

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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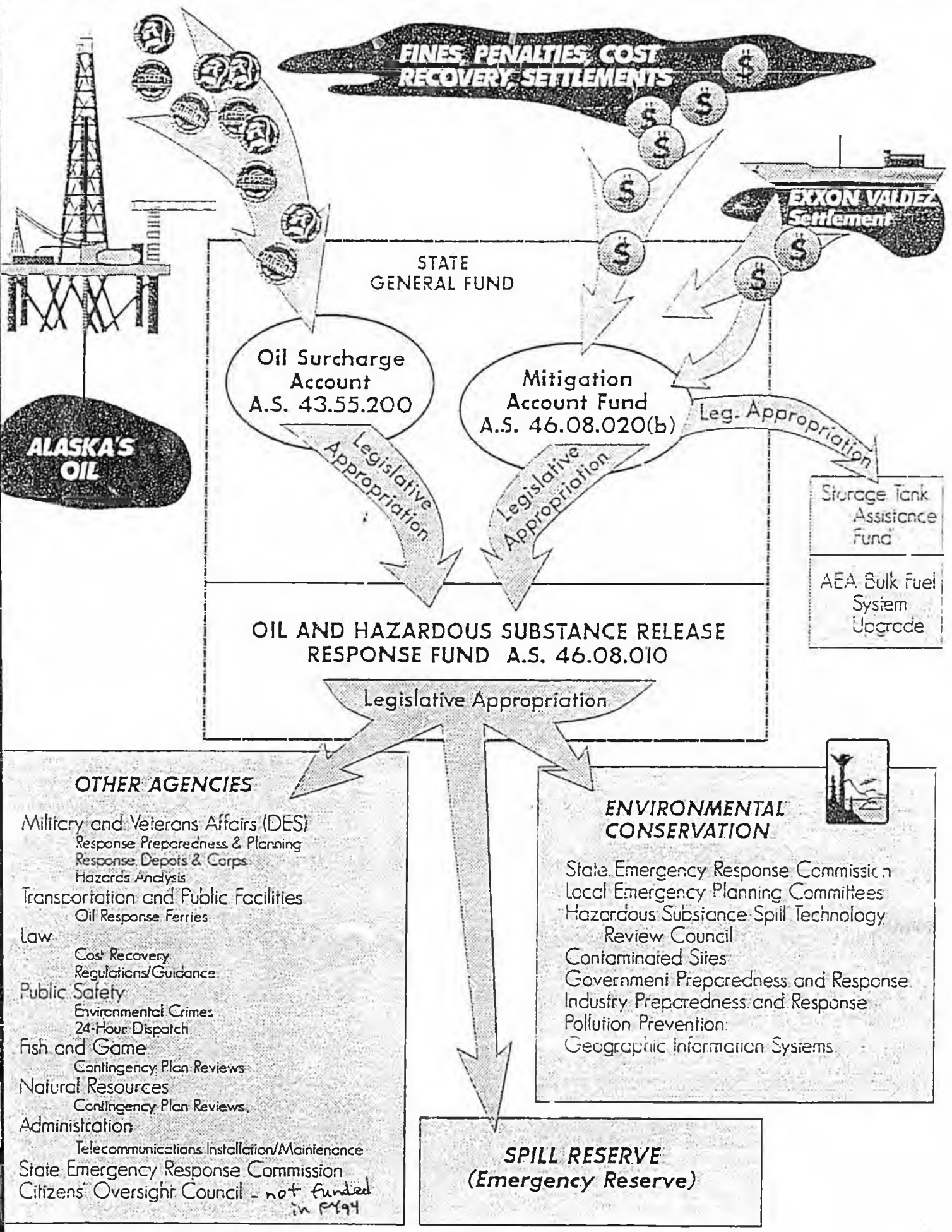
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**Petition for Protecting the Oil and Hazardous Substance
Release Response Fund (470 Fund)**

We the undersigned oppose any legislation that reduces funding for oil and hazardous substance spill prevention and response programs funded by the 470 Fund.

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Please send to Senator Pearce, Co-chair Senate Finance Committee, State Capitol, Juneau, AK 99801-1182



REFLECTS CURRENT LAW



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

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

April 27, 1994

Honorable Members of the House State Affairs Committee
Room 102
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Re: Senate Bill 215

Dear Honorable Members of the House State Affairs Committee:

The Prince William Sound Regional Citizens' Advisory Council (RCAC) was created by the U.S. Congress under the Oil Pollution Act of 1990. The RCAC has 18 members representing municipalities, commercial fishing groups, Alaska Native interests and environmental and business organizations. RCAC's mission is "citizens promoting the environmentally safe operation of the Alyeska Pipeline Service Company terminal and associated tankers."

For over a year, RCAC has made a good faith effort and actively worked with the legislature on Senate Bill 215 and its companion, House Bill 238. We worked closely with the Senate Finance Committee to develop a committee substitute for SB 215 that would provide Alaska with a functioning oil and hazardous substances response program and, hopefully, a viable spill prevention program. Despite improvements to the bill made in the Senate Finance Committee, serious problems still remain. I would like to briefly describe these problems.

New or unchanged problems in SB 215:

- The Senate Finance Committee substitute authorizes use of the prevention account for underground storage tank grants [AS 46.08.040(a)(2)(H)]. **This is a new use of the response fund. The current backlog of grants requests totals \$65 million** and the application period, which was to sunset this fiscal year, is likely to be extended. Approximately \$5 million has been spent annually on this program; the source of funding for the past two years was primarily mitigation account proceeds. The problem with this new use of the prevention account is that 1) the 3-cent surcharge is insufficient to fund the underground storage tank grant program and maintain current spill prevention programs, 2) other sources of funds are available to underground storage tank owners, and 3) this action is inconsistent with the original stated intent of the proponents of response fund legislation---to provide greater equity in surcharge payments

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between crude and non crude operators and beneficiaries of the state response and prevention programs.

- **The entire estimated balance of the spill reserve is appropriated to the response account. This fails to recognize that the fund has always served two purposes---spill prevention and response. Given that future nickels are divided three cents for prevention and two cents for response, it makes sense that previous nickels should be divided similarly.** In addition, approximately 42 percent of the balance originating from state general funds and not surcharge payments.
- In the committee substitute, the 2-cent response surcharge is suspended until June 30, 1995 if the legislature fails to appropriate the entire balance of the spill reserve to the response account. This is an improvement over the previous Senate Resources Committee version.
- Authorization for oil and hazardous substance response depot equipment purchases specifies the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services. The DEC also has authority for establishing response depots and is the more appropriate lead agency for oil and hazardous substance depots or the oil and hazardous substances component of all-hazards depots. The DMVA would be the lead agency on all-hazards depots [section 26, AS 46.08.040(a)(2)(C)(ii)].
- **Restoration costs can be paid from the prevention account as well as the response account.** Restoration is part of a continuum of clean up activities and therefore, should be paid from the response account. If restoration can be paid from the prevention account, there will always be pressure to identify clean up actions as restoration and shift these costs to the prevention account.
- The Citizens' Oversight Council on Oil and Other Hazardous Substances (COC) was established after the *Exxon Valdez* oil spill as one of the principal recommendations of the Oil Spill Commission. The Oil Spill Commission identified state and federal government and public complacency as one of the principal causes of the *Exxon Valdez* oil spill. The COC was established by the legislature in response to this recommendation. Similarly, Congress created the regional citizens' advisory councils of Cook Inlet and Prince William Sound in the Oil Pollution Act of 1990 (OPA 90) to oversee and advise on issues related to the transAlaska pipeline and marine transportation of crude oil. Both the COC and use of the response fund to pay for its operations were deleted.

We urge you in the interests of all Alaskans to remedy these serious problems before passing this bill from the House State Affairs Committee. Attached is additional information on the legislative history of the oil conservation surcharge and a review of the status of Alaska's spill response and prevention programs five

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years after the *Exxon Valdez* oil spill. I hope these materials will be useful to your deliberations on the bill.

Sincerely,

A handwritten signature in cursive script that reads "Stan Stephens". The signature is written in dark ink and is positioned above the printed name.

Stan Stephens, President

c.c. without attachments

Governor Hickel

H.E. Stanley, RCAC, Executive Director

Gary Bader, Citizens' Group Liaison Manager, Alyeska Pipeline

Service Company

RCAC Directors

The Nickel-Per-Barrel Conservation Surcharge:

A Review of Legislative History and Intent

Prepared for:

Prince William Sound Regional Citizens' Advisory Council
Oil Spill Prevention and Response Committee

January 1994



Eco-Systems

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EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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INTRODUCTION

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

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

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

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

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

- the \$0.05 per-barrel severance tax conservation surcharge on crude oil production was intended to be used only for *catastrophic crude oil* spill response;
- the 1989 surcharge legislation, SB 260, changed the original purposes of the OHSRRF, which included cleanup of contaminated sites and response to hazardous substance and refined petroleum product releases;

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

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

BACKGROUND ON THE OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

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

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

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

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

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

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

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

Purposes of the Oil and Hazardous Substance Release Response Fund

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

- 1) to contain, cleanup and take other necessary actions, such as monitoring, assessing, investigating and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or the environment;
- 2) to provide matching funds for participation in federal oil discharge cleanup activities under CERCLA for hazardous waste site investigation, evaluation, and clean up; and
- 3) to recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance.

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

⁴Ibid.

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

Financing of the Oil and Hazardous Substance Release Fund

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

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

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

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

IMPOSITION OF THE SEVERANCE TAX CONSERVATION SURCHARGE

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

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

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

Committee Action on Senate Bill 260

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

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

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

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

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

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

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

The **Senate Finance Committee** heard SB 260 on April 22 (?) and 28.⁷ At the April 22 (or 26) meeting, Senator Fahrenkamp, chair, Senate Resources Committee, came before the Finance Committee and directed her remarks to SB 260, SB 261, SB 264 and SB 266. She explained that the Senate Resources Committee had a proposed draft committee substitute for SB 260 that the Resources Committee had not adopted because of insufficient time to draft the changes. Senator Uehling, co-chair of the Senate Finance Committee assigned

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

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

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

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

- The purpose section (“...to provide a means by which to pay the expenses incurred in the protection of state land and water against the release of oil and hazardous substances that cause environmental damage and danger.”) was expanded to a findings and purpose section that was similar to the findings and purpose sections contained in the other oil spill bills. It added the finding that “the March 24, 1989 oil spill disaster in Prince William Sound demonstrates the need for the state to have an independent spill containment and clean up capability in the event of future discharges of oil or hazardous substances.” The purpose was expanded to “provide assurance to the people of the state that their health, safety, and well-being will be protected from the adverse consequences of oil and hazardous substances releases of a magnitude that presents a grave and substantial threat to the economy and environment of the state.”
- The fee would not be charged to fuel barges on rivers because they transport refined products rather than crude oil.
- Senator Pearce explained that Sections 42.59.050 and 42.59.60, the “blackmail clause sections,” were included to ensure that the legislature appropriate money into the response fund on a long-term basis--that in the past the legislature has not demonstrated “a great deal of staying power” when it comes to setting up a new fund and ensuring annual appropriations as evidenced by the current balance of the oil and hazardous substance release response fund.
- Jack Chenoweth, legislative council, gave a lengthy explanation of how the “on/off” provisions of the bill would work. This was explained in the context of the fiscal notes for SB 261 and SB 264 which would use approximately \$4.5 million annually during the initial years.
- Senator Uehling noted that 13 different pieces of legislation were pending, and that if they all passed, more than \$4.5 million would be needed from the fund.
- Senator Pearce noted that the effect of additional expenditures would be that the tax would remain on for a longer period of time. If the cap were

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

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

- Mr. Chenoweth explained that the legislature establishes uses of the response fund through legislation and statutes.
- It was noted that royalty oil was exempted from the fee. That this was appropriate because sovereign entities do not normally tax themselves.
- Senator Pearce noted that the Alaska Department of Revenue was concerned that fee charges not be deducted from transportation costs, thereby reducing severance tax income. There was considerable discussion of a fee versus a severance tax surcharge, whether Cook Inlet production would be included, and whether purchasers of royalty oil would pay the fee. The Department of Revenue preference was that the fee be an add-on to the severance tax and be levied at the wellhead and placed under Chapter 55 rather than under a new Chapter 59. These changes would solve many of the potential problems with the fee. These changes were adopted by the Finance Committee.
- Jim Baldwin, Alaska Department of Law, noted that the provision for turning on and off the surcharge was "a very interesting technique..... to avoid the dedicated fund prohibition." He suggested adding a severability clause in case the mechanism was determined to be invalid. It was noted that if the on/off mechanism was found to be invalid and severed, it would have the effect of keeping the tax on indefinitely. Therefore, industry was unlikely to challenge the provision. Nonetheless, a severability clause was amended to the bill.
- Senator Zharoff voiced that the \$25 million cap was inadequate. He suggested that the cap be \$50 million. Following a review of Department of Revenue projection of revenues, the \$50 million cap was adopted without objection.
- Senator Zharoff noted that the committee had not addressed the issue of interest on the fund balance---whether it would accrue to the general fund or to the response fund. Senator Pearce voiced her understanding that rolling interest back into the fund runs the risk of "stopping imposition of the fee." She suggested that if the intent is to continue the fee, the interest should accrue to the general fund. Senator Kerttula advised that the legislature could be provided information on interest accrued and then make the decision whether to appropriate the interest as well as the surcharge collections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public Testimony on Senate Bill 260

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

LEGISLATION EXPANDING USE OF THE RESPONSE FUND

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

Amendments to Uses of the Fund

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

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

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

Table 1

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

Legislation Enacted 1989 Session

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

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

SLA 89 Chapter 30 **SB 261**
Required DEC to prepare and annually revise State Master Plan and Regional Plans.
Authorized DEC to use Response Fund to pay cost of State and Regional Plans.
Expanded use of the Response Fund to include restoration of the environment.

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

Legislation Enacted 1990 Session

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

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

Table 1 continued

Expanded use of Response Fund to include:

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

SLA 90 Chapter 199

HB 578

Established Citizens' oversight council.

Expanded use of Response Fund to include Citizens' Oversight Council costs.

Legislation Enacted 1991 Session

SLA 91 Chapter 48

SB 165

Expanded use of Response Fund to include construction of marine response vessels.

SLA 91 Chapter 83

SB 25

Expanded uses of Response Funds to municipal grants.

SLA 91 Chapter 31

SB 194

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

SLA 91 Chapter 92

SB 196

Required the Citizens' Oversight Council to submit a report on response action contractor liability.

SLA 91 Chapter 90

SB 263

Provided a one-year delay for compliance of non-crude oil operation with financial responsibility requirements.

Authorized DEC to issue interim approval for contingency plans.

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

OTHER STATES' RESPONSE FUNDS

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

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

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

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

Types of Response Funds

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

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

¹⁵*Oil Spill U.S. Law Report*, March 1993, p. 12.

¹⁶*ibid.*

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

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

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

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

Response Funds Tax Rates

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

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

Types of Products Assessed Response Fees

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

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

Uses of Response Funds

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

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

CONSERVATION SURCHARGE IN THE CONTEXT OF NORTH SLOPE PROFITABILITY

In October 1993, Dr. Richard A. Fineberg presented a paper entitled "Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures" at the 15th Annual North American Conference of the International Association for Energy Economics (Appendix C). This paper was a continuation of Mr. Fineberg's research for the Alaska Senate Finance Committee completed in November 1992 and a study by Dr. Edward B. Deakin for the Alaska Department of Revenue completed in March 1989.¹⁷

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

Appendix A

Senate Bill 215 and Background Information

SENATE BILL NO. 215
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR MILLER

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

A BILL
FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) the governor finds that

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

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

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

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

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

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

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

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

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

3 (2) the commissioner pays them from another source.

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

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

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

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

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

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

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

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

25 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
26 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
27 less any oil the ownership or right to which is exempt from taxation.

28 (b) The surcharge imposed by (a) of this section is in addition to

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

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

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

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

4 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The
5 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into
6 the general fund.

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

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

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

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

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

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

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

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

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

1 (1) add the amounts determined under (a)(1) and (2) of this section;
2 (2) determine the difference between the amount determined under (1)
3 of this subsection and the amount determined under (a)(3) of this section; and
4 (3) report the amount determined under (2) of this subsection to the
5 commissioner.

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

10 (d) If the commissioner of administration reports that the difference determined
11 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue
12 shall suspend imposition and collection of the surcharge levied and collected under
13 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on
14 the first day of the calendar quarter next following the commissioner's receipt of the
15 commissioner of administration's report under (b) of this section. Before the first day
16 of a suspension authorized by this subsection, the commissioner shall make a
17 reasonable effort to notify all persons who are known to the department to be paying
18 the surcharge under AS 43.55.201 that the surcharge will be suspended.

19 (e) Except as provided in AS 43.55.241, if the commissioner of administration
20 reports that the difference determined under (b) of this section is less than
21 \$50,000,000, the commissioner of revenue shall require imposition and collection of
22 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins
23 on the first day of the calendar quarter next following the commissioner's receipt of
24 the commissioner of administration's report under (b) of this section. Before the first
25 day of reimposition of the surcharge authorized by this subsection, the commissioner
26 shall make a reasonable effort to notify all persons who are known to the department
27 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be
28 reimposed.

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

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

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

4 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by
5 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from
6 the surcharge would be sufficient to restore the balance of the oil and hazardous
7 substance release prevention and response fund on the first day of the fiscal year to
8 at least \$50,000,000, and

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

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

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

22 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

23 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
24 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
25 less any oil the ownership or right to which is exempt from taxation.

26 (b) The surcharge imposed by (a) of this section is in addition to

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

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

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

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

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

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

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

13 (3) "catastrophic oil discharge" means

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

15 or

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

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

22 (15) "surcharge" means

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

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

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

28 (e) The department may attach reasonable terms and conditions to its approval
29 or modification of a contingency plan that the department determines are necessary to
30 ensure that the applicant for a contingency plan has access to sufficient resources to
31 protect environmentally sensitive areas, [AND] to take containment and cleanup and

1 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
2 discharges from the facility or vessel as provided in (k) of this section, and to ensure
3 that the applicant complies with the contingency plan. The contingency plan must
4 provide for the use by the applicant of the best technology that was available at the
5 time the contingency plan was submitted or renewed. The department may require an
6 applicant or holder of an approved contingency plan to take steps necessary to
7 demonstrate its ability to carry out the contingency plan, including

8 (1) periodic training;

9 (2) response team exercises; and

10 (3) verifying access to inventories of equipment, supplies, and
11 personnel identified as available in the approved contingency plan.

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

13 (e) The department may attach reasonable terms and conditions to its approval
14 or modification of a contingency plan that the department determines are necessary to
15 ensure that the applicant for a contingency plan has access to sufficient resources to
16 protect environmentally sensitive areas, [AND] to take containment and cleanup and
17 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
18 discharges from the facility or vessel as provided in (k) of this section, and to ensure
19 that the applicant complies with the contingency plan. If a contingency plan submitted
20 to the department for approval relies on the services of an oil spill primary response
21 action contractor, the department may not approve the contingency plan unless the
22 primary response action contractor is registered and approved under AS 46.04.035.
23 The contingency plan must provide for the use by the applicant of the best technology
24 that was available at the time the contingency plan was submitted or renewed. The
25 department may require an applicant or holder of an approved contingency plan to take
26 steps necessary to demonstrate its ability to carry out the contingency plan, including

27 (1) periodic training;

28 (2) response team exercises; and

29 (3) verifying access to inventories of equipment, supplies, and
30 personnel identified as available in the approved contingency plan.

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

- 1 (a) The department shall
2 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide
3 master oil and hazardous substance discharge prevention and contingency plan;
4 (2) annually review the statewide master oil and hazardous
5 substance discharge prevention and contingency plan; and
6 (3) revise the statewide master oil and hazardous substance
7 discharge prevention and contingency plan; the department shall revise the
8 statewide master plan whenever, in the judgment of the commissioner, revision
9 is necessary.

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

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

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

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

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

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

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

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

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

30 (1) the draft plan to the

31 (A) public for review and comment; and

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

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

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

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

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

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

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

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

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

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

22 (2) "catastrophic oil discharge" means

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

24 or

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

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

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

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

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

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

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

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

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

26 (2) the catastrophic oil release response account,

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

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

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

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

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

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

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

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

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

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

21 (3) fines, penalties, or damages recovered under AS 46.08.005 -
22 46.08.080 or other law for costs incurred by the state as a result of the release or
23 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
24 damages recovered or otherwise received due to a catastrophic oil discharge.

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

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

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

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

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

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

13 (3) fines, penalties, or damages recovered under AS 46.08.005 -
14 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil
15 discharge.

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

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

24 (a) In addition to money in the fund that is transferred to the commissioner of
25 community and regional affairs to make grants under AS 29.60.510 and to pay for
26 impact assessments under AS 29.60.550, the commissioner of environmental
27 conservation may use money

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

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

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

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

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

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

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

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

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

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

28 (i) in federal oil discharge cleanup activities; and

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

31 and

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

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

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

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

16 (C) pay all costs incurred to

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

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

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

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

30 (D) pay the expenses incurred by the department for

31 (i) the oil and hazardous substance response corps;

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and

(ii) the oil and hazardous substance response depots;

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

(i) in federal oil discharge cleanup activities; and

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) The commissioner shall submit a report to the legislature not later than the
15 10th day following the convening of each regular session of the legislature. The report
16 may include information considered significant by the commissioner but must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (9) "release"

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

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

7 (i) a permitted release; or

8 (ii) an act of nature;

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (ii) that actual release may reasonably be expected to

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

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

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

7 * Sec. 47. AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230,
8 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

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

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

16 * Sec. 50. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
17 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND
18 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the
19 effective date of this section, every producer of oil who is required by AS 43.55.200 -
20 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
21 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
22 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
23 received after June 30, 1993, and before the effective date of this section, if so appropriated
24 by the legislature and notwithstanding any other provision of law relating to the deposit of and
25 accounting for those receipts,

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comparison with House Bill 238

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

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

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

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

January 23, 1994



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 26 identifies the two accounts that constitute the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sections 42, 43 and 45. These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 42 provides a technically revised definition of "release" and section 43 substantially amends the definition of "threatened release." In current statute, the definition of threatened release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent.

A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." **Sections 36 and 37** are conforming changes to these revised definitions. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

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

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

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

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

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

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

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

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

January 23, 1994

Appendix B

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

U.S. LAW REPORT

RECEIVED

MAR 11 1993

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

DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
OIL SPILL PREVENTION & RESPONSE

page 2... **Officials Are Inundated With Last-Minute Response Plans.** Thousands of plans poured into Washington, DC, and various regional offices around the country within days of the February 18 deadline. Now it's up to the federal agencies to review the plans by August 18, or to issue interim letters of approval that will be valid for two years.

In the interim, the agencies are still plowing through the rulemaking process: the USCG published interim final rules for vessels and marine transportation-related facilities on February 5; EPA published its proposed rule for non-transportation-related onshore facilities on February 17; the RSPA put an interim final rule for onshore pipelines into effect on January 5; and MMS published an interim final rule for offshore facilities on February 8. Also: the USCG has classified 22 OSROs to date (see column on page 3).

page 7... **First Settlements Under OPA 90 Total \$14.7 Million.** DOJ filed the first two judicial settlements under OPA 90 with a US district court in Washington State on February 10. DOJ resolved complaints concerning oil spills in 1991 against Texaco and US Oil that totaled \$14.7 million — an amount attorneys say they could never have gotten under the Clean Water Act.

page 8... **Congressional Committees Vie for Jurisdiction Over OPA 90.** The recent shifts in Congress have caused a stir between the House Merchant Marine and Fisheries (MM&F) Committee and the House Natural Resources (NR) Committee. On February 4, an NR subcommittee held a hearing on the status of oil spill response in light of the Shetland Islands spill. Then on February 17, an MM&F subcommittee held its own hearing to discuss progress on the implementation of OPA 90.

page 10... **Attorneys Consider Ways to Avoid International Liability Limits in the Braer Case.** Speculation has mounted in recent weeks over whether US attorneys may be able to try a

case for damages from the January 5 Shetland Islands spill in US courts. They think it may be possible to show that the owner of the tanker Braer has some US connection.

page 11... **Study of Leak Detection Devices on Tankships Precedes NPRM.** On February 5, the USCG made available its report entitled *Tank Level Detection Devices for the Carriage of Oil*. The USCG said it would use the study to develop a notice of proposed rulemaking to implement section 4110 of OPA 90. The study evaluates leak scenarios and suggests an approach to developing standards for the approval of devices.

page 11... **Alaska AG Raises Concerns About the Exxon Valdez Trustee Council.** Alaska Attorney General Charles Cole is a member of the trustee council that must determine how the Exxon Valdez settlement money must be spent. He spoke at the *Exxon Valdez Oil Spill Symposium* on February 2-5 in Anchorage on some of the problems inherent in the current system of using trustees to determine restoration projects.

page 12... **More States Are Charging Fees for Oil Spill Response.** The OSLR staff has put together a chart comparing state per-barrel/per-gallon fees on oil that help fund the cleanup of oil spills. We learned during our research that a few states currently have bills in committee that deal with this issue. HB 1194 in Hawaii, for example, proposes a 6-cents-per-barrel tax on oil to support a \$7 million fund for prevention and response.

page 16... **News Briefs**

- State and Federal Agencies Work with Industry to Schedule Drills in Washington
- USCG to Regulate the Transfer of Oil to or from Motor Carriers and Railroads

page 16... **Hotline**

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

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

agencies that employ them inhibit their ability to make critical evaluations of other projects?

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

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

More States Are Charging Fees for Oil Spill Response

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

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

During our research, we also found that a number of states have bills in committee that deal, in some way, with the issue of fees on oil for spill response. Among them are: SB 228 in Montana

that would charge $\frac{3}{4}$ of a cent per gallon on diesel and other oil products in addition to gasoline; HB 172 and HB 434 in New Hampshire that would allow the state to collect the fee at the time of import rather than at the time of sale to ease the collection process; HB 1739 in Virginia that would also change how the state collects the fee; HB 228 in Idaho that would impose an additional 1 cent-per-gallon fee on petroleum to finance the Idaho Petroleum Remediation Fund; and HB 1194 in Hawaii that would establish a 6 cents-per-barrel tax on oil entering the state to finance the Environmental Response Revolving Fund. Hawaii's fund would be used for petroleum release prevention, response, and cleanup programs, and would be capped at \$7 million (officials expect that the fund will not reach the \$7 million cap for eight years). (The Washington State Office of Marine Safety's legislative proposal to charge a per-trip fee on vessels coming into Puget Sound died in its early stages.)

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

State Fees on Oil for Spill Response and Administration Costs*

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

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per trip fees

**Fees are assessed only once for the same oil.

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

| State | Fee** | Who Must Pay | Where the Money Goes |
|---------------|---|--|--|
| Maine | 4 cents per barrel for coastal and inland cleanup; 44 cents (gasoline), 25 cents (#2, kerosene, jet fuel, and diesel), and 10 cents (#6) per barrel for groundwater cleanup | For coastal and inland cleanup: every person that first transports oil in Maine. For groundwater cleanup: terminal facilities that first transfer the products and any person that first transports oil into the state (no fee on exports) | The Maine Coastal and Inland Surface Oil Cleanup Fund (now at about \$4 million; capped at \$6 million), and the Groundwater Oil Cleanup Fund (now at about \$12 million; capped at \$15 million) |
| Maryland | $\frac{3}{4}$ of a cent per barrel for cleanup; 5 cents per barrel for upgrading underground storage tanks | The tank owner | The Maryland Oil Disaster Containment, Cleanup, and Contingency Fund (capped at \$5 million), and the Underground Storage Tank Upgrade and Replacement Fund (now at about \$4.5 million; capped at \$5 million) |
| Massachusetts | None | — | — |
| Michigan | $\frac{7}{8}$ of a cent per gallon of petroleum products (36.75 cents/barrel) | All those selling refined oil for resale | The MI Underground Storage Tank Financial Assurance Fund (now at about \$52 million; no cap) |
| Minnesota | None | — | — |
| Mississippi | None | — | — |
| Missouri | \$25 per 8,000 gallons | The tank owner upon delivery of gasoline | The Underground Storage Tank Insurance Fund (capped at \$8 million) |
| Montana | $\frac{3}{4}$ of a cent per gallon (the fee is currently shut off until the fund drops below \$4 million) | The gasoline distributor | The Petroleum Tank Release Cleanup Fund (now at about \$5 million; capped at \$8 million) |
| Nebraska | $\frac{3}{10}$ of a cent per gallon on motor fuels (although now it is at $\frac{5}{10}$ of a cent per gallon on motor fuels plus $\frac{1}{10}$ of a cent per gallon on all other petroleum since the fund dropped down to \$2 million; the fee will return to $\frac{3}{10}$ of a cent when the fund reaches \$4 million) | The refiner, importer, or distributor that first sells within the state | The Petroleum Release Remedial Action, and Reimbursement Fund (now at about \$3.1 million; capped at \$5 million) |
| Nevada | $\frac{6}{10}$ of a cent per gallon on most petroleum products (25.2 cents/barrel) | The refiner or importer | The State Petroleum Fund (now at about \$4 million; capped at \$7.5 million) |
| New Hampshire | $\frac{6}{10}$ of a cent per gallon for the ODD Fund; $\frac{1}{10}$ of a cent per gallon for the OPC Fund | The distributor of motor fuels at the time of sale (for the $\frac{6}{10}$ of a cent fee); the distributor of all oil at the time of sale (for the $\frac{1}{10}$ of a cent fee) | The Oil Discharge, Disposal, and Cleanup Fund (the ODD Fund: now at about \$9.1 million; capped at \$10 million); The Oil Pollution Control Fund (the OPC Fund: now at about \$3.5 million; capped at \$5 million) |
| New Jersey | 1 $\frac{1}{2}$ cents per barrel for major facility owners | The operator or owner of the receiving or transferring major facility | The NJ Spill Compensation Fund (now at about \$72 million; no cap) |
| New Mexico | None | — | — |

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.

**Fees are assessed only once for the same oil.

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

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

*This does not refer to small one-time fees (e.g., for registration or licensing); only per-gallon, per-barrel, or per-trip fees.

**Fees are assessed only once for the same oil.

March 1993

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OIL SPILL U.S. LAW REPORT

Alaska State Legislature

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

Legislative Research Agency



Phone: (907) 465-399
Fax: (907) 463-3351

April 16, 1993

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski^{MG} and Paula d. Scavera^{PS}
Legislative Analysts

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

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

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

Representative Brown
April 16, 1993
Page 2

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

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

Attachments

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

**SELECTED STATE FUNDS SIMILAR TO
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

| State Fund | Primary Revenue Source | Purpose / Use | Comments | Contact |
|---|--|---|--|---|
| California Oil Spill Response Trust Fund | 25 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline | for cleanup of oil in marine waters or cleanup of oil that will impact marine waters | Fund has reached its cap of \$50 million | Department of Fish and Game, Oil Spill Prevention and Response Office (916) 445-9338 |
| California Oil Spill Prevention Administrative Fund | 4 cents/barrel on crude oil or petroleum products received at a marine terminal or transported by pipeline | administering, operating, managing, staffing, and plan reviewing of oil spills in marine waters or impacting marine waters | Approximate annual revenue = \$20 million Approximate number of personnel funded = 190 Approximate annual expenditures = \$18 million | |
| Florida Inland Protection Trust Fund (Chapter 376, Section 3071) | 30, 60, or 80 cents/barrel tax on pollutants (petroleum fuels) produced or imported into the state (rate varies with unobligated balance of fund); tax is currently at the lowest level and is expected to remain there indefinitely (annual revenue at 80 cents is still not sufficient to pay all the claims against the fund) | cleanup of discharges of petroleum or petroleum products from stationary petroleum storage facilities; investigation and assessment of contaminated sites; restoration or replacement of potable water supplies; rehabilitation, maintenance and monitoring of contaminated sites; cost recovery expenses; administrative expenses including costs incurred by the Department of Health in providing field and laboratory services; some activities related to the removal and replacement of petroleum storage systems | Approximate annual revenue = \$155 million Approximate number of personnel funded = 50 Approximate annual expenditures = \$155 million | Department of Environmental Regulation, Division of Petroleum Cleanup (904) 487-3299 |
| Florida Water Quality Assurance Trust Fund (Chapter 376, Section 307) | varies with type of product and amount in fund; \$1 or \$2/lead acid battery; 2.3 or 5.9 cents/gallon solvents; 1 or 2.5 cents/gallon motor oil; 2 to 5 cents/barrel petroleum products | to restore or replace potable water supplies; for the investigation, assessment, cleanup, restoration, maintenance, and monitoring of any site contaminated with hazardous wastes, hazardous substances as defined by CERCLA, pollutants, substances suspected to be carcinogenic or toxic to humans, or substances which pose a serious danger to public health or welfare | Approximate annual revenue = \$25 million Approximate number of personnel funded = 35 Approximate annual expenditures = \$25 million | Department of Environmental Regulation, Bureau of Waste Management (904) 480-0190 |
| Florida Coastal Protection Trust Fund (Chapter 376, Section 11) | 2 cents/barrel tax on pollutants (includes pesticides ammonia, chlorine, and other oil products) produced or imported into the state; tax suspended when fund reaches \$50 million, reimposed at \$40 million | to provide a mechanism to have financial resources immediately available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages | Approximate annual revenue = n/a Approximate number of personnel funded = 17 Approximate annual expenditures = n/a | Department of Natural Resources, Office of Coastal Protection (904) 488-2974 |

**SELECTED STATE FUNDS SIMILAR TO
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

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

**SELECTED STATE FUNDS SIMILAR TO
ALASKA'S OIL AND HAZARDOUS SUBSTANCE SPILL RESPONSE FUND**

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

n/a = not available at this time

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

Prepared by the Legislative Research Agency, April 1993 (93.186).

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

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Appendix C

Alaska North Slope Oil Profits Report

Alaska North Slope Oil Profits and Proposed Environmental Mitigation Measures

Richard A. Fineberg
Box 416
Ester, Alaska 99725

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

ABSTRACT

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

INTRODUCTION

Alaska is often the reluctant host to intense public policy battles between environmental protection and development. These issues are frequently cast in economic terms: How much can the proponents of a proposed project afford to pay for environmental protection measures? Or: What will be the economic consequences of going forward with, delaying or halting the project? Because economics frequently frames these questions, it seems appropriate to ask whether economics can also provide answers. Certainly economics is the correct discipline for analyzing the costs. At the same time, it must be recognized that assessment of environmental risk is not turf on which economists are necessarily expert. With this background in mind, we will look at one manifestation of Alaska's perpetual debate: How much spending on environmental protection — principally on prevention of oil spills and mitigation of other potential environmental hazards — should the owners of the Trans-Alaska Pipeline¹ (TAPS) be required to bear?

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

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

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

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

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

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

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

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

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

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

ANS PRODUCTION AND PIPELINE PROFITS

Although profits from Alaska North Slope production and pipelining are not reported by the producing companies or any government entity, using a variety of published sources it is possible to estimate average profits with a fair degree of precision. Once the data are assembled, profits to the North Slope owners can be estimated by subtracting production and shipping costs, taxes and royalties from the market price of oil. An example of profit calculations for 1991 is provided in Table 1 on the following page. That table begins with the Lower-48 sales price of oil (line 1), then subtracts pipeline charges (lines 4 and 5) and marine transportation (line 12) to establish a field or basis price (line 13) for calculating state royalties and production and property taxes (line 14). After those payments are calculated, operating and capital costs (line 15) are removed. State income tax, estimated from published figures (line 17), is then subtracted. The resulting net revenue figure is the basis for estimating federal income tax (line 18). The producers also own TAPS and the feeder pipelines in shares roughly equal to their production shares, with the exception of Conoco (which produces the Milne Point field — less than two percent of total ANS production — but has no ownership share in TAPS). To develop a comprehensive picture of North Slope profitability, TAPS profits (line 11) and feeder line profits (line 8) therefore must be added to production profits. The resulting total appears at line 22. To account for different market and transportation prices for West and Gulf Coast oil, calculations are made for each destination. The weighted average of West Coast and Gulf Coast ANS dispositions appears at line 23.⁸

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

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

| North Slope Profit Analysis: ALL FIELDS | / -- ANS Avg. (\$/bbl.) -- / | | Notes |
|---|------------------------------|----------|---|
| | Gulf Coast | W. Coast | |
| 1 Average Price for ANS (Spot) | \$18.35 | \$17.21 | Alaska Dept. of Revenue (ADOR) data |
| 2 Quality Adjusted Price | | | [Used for individual field analysis] |
| 3 Production / Disposition <i>MM. bbls. yr./day</i> | | | |
| a Production | 664.870 | 1.822 | Alaska Dept. of Natural Resources data |
| b. Volume to East / West Coast (%) | 21.93% | 78.07% | From ADOR data |
| 4 Feeder Pipeline Tariffs | (\$0.10) | (\$0.10) | Wghtd. avg. sum of items 4a thru 4g |
| a Operating & capital costs | (\$0.04) | (\$0.04) | Alaska Dept. of Law (ADL 7/29/92) less 4b |
| b State & local property tax (pipelines) | \$0.00 | \$0.00 | 30% of total ADOR property tax |
| c State income tax (pipelines) | \$0.00 | \$0.00 | 4d * (eff. state tax rate / eff. fed. tax rate) |
| d Federal income tax (pipelines) | (\$0.01) | (\$0.01) | ADL (7/29/92) less item 4c |
| e After-tax margin | (\$0.02) | (\$0.02) | ADL (7/29/92) |
| f Recovery of deferred return | (\$0.01) | (\$0.01) | " |
| g DR&R allowance | \$0.00 | \$0.00 | " |
| 5 TAPS Pipeline Tariff | (\$3.41) | (\$3.41) | Sum of items 5a thru 5h |
| a Operating & capital costs | (\$1.31) | (\$1.31) | Alaska Dept. of Law (ADL; 7/29/92) less 5b |
| b State & local property tax (pipelines) | (\$0.15) | (\$0.15) | 30% of total ADOR property tax |
| c State income tax (pipelines) | (\$0.09) | (\$0.09) | 5d * (eff. state tax rate / eff. fed. tax rate) |
| d Federal income tax (pipelines) | (\$0.65) | (\$0.65) | ADL (7/29/92) less item 5c |
| e After-tax margin | (\$0.49) | (\$0.49) | ADL (7/29/92) |
| f Recovery of deferred return | (\$0.64) | (\$0.64) | " |
| g DR&R allowance | (\$0.08) | (\$0.08) | " |
| h Pumpability Charge | | | [Used for individual field analysis] |
| 6 State Share (Feeder Lines) | (\$0.01) | (\$0.01) | Sum of items 4b, 4c |
| 7 Federal Share (Feeder Lines) | (\$0.01) | (\$0.01) | Item 4d |
| 8 Industry Profit (Feeder Lines) | \$0.03 | \$0.03 | Sum of items 4e, 4f |
| 9 State Share (TAPS) | (\$0.25) | (\$0.25) | Sum of items 5b, 5c |
| 10 Federal Share (TAPS) | (\$0.65) | (\$0.65) | Item 5d |
| 11 Industry Profit (TAPS) | \$1.13 | \$1.13 | Sum of items 5e, 5f |
| 12 Tanker (to Gulf / West Coast) | (\$3.83) | (\$1.07) | USFRA data (ADOR) |
| 13 Wellhead value | \$11.02 | \$12.64 | Sum of items 1, 4, 5, 12 |
| 14 State Royalties, Production & Property Taxes | (\$3.01) | (\$3.41) | Sum of items 14a thru 14d |
| a Royalty | (\$1.30) | (\$1.50) | Item 13 less field costs * est. field royalty |
| b Severance tax | (\$1.31) | (\$1.51) | Item 13 * .875 * nominal severance * ELF |
| c Spill Response & Conservation Taxes | (\$0.05) | (\$0.05) | \$0.054 * .875 |
| d State & local property tax (production) | (\$0.36) | (\$0.36) | 70% of total DOR property tax |
| 15 Production costs | (\$3.49) | (\$3.49) | Sum of items 15a, 15b |
| a Lifting Costs | (\$1.19) | (\$1.19) | Derived from trade publication estimates |
| b Depletion, Depreciation & Amortization | (\$2.30) | (\$2.30) | Derived from trade publication estimates |
| 16 Net Revenue (production) | \$4.52 | \$5.74 | Sum of items 13, 14, 15 |
| 17 State Income Tax (production) | (\$0.15) | (\$0.15) | From ADOR Spr. 92 frst. less items 4c, 5c |
| 18 Federal Income Tax (production) | (\$1.40) | (\$1.79) | Est. 32.1% of items 16 + 17 |
| 19 Industry Profit (production) | \$2.96 | \$3.79 | Sum of items 16 thru 18 |
| 20 Total State Share (production + pipelines) | \$3.42 | \$3.82 | Sum of items 6, 9, 14, 17 |
| 21 Total Federal Share (production + pipelines) | \$2.06 | \$2.45 | Sum of items 7, 10, 18 |
| 22 Total Industry Profit (production + pipelines) | \$4.12 | \$4.95 | Sum of items 8, 11, 19 |
| 23 CY 91 Industry Avg. per-barrel ANS Profit | | \$4.77 | (Gulf [line 22 * line 3b] + West Coast [line 22* line 3b]) |

(From: North Slope Profits and Production Prospects, p. 43)

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

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

Insofar as the profits from ANS production and pipelining are concerned, was 1991 a typical year? As indicated above, profitability of North Slope operations is not tabulated in any form that will answer that question. ANS production and pipeline profits for the years 1977 through 1987 were estimated in a 1989 accountancy study commissioned by the Alaska Department of Revenue. That report was prepared by Dr. Edward Deakin, Price-Waterhouse Professor of Petroleum Accounting at the University of Texas. The per-barrel profits model was tested against Deakin's results for 1987 and the results tracked quite closely, producing a nearly identical division of the economic rents.¹¹ To fill the gap between 1988 and the present, a simplified version of the model in Table 1 was created for the years 1988-90 and 1992.¹² The results of this exercise are shown, with the Deakin's 1977-87 figures and the 1991 estimate, in Tables 2 and 3 on the following pages.

From these data, it is clear that the 1991 results were not unusual. As Table 3 indicates, estimated ANS production and pipeline profits for the seven-year period between 1986 and 1992 averaged approximately \$3.7 billion in 1993 dollars.

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

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

Table 2.

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

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

Notes

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