Oil and Hazardous Substance Release Response Fund cumulative expenditures	112,831,491
Difference AS 43.55.230 (b)	-$ 12,001,425

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

cc: John A. Sandor
Commissioner
Department of Environmental Conservation

Don Wanie, Director
Division of Finance
Department of Administration

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To	From
Co.	Co.
Dept.	Phone #
Fax #	Fax #

MEMORANDUM

STATE OF ALASKA
Department of Administration

To: Darrel J. Rexwinkel
Commissioner
Department of Revenue

Date: August 20, 1993

File Ref:

From: Nancy Bear Usera
Commissioner
Department of Administration

Phone: 465-2200

Subject: Second Quarter 1993 Report for the Oil Surcharge Account

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

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by $50,000,000. As of June 30, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by $8,543,087. The calculation is as follows:

Oil Surcharge Account cumulative revenue	$109,709,198
Oil and Hazardous Substance Release Response Fund cumulative expenditures	118,252,285
Difference AS 43.55.230 (b)	($ 8,543,087)

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

cc: John A. Sandor
Commissioner
Department of Environmental Conservation

Don Wanie, Director
Division of Finance
Department of Administration

Alyeska pipeline SERVICE COMPANY

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512. TELEPHONE (907) 278-1611. TELEX 090 25-127

August 6, 1993

The Honorable Bill Williams
House of Representatives
352 Front Street
Ketchikan, Alaska 99901

Dear Representative Williams:

I would like to inform you about a recent announcement by the Coast Guard concerning recommendations to meet OPA-90 regulations within Alaska Waters which I felt should be of particular interest to you.

These recommendations and alternative proposals reached by Captain of Ports, Regional Citizen Advisory Councils and DEC and TAPS tanker owners help reduce oil spill risks plus increase response capacity.

The following paragraphs were taken from the most recent Response Bulletin dated July 29, 1993:

"Agency Activity "-

ALASKA - COAST GUARD headquarters is reviewing proposed alternative means of complying with OPA 90 for tankers and barges serving Alaska. Because of Alaska's remoteness and weather, both crude and non-crude operators have asked for waivers from the tank vessel response plan regulation requirements. The alternative proposals have been worked out with the Department of Environmental Quality, The Regional Citizens Advisory Councils and Captains of the Ports. The 17th District Coast Guard has recommended approval. The alternatives include measures to reduce risks and increase response capacity.

For example, the TAPS tankers have agreed to route further (100-150 miles) off shore. The crude carriers also agree to fund stand by aircraft for delivery of dispersants in the Gulf of Alaska within 12 hours at an estimated cost of $150,000 per month. Equipment in Prince William Sound would be somewhat modified to go beyond the 50 mile mark to enhance its open water response, additional equipment would be cached in Southeast Alaska to create a tier 1 response capacity. Additional prevention measures identified in the disabled tanker study would be incorporated.

The non-crude operators have promised steps to reduce the spill threat, increase immediate response and augment shore -based capacity. Oil barges would only be towed by twin screw tugs, with extra emergency tow wires. Extra inspectors for tow wires would be employed. Hardware and training would be required for insuring retrieval capacity. A skimmer lightering pump and boom would be carried on board the vessels. Finally, extra equipment would be stationed with SEA PRO in Southeast Alaska, added in Prince William Sound and Dutch Harbor and stored for emergency shipment in Anchorage.

The proposals are likely to be approved as meeting the "Spirit" of OPA 90. However, RCAC's maintain reservations about the reliance on dispersants in the Gulf of Alaska.

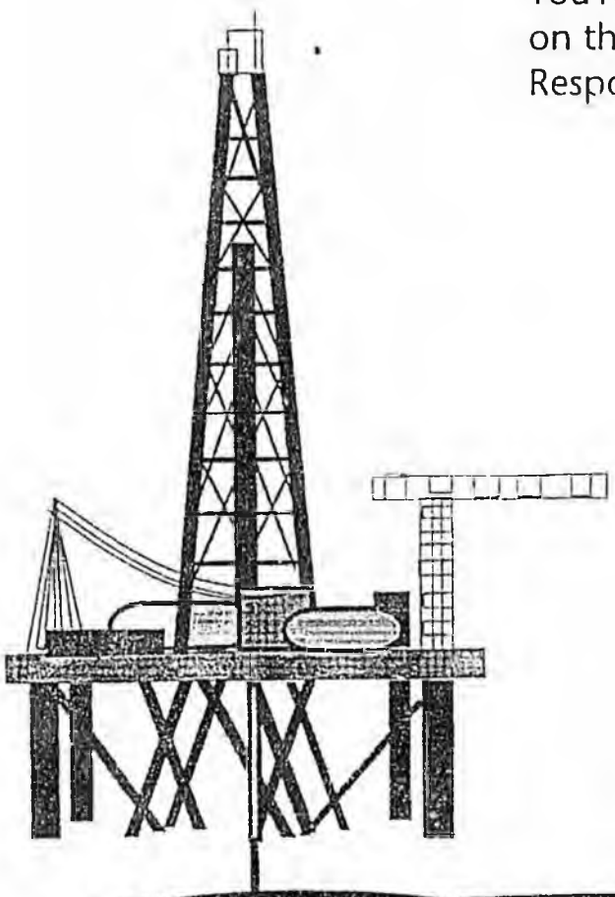
I hope this information helps you better understand the continued effort by all those involved within Alaska (Federal , State, Citizens, and Industry) all working to meet the new federal requirements and my commitment to keep you informed during the interim.

Sincerely,

Paul M. Richards
Manager
Government Relations

To: Legislators, Staff and Press

Alaska's Response Fund



You're invited to an informational workshop on the Oil and Hazardous Substance Spill Response Fund:

- The Fund's history
- How the Fund works...how money goes in and out, and what it's used for
- How the Fund is managed
- The budget process
- Upcoming legislative issues

Tuesday, January 18th,
1:30 to 3:30 PM at
Governor's Conference Room
Capitol Building, 3rd floor

The purpose of this session is to provide nuts and bolts information on the Fund, and to answer any questions you may have. Any information or comments you wish to share will also be welcome.

— Public welcome —

The Alaska Department of Environmental Conservation

For more information call Joe Ferguson at 465-5060

Alaska State Legislature

Legislative Research Agency

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

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December 28, 1992

MEMORANDUM

TO: Senator Rick Halford

FROM: Maria Gladziszewski
Legislative Analyst

RE: **Alaska's Oil and Hazardous Substance Release Response Fund: History, Expenditures and Reimbursements**
Research Request 93.062

You asked for the following information about the Oil and Hazardous Substance Release Response Fund (the "470 Fund"):

1. legislative history of the 470 Fund and a brief summary of all legislation passed since 1989 affecting the 470 Fund;

2. current balance of all accounts associated with the 470 Fund and the amount spent annually from the 470 Fund since 1989;

3. status of all expenditures from the 470 Fund associated with the state's response to the *Exxon Valdez* spill, reimbursement to the state of these funds from Exxon under the settlement, and reimbursement to the 470 Fund of this money as it is received by the state; and

4. procedure for reimbursing the fund for expenditures made from it.

Each question is discussed briefly below. Additional information is included in the attached tables and information. Question one is covered in Legislative Research Agency Memorandum 92.236 (Attachment A). In addition, sections of a draft report prepared by the Alaska Department of Environmental Conservation (DEC) chronicle the 470 Fund history (Attachment B, "*A Strategic Plan for the Oil & Hazardous Substance Release Response Fund*"). Tables One and Two address question two. Question three is addressed in Table Three and accompanying notes. Question four, regarding reimbursement procedures, is addressed at the end of this memorandum.

QUESTION ONE: Response Fund History

The Oil and Hazardous Substance Release Response Fund, dubbed the "470 Fund" after the house bill that established it in 1986, originally was used only for containment, cleanup or monitoring of oil or hazardous substance spills. After the 1989 *Exxon Valdez* oil spill, the legislature expanded the use of the fund to finance such additional functions as spill response training, response exercises, and inspections; preparation and review of spill contingency plans; operation of the spill response office, response corps and response depots; environmental restoration after an oil or hazardous substance release; and refurbishment of one or more vessels that have spill response capability.

The 470 Fund began in 1986 as the balance of the Spill Expense Reserve Account (an account established by the legislature in FY 81 and funded with a $1 million appropriation), the balance in the Oil Spill Mitigation Account (a general fund account established in 1982 to accept deposits from oil discharge penalty payments[1]) and an additional $300,000 appropriation.

Between 1986 and 1989, 470 Fund deposits came from general fund appropriations and appropriations of money recovered from parties responsible for oil and hazardous substance spills. In 1989, new legislation required oil producers to pay a conservation surcharge of $0.05 per barrel of oil produced from each lease of state property (AS 43.55.200). The commissioner of the Department of Administration was directed to account separately for all proceeds of the oil surcharge. Since FY 91, the primary funding source for the 470 Fund has been appropriations of receipts from this conservation surcharge.

See Legislative Research Agency Memorandum 92.236 (Attachment A) for a more detailed response fund history. In addition, sections of a draft report prepared by the Alaska Department of Environmental Conservation (DEC) chronicle 470 Fund history (Attachment B).

QUESTION TWO: Current Balance and Amount Spent from the 470 Fund

The lower portion of table 1A shows that on June 30, 1993, the end of FY 93, if all the appropriated money is spent and no additional deposits are made to the fund, the balance in the 470 Fund will be approximately $100,000. This is based on an available fund balance at the beginning of FY 93 of $52.8 million and FY 93 appropriations of $52.7 million.

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[1]This account was repealed by the 1986 legislation establishing the 470 Fund and replaced with the Oil and Hazardous Substance Release Mitigation Account.

According to DEC, FY 93 expenditures as of December 9, 1992 were approximately $13.3 million.

Table 1B includes information about the two primary sources of 470 Fund deposits--the oil and hazardous substance release mitigation account and the account containing deposits from the $.05 per barrel conservation surcharge. Table 1B shows that the available balance in the oil and hazardous substance release mitigation account as of December 18, 1992 was $194,000. The table also shows that from July 1, 1992, to December 18, 1992, the revenue collected by the state from the $0.05 per barrel surcharge on oil has been approximately $8.5 million. Total revenue collected from the surcharge (inception to date) is approximately $92 million.

Table Two shows that during the fiscal years 1987 - 1992, 470 Fund expenditures totaled approximately $94.9 million. This with FY 93 expenditures to date of approximately $13.3 million brings the total expenditures from the 470 Fund to $108.2 million. Table Two also shows that *Exxon Valdez* oil spill-related expenditures for the same period totaled approximately $76 million, or 80 percent of total fund expenditures through FY 92.

QUESTION THREE: Status of *Exxon Valdez* Expenditures

Table Three and accompanying notes show that approximately $36.5 million, or 48 percent of the amount spent from the 470 Fund on *Exxon Valdez* oil spill-related expenditures, has been reimbursed to the fund from payments by Exxon. This amount includes the $4 million that was deposited into the 470 Fund as a result of the first settlement payment made to the state from Exxon in December 1991.

Exxon made a second settlement payment of approximately $29 million to the state in December 1992. Additional reimbursements to the fund are expected as a result of this payment. Assistant Attorney General Craig Tillery reports that preliminary calculations indicate that approximately $12.3 million will be deposited into the mitigation account. If all $12.3 million from the mitigation account were appropriated to the 470 Fund, payments from Exxon will have reimbursed the 470 Fund for approximately 64 percent of 470 Fund *Exxon Valdez* oil spill-related expenditures.

QUESTION FOUR: Procedures for Reimbursing the 470 Fund

Alaska Statute 46.04.010 states that DEC shall promptly seek reimbursement for expenses it incurs in cleaning up or containing an oil spill. "Money received by the department under this section shall be deposited in the general fund and credited to a special account called

the 'oil and hazardous substance release mitigation account'." Christine Underwood, administrative officer with DEC's Division of Administrative Services, reports that all reimbursements received are deposited according to this statute. Deposits may be made to the mitigation account but the legislature must then appropriate that money to the 470 Fund.

The legislature authorized program receipt authority to the 470 Fund in 1989 and 1990. Special appropriations were made to the response fund in March of 1989, $10 million of which were program receipts from Exxon. To date, the state has received $7.7 million in payments on the promised $10 million and the 470 Fund accounts still carry a $2.3 million accounts receivable for these funds.

I hope this information is useful to you. Please do not hesitate to contact this office with additional questions.

Attachments

TABLE 1A:
OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
BALANCE SHEET, FY 91 and FY 92

	JUNE 30, 1992	JUNE 30, 1991
Reserve for Encumbrances	$13,911,537.91	$10,910,943.35
Reserve for Prior Year Authorizations	$ 1,822,446.72	$ 117,748.29
Reserve for Restricted Revenue	(5,641,109.99)	0.00
Unreserved	$23,951,883.94	$19,916,033.39
TOTAL FUND BALANCE	**$34,044,758.58**	**$30,944,725.03**

OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
BALANCE SHEET, CURRENT and FY 93

Unreserved as of June 30, 1992	$24,000,000 (rounded)
Deposit July 1, 1992 from General Fund (Oil Surcharge Account Revenue)	$27,000,000
Deposit July 1, 1992 from General Fund (Mitigation Account Revenue)	$ 1,800,000
TOTAL UNRESERVED + DEPOSITS (July 1, 1992)	$52,800,000
Fiscal Year 1993 Authorized Expenditures	$52,700,000
Expenditures As of 12/09/92	$13,300,000
BALANCE AS OF 12/09/92	$39,500,000
BALANCE, END OF FY 93*	$ 100,000

*This assumes that all authorized expenditures are made and there are no additional deposits.

SOURCE:

Alaska Department of Environmental Conservation, Division of Administrative Services

Prepared by the Legislative Research Agency, December 1992 (93.062).

TABLE 1B
SOURCES OF REVENUE FOR THE 470 FUND:
MITIGATION ACCOUNT BALANCE AND OIL SURCHARGE REVENUE

Oil & Hazardous Substance Release Mitigation Account
Balance as of 12/18/92

Cash Balance	$2,016,000
Obligations	$1,822,000
Available Balance*	**$ 194,000**

*Exxon made a second settlement payment to the state in December 1992. Assistant Attorney General Craig Tillery expects that approximately $12.3 million of the $29 million payment will be deposited into the mitigation account as payment to the state for unreimbursed response costs.

Unrestricted General Revenue--Oil Surcharge Account
REVENUE COLLECTED

Fiscal Year 1990	$26,932,000
Fiscal Year 1991	$27,965,000
Fiscal Year 1992	$28,669,000
July 1, 1992 - December 18, 1992	$ 8,463,000
TOTAL REVENUE COLLECTED (Inception to 12/18/92)	**$92,029,000**

TOTAL 470 FUND EXPENDITURES
Inception to December 9, 1992

Expenditures FY 87 - 92	**$ 94,894,300**
Expenditures FY 93 as of 12/09/92	**$ 13,300,000**
TOTAL Expenditures*	**$108,194,300**

NOTE:

* This figure is according to the Department of Environmental Conservation. According to Response Fund Annual Reports, 470 Fund actual expenditures for FY 87 to FY 92 total $94.9 million. According to DEC, additional expenditures and obligations of $13.3 million for July 1, 1992 to December 9, 1992 bring the total expenditures (inception to December 9, 1992) to $108.2 million. Total 470 Fund expenditures recorded by the Department of Administration (DOA) vary slightly from DEC records. According to DOA, total expenditures from inception to December 18, 1992 are $107,146,000.

SOURCE:

Department of Administration, Division of Finance (Mitigation and Oil Surcharge accounts); Department of Environmental Conservation (Total 470 Fund expenditures).

Prepared by the Legislative Research Agency, December 1992 (93.062).

TABLE TWO
THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND ("470 Fund"):
ACTUAL EXPENDITURES, FISCAL YEARS 1987 – 1992

	FY 92	FY 91	FY 90	FY 89	FY 88	FY 87	FY 87 – 92 TOTAL
State & Regional Contingency Plans/Requirements	$307.7	$556.7	$158.4				
Spill Response Office, Depots & Corps	$1,125.1	$967.7	$199.8				
Spill Response Containment, Safety, Cleanup & Cost Recovery	$4,224.7	$690.2	$211.0	$246.8 *	$330.0	$428.8	
State Emergency Response Commission & LEPCs (HB 566)	$832.2	$399.6					
Spill Response Drills	$105.7	$448.5					
Exxon Valdez Project – General	$3,461.1	$11,977.7					
Litigation	$1,576.9	$4,100.0					
Damage Assessment	$8,012.8	$8,834.4					***EXXON***
DEC Response			$24,005.4	$5,456.3			***VALDEZ***
Interagency Response			$4,560.0	$609.7			**Subtotal**
Local Response			$3,210.2	$205.6			$76,010.1
Contaminated Site Investigation, Safety, Cleanup & Cost Recovery	$1,262.4	$1,671.7	$774.5				
Kenai Cleanup Project (Contaminated Sites)	$555.9	$583.7					
Spill Prevention & Response Preparedness (HB567)		$1,176.0					
Spill Reserve	$71.4	$313.6	$245.5				
Other	$759.5	$124.3	$112.8				
TOTAL FY 87 – FY 92	**$22,295.4**	**$31,844.1**	**$33,477.6**	**$6,518.4 ***	**$330.0**	**$428.8**	**$94,894.3**
FY 93 Expenditures through December 9, 1992							**$13,300.0**
TOTAL							**$108,194.3**

NOTES:

Response Fund Annual Reports have not consistently reported all the categories listed above for the years 1988 – 1992.

LEPCs = Local Emergency Planning Committees

* By direction of DEC officials, these figures have been slightly modified from the FY 89 Response Fund Annual Report.

SOURCES:

Alaska Department of Environmental Conservation, Response Fund Annual Reports for the years 1987 – 1991; and
Alaska Department of Environmental Conservation, Division of Administrative Services, for 1992, 1993 and modified 1989 data.

Prepared by the Legislative Research Agency, December 1992 (93.062).

TABLE THREE:
REIMBURSEMENTS TO THE 470 FUND RELATING TO THE *EXXON VALDEZ* OIL SPILL
(Inception to June 30, 1992)

Actual Expenditures from the 470 Fund	$76.0 million
Revenue Deposited into the 470 Fund from the Mitigation Account (not including settlement payment deposits)	$32 5 million
Deposit from First Settlement Payment, December 1991	$ 4.0 million
TOTAL DEPOSITS TO DATE *	**$36.5 million** (48% of Fund expenditures on Exxon Valdez)
UNREIMBURSED EXPENDITURES	$39.5 million

SOURCE: Alaska Department of Environmental Conservation

* Assistant Attorney General Craig Tillery reports that settlement money to be received by the state from Exxon can be divided into reimbursements for litigation, damage assessment, and response costs. The first two, litigation and assessment costs, were addressed first because it was reasoned that these types of expenses were not likely to be recovered from Alyeska in subsequent litigation. According to a memorandum from Attorney General Charles Cole to OMB Director Shelby Stastny (dated January 21, 1992), approximately $38.2 million was due to the state from Exxon for litigation and assessment costs--86.5 percent for litigation costs and 13.5 percent for 470 Fund expenditures on damage assessment. Approximately $25.3 million (or 86.5 percent) of Exxon's first $29.3 million settlement payment to the state (in December 1991), therefore, was deposited into the general fund as reimbursement for litigation costs (account #64030-Legal Services). The remaining $4 million was deposited into the 470 Fund (see Attachment C, January 21, 1992 memorandum).

According to Assistant Attorney General Craig Tillery, Exxon made a second settlement payment a few weeks ago (December 1, 1992). As is specified in statute, that second payment (approximately $29 million) has been deposited in the general fund until it can be determined into which other accounts deposits should be made. Legislation passed in June 1992 (Section 1 Chapter 1 FSSLA 1992, included as Attachment D) specifies that money received by the state as reimbursement for state expenses related to the *Exxon Valdez* oil spill be deposited into the general fund. The law also specifies how to determine the percentage of a given settlement payment to be deposited into the mitigation account.

Mr. Tillery reports that the state's oil spill accounting firm, the Seattle-based Peterson and Company, is in the process of determining how much of the second settlement payment should be deposited into the 470 Fund as reimbursement for response costs. Mr. Tillery expects that approximately $12.3 million of the $29 million will be deposited into the mitigation account. If all $12.3 million is then deposited into the 470 Fund, reimbursements to the 470 Fund as a result of payments from Exxon would total $48.8 million (64 percent of 470 Fund expenditures on *Exxon Valdez*) and the total 470 Fund unreimbursed expenditures would be reduced to $27.2 million.

ATTACHMENT A

"History of the Oil & Hazardous Substance Release Response Fund"
Legislative Research Agency Memorandum 92.236

Alaska State Legislature

Legislative Research Agency

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May 4, 1992

MEMORANDUM

TO: Representative Kevin "Pat" Parnell

FROM: Glenn T. Gray GTG
Legislative Analyst

RE: History of the Oil and Hazardous Substance Release Response Fund
Research Request 92.236

You asked for a history of the Oil and Hazardous Substance Release Response Fund, hereafter referred to as the Response Fund. The fund is also known as the "470 Fund" after HB 470 which established the fund in 1986. We obtained the information for this memorandum from session laws (Attachment A), from a draft document currently being prepared by the Department of Environmental Conservation (Attachment B), and from annual reports to the Alaska State Legislature (Attachment C).

Summary

The legislature created the Response Fund in 1986 with the intent that money would always be available to respond to oil and hazardous materials spills. While initially the primary intent of the fund was to finance spill clean up and monitoring, legislative changes after the 1989 *Exxon Valdez* oil spill expanded the use of the fund and its source of financing. The fund may now be used for certain state agency operating expenses related to spills and for certain capital expenses, such as construction of oil spill response vessels and spill response depots.

The fund was originally financed from the general fund but now is primarily funded by a $0.05 per barrel conservation surcharge.

Original Intent of the Fund

The legislature replaced the Spill Expense Reserve Account (Reserve Account) in 1986 when it created the Oil and Hazardous Substance Release Response Fund. Chapter 59 SLA 86 created the Response Fund for "payment of the expenses incurred by the Department of Environmental Conservation in the protection of

Amendments to the Fund

The legislature made changes to the fund in 1989, 1990 and 1991.[2] These changes expanded uses of the Response Fund to include funding for:

- grants issued by the Department of Community and Regional Affairs;
- operation of the Citizens' Oversight Council;
- spill response during disasters declared by the governor;
- operation of the spill response office;
- review of discharge prevention and contingency plans;
- completion of training and response exercises;
- verification of proof of financial responsibility;
- operation of the response corps and response depots managed by the state Division of Emergency Services, Department of Military and Veterans' Affairs ;
- preparation of state and regional discharge prevention and contingency plans; and
- refurbishment of vessels for oil spill response by the state Department of Transportation and Public Facilities.

These uses of the funds are described in more detail in Attachment B and Attachment C.

I hope that this information answers your questions about how use of the Response Fund has changed since its inception. Please contact this office if we may be of additional service.

Attachments

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[2]Session laws containing these changes are: Chapters 29, 39, 90 and 113 SLA 89; Chapters 190, 191 and 199 SLA 90; and Chapters 48 and 83 SLA 91.

ATTACHMENT A
Session Laws Affecting the Response Fund

1986

Chapter 59

AN ACT

Relating to the release of oil and hazardous substances; repealing the oil spill mitigation account; and providing for an effective date.

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* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may appropriate from the following sources to the fund:

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

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

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

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

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. 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.

Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use money from the fund to

(1) contain, clean up, and take other necessary action, such as monitoring, assessing, investigating, and evaluating the release or threatened release of oil or a hazardous substance that

poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) 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); and

(3) 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.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

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

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.020;

(3) a summary of municipal participation in responses funded by the fund;

(4) a detailed summary of department activities in

responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; and

(5) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous waste sites, the commissioner shall include in the report under this section

(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.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, may seek 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 the threatened release of oil or a hazardous substance.

(c) The department may reimburse a municipality for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release of oil or a hazardous substance if

(1) the municipality has entered into an agreement with the commissioner under AS 46.09.020(e) before incurring the expenses for

which reimbursement is sought; and

(2) the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare, or to the environment.

Sec. 46.08.080. REGULATIONS. The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to which this chapter otherwise applies. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "capital improvement" includes 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;

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

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, the restoration of the environment, and incidental administrative costs;

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

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

(6) "hazardous substance" means

(A) an element or compound that, when it enters into

or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(C) "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

(7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(10) "threatened release" means an imminent danger that a release will occur.

* Sec. 2. AS 46 is amended by adding a new chapter to read:

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a) Except as provided in (b) of this section, a person in charge of a

vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to

cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner may assist the adjutant general in the relief of

the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provision of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

Sec. 46.09.070. REGULATIONS. The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all or any portion of the substances to

which this chapter otherwise applies. The commissioner shall adopt only those regulations that are expressly required to implement the specific purposes of this chapter.

Sec. 46.09.900. DEFINITIONS. In this chapter

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

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment, and incidental administrative costs;

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

(4) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

(C) "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;

(5) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(6) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(7) "threatened release" means an imminent danger that a release will occur.

Sec. 3. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

Sec. 4. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

* Sec. 5. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.00[illegible] "disaster" means the occurrence or imminent threat of widespread o[illegible] severe damage, injury, or loss of life or property resulting from a[illegible] natural or man-made cause including, but not limited to, fire, flood[illegible] earthquake, landslide, avalanche, wind-driven water, weather condi[illegible] tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRIN[illegible] EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, a[illegible] contamination, blight, infestation, explosion, [OR] riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage.

* Sec. 6. AS 45.45.900 is amended to read:

Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC POLICY. A provision, clause, covenant, or agreement contained in, collateral to, or affecting a [ANY] construction contract that [WHICH] purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) [ANY] other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of an [ANY] insurance contract, workers' compensation, or agreement issued by an insurer subject to the provisions of AS 21, or a provision, clause, covenant or agreement of indemnification respecting the handling, containment or cleanup of oil or hazardous substances as defined in AS 46.

* Sec. 7. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent

discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land or subsurface land of the state poses an immediate threat to the public health or welfare, or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment.

* Sec. 8. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

* Sec. 9. AS 46.03.760(a) is amended to read:

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

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

to which the discharge degrades existing environmental quality;

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

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

* Sec. 10. AS 46.03.765 is amended to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09 or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 11. AS 46.03.780(a) is amended to read:

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

* Sec. 12. AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) - (f) of this section, a person who negligently violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class B misdemeanor.

* Sec. 13. AS 46.03.790(b) is amended to read:

(b) Except as provided in (d) - (f) of this section, a person who knowingly violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class A misdemeanor.

* Sec. 14. AS 46.03.790(d) is amended to read:

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 15. AS 46.04.010 is amended to read:

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

Chapter 59

* Sec. 16. AS 46.04.090(b) is amended to read:

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.09, and AS 46.03.

* Sec. 17. Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020, added by sec. 2 of this Act.

* Sec. 18. Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.070, added by sec. 2 of this Act.

* Sec. 19. AS 46.03.758(k) is repealed.

* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

LAWS OF ALASKA

1986

Source
HCS CSSB 278(Fin)

Chapter No.
60

AN ACT

Relating to impoundment and registration of motor vehicles; senior citizen motor vehicle tax exemptions; licensing of certain drivers; fees for driver's licenses and permits; refusal to submit to a chemical test for intoxication; and the driver's license compact.

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

THE ACT FOLLOWS ON PAGE 1, LINE 13

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 3, 1986
Actual Effective Date: September 1, 1986

ıship 21 North, Range 3 West, Seward Meridian
:ion I
:ions 11 - 14
ions 23 - 26
ions 35 - 36
ship 22 North, Range 2 West, Seward Meridian
ions 19 - 21
ions 28 - 33,
anding AS 16.20.510 - 16.20.530, the commissioner
in consultation with the commissioner of natura
epare a management plan for the Willow Mountain
ea. The commissioner of fish and game and the
ural resources shall exercise their respective
area in a manner consistent with the management

agement plan is developed under AS 16.20.620(b),
Act, management decisions for the Willow Mountain
: reflect the intent of the Willow Mountain Sub-
anagement Plan adopted in October, 1986.
es effect immediately under AS 01.10.070(c).

LAWS OF ALASKA

1989

Source
CSSB 256(CLRA)

Chapter No.
29

AN ACT

Relating to reimbursement for costs incurred and recovery of money expended as a result of a released hazardous substance; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 11

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 11, 1989
Actual Effective Date: May 12, 1989, retroactive to March 24, 1989

Chapter 29

AN ACT

Relating to reimbursement for costs incurred and recovery of money expended as a result of a released hazardous substance; and providing for an effective date.

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* Section 1. AS 46.08.070(b) is amended to read:

(b) The attorney general, at the request of the commissioner, shall immediately [MAY] seek 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 the threatened release of oil or a hazardous substance.

* Sec. 2. AS 46.08.070(c) is amended to read:

(c) The department may reimburse a municipality for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release of oil or a hazardous substance if

(1) the municipality has entered into an agreement with the commissioner under AS 46.09.020(e) [BEFORE INCURRING THE EXPENSES FOR WHICH REIMBURSEMENT IS SOUGHT]; and

(2) the commisioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare, or to the environment.

* Sec. 3. This Act is retroactive to March 24, 1989.

Chapter 29

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

LAWS OF ALASKA

1989

Source

SCS CSHB 68(Jud)

Chapter No.

39

AN ACT

Relating to liability for the release or threatened release of a hazardous substance; recovery of state costs for an oil or hazardous substance release; liability of response action contractors; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 12, 1989
Actual Effective Date: May 13, 1989

Chapter 39

AN ACT

Relating to liability for the release or threatened release of a hazardous substance; recovery of state costs for an oil or hazardous substance release; liability of response action contractors; and providing for an effective date.

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* Section 1. AS 40.17.110(b) is amended by adding a new paragraph to read:

(60) a certificate relating to a lien under AS 46.08.075.

* Sec. 2. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality, and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

(A) an act of war;

(B) except as provided under AS 46.03.823(c), an intentional or negligent act or omission of a third party, other

than a party or its agents in privity of contract with, or employed by, the person, and that the person

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

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

(C) an act of God; and

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

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

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

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

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

(2) the person is a governmental entity that acquired the

facility by escheat, or through another involuntary transfer or acqu
sition, or through the exercise of eminent domain authority by pu
chase or condemnation;

(3) the person is a corporation organized under 43 U.S.C
1601 - 1628 (Alaska Native Claims Settlement Act) that acquired th
facility under those sections;

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

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

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

(1) any specialized knowledge or experience the person ha

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

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

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

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

(e) This section does not diminish the liability of a person wh

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

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

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

(h) The state or a municipality is not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state or municipality constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of

joint liability and is liable severally for damages and costs attributable to that person if the person proves that

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

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

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

* Sec. 3. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.823. HAZARDOUS SUBSTANCE RESPONSE ACTION CONTRACTORS (a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

(b) The liability limitation under (a) of this section does not apply to a response action contractor who would otherwise be strictly liable under this section.

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

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

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a response action contract or a remedial action plan if one has been approved by the department.

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

(g) In this section,

(1) "response action" means an action taken in connection with the mitigation or cleanup of a hazardous substance release or threatened release, including investigation, evaluation, plan development, mapping and surveying, engineering, design and construction, removal, and equipment provision;

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

(A) the department; or

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

(3) "response action contractor" means

(A) a person who enters into a response action contract with respect to a release or threatened release of a hazardous substance and who is carrying out the contract; and

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

* Sec. 4. AS 46.03.826(3) is amended to read:

(3) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance <u>into the atmosphere or</u> in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 5. AS 46.03.826(4) is amended to read:

(4) "hazardous substance" means

(A) an element or compound which, when it enters <u>into the atmosphere or</u> in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; [OR]

(B) oil; <u>or</u>

<u>(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);</u>

* Sec. 6. AS 46.03.826 is amended by adding new paragraphs to read:

(8) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(9) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

(10) "owner" and "operator"

(A) mean

(i) in the case of a vessel, any person owning, operating, or chartering by demise, a vessel;

(ii) in the case of facility, any person owning or operating the facility;

(iii) in the case of an abandoned facility or vessel, any person who owned, operated, or otherwise controlled activities at the facility or vessel immediately before the abandonment; and

(iv) in the case of a facility or vessel, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a