

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8437 SENATE RESOURCES**

(c) exclusively private claims, if any, by Alaska Native Villages and individual Alaska Natives, other than claims for Natural Resource Damages, seeking damages for private harms to Native subsistence well being, community, culture, tradition and way of life resulting from the Oil Spill, including private claims for private harms to Alaska Native Villages and individual Alaska Natives resulting from the impairment, destruction, injury or loss of Natural Resources caused by the Oil Spill and any other exclusively private claims that are available to Alaska Native Villages and individual Alaska Natives; and

(d) exclusively private claims, if any, by Alaska Native Corporations, other than claims for Natural Resource Damages, seeking damages for private harms resulting from injuries caused by the Oil Spill to lands in which a Native Corporation holds any present right, title, or interest, including private claims for lost or diminished land values, for preservation, protection and restoration of archaeological or cultural resources and archaeological sites found on the lands described in this subparagraph, for private harms resulting from injuries to Natural Resources found on lands described in this subparagraph, for impairment of riparian or littoral rights, if any, and any other claims that are available to Alaska Native Corporations as private landowners; provided, however, that such claims shall not include any claims based upon injuries to tidelands or submerged lands.

17. The State acknowledges that certain entities in addition to the State have asserted a right to recover tax revenues which would have been or would be collected under existing AS 43.75. However, it is the State's legal position that it is the only entity which possesses any claim under existing AS 43.75 and that it is the only entity which is authorized or entitled to pursue a claim under existing AS 43.75.

18. Effective upon Final Approval, each of the Governments covenants not to sue any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies with respect to any and all civil claims or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill, including, without limitation, claims arising from any of the subject matter underlying the civil claims asserted in the State Action or the U.S. Action; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to

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sue shall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Alyeska or the Alyeska Owner Companies for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Alyeska or the Alyeska Owner Companies, personally or through insurance policies purchased by the individual or individuals.

Releases and Covenants Not To Sue

by Alyeska and Alyeska Owner Companies

19. Effective upon Final Approval, Alyeska and the Alyeska Owner Companies release and covenant not to sue or to file any administrative claim against each of the Governments and their current or former employees with respect to any and all claims relating to or arising from the Oil Spill, including without limitation, claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on: (a) the Alyeska Counterclaim; or (b) any other civil claims that have been or could be asserted by Alyeska or the Alyeska Owner Companies against either of the Governments relating to or arising from the Oil Spill, except that nothing in

this Agreement shall affect or impair the rights of Alyeska or the Alyeska Owner Companies to enforce this Agreement.

Dismissal of Actions and Claims

20. Not later than 15 days after Final Approval, each of the claims relating to or arising from the Oil Spill and asserted by the State and/or the United States against Alyeska, the Alyeska Owner Companies, Exxon Corporation or Exxon Shipping Company, including the claims asserted in the State Action, the U.S. Action and as third-party claims in various other lawsuits, and all claims relating to or arising from the Oil Spill and asserted by Alyeska and the Alyeska Owner Companies against the State, including the Alyeska Counterclaim, shall be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Alyeska, the Alyeska Owner Companies, the United States, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement the provisions of this paragraph.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 19 shall not be construed to bar any claim by Alyeska or the Alyeska Owner Companies against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies by the TAPL Fund, Alyeska and the Alyeska Owner Companies agree to indemnify and hold the Governments harmless from any liability that they have to the

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TAPL Fund based on such claims. However, the foregoing indemnity (a) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies from the TAPL Fund, and (b) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

#### Third Party Litigation

22. (a) Except as provided in subparagraph (b) of this paragraph, if any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Alyeska or the Alyeska Owner Companies and the Governments, or against Alyeska or the Alyeska Owner Companies and either the United States or the State, each of these Sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party. However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between or among the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases. Further,

notwithstanding any other provision of this Agreement, the Sued Parties may seek indemnification or contribution from any other party to the action or from any third party (including Exxon Corporation and Exxon Shipping Company), other than one of the Sued Parties, and the rights of the Alyeska Owner Companies to reallocate costs among themselves or to seek indemnification or contribution from each other shall not be affected in any way by this Agreement.

(b) If any person or entity, other than the TAPL Fund, asserts claims against the Governments, or either of them, that are based upon contribution or indemnity or any other theory of recovery over against the Governments arising from any liability of or payment by said person or entity to Alyeska or the Alyeska Owner Companies relating to or arising from the Oil Spill, or based upon subrogation rights arising from any monies paid to Alyeska or the Alyeska Owner Companies, Alyeska shall indemnify and hold the Governments harmless from any liability that the Governments have to such person or entity based on such claims. The foregoing indemnity (i) shall not be enforceable with respect to any amount in excess of value actually received by Alyeska or the Alyeska Owner Companies, and (ii) shall be enforceable only if the Governments assert in good faith all defenses they may have to such claims.

23. Neither Alyeska nor the Alyeska Owner Companies shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil

Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Alyeska or the Alyeska Owner Companies in any action relating to or arising from the Oil Spill where Alyeska or the Alyeska Owner Companies are not parties, except that either Government may assert against Alyeska and the Alyeska Owner Companies the rights to indemnification as expressly provided in Paragraph 21.

24. Any liability which Alyeska or the Alyeska Owner Companies incur as a result of a suit by a Third Party, as described in Paragraphs 22 or 23, shall not be attributable to or serve to reduce the payments required to be paid by Alyeska pursuant to Paragraphs 11 - 14.

25. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action relating to or arising from the Oil Spill pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

26. If a Third Party, which previously has reached or hereafter reaches a settlement with Alyeska or the Alyeska Owner Companies, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Alyeska or the Alyeska Owner Companies, and shall assert that joinder of Alyeska or the Alyeska Owner Companies is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if

the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Alyeska or the Alyeska Owner Companies' joinder, the sued Government(s) may institute third-party actions against Alyeska or the Alyeska Owner Companies solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce any judgment against Alyeska or the Alyeska Defendants.

27. If a Third Party, which previously has reached or hereafter reaches a settlement with the Governments, or either of them, brings or pursues an action against Alyeska or the Alyeska Owner Companies, or any of them (collectively, the "Alyeska Defendants"), the Alyeska Defendants shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of either of the Governments, and shall assert that joinder of the Governments, or either of them, is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the Alyeska Defendants' efforts to obtain a proportional allocation of fault without joinder of the Governments, or either of them, the Alyeska Defendants may institute third-party actions against the Governments, or either of them, solely for the purpose of obtaining allocation of fault. The Alyeska Defendants in such third-party actions shall not enforce any judgment against the Governments.

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Effect on TAPS Tariff

28. Solely for the purpose of resolving the issues in dispute in this litigation over the Oil Spill and without in any way conceding that the monies paid pursuant to this Agreement are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System, the Alyeska Owner Companies agree that the payments made under the terms of this Agreement shall not be included, directly or indirectly, in the tariff rates charged by the Alyeska Owner Companies for the use of the Trans-Alaska Pipeline System. Notwithstanding the foregoing, the Alyeska Owner Companies reaffirm that it is their belief that such amounts would properly be included in the tariff rates charged and that they are agreeing not to include such amounts only as part of the compromise and settlement reflected in this Agreement. The State acknowledges that the compromise and agreement set forth in this paragraph will not be used in any other action or proceeding or otherwise urged as precedent that monies paid in settlement of litigation are not properly included in the tariff rates charged for the use of the Trans-Alaska Pipeline System.

Interest for Late Payments

29. If the payments required by Paragraphs 11 - 14 of this Agreement are not made by the dates specified, Alyeska shall be liable to the Governments for interest on the overdue amount, from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31

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U.S.C. § 3717(a)(1) and (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

30. This Agreement is the result of a compromise and does not constitute an admission of liability by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims or defenses available to it relating to or arising from the Oil Spill. Except as expressly stated in this Agreement, nothing in this Agreement is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

31. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

32. Except as explicitly stated herein, nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties of the Governments, on the one hand, and Alyeska or the Alyeska Owner Companies, on the other hand, under the Exxon Consent Decree.

33. Nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties under the following judgments or agreements:

(a) the Memorandum of Agreement and Consent Decree entered into between the United States and the State in United

States of America v. State of Alaska, Civil Action No. A91-081 CIV and approved by this Court in August 1991;

(b) the Agreement between the State of Alaska, the United States and Plaintiffs entered in The Native Village of Chenega Bay, et al. v. State of Alaska, JAN-91-2344 Civil and approved and entered as a Final Judgment by the Alaska Superior Court in February 1992;

(c) the Consent Decree and Stipulation of Dismissal entered into between Alaska Natives and Native Interests, the United States and the State of Alaska in The Native Village of Chenega Bay, et al. v. The United States of America and The State of Alaska, Case No. A91-454 CIV and approved by this Court on January 17, 1992;

(d) the Agreement between the TAPL Fund and the State made on February 24, 1992 which contains mutual releases and covenants not to sue subject to an exception for AS 43.75 revenues specified therein and the Stipulation of Dismissal with Prejudice and Order executed by the United States and the TAPL Fund on February 13, 1992; and

(e) the State's Right-of-Way Lease for Trans-Alaska Pipeline and the United States' Grant and Agreement of Right-of-Way for Trans-Alaska Pipeline.

34. Except as explicitly stated herein, nothing in this Agreement alters, amends, modifies, or, in any way, affects the legal rights and duties of the Governments, on the one hand, and

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Exxon Corporation or Exxon Shipping Company, on the other hand, under the Exxon Consent Decree.

Notices and Submittals

35. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the State of Alaska:

Attorney General  
State of Alaska  
Pouch K  
Juneau, Alaska 99811

Supervising Attorney  
Environmental Section  
Department of Law  
1031 W. Fourth Street, Suite 200  
Anchorage, Alaska 99501

As to the United States:

Chief, Admiralty and Aviation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 14271  
Washington, D.C. 20044-4271

As to Alyeska and the Alyeska Owner Companies:

Office of the President  
Alyeska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, Alaska 99512

General Counsel  
Alyeska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, Alaska 99512

To each of the Alyeska Owner Companies, at addresses to be supplied by Alyeska.

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Election to Terminate

36. Any Party may elect to terminate this Agreement if: (a) a final judicial determination is made by any court of competent jurisdiction that this Agreement will not be approved and entered without modification; or (b) such court modifies this Agreement in a manner materially adverse to that Party prior to or contemporaneously with a final judicial determination approving this Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement.

Entry of Final Judgment

37. This Court finds that this Agreement is fundamentally fair, just and reasonable and directs that this consent decree be entered as a final judgment with respect to the claims against Alyeska, the Alyeska Owner Companies, Exxon Corporation and Exxon Shipping Company in State of Alaska v. Exxon Corporation, et al., Case No. A92-173 CIV. This Court directs that this consent

decree be entered as a final judgment in United States of America  
v. Exxon Corporation, et al. Case No. A91-082 CIV.

Retention of Jurisdiction

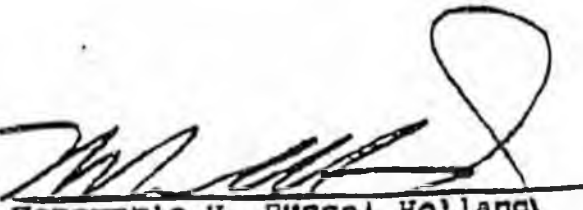
38. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

39. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

40. Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

THE FOREGOING Agreement and Consent Decree between the United States of America and the State of Alaska, on the one hand, and Alyeska and the Alyeska Owner Companies, on the other hand, is hereby APPROVED AND ENTERED IS 25 DAY OF November, 1992.

  
Honorable H. Russel Holland  
United States District Judge  
District of Alaska

R. PEASE  
KURTZ  
COURT REPORTERS  
& VIDEO  
406 AK FORT  
378-4100

AGREEMENT AND CONSENT DECREE  
L2090.11

10

ACE 10720903

FOR THE STATE OF ALASKA

Date: 11-25-92 Walter Hickel  
WALTER J. HICKEL  
Governor  
State of Alaska

Date: 11.25.92. Charles E. Cole  
CHARLES E. COLE  
Attorney General  
State of Alaska  
Pouch K  
Juneau, Alaska 99811

FOR THE UNITED STATES OF AMERICA

Date: Nov 25, '92 Stuart M. Gerson  
STUART M. GERSON  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

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ORANGE, AK 99661  
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FOR ALYESKA AND THE ALYESKA OWNER COMPANIES

Date: November 25, 1992

ALYESKA PIPELINE SERVICE COMPANY

By: [Signature]  
Its: [Signature]

Date: November 25, 1992

AMERADA/HESS PIPELINE CORPORATION

By: [Signature]  
Its: [Signature]

Date: November 25, 1992

ARCO TRANSPORTATION ALASKA, INC.

By: [Signature]  
Its: [Signature]

Date: November 25, 1992

BP PIPELINES (ALASKA), INC.

By: [Signature]  
Its: [Signature]

Date: November 25, 1992

EXXON PIPELINE COMPANY

By: [Signature]  
Its: [Signature]

Date: November 25, 1992

MOBIL ALASKA PIPELINE COMPANY

By: [Signature]  
Its: [Signature]

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GENERAL CORPORATION  
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Date: November 25, 1992

PHILLIPS ALASKA PIPELINE CORPORATION

By: *Harold P. Stone*  
Its: Attorney-in-Fact

Date: November 25, 1992

UNOCAL PIPELINE COMPANY

By: *Harold P. Stone*  
Its: Attorney-in-Fact

Date: November 25, 1992

*Harold P. Stone for*  
RONALD L. OLSON  
Munger, Tolles & Olson  
355 South Grand Avenue  
Los Angeles, California 90071  
Attorney for Alyeska and  
Alyeska Owner Companies  
(except Exxon Pipeline Company)

Date: November 25, 1992

*Randall J. Weddle*  
RANDALL J. WEDDLE  
Faulkner, Banfield, Doogan &  
Holmes, P.C.  
550 W. 7th Avenue, Suite 1000  
Anchorage, Alaska 99501  
Attorney for Exxon Pipeline  
Company

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## APPENDIX A

The settlement provides for the construction of docks and response storage facilities at Tatitlek and Chenega and the pre-positioning of oil spill response equipment at both locations. The exact nature of these projects cannot be known without more investigation and planning. Nevertheless, it is intended that these facilities be constructed in such a way as to facilitate the effective response to an oil spill in Prince William Sound.

As currently proposed, the docks at Tatitlek and Chenega would be constructed on land acquired from the villages, with title to the land and facilities and the responsibility for maintenance given to the villages or State as deemed appropriate by the State. The docks would be suitable for oil spill response use as well as limited use by the ferry MV Bartlett and would permit the loading and unloading of passengers, light cargo and, if appropriate, vehicles. The facilities should be designed to support oil spill response vessels, including the new oil spill response ferry vessel now being designed.

The proposed docks consist of a pier head platform and 12 foot wide causeway and would be lighted for nighttime operations. Berthing and mooring dolphins and fenders would be provided. The dock would be useable throughout the tidal range. A one acre gravel pad would be created at the base of the dock. The total combined estimated cost of these projects would be about \$14.5 million, including the cost of constructing and stocking associated storage facilities with spill response equipment (e.g. boom and absorbent pads). Ownership of this response equipment would reside with Alyeska.

a. **Tatitlek:** The dock at Tatitlek would be located at the east end of the village and would require construction of a one quarter mile access road.

b. **Chenega:** The dock at Chenega would be located at the west end of the village and could use existing roads. The Chenega dock would be in the vicinity of the old saltery which is a major environmental concern of the people of Chenega, the State and the United States. The saltery contains asbestos and partially filled abandoned fuel oil storage tanks. It is in complete disrepair. The proximity of the saltery, coupled with the environmental hazard it presents, mandates that strong consideration be given to removal in conjunction with construction of the dock or associated pad.

## APPENDIX B

In the event of a spill in Prince William Sound, particularly in the southwestern portion near Hinchinbrook, it would be useful to have the option of utilizing Cordova for staging response efforts. While Cordova has good air transport facilities, there is, at present, no available deep water port and little in available staging areas. Currently there is a proposal to create such a port at Shepard Point, about six miles outside of Cordova.

Connecting the port with Cordova requires rehabilitation of about two miles of existing road and construction of about 4.8 miles of new road, including a bridge across Humpback Creek. The road would run primarily across Eyak Corporation land. Eyak is supportive of the project. The proposed project includes the construction of the road to Shepard Point and a response staging area and the pre-positioning of boom and other response equipment.

In addition to the oil spill response benefits of this project, the proposed road would allow for the lightering of tourists into Cordova from tour vessels.

## APPENDIX C

Of all of the restoration projects considered for funding from the EXXON VALDEZ oil spill Joint Trust Fund, the most public support has been generated for the acquisition of in-holdings in Kachemak Bay State Park which are scheduled to be logged. A number of proposals have surfaced for financing such a buyout, but have fallen short of the amount needed to complete the purchase. It is believed that the sum proposed for this project, combined with funds from other sources, would eventually be sufficient to complete the transaction.

The proposed buyback includes lands surrounding Peterson, China Poot and Neptune Bays. Acquisition of these lands would provide a significant benefit to the natural resources and people affected by the spill. In particular, the lands acquired provide habitat for species which utilize old growth forests, such as marbled murrelets. The shorelines of these bays contain numerous archeological sites, including house pits, rock shelters and middens. More than 6000 bald eagles winter annually in Kachemak Bay, with many using the lands in question. The sand bars and islands of China Poot Bay are regularly utilized haul out sites for harbor seals. In addition, Kachemak Bay provides recreational opportunities for many Alaskans and tourists who visit the southern Kenai Peninsula and is the scenic background for the Homer area.

## APPENDIX D

In conjunction with creation of the Valdez Emergency Response Center, the United States Coast Guard and the Alaska Department of Environmental Conservation will be provided space for use as a communications center. This project will provide the funds to equip that space for the agencies so as to enhance the management of an oil spill response. The exact equipment to be purchased will be designated after further planning, but includes computer systems, software, facsimile machines, copier, communications console and miscellaneous furniture.

**SB**

**210**

**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886

January 24, 1994

The Honorable Mike Miller  
Chair, Resources Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

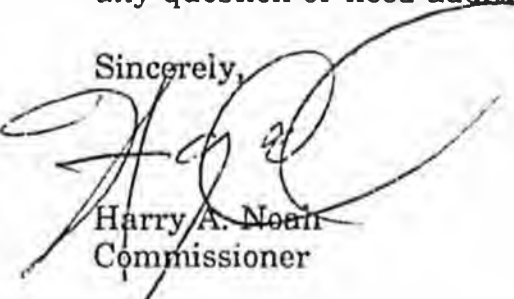
Dear Senator Miller:

We fully support Senate Bill 210 which authorizes the Department of Natural Resources to dispose of state land within five miles of the right-of-way of the Dalton Highway to a licensed public utility or a licensed common carrier. This is needed to allow for the construction and operation of such things as pipelines, electric and telephone lines. These uses are currently prohibited under AS 19.40.200.

We would also recommend that the statute be further amended to authorize the Department to dispose of land for industrial and commercial uses within the identified development nodes at Coldfoot, Happy Valley, Franklin Bluffs, Yukon Crossing and Deadhorse. In the last year, land at these locations has been conveyed to the state. We are prohibited from issuing leases or permits, for even the existing facilities, at these locations. In addition, we are prohibited from removing or disposing of gravel. There is currently a need for gravel at Deadhorse for airport improvement that we are unable to provide.

Please feel free to contact me or Ron Swanson, Director, Division of Land, if you have any question or need additional information.

Sincerely,



Harry A. Noah  
Commissioner

HAN/sf

cc: Senator Sharp  
Commissioner Bruce Campbell, DOT/PF  
Ron Swanson, Director, Div. of Land  
Jerry Gallagher, Legislative Liaison, DNR  
Raga Elim, Legislative Liaison, Office of the Governor



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: SB 210

APPROVED: 

TITLE: Disposal of Dalton Hwy  
Right of Way Land

DATE: January 18, 1994

The Department of Transportation and Public Facilities (DOT&PF) supports amendment of AS 19.40.200 to allow disposal of state land within five miles of the Dalton Highway right of way for the purpose of establishing public utility systems.

DOT&PF recommends that AS 19.40.200 also be amended to allow disposal of state land and materials for construction, improvement and maintenance of public facilities. Such an amendment would facilitate work on corridor airports, service roads, access roads and waysides, as well as on the Dalton Highway south of 68 degrees north latitude.

For Further Information, Contact [REDACTED] at 465-3904.

SPONSOR STATEMENT

SENATOR BERT SHARP

SB-210

Under current statute, the state of Alaska is prohibited from disposing of, or leasing, state land within five miles of the right-of-way of the Dalton Highway. The state owns many acres of land in this area, yet it cannot be leased or purchased. This prohibition on state land seems needlessly harsh.

In the summer of 1992, Summit Telephone Company applied to the Alaska Public Utilities Commission for certification to provide telephone service to Coldfoot and Wiseman. BLM assured them they would not have any problems obtaining a long term lease for a central switching office and 60 foot radio tower in Coldfoot.

Upon receiving certification from APUC, Summit immediately went to BLM to obtain the land. They were told that the land surrounding Coldfoot had been transferred to the State of Alaska, and they would have to apply to the Department of Natural Resources to obtain land in Coldfoot.

The Department of Natural Resources informed Summit Telephone Company that there could be no leasing or sale of land in the Coldfoot area, because such disposal was prohibited by statute.

Senate Bill 210 would lift this ban and allow the Department of Natural Resources to lease the land for nonresidential development. This would enable telephone service, airport and highway maintenance, and many other public service needs to be met.

I urge your favorable vote on this very important legislation. Thank you.

## SECTIONAL ANALYSIS

SB 210

"An Act relating to disposal of state land within five miles of the right-of-way of the Dalton Highway to a licensed public utility or a licensed common carrier."

\*Section 1. The prohibition on disposal of state land under AS 19.40.200(b) of this section would not apply to a prohibition on disposal of state land under AS 38.810(e); or

(A) an oil and gas lease under AS 38.05.108; or

(B) exploration, development, production or transportation of oil and gas north of 68 degrees north latitude; or

(C) a state lease or materials sale for exploration, development, production or transportation of oil and gas or reconstruction or maintenance of the highway north of 68 degrees north latitude.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB210

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: "An Act relating to disposals of state land within BRU: Resource Development  
five miles of the right-of-way of the Dalton Highway to a licensed..." Component: Land Development  
 Sponsor: Senator Sharp  
 Requestor: Senator Sharp Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)  
 DNR supports the bill with amendments to allow land and material disposals within development nodes.

Prepared by: Ron Swanson, Director Phone: 62-2692  
 Division: Land Date: 14-Jan-94  
 Approved by Commissioner: Harry A. Noah Date: 14-Jan-94  
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNMENT LEGISLATIVE OFFICE

FISCAL NOTE

Revision Date: Department Affected: DOT&PF  
 Title: Disposal of Dalton Hwy Right Of Way Land BRU: Northern Region Planning  
 Sponsor: Sharp Component: Northern Region Planning  
 Requestor: Component Serial Number: #578

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

Adoption of this bill would not adversely affect DOT&PF. As a possible user of utility services, DOT&PF may benefit from it.

Prepared by: Norman Piispanen  
 Division: Northern Region Planning  
 Approved by Commissioner: *B.A. Campbell*  
 Agency: Department of Transportation and Public Facilities

Phone: 451-2385  
 Date: January 14, 1994  
 Phone: 465-3901  
 Date: January 18, 1994

8-LS1110E2  
Luckhaupt  
1/28/94

CS FOR SENATE BILL NO. 210(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR SHARP

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to disposals of state land within five miles of the right-of-way  
2 of Dalton Highway to a licensed public utility or a licensed common carrier;  
3 relating to disposals of state land for nonresidential development in nodes of  
4 development along the Dalton Highway; and allowing state leases and materials  
5 sales for construction or maintenance of airports along the Dalton Highway."

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

7 \* Section 1. AS 19.40.200(b) is amended to read:

8 (b) The prohibition on disposal of state land under (a) of this section does not  
9 apply to a disposal

10 (1) to a licensed public utility or a licensed common carrier under  
11 AS 38.05.810(e);

12 (2) for nonresidential development within the Yukon River  
13 Crossing, Coldfoot, Happy Valley, Franklin Bluffs, and Deadhorse development

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nodes; or

(3) necessary for

(A) [(1)] an oil and gas lease under AS 38.05.180;

(B) [(2)] exploration, development, production, or transportation of oil and gas north of 68 degrees north latitude; or

(C) [(3)] a state lease or materials sale for

(i) exploration, development, production, or transportation of oil and gas; [OR]

(ii) reconstruction or maintenance of the highway north of 68 degrees north latitude; or

(iii) construction or maintenance of airports.

215

SB

MEMORANDUM

STATE OF ALASKA  
Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: April 2, 1993

File Ref:

From: Nancy Bear Usana  
Commissioner  
Department of Administration

Phone: 465-2200

Subject: First Quarter 1993 Report for the Oil Surcharge Account

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

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

Oil Surcharge Account cumulative revenue	\$100,330,066
Oil and Hazardous Substance Release Response Fund cumulative expenditures	<u>112,331,491</u>
Difference AS 43.55.230 (b)	<u>- \$ 12,001,425</u>

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

cc: John A. Sandor  
Commissioner  
Department of Environmental Conservation

Don Wanie, Director  
Division of Finance  
Department of Administration

# MEMORANDUM


STATE OF ALASKA

Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: August 20, 1993

File Ref:

From: Nancy Bear Usera   
Commissioner  
Department of Administration

Phone: 465-2200

Subject: Second Quarter 1993 Report for the Oil Surcharge Account

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

AS 43.55.230(c) provides that you suspend imposition and collection of the surcharge when the cumulative revenue of the General Fund Surcharge account equals or exceeds the cumulative amount expended from the OHSRRF by \$50,000,000. As of June 30, 1993, the cumulative expenditures of the OHSRRF exceeded the cumulative revenue of the General Fund Oil Surcharge account by \$8,543,037. The calculation is as follows:

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

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

cc: John A. Sander  
Commissioner  
Department of Environmental Conservation

Don Wanie, Director  
Division of Finance  
Department of Administration

# MEMORANDUM


STATE OF ALASKA

Department of Administration

To: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue

Date: November 10, 1993

File Ref:

From: Nancy Bear Usera   
Commissioner  
Department of Administration

Phone: 465-2200

Subject: Third Quarter 1993 Report for the Oil Surcharge Account

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

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

Oil Surcharge Account cumulative revenue	\$112,085,145
Oil and Hazardous Substance Release Response Fund cumulative expenditures	<u>125,099,389</u>
Difference AS 43.55.230 (b)	<u>(\$ 13,014,244)</u>

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

cc: John A. Sandor  
Commissioner  
Department of Environmental Conservation

Don Wania, Director  
Division of Finance  
Department of Administration

Post-It™ brand fax transmittal memo 7871 # of pages 1

To: Teresa	From: Eileen Plat
Co: Sen Miller	Co: DOA
Dept:	Phone #: 465-2200
Fax #: 465-3344	Fax #: 465-7491

# Legislative Research Agency

Alaska State Legislature



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

Phone: (907) 465-3991  
Fax: (907) 463-3351

November 18, 1993

## MEMORANDUM

TO: Senator Mike Miller

FROM: Maria Gladziszewski *MG*  
Legislative Analyst

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

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

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

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

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

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

Senator Miller  
November 18, 1993  
Page 2

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

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

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

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

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

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

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

Senator Miller  
November 18, 1993  
Page 3

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

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

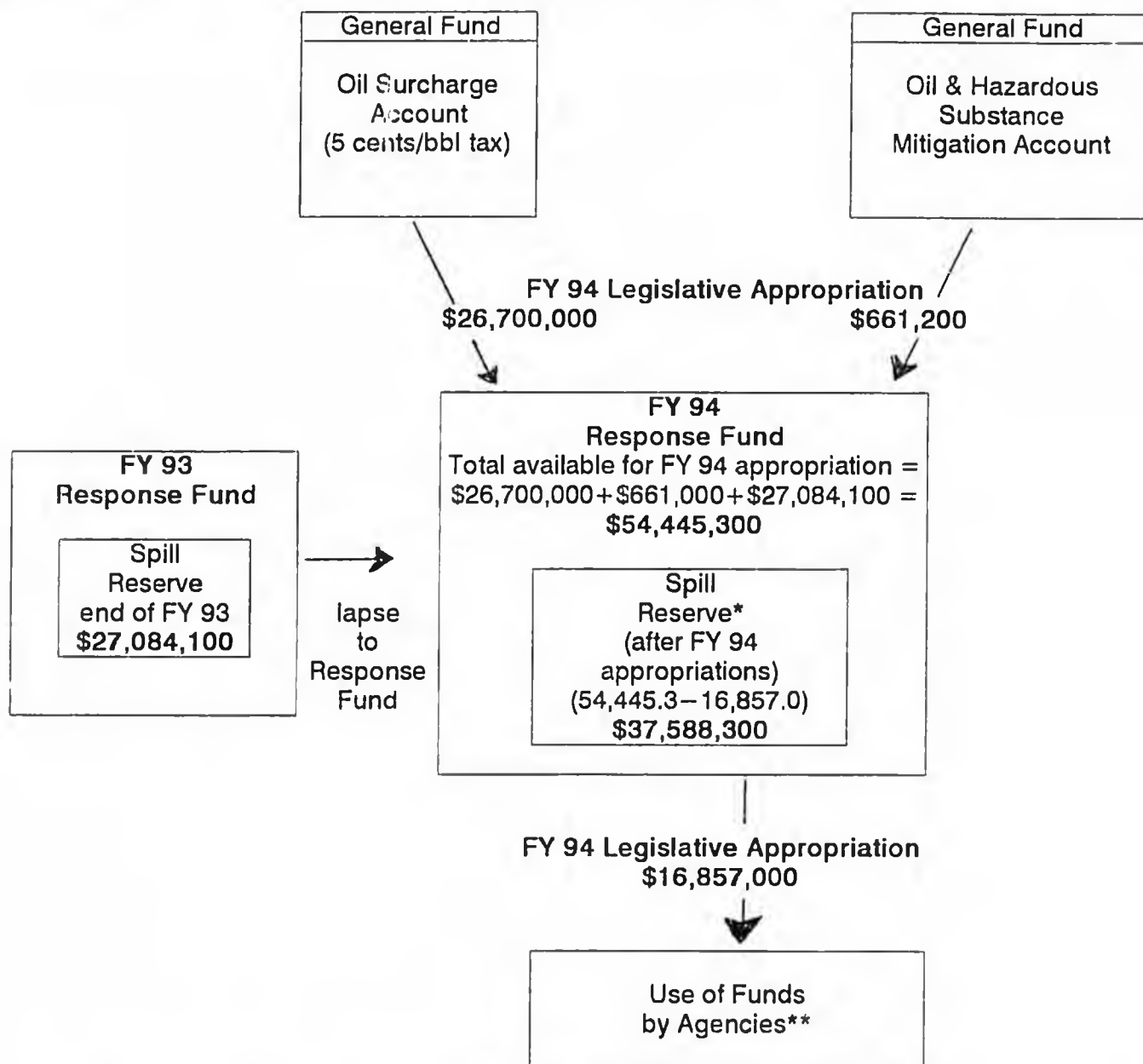
I hope this information is useful for your purposes. Please do not hesitate to contact this agency if you need further assistance.

Attachments

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

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



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

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

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

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

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

DATE & TYPE OF PAYMENT	TOTAL PAYMENTS & DISPOSITION OF MONEY			
	TOTAL AMOUNT OF PAYMENT	TO THE STATE OF ALASKA	TO THE U.S. GOVERNMENT	TO THE JOINT TRUST FUND
Criminal Penalty May 1, 1991	\$100,000,000	\$50,000,000	\$50,000,000	\$0
<b>Civil Payments</b>				
December 1, 1991	\$90,000,000	\$29,300,000 *	\$24,500,000	\$36,200,000
December 1, 1992	\$150,000,000 **	\$29,000,000 *	\$24,500,000	\$56,500,000
September 1, 1993	\$100,000,000	\$20,000,000 *	\$11,600,000	\$68,400,000
September 1, 1994	\$70,000,000	<div style="border: 1px solid black; padding: 5px; text-align: center;">                     Some deposits to                      state &amp; federal                      treasuries are likely                      (as payment for                      certain costs incurred).                       SEE NOTE ***, BELOW.                 </div>		\$70,000,000 ***
September 1, 1995	\$70,000,000			\$70,000,000 ***
September 1, 1996	\$70,000,000			\$70,000,000 ***
September 1, 1997	\$70,000,000			\$70,000,000 ***
September 1, 1998	\$70,000,000			\$70,000,000 ***
September 1, 1999	\$70,000,000			\$70,000,000 ***
September 1, 2000	\$70,000,000			\$70,000,000 ***
September 1, 2001	\$70,000,000			\$70,000,000 ***
<b>TOTAL</b>	<b>\$1,000,000,000 ****</b>	<b>\$128,300,000</b>	<b>\$110,600,000</b>	<b>\$721,100,000</b>

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

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

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

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

**DEPOSITS TO THE STATE OF ALASKA GENERAL FUND**

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

**DEPOSITS TO ALASKA'S OIL SPILL MITIGATION ACCOUNT**

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

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

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

# — ATTACHMENT A —

## OIL AND HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

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

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

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

- ATTACHMENT B -

MEMORANDUM

State of Alaska  
Department of Law

TO: Tracy Kramer  
Office of Management and  
Budget

DATE: April 28, 1993

FILE NO:

TEL. NO: 269-5274

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

FROM:

Breck C. Toksvin *BCT*  
Assistant Attorney General  
Environmental Section

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

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

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

*Should say "Response Fund"*

AS 43.55.230 provides that:

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

(2) expended through that calendar quarter from the oil and hazardous substance release response fund established in AS 46.09.010.

In determining whether an appropriation from the oil and

Tracy Kramer  
Treatment of Spill  
Reserve Appropriation

April 28, 1993  
Page 2

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

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

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

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

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

Tracy Kramer  
Treatment of Spill  
Reserve Appropriation

April 28, 1993  
Page 3

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

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

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

BCT:vo

cc: Craig Tillery  
Janice Adair  
Deborah Behr

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

January 24, 1994

SUBJECT: Senate Bill 215 -- sectional analysis. (Work Order No. 8-LS1107AE)

TO: Senator Mike Miller  
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth  
Legislative Counsel

The bill you introduced derives from the "M" draft of CSHB 238( ) prepared during the First Session of the current legislature. In general terms, the bill amends the purposes for which the oil and hazardous substance release response fund ("470 Fund") may be expended, replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges, reassigns responsibilities for the oil and hazardous substance response corps, depots, and Emergency Response Commission, and makes a series of related changes.

I

Amendments related to the oil and hazardous substance release response fund:

The bill establishes a series of funds and accounts:

-- the oil and hazardous substance release response fund [this is the original "470 Fund" retained in this bill the "oil and hazardous substance release prevention and response fund"]; the measure does not change the fund's status in that it remains a fund within the general fund; the redesignated fund would have two components:

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020), the first component, with its companion oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020), a holding account from which money is transferred in and out;

-- the catastrophic oil release response account (AS 46.08.010(a)(2) and 46.08.025), the second component, with its companion catastrophic oil release

response mitigation account (AS 46.08.025), also a holding account from which money is transferred in and out. <sup>1/</sup>

With reference to this collection of funds and accounts:

**Bill section 25** amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

**Bill section 26** identifies the two accounts that constitute that fund.

**Bill section 27** makes a related substitution of a reference to "account" for fund.

The deletion made in **bill section 28** reflects the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill.

**Bill section 29**, revising AS 46.08.020, spells out the manner in which the oil and hazardous substances release contingency and abatement account is to be financed.

**Bill section 30**, adding a parallel section, AS 46.08.025, sets out the manner in which the catastrophic oil release response account is to be financed.

**Bill section 31:** The amendments made by this section to AS 46.08.040(a) revise the objectives for which money in the oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. All the purposes except activity directly related to a catastrophic oil release or threatened catastrophic oil release and use of the fund balance for related oil cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to a catastrophic oil release or threatened catastrophic oil release and those involving related oil cleanup activity cost recovery purposes are to be met from the catastrophic oil release response account. New in this version is the directive that the catastrophic oil release response account be used to acquire the equipment for the response depots.

---

<sup>1/</sup> In addition to the renamed funds and the four accounts, carried forward in AS 46.04.010--not amended in this bill--and in AS 37.14.010(a)--amended in other ways by section 8 of this bill--are the references in current law to the "oil and hazardous substance release mitigation account." Those references need to be corrected or removed.

Senator Mike Miller

January 24, 1994

Page 3

Bill section 32 and 33 limits the governor to drawing disaster emergency money from the catastrophic oil release response account. <sup>2/</sup>

Bill section 34: Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release response fund would still be required before money could be used for any purpose other than the immediate response action authorized by AS 46.08.040(a)(1)(A) for catastrophic oil spills.

Bill sections 8 and 35 make additional changes reflecting the division of the fund into two accounts. Bill section 35 removes a requirement relating to the contents of the commissioner of environmental conservation's annual report.

As in the last previous version, the measure seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." Bill section 42 provides a technically revised definition of "release" and bill section 43 substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by bill sections 36 and 37.

Under one of the repealer sections set out in bill section 47, the oil and hazardous substance release response fund would no longer be available to support ferry construction. <sup>3/</sup>

As I earlier noted, the "oil and hazardous substance release response fund" is renamed the "oil and hazardous substance release prevention and response fund." You'll find those changes set out in bill sections 1, 4, 6, 7, and 41 of the bill, and elsewhere as appropriate.

Bill section 5 differentiates between the two accounts for the purpose of making disaster emergency grants to municipalities.

Bill section 44 provides a definition of "catastrophic oil discharge" into AS 46.08, while bill section 49 explains that definition's applicability.

---

<sup>2/</sup> These two sections were originally drafted as alternatives that reflected a question as to whether the First Session's SB 90 am H would become law. That bill has become law--ch. 11, SLA 1993--so one of these alternatives and the two related reference sections at the end of the bill should be eliminated.

<sup>3/</sup> The authorization to use the fund to build one or more new ferries would be terminated by the bill's repeal of AS 19.65.025 and AS 46.08.040(d).

II

Amendments related to the oil conservation surcharge:

In its sections 9 - 16, the bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, one levied at 3 cents per barrel, the other imposed at a rate of 2 cents per barrel.

**Bill section 9:** This section imposes a new conservation surcharge at the rate of \$.03 per barrel.

**Bill sections 10 - 13** essentially carry forward the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but make them applicable to the new surcharge.

**Bill section 11** directs the deposit of the three cent per barrel surcharge to the "catastrophic oil release response account" in the fund.

**Bill section 12** sets out the conditions under which the severance tax surcharge shall be suspended or reimposed. It 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 that have been recovered and redeposited into the mitigation account. The amended provision also reflects the substitution of the catastrophic oil release response account. Under subsection (f), in lieu of quarterly determinations of the trigger mechanism, when the account balance exceeds 45 million dollars, the determinations are to be made more frequently.

**Bill section 13** amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

**Bill section 14** imposes a two cent per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substance release contingency and abatement account."

**Bill section 15** maintains the current definition of "catastrophic oil discharge" and makes it applicable to both oil conservation surcharges.

**Bill section 16** provides a revised definition for the term "surcharge."

A related provision of the bill, **bill section 48**, is inserted by way of clarification of 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 from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition 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.

Another related provision, **bill 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. <sup>4/</sup>

### III

#### **Amendments related to reassignments of agency responsibilities:**

**Bill section 38** reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

**Bill section 39** transfers the responsibility for maintaining the emergency response depots to that department.

**Bill section 46** moves the Alaska State Emergency Response Commission from that department to the Department of Military and Veterans' Affairs.

**Bill section 51** protects or "holds harmless" the terms of members of the response commission despite the transfer of the commission by bill section 46.

### IV

#### **Related matters:**

The measure proposes a series of changes related to the governor's authority to declare disaster emergencies.

**Bill section 2:** With the division of the existing fund into two accounts, the changes revise the priority order in which the governor may have access to money to respond to a disaster.

**Bill section 3** makes a drafting change related to the handling of the current material in the immediately preceding bill section.

---

<sup>4/</sup> This section, too, would require revision to update the references by the one year that has passed since introduction of the bill in the First Session.

Bill sections 17 and 18 conform language of AS 46.04.030(e) to the definition of the phrase "containment and cleanup" already provided for that chapter. <sup>2/</sup>

\*

**Bill section 19:** The amendment to AS 46.04.200(a) retains the requirement of annual review of the statewide prevention and contingency plan but removes from current law the requirement of annual revision of the plan and substitutes revision at the discretion of the commissioner of environmental conservation.

**Bill section 20:** The section, amending AS 46.04.200(c), deletes from current law the explicit requirements that, as part of the annual review of the state master plan, the proposed draft revisions of the state master plan be offered for public review and comment, for legislative review, and for review by the state emergency response commission (AS 46.13.010).

**Bill section 21:** In line with the changes made in the preceding bill section, this bill section restates the requirements applicable to a plan revision, directing submission of the proposed revised master plan to the same three groups.

**Bill sections 22 and 23:** The changes and addition made by these two bill sections, applicable to regional prevention and contingency master plans, parallel those with respect to the state plan as set out in bill sections 19 and 20.

**Bill section 24** offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 100,000 barrels of oil.

7 8

V

Other topics:

**Bill section 40** eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research, and assigns the office authority to contract to provide personnel for certain release-related work.

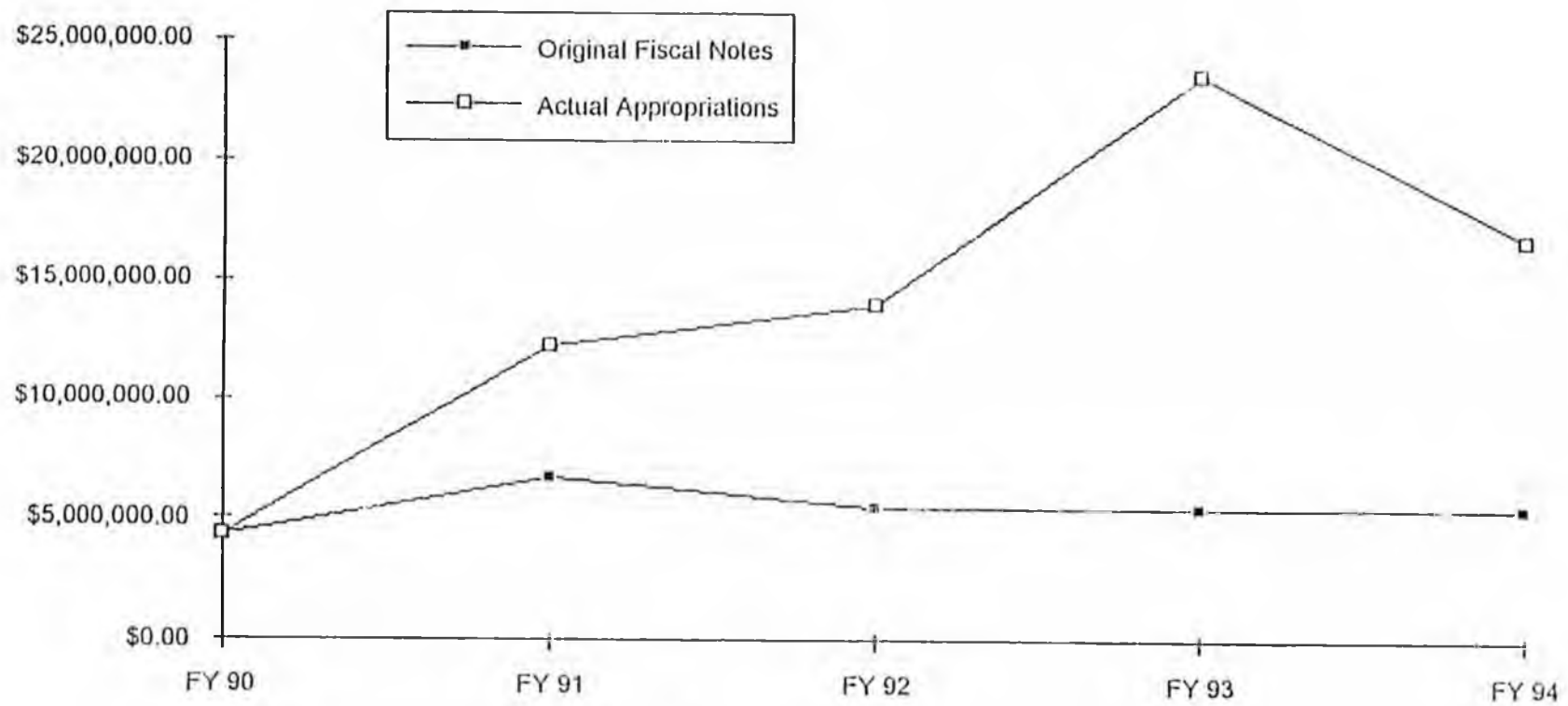
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<sup>2/</sup> AS 46.04.030(a) was to have been amended, and was amended, effective January 1, 1994. Bill section 54 speaks to what was, at the time of the bill's introduction, a pending amendment. One of these alternatives and the contingent provision may be removed from the bill.

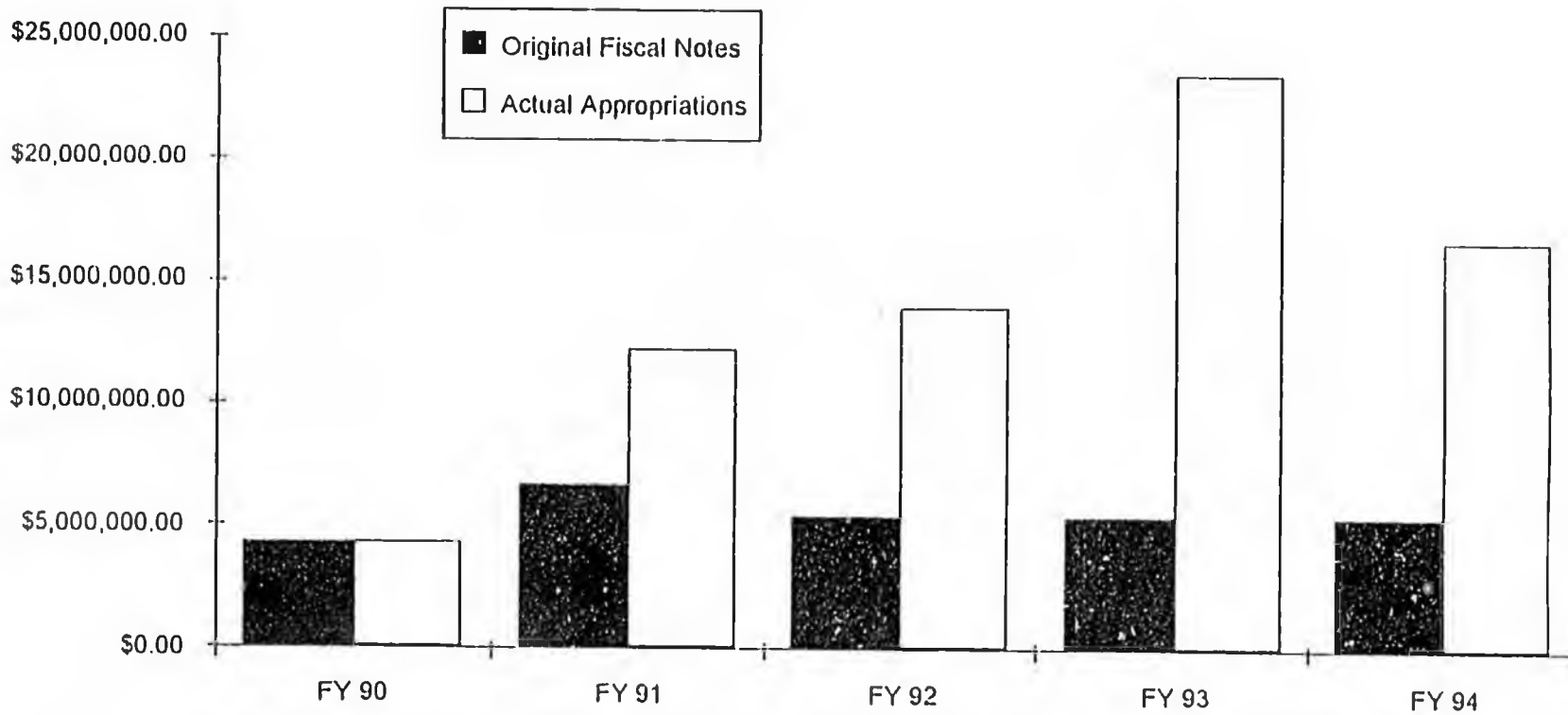
Senator Mike Miller  
January 24, 1994  
Page 7

Modeled after the revision of the definition made in bill section 43 mentioned earlier, **bill section 45** revises the definition of the term "threatened release" applicable to AS 46.09.

JBC:pl  
94-060.plm



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention And Response Committee, December 1992.



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention And Response Committee, December 1992.

BUDGET PREVENTION RESPONSE PROGRAMS

	DEC/OMB FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G Industry Contingency Plan Reviews	45.10
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
<b>TOTAL EXPENDITURES</b>	<b>10727.30</b>
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest on Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million Through the Year 2001 - Annual Amounts May Vary)	3500.00
<b>MINIMUM TOTAL REVENUES AVAILABLE</b>	<b>16400.00</b>

2 CENT BUDGET - PREVENTION RESPONSE PROGRAMS AND CONTAMINATED SITES PROGRAM

	DEC/OMB FY 95 Budget Review
Contaminated Sites	2747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	185.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
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DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
<b>TOTAL EXPENDITURES</b>	<b>13514.60</b>
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest on Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 Million Through the Year 2001 - Annual Amounts May Vary)	3500.00
<b>MINIMUM TOTAL REVENUES AVAILABLE</b>	<b>16400.00</b>

# Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

Senate District 0

While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976

## Senate

### SENATE BILL 215 SPONSOR STATEMENT

Last session, SB 215 was introduced to address several critical concerns relating to the 5 cents/barrel Oil and Hazardous Substance Release Response Fund. It has become increasingly clear that legislation is needed this session to address these concerns, and get the 470 Fund back to what it was originally intended when the Legislature enacted the nickel tax in 1989 - the creation of a \$50 million emergency reserve fund to have immediately available for response activity in case of a major oil spill, and the ability to fund certain necessary state programs in the area of spill prevention and response.

Last fall, the Senate Resources Committee held a full-day public hearing on SB 215. Testimony was taken from the Governor's Office of Management and Budget, the Department of Law, the Legislative Research Agency, Legislative Legal Services, the Department of Environmental Conservation, and the public through the statewide teleconference network.

The purpose of this second hearing is to have Legislative Legal Services again provide a sectional summary of Senate Bill 215 for the benefit of those members who were unable to attend the meeting in November, and to give another opportunity for further public testimony on this important issue.

For those committee members and members of the public who did not attend our last hearing, it may be helpful to briefly summarize some of the key issues that were raised.

First, the Department of Administration's quarterly reports show that the fund has a negative balance of \$-8 to -13 million. The Governor's office and DEC testified that it is clear that a change in the law is necessary to correct this problem.

Second, there are numerous questions about what specific programs should be paid for from the 470 Fund, and how much money should go into these programs. Serious concerns have been raised about whether current policy and expenditures are consistent with the original intent of the Legislature in 1989.

Third, questions have been raised as to the appropriateness of a crude oil tax enacted for very specific purposes now being used to address environmental problems created by other industries.

It is the sponsor's belief that the 470 Fund needs to be fixed through legislation. The goal is to ensure that the State of Alaska will have a true oil spill emergency reserve of \$50 million in immediately available cash, to spend in case of a major spill - and to provide a guaranteed and secure source of funding for the necessary state oil spill prevention and response programs.

**DRAFT**

12

12

by OMB

**Response Fund Summary as of November 5, 1993**

	<b>AS 43.55.230(b) Calculation</b>	<b>Response Fund</b>
Cummulative Surcharge Collected	112,085,145	109,200,000
Cummulative Expenditures	-127,190,873	-127,190,873
Difference	-15,105,728	-17,990,873
Cummulative Other Deposits		
General Fund	0	44,447,000
Program Receipts	0	30,000,000
Mitigation Account	0	5,007,800
Miscellaneous/Accounts Receivable	0	-3,049,952
Reserve For Encumbrances	0	-8,690,862
Reserve For Capital Appropriations	0	-3,191,125
Reserve for FY 94 Operating Appropriations (Excluding Spill Reserve Appropriation)	0	-9,302,319
Balance or Spill Reserve	-15,105,728	37,229,669

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

DATE: 5/8/93

FURTHER: FINANCE

Date of 5-Day Notice: 1/13/94  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

RESOURCES Committee considered SB 215

Oil and hazardous substance release response fund; repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; efd.

and recommends:

replace with \_\_\_\_\_ CS SB 215 (RES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DEC.	2-24-94		X

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

[Signature]  
[Signature]

OTHER RECOMMENDATIONS:

~~[Signature]~~  
[Signature] (NO REC)  
[Signature] (No Fees - No Rec)

[Signature]  
Mike Miller DO PASS  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 215

Revision Date: January 28, 1994  
Title: "...redesignating the oil and hazardous substance release response fund..."  
Sponsor: Senator Miller  
Requestor: Senator Miller

Department Affected: Department of Law  
BRU: Legal Services, Exxon Valdez Litigation  
Component: Legal Services, Operations Exxon Valdez Litigation  
COMPONENT SERIAL NO. 0093, 1175

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx

POSITIONS:

FULL-TIME	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: January 28, 1994

Approved by Commissioner: Bruce M. Botelld, Attorney General  
Agency: Department of Law

Date: January 28, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 215

ANALYSIS CONTINUATION:

SB 215 would split the present Oil and Hazardous Substance Release Response Fund (470 Fund) into two accounts. The first account, the catastrophic account, would be financed by a 3 cent a barrel conservation surcharge on oil production. The second account, the abatement account, would be financed by an on-going 2 cent surcharge.

Under present law, the Legislature can appropriate Oil and Hazardous Substance Fund (470) monies to the Department of Law and other departments for recovery of the costs of containment and cleanup (including restoration of the environment) resulting from the release or threatened release of oil or a hazardous substance. In the case of the Department of Law, this currently occurs in two instances. First, an annual amount of \$355,000 is appropriated from the oil and hazardous substance fund to the Legal Services Operations component to pay for the department's cost recovery enforcement efforts on behalf of the Department of Environmental Conservation. Second, an amount of \$1,005,200 was appropriated in FY 94 and \$805,200 is requested for FY 95 to pay for EXXON VALDEZ and certain other significant oil and hazardous substance cost recovery efforts. During the current fiscal year (FY 94) the department has already collected \$20,000,000 (\$14,762,703 for deposit in the general fund and \$5,237,297 for deposit in the mitigation account) that is attributable to the EXXON VALDEZ oil spill. In addition, the department has also already collected \$600,000 in cost recover services for deposit in the mitigation account, from other cost recovery efforts.

SB 215, by dividing the 470 Fund, would only allow use of the 3 cent catastrophic spill account for cost recovery efforts relating to spills over 4.2 million gallons or where the Governor has declared a disaster emergency. SB 215 also provides that all on-going spill prevention and response programs be funded by the 2 cent fund. However, the estimated revenues from the 2 cent surcharge are not sufficient to finance these activities, which include Department of Law cost recovery efforts relating to so-called non-catastrophic spills. In its fiscal note analysis of SB 215, the Department of Environmental Conservation has indicated that it would require an initial general fund appropriation of \$5,100,000 to offset the loss of 470 Fund monies. Substitution of general funds for 470 Funds, however, is somewhat problematic in view of the dramatic downturn in the state's general fund revenues. Because much of the Department of Law's cost recovery effort involves these so-called non-"catastrophic" spills the department will suffer a drastic decrease in funding resulting

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 215

ANALYSIS CONTINUATION:

in a severe reduction in its efforts to recover monies owed to the state by parties responsible for oil and hazardous substance pollution. Moreover, the Department of Law's cost recovery enforcement efforts provide an important incentive for cleanups by private parties who, in the absence of undertaking cleanup themselves, would face state-funded cleanups and repayment of those costs to the state. In many ways, cost recovery is the engine that drives private cleanups of oil and hazardous substance pollution. By creating a division between so-called catastrophic and non-catastrophic spill cost recovery efforts, SB 215 would disrupt state recovery efforts and serve as a disincentive for private cleanups. Because of the uncertainty of substitute funding if SB 215 is approved, we cannot predict the amount of substitute general funds that may be required, nor can we predict the amount of cost recovery funds that will be lost if substitute funding is not found.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 215

Revision Date: \_\_\_\_\_  
Title: Oil and Hazardous Substance Release  
Response Fund  
Sponsor: Senator Miller  
Requestor: Senate Resources Committee

Department Affected: Environmental Conservation  
BRU: SPAR/Administrative Services  
Component: All SPAR Components  
Response Fund Administration

COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>\$550.0</b>	<b>\$1,449.0</b>	<b>\$2,860.0</b>	<b>\$4,283.0</b>	<b>\$5,469.0</b>	<b>\$6,918.0</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>\$550.0</b>	<b>\$1,449.0</b>	<b>\$2,860.0</b>	<b>\$4,283.0</b>	<b>\$5,469.0</b>	<b>\$6,918.0</b>

Estimate of any current year (FY94) cost: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Bob Poe, Director  
Division: Information & Administrative Services

Phone: 465-5010  
Date: 2/24/94

Approved by Commissioner: [Signature]  
Agency: Department of Environmental Conservation

Date: 2/24/94

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FISCAL NOTE

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	5-Year Total
Revenue from .025 surcharge	\$12,750.0	\$12,250.0	\$11,250.0	\$10,250.0	\$9,500.0	\$8,500.0	\$64,500.0
State Spill Prevention Program*	\$13,300.0	\$13,699.0	\$14,110.0	\$14,533.0	\$14,969.0	\$15,418.0	\$86,029.0
Difference	(\$550.0)	(\$1,449.0)	(\$2,860.0)	(\$4,283.0)	(\$5,469.0)	(\$6,918.0)	(\$21,529.0)
Total GF Cost	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0	\$21,529.0

\* This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

This legislation proposes to fund the state's entire spill prevention and response program from a 2.5 cent per barrel surcharge on crude oil produced in Alaska. Since SB215 Version "U" now allows the catastrophic account, established in SB215, to be used for both hazardous substance and oil spills, and there is no spill-size-threshold in order to access the catastrophic account, no non-catastrophic spill reserve need be established.

The figure for the 2.5 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue

**SENATE RESOURCES COMMITTEE**

November 19, 1993  
9:00 A.M. Anchorage  
(INTERIM HEARING)

**MEMBERS PRESENT**

Senator Mike Miller, Chairman  
Senator Loren Leman, Vice-Chairman  
Senator Dave Donley  
Senator Fred Zharoff

**MEMBERS ABSENT**

Senator Steve Frank  
Senator Drue Pearce  
Senator Al Adams

**COMMITTEE CALENDAR**

SENATE BILL NO. 215  
"Oil & Hazardous Substance Release Response Fund"

**PREVIOUS SENATE COMMITTEE ACTION**

SB 215 - No previous action to record.

**WITNESS REGISTER**

Jack Chenoweth, Legislative Legal Services  
130 Seward Street  
Juneau, Alaska 99801  
POSITION STATEMENT: Provided sectional review of SB 215.

Maria Gladziszewski, Legislative Research Agency  
130 Seward Street, Ste. 218  
Juneau, Alaska 99801-2196  
POSITION STATEMENT: Provided review of memo regarding SB 215.

Shelby Stastny, Director  
State Office of Management & Budget  
P.O. Box 110020  
Juneau, Alaska 99801-0020  
POSITION STATEMENT: Provided review of DOA memos regarding SB 215.

Senate Resources

-1-

November 19, 1993

Craig Tillery  
Department of Law  
1031 West Fourth Avenue, Ste. 200  
Anchorage, Alaska 99501-1994  
POSITION STATEMENT: Testified regarding reimbursements of Exxon Valdez  
settlement monies to the "470 Fund."

Mead Treadwell, Deputy Commissioner  
Department of Environmental Conservation  
410 Willoughby, Ste. 105  
Juneau, Alaska 99801-1795  
POSITION STATEMENT: Commented on SB 215.

Ardie Gray, Public Affairs Manager  
Alaska Oil & Gas Association  
121 West Fireweed Lane, Ste. 207  
Anchorage, Alaska 99503  
POSITION STATEMENT: Supports SB 215.

Walt Furnace  
Alaska Support Industry Alliance  
4220 B Street, #200  
Anchorage, Alaska 99501  
POSITION STATEMENT: Supports SB 215.

Richard Mullen, Manager  
South East Alaska Petroleum Resource Organization  
3350 Denali  
Ketchikan, Alaska 99901  
POSITION STATEMENT: Commented on SB 215.

Charles McKee  
7800 East DeBarr Road, #63  
Anchorage, Alaska 99504  
POSITION STATEMENT: Opposes SB 215.

Chip Thoma  
2 Marine Way  
Juneau, Alaska 99801  
POSITION STATEMENT: Opposes SB 215.

#### **ACTION NARRATIVE**

**SENATOR MILLER** called the Resources Committee meeting to order at 9:23

a.m. and announced S3 215 OIL & HAZARDOUS SUBS. RELEASE RESPONSE FUND to be up for consideration.

**SHELBY STASTNY**, Director of the State Office of Management & Budget, gave an overview of the First, Second and Third Quarter Reports for the Oil Surcharge Account (dated 4/2/93, 8/20/93 and 11/10/93) issued by the Dept. of Administration which are required by AS 43.55.230(b). He acknowledged there is concern that the balance of the fund is a negative number.

He referred to a memo from his office included in a packet submitted by DEC to the House Resources Committee hearing last week, dated November 5, 1993, regarding similar legislation (House Bill 238). He explained that the statute requires that the quarterly reports simply show the cumulative surcharge, or total collected through the nickel-per-barrel tax, minus the total cumulative expenditures, which produces a negative balance of \$ -15,105,728 according to his 11/5/93 memo. The amount actually available in the Response Fund as of that date, however, was \$37,229,669.

The difference between the Fund balance prepared by DOA and the Fund balance prepared by OMB occurs because funding for the cumulative expenditures is provided by the nickel-per-barrel tax as well as program receipts and other general fund contributions from the oil industry. Therefore, based on the statutory calculation, the ending balance will never reach \$50 million unless there is \$125 million in the Fund.

The Administration would like to see some sort of correction so the quarterly reports reflect the true Fund balance. He stated that if the Legislature's goal is to provide a \$50 million fund, then there should be a better way of calculating when the tax "turns off." The administration's position is that the state should accumulate a \$50 million fund that will always be available to respond to disasters and other significant spills, releases, etc.

**SENATOR MILLER** asked Mr. Stastny to clarify if and when the tax would

cease based on the \$ -15 million and \$37 million figures presented in the OMB memorandum.

**MR. STASTNY** said he believes the tax would stop when the figure in the right hand column (\$37 million) reached approximately \$125 million due to the \$75 million in expenditures which come from revenues other than the nickel-per-barrel tax. He noted that when the present administration took office the balance of the fund was between \$8 and \$9 million and has increased to the present \$37 million.

**SENATOR LEMAN** asked why the figures reflecting the *Cumulative Surcharge Collected* were different under the columns titled *AS 43.55.230(b) Calculation* and *Response Fund*.

**MR. STASTNY** said the *Response Fund* figure is an amount appropriated by the Legislature annually. However, the state continually collects the surcharge (reflected in the *AS 43.55.230(b) Calculation* column) even though it has not yet been appropriated by the Legislature.

**CRAIG TILLERY**, Department of Law, explained the process for reimbursements of Exxon Valdez settlement monies to the Fund. He testified that Exxon is required to pay \$900 million in settlement money. Of that amount, the state and federal governments are entitled to take their reimbursements from certain Exxon Valdez oil spill related expenses. The remainder goes into the Exxon Valdez Trust Fund where it is spent under the direction of the joint federal and state trustees. The governments determine what their restoration needs will be for a given year, then look at how much will be left over and from that, take the appropriate amount due.

That money does not go through the Trust Fund but straight to the governments via the General Fund. The money being reimbursed from the Response Fund goes into the Mitigation Account from which the Legislature may, as it always has done, appropriate it back into the Response Fund.

He pointed out that under the proposed bill, the money would go to the Oil & Hazardous Substance Release Contingency and Abatement Account (OHSRCAA) from which the commissioner may spend money. He views this as bypassing the process of legislative appropriation of the money into the OHSRCAA which could be viewed as setting up a dedicated fund. He suggested the committee explore the possibility of running the money through the Mitigation Account, then allowing the Legislature to appropriate it into the OHSRCAA.

**MARIA GLADZISZEWSKI**, Legislative Research Agency, reviewed her memo dated 11/18/93 in response to questions posed by Senator Miller. The first asked for the current balance in the Spill Response Fund and the emergency spill reserve. She said the committee heard from Mr. Stastny regarding the balance of the fund and referred to the flow chart (Table One) attached to her memo. She also referred to Table Two in the memo which explains the process discussed by Mr. Tillery regarding reimbursements.

The second question asked if a legislative appropriation to the emergency spill reserve is considered an expenditure for the purpose of AS 43.55.230(b) (suspension and reimposition of the \$0.05/bbl surcharge). She referred to a memo by Mr. Breck Tostevin, Department of Law, which concludes that money appropriated to the spill reserve is not considered an expenditure for the purpose of calculating whether to suspend the surcharge.

The third question asked for (1) the current status of the Exxon Valdez settlement reimbursements to the State of Alaska and the Response Fund, (2) the amount that has been reimbursed so far and (3) how much is likely to be reimbursed in the future. A detailed response is contained in Ms. Gladziszewski's memo.

**JACK CHENOWETH**, Legislative Legal Services, gave a sectional summary of SB 215.

The principal changes occur with respect to the structure and objects of expenditure of the Oil & Hazardous Substance Release Response Fund. It is divided into two accounts; the Release Contingency and Abatement Account, and the Catastrophic Oil Release Response Account.

Section 25 identifies the division of the current fund into two accounts.

Section 26 identifies, by name, the two accounts.

Section 27 is a drafting change to reflect the fact that the Fund is divided into two accounts.

Section 28 adds in the proviso that equipment that can be used at the substance response depots may be purchased out of the Fund and that the current authorization of expenditure for marine ferries is to be repealed.

Section 29 discusses the composition of the Oil & Hazardous Substance Release Contingency and Abatement Account (OHSRCAA); Section 30 discusses the composition of the Catastrophic Oil Release Response Account (CORRA) and essentially requires what is currently required of the Fund as a whole.

Section 31 makes changes in what the two accounts may be used for. The Catastrophic Release Account may be used for major oil releases; the Contingency and Abatement Account is used for events that fall short of catastrophic or threatened catastrophic oil releases.

Sections 32 and 33 are companion measures which both discuss what the Governor may do with the balance of funds in the Catastrophic Release Account. Following the passage of Senate Bill 90 in 1993, Section 32 is no longer necessary in SB 215 and Section 33 would become the operative section.

Section 34 speaks to the use of monies from either account and requires a specific appropriation for most purposes except for immediate response action currently authorized in law.

Sections 8 and 35 reflect the division of the Fund into two accounts.

Sections 42 and 43 reflect revisions of definition of the terms "release" and "threatened release."

Sections 36 and 37 make conforming changes.

Sections 1, 4, 6, 7 and 41 make reference to the renamed accounts.

Section 5 refers to the two accounts and touches upon grants to municipalities for disaster emergencies.

Sections 44 and 49 reflect changes in the definition of "catastrophic oil discharge" in an effort to explain that definition's applicability.

**MR. CHENOWETH** summarized that all the above sections make changes that reflect the fact that the current 470 Fund would be divided into two accounts, and the purpose of the accounts would differ in that the Catastrophic Release Account would be used for major oil releases, and the Contingency and Abatement Account would handle other purposes spelled out in the bill revisions.

Sections 9 through 16 reflects a revision in the oil & gas conservation surcharge, or nickel-per-barrel surcharge. This would be replaced by two surcharges, one at three cents and one at two cents. The .03 levy is deposited into the Catastrophic Release Account and is subject to suspension or termination when the balance of the fund reaches \$50 million. The .02 levy is deposited into the Contingency and Abatement Account and continues without limitation.

Section 38 reassigns the Oil & Hazardous Substance Response Corps to DEC.

Section 39 transfers responsibility for maintaining the response depots to DEC.

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

Section 51 holds harmless the terms of persons serving on the Response Committees despite the agency transfer.

Sections 2 and 3 address the Governor's authority to declare disaster emergencies.

Sections 32 and 33 make changes that relate to the Governor's use of money in the Oil and Hazardous Substance Release Prevention & Response Fund in the face of a disaster emergency.

Sections 17 and 18 make conforming changes.

Sections 19 and 20 make changes in the statewide prevention and contingency master planning process.

Sections 22 and 23 make changes in the regional prevention and contingency master planning process and eliminate the Oil & Hazardous Substance Response Office's ability to conduct spill technology research.

Section 24 amends the definition of "catastrophic oil discharge" to include the declaration of a disaster emergency by the governor.

Section 40 assigns the Oil & Hazardous Substance Response Office the authority to contract to provide personnel for certain release related work.

Sections 43 and 45 revise the definition of "threatened release."

**MR CHENOWETH** suggested that some technical drafting changes should be considered to "clean up" the bill based on action taken during the first session of the 18th Legislature before reporting the measure from committee.

**MEAD TREADWELL**, Deputy Commissioner, Dept. of Environmental Conservation referred to a draft package submitted to the Committee entitled "DRAFT 11/12/93: Principles for Consensus on the Response Fund Funding." He emphasized the Department's desire to work with all interested parties in maintaining a strong spill response program. He also emphasized that DEC does want to build and maintain a \$50 million spill reserve and believes that will be achieved this year. Finally, he pointed out that DEC agrees that greater equity should be achieved in funding sources for the non-crude and hazardous substance prevention and response aspects of the program.

The Department's strategy is to look at other ways to expand response fund sources including cost recovery. The fund is owed approximately \$30 million from Exxon Valdez expenditures and DEC estimates the recovery schedule on page 6 of the draft. DEC is also increasing, in cooperation with the Department of Law, cost recovery efforts.

Damages and fines currently collected by the Mitigation Account could possibly be figured in when determining suspension of the tax.

Fees to be paid by non-crude facilities for contingency plan review, as well as fees for financial responsibility submissions, could be imposed. Loading fees as a source of UST funding has been discussed. Substitution of General Funds, including interest on the spill reserve and use of other tax revenues, were suggested as other possible funding sources to cover the program.

Suggestions regarding the surcharge include: 1) amending the tax law to reflect that the tax is collected when the balance of the fund, less obligations

appropriated by the Legislature or spent from the spill reserve, is less than \$50 million and 2) adopting an incentive clause stating that the tax will not be collected in such a year unless other named sources are also appropriated to the fund.

DEC has reviewed methods to further limit fund expenditures including: removal of full funding for the SERC by making an all-hazards SERC, repeal of the provision that allows ferries to be built with the Response Fund, and requiring review of expenditures by a body such as the SERC in case of spill prevention and response plans, and the HSSTRC in case of research.

**MR. TREADWELL** asked that if the committee goes forward with the legislation that it review page 6 of the draft package regarding fund availability if the surcharge is split. He also discussed related options which are outlined on Page 7 of the package. Page 8 shows a spreadsheet projecting various expenditures and ways the program might continue through the year 2000.

[THE TESTIMONY OF MR. CHARLES MCKEE, MS. ARDIE GRAY AND MR. WALT FURNACE WAS INAUDIBLE DUE TO TAPE MALFUNCTION. A COPY OF MS. GRAY'S WRITTEN TESTIMONY WAS MADE AVAILABLE AND IS ATTACHED.]

**CHIP THOMA**, Juneau, testified that the 470 Fund is, for the most part, the crude and non-crude producers' profits. He stated these producers are behind the proposed gutting of the 470 Fund. Very large profits are also being made by the refiners and transporters. He believes anti-trust fraud and price fixing practices exist in the fuel industry and hopes it will be curtailed. He pointed out that a recent BLM audit of the TAPS, Alyeska, and the owner companies shows the management responsibility for serious operational shortcomings is practically nonexistent. He does not believe any of the owner companies have taken steps necessary to prevent another large spill, nor have they made the improvements necessary to protect communities and river systems in Alaska

that depend on refined products. He stated this is why the 470 Fund exists, and should remain, in its present size and form.

**RICHARD MULLEN**, manager of South East Alaska Petroleum Resource Organization (SEAPRO), a pollution response cooperative of 39 member companies, funded by non-crude oil operations, has had concerns for some time regarding the operations of the 470 Fund. SEAPRO believes the Fund is not accomplishing what the Legislature intended and they support an effort to "fix" the Fund so that money is available in the event of a catastrophic spill. A careful review should also be made of what has been accomplished in creating a pollution response capability. They feel only a portion of the potential pollution sources in the region have been passed, through regulation and statute, to prepare to do a better job of prevention and response. The vast majority of spills come from unregulated sources and in these cases, no response is undertaken unless it is done by the Coast Guard. SEAPRO believes the Fund is valuable, yet it is regionally limited, it targets only a small segment of the potential global pollution threat, and is not necessarily available to the public. The Legislature should look at what is available and determine methods to make better use of those sources to protect the general public.

**SENATOR MILLER** said the committee will take up SB 215 within the first or second week of the next session, work with concerned parties, and try to move it out of committee before the end of the first month.

**SENATOR MILLER** adjourned the meeting at 3:00 p.m.

**TESTIMONY OF THE  
ALASKA OIL AND GAS ASSOCIATION**

**OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND  
SB 215/HB 238**

I am Ardie Gray, Public Affairs Manager of the Alaska Oil and Gas Association (AOGA). AOGA is a non-profit industry trade association. Its 18 member companies account for the majority of oil and gas exploration, production, refining, marketing and transportation activities in Alaska.

AOGA appreciates the opportunity to testify on several issues related to the Oil and Hazardous Substance Release Response Fund ("470 Fund").

As AOGA testified at the House and Senate Economic Task Force Mini-Summit hearing and House Resources Committee hearings earlier this year, our industry considers tax stability an important element for an economic climate to encourage industry investment in Alaska projects. We also identified, as a particular industry concern, appropriations from the 470 Fund which do not serve the purpose for which the Legislature imposed a nickel per barrel tax on production in 1989.

After the Valdez oil spill, the Legislature levied this nickel per barrel tax for the purpose of accumulating 50 million dollars in a fund for emergency oil spill containment and cleanup. The original intent of the nickel per barrel tax was that it be used for emergency response and preparedness only. Four years later, more than 110 million dollars in new taxes have been collected from the oil industry for the Fund.

Most of that money has been spent. Over the past four years, money has been appropriated from the 470 Fund for things like cleaning up state campgrounds, state airports, privately-owned greenhouses, and buying new ferries. These may be important concerns, but they are not oil spill emergencies.

## **BUDGET APPROPRIATIONS:**

As the Governor's Organizational Efficiency Task Force Summary Report stated in June of 1992, "the liberal use of the Fund appears to be driving up total state spending with little concern for efficiency."

The original fiscal notes from the 1989 and 1990 sessions, according to a recent report by the Prince William Sound Regional Citizens Advisory Council (RCAC), projected annual expenditures from the 470 Fund on the order of 5 to 8 million dollars per year. Expenditures have now grown to levels significantly higher than that.

It is also very clear that the 470 Fund was never intended to fund one-third of ADEC's operating budget.

The current Legislature should be commended for the efforts undertaken during the 1993 session in an attempt to make 470 Fund appropriations more consistent with the original purposes of the Fund when the tax was enacted. It was particularly significant that the Legislature chose to end funding for environmental activist organizations to undertake activities such as hiring former legislative aides, and rejected a proposal to expand Fund uses for something called an "international increment." While significant progress was made, more changes are necessary.

## **ACCOUNTING PROBLEM:**

Two new issues relating to accounting for money in the 470 Fund arose during legislative debate last session on HB 238. The first problem relates to how the balance in the 470 Fund is calculated.

AS 43.55.230 requires that:

"not later than 30 days after the end of each calendar quarter, the commissioner of administration shall determine the cumulative total of money

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

(2) expended through that calendar quarter from the oil and hazardous substance response fund established in AS 46.08.010 (the 470 Fund)."

The commissioner of administration is then required to:

"within 15 days of making the determination required by this section, the commissioner of administration shall report to the commissioner (of revenue) the difference between (a)(1) of this section and the amount determined under (a)(2) of this section.

If the commissioner of administration reports that the difference determined by this section equals or exceeds \$50,000,000, the commissioner of revenue shall suspend imposition and collection of the surcharge levied and collected under AS 43.55.200."

To our knowledge, despite the statutory requirement that this be reported every quarter, this formal report was issued for the first time on April 2 of this year. The issuance of this first report was very disturbing to our industry. The report showed that the 470 Fund actually carried a **NEGATIVE BALANCE OF 12 MILLION DOLLARS!**

This effectively meant that our industry would have to pay an additional \$62 million dollars in nickel per barrel taxes before the 50 million dollar cap originally intended for the Fund would be reached.

The second accounting problem relates to the money accumulated in the emergency spill reserve. The question is whether this money actually counts toward the \$50 million cap on the Fund.

In order to maintain an emergency spill reserve, each year in the front section of the operating budget the Legislature has appropriated money to an emergency spill reserve fund. AOGA believes the intent of the Legislature is to be fiscally responsible, while addressing the constitutional prohibition on dedicated funds.

The problem created by this separate appropriation is whether this money has been "expended" from the 470 Fund. If this appropriation is an "expenditure" then it does not count toward the \$50 million cap on the Fund.

This issue was first raised by the Legislature Research Agency when they reported earlier in the year that the 470 Fund balance was only 100 thousand dollars. ADEC has taken a differing view, asserting that this money has not been expended. In either case, this statute is in need of clarification.

#### **SPLITTING OF THE 470 FUND:**

Given all of the confusion over what the balance in the 470 Fund is, whether appropriations to the spill reserve are considered "expenditures", and the differing views over what are appropriate uses of the money in the 470 Fund, AOGA believes it is necessary to look at a new approach to the Fund.

For this reason, AOGA strongly supports the proposal in SB 215 and HB 238 to split the current nickel into two funds; a 2 cents per barrel "oil spill preparedness account", to be funded through a permanent 2 cents per barrel tax, and a 3 cents per barrel "catastrophic oil discharge account."

This proposal is a "win-win" opportunity for all interested parties for several reasons:

First, it will provide for the \$50 million cash emergency fund originally envisioned in 1989 -- undiluted by other environmentally-related expenditures. The new proposal would ensure that there was a separate and secure independent source of \$50 million available to the state and local communities in case of an emergency. To provide initial money for the "catastrophic oil discharge reserve account", AOGA believes it is essential that the balance in the current oil spill emergency reserve fund be transferred to the new account.

Second, the permanent 2 cents per barrel tax would go into an "oil spill preparedness account", ensuring a permanent and secure source of funding for state prevention and preparedness programs as long as oil is being produced in Alaska. The 2 cent per barrel tax would provide over \$10 million per year, more than the \$5-\$8 million originally projected. While this is somewhat less than is currently being spent on operating programs from the 470 Fund, it should also be noted that ADEC has indicated that long term operating costs for prevention and response programs will decrease once initial "startup costs" have been incurred.

Third, it will provide some form of tax certainty for the industry. The current hidden tax policy will be eliminated. Industry will continue to pay the 5 cents per barrel tax until the "catastrophic oil discharge emergency reserve account" reaches \$50 million, with a permanent 2 cents per barrel tax being paid after that time. No more guessing games as to when, or if, the current temporary tax would be suspended.

Fourth, and most important, this legislation will provide certainty for Alaska's citizens. The public will know that there is a \$50 million fund sitting there in case of emergency, and only in case of an emergency. The public will also know that there is a fair and secure source of guaranteed funding available for the state's prevention and preparedness programs.

#### **UNDERGROUND STORAGE TANKS:**

A major subject of legislative debate in recent years has been funding for the state's underground storage tank cleanup assistance program. Legislation has been proposed to tap the 470 Fund to pay for the program, and the Legislature has used the 470 Fund Mitigation Account to pay for the program during the last two sessions.

As AOGA has previously testified, we do not believe it is appropriate to use the state's supposed oil spill emergency fund to pay for this program.

However, AOGA does support continuing the policy of using mitigation account reimbursement money to fund the state's share of the underground storage tank cleanup assistance program. With future Exxon Valdez settlement reimbursement payments flowing into the mitigation account, there should be ample funding available for the underground storage tank program.

#### **PUBLIC OPINION:**

Finally, I would like to share with you the results of some recent public opinion survey work conducted by Dittman Research for AOGA.

In September of this year, Dittman Research conducted a statewide survey of 516 residents in 55 Alaska communities. We asked three questions related to the 470 Fund, with the following results.

1. "After the Prince William Sound oil spill, Alaska's state Legislature established a special tax on the oil industry of 5 cents per barrel to go into an emergency response fund to be available to respond to future spills if necessary. The goal was to build the fund up so that 50 million dollars would be available, then eliminate the tax. Do you favor or oppose this goal?"

Favor	86%
Oppose	12 %
Unsure	2%

2. "Do you feel the money placed in the emergency response fund should stay there until it builds up to 50 million dollars, or should it be spent as it is being collected in order to provide money for operating expenses of the Department of Environmental Conservation and other purposes?"

Stay there	79%
Be spent	19%
Unsure	2%

3. "The special tax was to be eliminated after the emergency fund reached a balance of 50 million dollars. However, much of the money has been spent, so even though the oil industry has paid over one-hundred million dollars in special taxes into the fund, the balance of the fund remains far below 50 million dollars and the special tax remains in effect. Do you approve or disapprove of the state's current practice of keeping the fund balance below 50 million dollars so the special tax can stay in effect?"

Disapprove	71%
Approve	22%
Unsure	7%

## CONCLUSION:

The 470 Fund is broken and it must be fixed. AOGA believes that SB 215 and HB 238 will provide the appropriate fix -- one consistent with the desire of Alaska's public to have an independent emergency spill reserve fund.