

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8738 HOUSE RESOURCES

*209*

1 and gas leasing program prepared under AS 38.05.180(b), but the  
2 commissioner may waive this limitation; or

3 (C) the land that, on the effective date of this Act, is held under  
4 a coal lease entered into under AS 38.05.150.

5 (b) For the purpose of exploring for and developing shallow natural gas  
6 reservoirs, upon application, the director may lease to a person land for which the state  
7 owns the subsurface rights. A person applying for a lease under this subsection

8 (1) shall specify the area to be leased; the area to be leased may not  
9 exceed 5,760 acres; a lessee may not hold more than 23,040 acres of land under leases  
10 entered into under this section;

11 (2) may not be required to pay an application fee or any other form of  
12 payment as a condition of submitting or processing the lease application or obtaining the  
13 lease.

14 (c) Unless the lease application is for land described in (a)(2) of this section that  
15 may not be leased or unless otherwise prevented by law from entering into a lease for  
16 land described in the lease application, promptly after receipt of a lease application, the  
17 director shall give notice of receipt of the lease application and call for comments from  
18 the public. The director's call for public comments must provide opportunity for public  
19 comment for a period of not less than 60 days. If, on the basis of public comments  
20 received, the director determines to enter into a lease for the area described in (b) of this  
21 section, the director shall execute the lease within 90 days after the close of the public  
22 comment period. ~~review~~ review is required under AS 46.40, within 30 days after the final  
23 consistency determination is made under AS 46.40. A lease entered into under this  
24 subsection gives the lessee the exclusive right to explore for, develop, and produce, for  
25 a term not to exceed five years, natural gas on the state land described in the lease; the  
26 right to explore for, develop, and produce is limited to gas derived from natural gas  
27 within 3,000 feet of the surface at the drill site.

28 (d) A lease shall be automatically extended if and for so long thereafter as gas  
29 is produced in paying quantities from the lease. A lease issued under this section  
30 covering land on which there is a well capable of producing gas in paying quantities  
31 does not expire because the lessee fails to produce gas unless the lessee is allowed  
32 reasonable time to place the well on a producing status. If drilling has commenced on

1 the expiration date of the primary term of the lease and is continued with reasonable  
2 diligence, including such operations as redrilling, sidetracking, or other means  
3 necessary to reach the originally proposed bottom hole location, the lease continues in  
4 effect until 90 days after drilling has ceased and for so long thereafter as gas is  
5 produced in paying quantities. A gas lease issued under this section that is subject to  
6 termination by reason of cessation of production does not terminate if, within 60 days  
7 after production ceases, reworking or drilling operations are commenced on the land  
8 under lease and are thereafter conducted with reasonable diligence during the period  
9 of nonproduction. In addition, upon application by the lessee, the director may once  
10 extend a lease issued under (c) of this section for a period of not more than five years  
11 if the director determines that during the period described in (c) of this section, the lessee

12 (1) has conducted reasonably diligent exploration activities in the area  
13 covered by the lease;

14 (2) has not been able to determine the commercial productivity of the  
15 natural gas occurring on the lease; and

16 (3) wishes to continue to conduct exploration activities in the area  
17 described in the lease.

18 (e) The director

19 (1) shall annually make a determination under this subsection that the  
20 lessee has diligently developed and continued to operate under the lease;

21 (2) may adjust the boundaries of a lease entered into under this section  
22 as may be necessary to ensure development of natural gas within a reasonably compact  
23 area; a lease as adjusted under this paragraph remains subject to the acreage limitations  
24 set out in (b)(1) of this section.

25 (f) For the privilege of exploring for and producing gas from a lease, the lessee  
26 shall pay rent to the state in the amount of 50 cents per acre. The rent is due and  
27 payable on the dates determined in the lease. If rent is not paid when due, the director  
28 shall mail the lessee written notice of nonpayment at the end of each month, while the  
29 rent remains unpaid, for a period of two months. The lessee may cure the failure to pay  
30 rent when due within 90 days after the rent payment becomes due and payable by paying  
31 to the director the amount of rent due together with a penalty of the greater of \$50 or  
32 five percent of the amount of rent in default. If the lessee fails to remedy the lessee's

1 failure to pay rent, the director shall terminate the lease.

2 (g) The royalty payable on natural gas produced from a lease is 6.25 percent of  
3 the value of the production removed or sold from the lease.

4 (h) A lease issued under this section is subject to the following terms and  
5 conditions and may be terminated by the director in the event of a breach of a term or  
6 condition:

7 (1) the lessee may surrender or relinquish the lease at any time;

8 (2) the lease may not be transferred or assigned until after the date of  
9 initial commercial production of gas from the area within the lease; however, this  
10 paragraph does not prohibit the lessee from entering into a farm out agreement or similar  
11 arrangement with a third party under which the third party assists in exploration and  
12 development of production from the lease if the agreement or arrangement does not  
13 require a payment of consideration by the third party to the lessee, except that the lessee  
14 may retain an overriding royalty interest in the lease or may retain a net profit or other  
15 production payment;

16 (3) gas produced from the lease may not be sold or otherwise made  
17 available for insertion into the in-place gas pipeline transmission or distribution system  
18 serving population centers in Southcentral Alaska, except that the director may waive this  
19 limitation to permit the exchange of the gas produced for other gas that may be  
20 distributed in rural communities and remote locations within the state.

21 (i) The applicant for a lease shall conduct a title search for the area described  
22 in the lease application.

23 (j) The acreage limitations of AS 38.05.140(c) and 38.05.180(m) do not apply  
24 to a lease.

25 (k) A lease does not give the lessee the right to produce oil or to produce gas  
26 from sources that are not within 3,000 feet of the surface at the drilling site. If the  
27 lessee's operation under the lease results in the production of oil or of gas in violation  
28 of this subsection, the director shall immediately suspend the lessee's operation under the  
29 lease and may terminate the lease.

30 (l) The commissioner of natural resources may adopt only the regulations that  
31 are reasonable and that are necessary to implement, interpret, or make specific the  
32 provisions of this section or to establish procedures to govern application of the

1 provisions of this section.

2 (m) In this section. "lease" means a shallow gas lease authorized by this section.

3 \* Sec. 3. AS 38.05.035(e)(6) is amended to read:

4 (6) before a public hearing, if held, or in any case not less than 21 days  
5 before the sale, lease, or other disposal of available land, property, resources, or  
6 interests in them other than a sale, lease, or other disposal of available land or an  
7 interest in land for oil and gas under (5) of this subsection, the director shall make  
8 available to the public a written finding that, in accordance with (1) of this subsection,  
9 sets out the material facts and applicable statutes and regulations and any other  
10 information required by statute or regulation to be considered upon which the  
11 determination that the sale, lease, or other disposal will best serve the interests of the  
12 state was based; however, a written finding is not required before the approval of

13 (A) a contract for a negotiated sale authorized under  
14 AS 38.05.115;

15 (B) a lease of land for a shore fishery site under AS 38.05.082;

16 (C) a permit or other authorization revocable by the  
17 commissioner;

18 (D) a mineral claim located under AS 38.05.195;

19 (E) a mineral lease issued under AS 38.05.205;

20 (F) a production license issued under AS 38.05.207;

21 (G) an exempt oil and gas sale under AS 38.05.180(d) of  
22 acreage offered in a sale that was held within the previous five years if the sale  
23 was subject to a written best interest finding, unless the commissioner  
24 determines that new information has become available that justifies a revision  
25 of the best interest finding; [OR]

26 (H) a lease sale under AS 38.05.180(w) of acreage offered in  
27 a sale that was held within the previous five years if the sale was subject to a  
28 best interest finding, unless the commissioner determines that new information  
29 has become available that justifies a revision of the best interest finding; or

30 (I) a shallow gas lease authorized under AS 38.05.177 in an  
31 area for which leasing is authorized under AS 38.05.177;

1 \* Sec. 4. AS 38.05.180(f) is amended to read:

2 (f) Except as provided by AS 38.05.131 - 38.05.134 and 38.05.177, the  
3 commissioner may issue oil and gas leases on state land to the highest responsible  
4 qualified bidder determined by competitive bidding under regulations adopted by the  
5 commissioner. Bidding may be by sealed bid or according to any other bidding  
6 procedure the commissioner determines is in the best interests of the state. Whenever,  
7 under any of the leasing methods listed in this subsection, a royalty share is reserved  
8 to the state, it shall be delivered in pipeline quality and free of all lease or unit  
9 expenses, including but not limited to separation, cleaning, dehydration, gathering, salt  
10 water disposal, and preparation for transportation off the lease or unit area. Following  
11 a pre-sale analysis, the commissioner may choose at least one of the following leasing  
12 methods:

13 (1) a cash bonus bid with a fixed royalty share reserved to the state of  
14 not less than 12.5 percent in amount or value of the production removed or sold from  
15 the lease;

16 (2) a cash bonus bid with a fixed royalty share reserved to the state of  
17 not less than 12.5 percent in amount or value of the production removed or sold from  
18 the lease and a fixed share of the net profit derived from the lease of not less than 30  
19 percent reserved to the state;

20 (3) a fixed cash bonus with a royalty share reserved to the state as the  
21 bid variable but no less than 12.5 percent in amount or value of the production  
22 removed or sold from the lease;

23 (4) a fixed cash bonus with the share of the net profit derived from the  
24 lease reserved to the state as the bid variable;

25 (5) a fixed cash bonus with a fixed royalty share reserved to the state  
26 of not less than 12.5 percent in amount or value of the production removed or sold  
27 from the lease with the share of the net profit derived from the lease reserved to the  
28 state as the bid variable;

29 (6) a cash bonus bid with a fixed royalty share reserved to the state  
30 based on a sliding scale according to the volume of production or other factor but in  
31 no event less than 12.5 percent in amount or value of the production removed or sold

1 from the lease;

2 (7) a fixed cash bonus with a royalty share reserved to the state based  
3 on a sliding scale according to the volume of production or other factor as the bid  
4 variable but not less than 12.5 percent in amount or value of the production removed  
5 or sold from the lease.

6 \* Sec. 5. AS 46.03.100(f) is amended to read:

7 (f) This section does not apply to discharges of solid or liquid waste material  
8 or water discharges from the following activities if the discharge is incidental to the  
9 activity and the activity does not produce a discharge from a point source, as that term  
10 is defined in regulations adopted under this chapter, directly into any surface water of  
11 the state:

12 (1) mineral drilling, trenching, ditching, and similar activities;

13 (2) landscaping;

14 (3) water well drilling, geophysical drilling, or coal bed methane  
15 drilling or other natural gas drilling to recover gas from a reservoir at a depth of  
16 less than 3,000 feet; or

17 (4) drilling, ditching, trenching, and similar activities associated with  
18 facility construction and maintenance or with road or other transportation facility  
19 construction and maintenance; however, the exemption provided by this paragraph does  
20 not relieve a person from obtaining a permit under (a) of this section if

21 (A) the drilling, ditching, trenching, or similar activity will  
22 involve the removal of the groundwater, stormwater, or wastewater runoff that  
23 has accumulated and is present at an excavation site for facility, road, or other  
24 transportation construction or maintenance; and

25 (B) a permit is otherwise required by (a) of this section.

26 \* Sec. 6. AS 46.04.030(b) is amended to read:

27 (b) A person may not cause or permit the operation of a pipeline or [AN  
28 EXPLORATION OR] production facility in the state or, except as provided in  
29 AS 46.04.050(c) for a well that has not penetrated a formation capable of  
30 producing oil, may not cause or permit the operation of an exploration facility in  
31 the state unless an oil discharge prevention and contingency plan for the pipeline or

1 facility has been approved by the department and the person is in compliance with the  
2 plan.

3 \* Sec. 7. AS 46.04.030 is amended by adding a new subsection to read:

4 (s) If an onshore well drilling for gas under a lease authorized by  
5 AS 38.05.177 penetrates a formation capable of producing oil, the operator of the  
6 facility

7 (1) shall notify the department and the Alaska Oil and Gas  
8 Conservation Commission; and

9 (2) may not conduct further operations in the drilled well until the  
10 facility complies with all applicable laws and regulations relating to oil and gas  
11 production; however, this paragraph does not prevent the operator of the facility from  
12 conducting activities that may be required by the Alaska Oil and Gas Conservation  
13 Commission to plug and abandon a well.

14 \* Sec. 8. AS 46.04.040(b) is amended to read:

15 (b) A person may not cause or permit the operation of a pipeline or an  
16 exploration or production facility in the state unless the person has furnished to the  
17 department, and the department has approved, proof of financial ability to respond in  
18 damages. Proof of financial responsibility required for

19 (1) a pipeline or an offshore exploration or production facility is  
20 \$50,000,000 per incident;

21 (2) an onshore production facility is

22 (A) \$20,000,000 per incident if the facility produces over  
23 10,000 barrels per day of oil;

24 (B) \$10,000,000 per incident if the facility produces over 5,000  
25 barrels per day but not more than 10,000 barrels per day of oil;

26 (C) \$5,000,000 per incident if the facility produces over 2,500  
27 barrels per day but not more than 5,000 barrels per day of oil;

28 (D) \$1,000,000 per incident if the facility produces 2,500 barrels  
29 per day or less of oil;

30 (3) an onshore exploration facility is

31 (A) \$25,000 per incident for a facility used solely to explore

1           for shallow natural gas by means of drilling a well when authorized by  
2           AS 38.05.177; and

3                   (B) except as provided by (A) of this paragraph. \$1,000,000  
4           per incident.

5   \* Sec. 9. AS 46.04.040 is amended by adding a new subsection to read:

6           (n) If an onshore well authorized under AS 38.05.177 to recover shallow  
7           natural gas penetrates a formation capable of producing oil, the operator of the facility  
8           may not conduct further exploration activity. However, this subsection does not  
9           prevent the operator of the facility from conducting activities that may be required by  
10          the Alaska Oil and Gas Conservation Commission to plug and abandon a well.

11   \* Sec. 10. AS 46.04.050 is amended by adding a new subsection to read:

12           (c) Except as provided in AS 46.04.030(s), the provisions of AS 46.04.030(b)  
13           do not apply to an onshore exploration facility used solely to explore for natural gas  
14           by means of drilling a well when authorized under AS 38.05.177.

15   \* Sec. 11. AS 46.08.040 is amended by adding a new subsection to read:

16           (e) Money from the fund may not be used to take action under (a) of this  
17           section as to the release or threatened release of oil or a hazardous substance from a  
18           shallow natural gas development well authorized under AS 38.05.177.

19   \* Sec. 12. RELATION TO RIGHTS GRANTED UNDER EXISTING COAL LEASES.

20   The provisions of AS 38.05.177, added by sec. 2 of this Act, may not apply to impair or  
21   infringe upon the rights of a lessee of a coal lease entered into under AS 38.05.150 on or  
22   before the effective date of this Act and that is in effect on the effective date of this Act to  
23   recover the coal bed methane and other gas held in association with the coal under the lease  
24   unless recovery by the lessee of coal bed methane and other gas in association with the coal  
25   is prohibited by the coal lease.

3/7/98  
Version K

**AMENDMENT**

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 394 (O&Q)

Page 11, line 3-6:

Delete all material

3/7/96  
Version K

**AMENDMENT**

**OFFERED IN HOUSE RESOURCES**

**BY REPRESENTATIVE JOHN DAVIES**

**TO: CSHB 394 (O&G)**

**Page 4, line 1:**

Following 'lease of'

Delete: 'unlimited duration'

Insert: 'twenty year duration, and may be renewed'

**Page 4, line 16-17:**

Following 'shall be'

Delete: 'for an indeterminate period upon condition of'

Insert: 'conditioned on'

**Page 4, line 20:**

Following 'the lease'

Insert: ', and shall terminate the lease if this condition is not met'

3/7/96  
Version K

**AMENDMENT**

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 394 (O&O)

Page 6, line 6-31

Delete all material

Page 7, line 1-4

Delete all material

3/7/06  
Version K

**AMENDMENT**

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 394 (O&G)

Page 4, line 21-30:

Following '(f)'

Delete all material

Insert: 'The lessee shall pay rent to the state in the amounts below:'<sup>1</sup>

3/7/96  
Version K

**AMENDMENT**

**OFFERED IN HOUSE RESOURCES**

**BY REPRESENTATIVE JOHN DAVIES**

**TO: CSHB 394 (O&O)**

**Page 2, line 19-28:**

**Delete all material**

**Page 5-6, line 32, 1,2, and 3**

**Delete all material**

**Page 11, lines 14-20**

**Delete all material**

3/7/96  
Version K

**AMENDMENT**

**OFFERED IN HOUSE RESOURCES**

**BY REPRESENTATIVE JOHN DAVIES**

**TO: CSHB 394 (O&Q)**

**Page 3, line 3:**

**Delete: 'do not apply'**

**Insert: 'may not be used'**

3/7/96  
Version K

**AMENDMENT**

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 394 (O&G)

Page 3, line 19:

Following (2):

Delete: 'may not'

Insert: 'shall'

3/7/96  
Version K

**AMENDMENT**

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 394 (O&G)

Page 3, line 17:

Following 'area'

Insert: 'proposed'

Following '; the area to be leased'

Delete: 'may not exceed 23,400 acres and may not be less than 640 acres;'

Insert: 'must be reasonably related to the proposed development'

# Alaska State Legislature

Resources, Vice Chair  
State Affairs, Vice Chair  
House Special Committee on Oil & Gas, Vice Chair  
House Special Committee on Fisheries



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Representative Scott Ogan  
House District 27

## Sponsor Statement HB 394

The purpose of this bill is to encourage shallow gas development for use within the state. HB 394 succeeds in this task by relieving the tremendous monetary and regulatory burdens that currently plague independent gas developers in Alaska.

HB 394 specifically addresses such issues as high bond requirements, lease issuance, application and processing fees, and royalties. It creates an economic environment where small independent gas companies can thrive, and be allowed to develop a resource that is truly important to the state.

Why is this bill so important to the state? In order to grasp the answer to this question, one must first look at our current situation. In June of 1995, the Department of Community and Regional Affairs presented an initiative known as the *Alaska Rural Energy Initiative* in which they report on the existing energy problems in the rural communities of Alaska.

The *Alaska Rural Energy Initiative* reports that it will cost \$200 million, excluding future inflation, to repair and renovate the fuel storage facilities of rural Alaska. In a report done by the *Rural Bulk Fuel Task Force* (1993), the cost of remediation of contaminated soil and ground water adds another \$200 million. The *Alaska Rural Energy Initiative* also states that another \$25 million will be needed for upgrading single-village electric utilities. An allowance of \$25 million more is needed for additional electric utility upgrades and for

inflation. Also, the state currently spends \$20 million annually on the power cost equalization program, a program that has cost the state \$200 million since its creation. All of these numbers point to one thing, and that is that Alaska has a serious energy problem in its rural communities, and it is going to cost a lot of money to fix.

In these days of budget cuts and reduced oil revenue, it is not reasonable to think that remediation, renovation, and power cost equalization will be easy to pay for in the future. This is why HB 394 is so important.

HB 394 would allow independent gas companies to explore for and develop shallow bed gas without being hindered by unreasonable regulations and requirements. With reasonable regulatory oversight, independent gas companies would be able to develop gas for use in rural communities. Communities with deposits of gas nearby would be able to pipe the gas directly to their converted generators, and they could use it to heat their homes.

Natural gas is a low-cost and environmentally safe form of energy that, in all likelihood, exists in many parts of the state. It could serve as an independent fuel source for many communities, but because of existing stringent regulations and bonding requirements, it is not economically feasible for independents to attempt to develop this valuable resource.

The merits of HB 394 are evident, and the benefits are far reaching. I ask for your support as we attempt to allow shallow natural gas to be used as an economically and environmentally sound alternative fuel source.

3/11/96

SECTIONAL ANALYSIS CSHB 394  
VERSION M

Bill Section 1 sets out legislative findings, a statement of purpose, and a statement of intent for the measure.

Bill Section 2 authorizes a shallow natural gas leasing program. Its key components are:

- The program is made applicable to recovery of natural gas, from any source, located within 3000 feet of the surface, but is inapplicable to (1) areas that cannot be leased under the oil and gas exploration licensing and leasing program (i.e. North Slope and Cook Inlet), (2) land under an exploration license or lease, or already leased under AS38.05.180, or part of the state's five year proposed oil and gas lease program, and (3) land under coal lease under the effective date of the Act
- The leases have no minimum size requirement. A maximum lease size of 5,760 acres is established, and total land leased cannot be more than 23,040 acres
- A public comment period is established
- A lease will be automatically extended if production of gas at paying quantities continues
- Rent and royalty rates are set out in AS38.05.177(f) and (G)
- There are several conditions and restrictions on the shallow gas lease, including limitations on lease assignment and on insertion of the gas into the in-place transmission system generally serving the population centers of southcentral Alaska; the rights of the state and of the lessee to terminate or surrender the lease are spelled out
- The commissioner of natural resources is given the ability to adopt only those regulations that are absolutely necessary to these operations

Bill Section 3 exempts the requirement of a best interest finding

**Bill Section 4** exempts shallow gas leases from competitive bidding requirements based on the choice of leasing methods specified in that section for oil and gas leases

**Bill Section 5** includes natural gas drilling of depths less than 3,000 feet as an activity.

**Bill Section 6:** There is a general requirement in law that pipelines and exploration and production facilities may not be operated unless an oil discharge prevention and contingency plan has been developed and is in place for the pipeline and for the exploration and production facility. The amendment made by this section establishes an exception from that requirement for an onshore well drilling for shallow natural gas so long as that facility does not encounter a formation capable of producing oil.

**Bill Section 7** sets out the steps that the owner or operator of a shallow natural gas well must take if the operation encounters a formation capable of producing oil.

**Bill Section 8** sets the financial responsibility requirement applicable to an onshore exploration facility exploring for shallow natural gas at \$25,000.

**Bill Section 9** requires the operator or owner to stop operating, with exceptions, when a formation capable of producing oil is encountered.

**Bill Section 10** sets out exemptions from the laws establishing oil discharge prevention and contingency plans and financial responsibility requirements. This bill section notes the additional exemption from these provisions for shallow natural gas exploration facilities except as may be required when that well penetrates a formation capable of producing oil.

**Bill Section 11** prohibits use of the oil and hazardous substance release prevention and response fund ("470 fund") as a source of money to clean up a release attributable to a shallow natural gas well.

**Bill Section 12** affirms that persons holding coal leases in effect on the effective date of this Act have the right to develop coal bed methane and related gas held in association with the coal.

# LEGAL SERVICES

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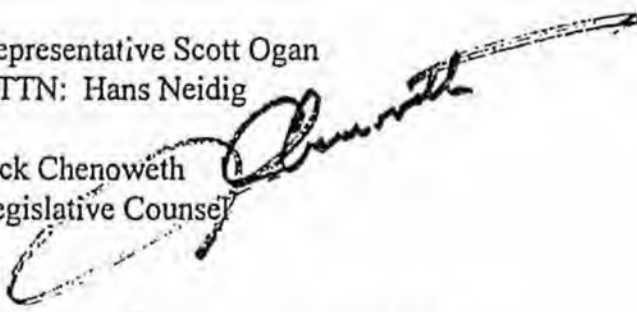
## MEMORANDUM

February 26, 1996

**SUBJECT:** Draft CSHB 394 ( ), relating to shallow bed natural gas leasing -- sectional analysis (Work Order No. 9-LS1463\M)

**TO:** Representative Scott Ogan  
ATTN: Hans Neidig

**FROM:** Jack Chenoweth  
Legislative Counsel



This is a substantial revision of the bill as originally introduced.

The heart of the bill is its section 2, authorizing a shallow bed natural gas leasing program. Among the key features of the leasing program:

-- The program is made applicable to recovery of natural gas, from any source, located within 3000 feet of the surface at the drill site, but is inapplicable to (1) areas that cannot be leased under the oil and gas exploration licensing and leasing program (i.e. North Slope and Cook Inlet), (2) land under an exploration license or lease, or already leased under AS 38.05.180, or part of the state's five-year proposed oil and gas lease program, and (3) land under coal lease under the effective date of the Act;

-- The leases may be awarded to cover areas not less than 640 acres nor more than 23,040 acres, and lease applicants may not be required to pay a fee for the application or its processing;

-- The director is authorized to provide the lease applicant an initial shallow bed gas development lease giving the exclusive right, for a period of not more than two years, to explore for and develop shallow bed natural gas; that right may be extended for one additional two year period on a showing of diligent, albeit unsuccessful effort;

-- The holder of an initial shallow bed gas development lease may convert the lease to one for an indeterminate period upon showing of an ability to produce shallow bed natural gas from the lease in commercial quantity;

-- The shallow bed natural gas lessee is required to pay rent and royalty at the rates set out in AS 38.05.177(f) and (g);

-- There are several conditions and restrictions on the shallow bed gas development lease, including limitations on lease assignment and on insertion of the gas into the in-place transmission system generally serving the population centers of southcentral Alaska; the rights of the state and of the lessee to terminate or surrender the lease are spelled out;

-- The commissioner of natural resources is precluded from adopting regulations to interpret or make specific the provisions of the shallow bed natural gas leasing program.

**Bill section 3** exempts from the requirement of a written best interest finding shallow bed gas development leases under AS 38.05.177.

**Bill section 4** exempts shallow bed gas development leases from competitive bidding requirements based on the choice of leasing methods specified in that section for oil and gas leases.

**Bill section 5** exempts shallow bed gas development leases from minimum work commitments otherwise imposable on oil and gas leases.

**Bill section 6** substitutes, in the exemption from obtaining a waste disposal permit for disposal of waste produced from drilling, reference to shallow bed natural gas in place of an existing reference to coal bed methane.

**Bill section 7:** There is a general requirement in law that pipelines and exploration and production facilities may not be operated unless an oil discharge prevention and contingency plan has been developed and is in place for the pipeline and for the exploration and production facility. The amendment made by this section establishes an exception from that requirement for an onshore well drilling for shallow bed natural gas so long as that facility does not encounter a formation capable for producing oil.

**Bill section 8** sets out the steps that the operator of a shallow bed natural gas operator must take if the operation encounters a formation capable of producing oil.

**Bill section 9** sets the financial responsibility requirement applicable to an onshore exploration facility exploring for shallow bed natural gas at \$25,000.

**Bill section 10** requires the operator of a shallow bed natural gas operator to cease operating, with exceptions, when the operator penetrates a formation capable of producing oil while exploring for gas.

**Bill section 11:** AS 46.04.050 sets out exemptions from the laws establishing oil discharge prevention and contingency plans and financial responsibility requirements. This bill section notes the additional exemption from these provisions for shallow bed natural gas exploration

Representative Scott Ogan  
February 26, 1996  
Page 3

facilities except as may be required when that well penetrates a formation capable of producing oil.

**Bill section 12** prohibits use of the oil and hazardous substance release prevention and response fund ("470 fund") as a source of money to clean up a release attributable to a shallow bed natural gas development well.

\*

There are three additional uncodified provisions:

**Bill section 1** sets out legislative findings, a statement of purpose, and a statement of legislative intent for the measure.

**Bill section 13** affirms that persons holding coal leases in effect on the effective date of this Act have the right to develop coal bed methane and related gas held in association with the coal.

**Bill section 14** invites the commissioner of natural resources to suggest further legislation to implement the provisions of AS 38.05.177, the shallow bed gas development leasing provision.

JBC:klb  
96-129.klb

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 394

Revision Date: \_\_\_\_\_  
Title: An Act authorizing a program of natural gas and coal bed methane development...  
Sponsor: Reps. Ogan and Rokeberg  
Requestor: \_\_\_\_\_

Department Affected: Environmental Conservation  
BRU: Air and Water Quality  
Component: Water Quality

COMPONENT SERIAL NO. 2062

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

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

Estimate of any current year (FY96) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

This bill exempts from permitting under AS 43.03.100 solid and liquid wastes incidental to activities associated with coal bed methane exploration drilling. This is similar to an exemption in the existing statute. If permits are not required, there is no cost to the department.

Prepared by: Larry Jones  
Division: Director, Division of Administrative Services

Phone: 465-5010  
Date: 1/18/96

Approved by Commissioner: Lawrence Jones  
Agency: Department of Environmental Conservation

Date: 1/18/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 394

Revision Date: \_\_\_\_\_  
 Title: An Act authorizing a program of natural  
 gas and coal bed methane development...  
 Sponsor: Reps. Ogan and Rokeberg  
 Requestor: \_\_\_\_\_

Department Affected: Environmental  
 Conservation  
 BRU: Environmental Health  
 Component: Solid Waste

COMPONENT SERIAL NO. 2067

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE**

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

Estimate of any current year (FY96) cost: \$ 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

**ANALYSIS:** (Attach a separate page if necessary.)

The proposed change to AS 46.03.100(f) will not require a change in solid waste program activities, as permits are not now issued for on-site discharge or disposal of waste material from activities associated with coal bed methane exploration drilling.

Prepared by: Larry Jones *Lawrence Jones*  
 Division: Director, Division of Administrative Services

Phone: 465-5010  
 Date: 1/18/96

Approved by Commissioner: *Lawrence Jones*  
 Agency: Department of Environmental Conservation

Date: 1/18/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 394

Revision Date: Original Dept Affected Natural Resources  
 Title: An Act authorizing a program of natural gas BRU: Resource Development  
and coal bed methane development licensing and leasing... Component: Oil & Gas Development  
 Sponsor: Representative(s) Ogan, Rokeberg  
 Requestor: House Oil & Gas Component Serial No. 439

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	312.0	312.0	312.0	312.0	312.0	312.0
TRAVEL	11.0	11.0	11.0	11.0	11.0	11.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	8.0	8.0	8.0	8.0	8.0	8.0
EQUIPMENT	40.0	6.0	6.0	6.0	6.0	6.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	386.0	352.0	352.0	352.0	352.0	352.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	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	386.0	352.0	352.0	352.0	352.0	352.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	386.0	352.0	352.0	352.0	352.0	352.0

Estimate of any current year (FY96) cost: \$ \_\_\_\_\_

POSITIONS

FULL-TIME	6	6	6	6	6	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Six new positions within DO&G will be required to implement the gas and coal bed methane licensing and leasing program.

One Geologist II to determine areas for gas/coal bed leasing and licensing, evaluate licensing proposals and the geologic justification for conversions of licenses to leases. Represent DNR before AOGCC in determinations of oil potential for lease/licensing areas.

One Petroleum Economist I to perform the economic analysis required under AS 38.05.180 and AS 38.05.035 for gas/coal bed methane licensing and leasing.

Prepared by: Ken Boyd, Director Phone: 269-8800  
 Division: Oil & Gas Date: 6-Feb-96  
 Approved by Commissioner: [Signature] Date: 6-Feb-96  
 Agency: Natural Resources

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**Analysis continued**

HB394

One Cartographer II to prepare maps and graphics for the best interest findings and ACMP analyses, as well as for license offerings.

One Natural Resource Officer II to research, write and regularly revise best interest findings and Alaska Coastal Management Program (ACMP) analyses.

One Natural Resource Officer II to perform the land title and status reviews, assist in determining land ownership boundaries, determine tract acreage.

One Natural Resource Officer II to administer leases and licenses including the awarding and issuing of leases and licenses, adjudicating assignment of ownership, and the enforcement of lease and license terms.

Travel costs include costs for staff to attend public hearings, and public meetings concerning the issuing of leases and licenses.

Contractual costs include office space, printing and publishing of public notices and display ads.

Supplies costs include costs for paper, pens, computer disks and other misc. supplies.

Equipment costs include phones, desks, computers, and other misc. equipment.

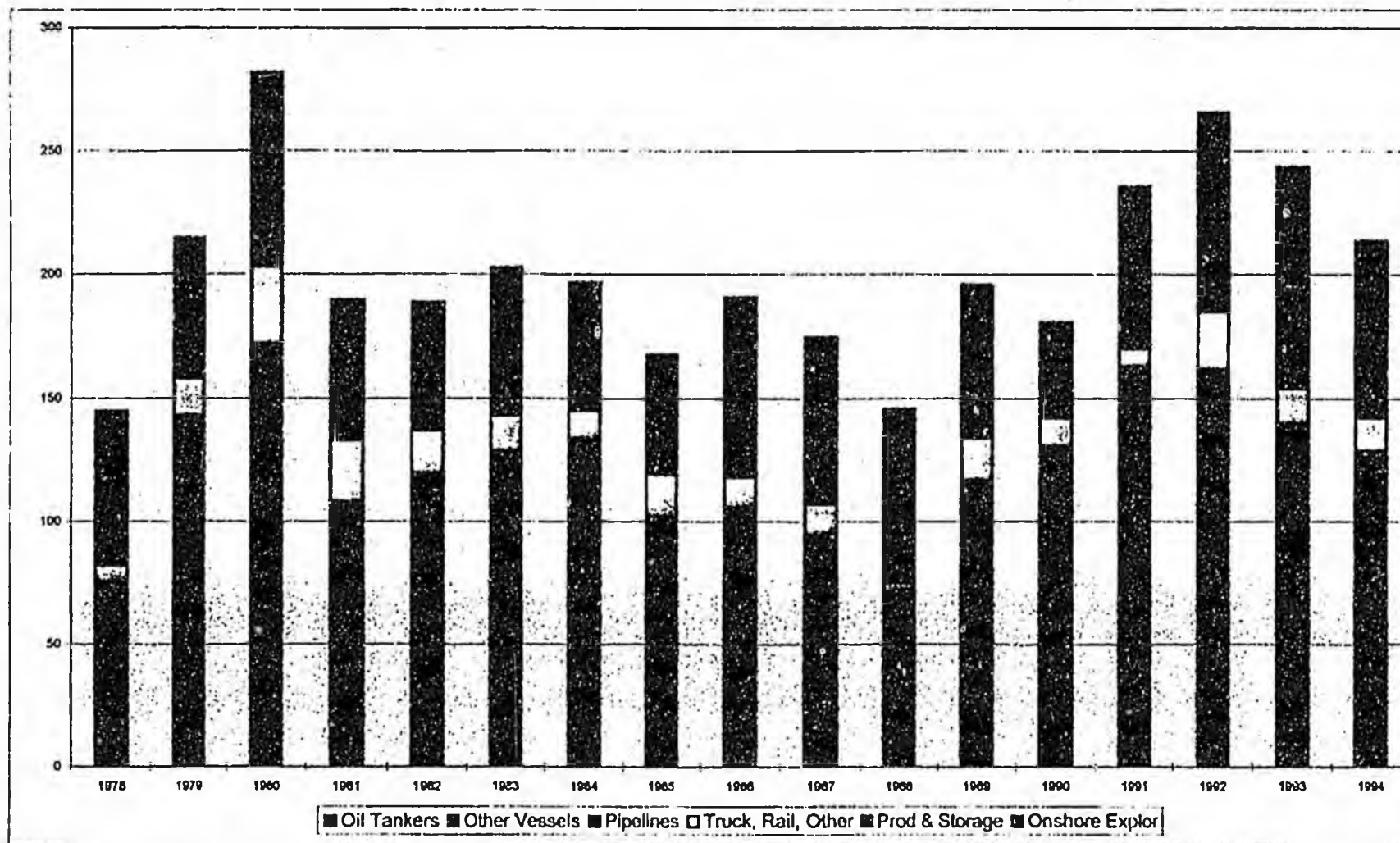
\*\* There are uncertainties in the bill which may change the fiscal impact, once clarified with the sponsor.

## Worldwide Numbers of Oil Spills

Greater than 10,000 gallons

Source: Cutter Information Corp's annual "Oil Spill Intelligence Report"

Year	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Oil Tankers	20	51	43	32	24	25	27	28	53	44	18	41	33	20	19	23	24
Other Vessels	33	47	44	36	50	53	37	22	27	32	27	45	45	36	22	21	28
Pipelines	22	45	85	40	48	51	70	52	26	19	26	31	53	107	121	98	77
Truck, Rail, Other	7	15	31	25	17	14	11	17	12	12	4	17	11	7	23	14	13
Prod & Storage	62	57	78	57	51	58	52	48	73	68	71	62	39	66	81	90	72
Onshore Explor	1	0	1	N/A	1	2	0	1	0	0	0	0	0	0	0	0	0
<b>Totals:</b>	<b>145</b>	<b>215</b>	<b>282</b>	<b>190</b>	<b>189</b>	<b>203</b>	<b>197</b>	<b>168</b>	<b>191</b>	<b>175</b>	<b>146</b>	<b>196</b>	<b>181</b>	<b>236</b>	<b>266</b>	<b>244</b>	<b>214</b>



# Calista Corporation

801 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279-5516 Facsimile (907) 272-5060

Norman Rokeberg  
State Representative  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

February 26, 1996

Dear Representative Rokeberg,

Calista Corporation is writing this letter in support of CS for House Bill No. 394 which you and Representative Ogan have sponsored. We think it is a necessary measure to assist the development of cheap local energy sources for rural Alaska. Since over 20,000 of those rural residents live in the Calista Region we wholeheartedly support this concept.

We like it so much, we wish you would also make portions of the bill apply to more than just state land. Virtually all of the land surrounding our 50 villages is either private ANCSA land or Federal land.

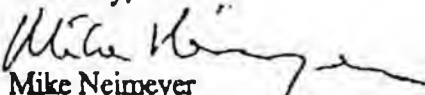
In Section 4 of your bill you have added a new subsection (5) to AS 46.03.100(f) and have removed the language OR COAL BED METHANE DRILLING from subsection (3). The new language would remove any protection that a private landowner would otherwise enjoy under the old version. We would suggest the following language which we think would provide this protection, that you are seeking on state leases, to activities on private and Federal land.

A new Subsection (5) would read:

(5) the discharge or disposal of waste material or water from activities associated with natural gas exploration drilling from shallow bed gas deposits as defined in AS 38.05.177  
(a)(1) [UNDER A LEASE AUTHORIZED BY AS 38.05.177].

While this language may not be the most artful drafting, I do believe it would at least serve both of our purposes. We would be happy to work with you or a member of your staff to address this issue.

Sincerely,

  
Mike Neimeyer  
VP Land and Natural Resources

c.c. Ivan M. Ivan

# ALASKA RURAL ENERGY INITIATIVE



Division of Energy  
Department of Community and Regional Affairs  
State of Alaska

June 1995

## EXECUTIVE SUMMARY

There are over 150 small villages in rural Alaska that are not accessible by road, that are characterized by severe climate and widespread poverty, and that are heavily dependent on fuel oil for power generation and heat. The average population per village is about 250 residents, mostly Alaska Natives.

### Bulk Fuel Storage

In most cases, the village fuel supply must be delivered by barge during a brief ice-free shipping season and stored throughout the year. Every village relies on above-ground tank farms for essential fuel storage though few of these facilities presently meet minimum standards of safety or environmental protection. Most lack adequate foundations, dikes, and piping systems as well as basic security fences. Many are rusted, improperly sited, and violate electrical codes.

An increasing number of villages now face the possibility that fuel will not be delivered because of these deficiencies. Fuel carriers are threatened with liability for environmental damage if they fill village tanks that subsequently leak. Most recently, the U.S. Coast Guard, with regulatory jurisdiction over fuel transfer facilities between the delivery barge and the storage tank, has sent letters to the owners of nearly 80 fuel storage facilities threatening to deny fuel deliveries unless deficiencies are corrected.

The estimated cost for repair and renovation of fuel storage facilities in rural Alaska is \$200 million, excluding future inflation. This does not include remediation of contaminated soil and groundwater.

### Electric Utilities

Approximately 80 communities in rural Alaska are served by small, single-village electric utilities; roughly the same number are served by larger, multi-village utilities. Most of these communities have no transmission link to any other community and are entirely dependent on local diesel generators for their power supply. The cost of power in rural Alaska is high, roughly 4 to 5 times the average elsewhere in the United States.

Particularly in the single-village utilities, power plant and distribution systems often do not meet accepted utility standards for safety, efficiency, reliability, and environmental protection. These villages require adequate electric service, however, for economic advancement and for support of other community facilities. Upgrading the physical plant of the electric utility to meet minimum standards is a pre-condition for utility self-reliance, as well as community self-reliance, in the future.

The estimated cost to upgrade the single-village utilities is \$25 million, excluding future inflation. Upgrade costs for the multi-village utilities have not been systematically estimated.

### Proposal for Funding

Policies, programs, and expenditures of both the State and Federal governments have contributed over the years to the relative permanence of remote Native villages in Alaska. Resolving the problem of deteriorating fuel tanks and substandard electric utility systems

is beyond the means of village residents. A joint State/Federal effort is needed to bring these facilities to the point where they no longer represent a safety or environmental hazard, and can be maintained and replaced as necessary without further long-term government support. To this end, the following is proposed:

1. The State and Federal governments will together make available for expenditure \$25 million per year -- \$12.5 million each -- until, in combination with local match contributions, a total investment of \$250 million is reached. While the number of years required to reach this investment total will not exceed 10, the actual number of years may be less depending on the size of the local match contributions. The \$250 million total includes the estimate of \$200 million for bulk fuel storage, \$25 million for upgrading single-village electric utilities, and an allowance of \$25 million for additional electric utility upgrades and for inflation.

It is proposed that the Federal contribution be appropriated to the Rural Utilities Service in the U. S. Department of Agriculture and, from there, channeled to the Division of Energy in the Alaska Department of Community and Regional Affairs, which will administer the program.

2. The funds will be expended as grants. Cash or in-kind match from participants will be required. The Division of Energy will retain authority to approve project design.
3. For bulk fuel storage facilities, a key objective will be to consolidate existing tank farms into a smaller number of code-compliant fuel storage facilities. The Division of Energy will meet with tank farm owners to develop consolidation agreements which will identify, for each consolidated facility, a single entity to assume ownership and operating responsibility, and which will set out each participant's rights and obligations. Each participant will be assured the right to solicit competitive bids for fuel delivery in the future.

Grant agreements with the designated facility owners will incorporate the consolidation agreements, will provide assurances with regard to long-term operation and maintenance of the facilities, and will establish requirements for periodic facility inspection and reporting.

4. For electric utility upgrades, project approval will be contingent on local commitment to professional utility management in the future. The Division of Energy will meet with utility boards and managers to define the upgrade projects and to negotiate utility management agreements. In these agreements, utilities may commit to joining a consolidated utility organization or to other arrangements that will ensure capable utility management.

Grant agreements will incorporate the utility management agreements and will include a utility pledge not to seek additional State or Federal grants for ordinary capital improvements such as normal renewal and replacement of diesel generating plant.

5. For the first year of this initiative, the State is seeking \$16 million in federal funds to match a prior commitment of \$16 million in State funds: \$10 million for bulk fuel storage and \$6 million for electric utility upgrades.

### 3. REMOTE VILLAGE ELECTRIC UTILITIES

#### 3.1 Electric Utilities in Rural Alaska

There are over 150 small communities in rural Alaska with electric utility service provided mostly by local diesel generators, and without any electrical interconnection outside the community. These communities are served by roughly 100 separate electric utility organizations. Some of these utilities have developed sufficient scale economies and expertise to operate with reasonable efficiency, to maintain accepted utility standards, and to be capable of financing their own plant requirements. These utilities typically serve a regional center or serve a number of small communities. In most rural Alaska communities, however, the electric utility operates generation and distribution plant that does not comply with accepted utility standards, and government assistance is required to finance capital improvements as well as on-going operations.

The cost of power provided by these village utilities is exceptionally high: median residential rates are in the range of 40-45 cents per kWh, 4 to 5 times the average elsewhere in the United States. For this reason, since 1981 the State has funded a power cost equalization program under which the State pays a portion of the monthly electric bill for customers of rural electric utilities, and has spent about \$200 million on the program to date. While this has enabled residents of remote villages to afford basic electrical service, the current annual program cost of \$20 million cannot be sustained by the State indefinitely as oil production from Prudhoe Bay and associated State revenues continue to decline.

Most of these isolated village utilities provide their own management, administrative services, maintenance and operations, constituting a very high burden of fixed costs per unit of electricity sold. Because competent mechanical and electrical expertise is often difficult to maintain in these organizations, generator maintenance is often sporadic and unorganized -- a situation which leads directly to catastrophic and expensive breakdowns. Merger with a larger utility organization offers the opportunity to benefit from sufficient scale economies to overcome some of these disadvantages. However, before such consolidation can be considered, the physical plant of the village utility must be improved to the point that it meets accepted industry standards.

Reliable electric service is needed in the villages not only as a prerequisite for economic advancement but also to support other necessary community infrastructure, including water and sewer systems. For the continuation of electrical service over the long-term in these isolated communities, electric utility plant and operations must be upgraded to the point that government support is no longer needed. Ideally, by bringing the physical plant up to standards either of the Rural Utilities Service (RUS, formerly the Rural Electrification Administration), or of the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), the isolated village utilities can be merged into new or established regional utilities that are self-reliant with respect to operations and capital financing. These regional organizations may be cooperatives, investor-owned utilities, or regional governmental entities.

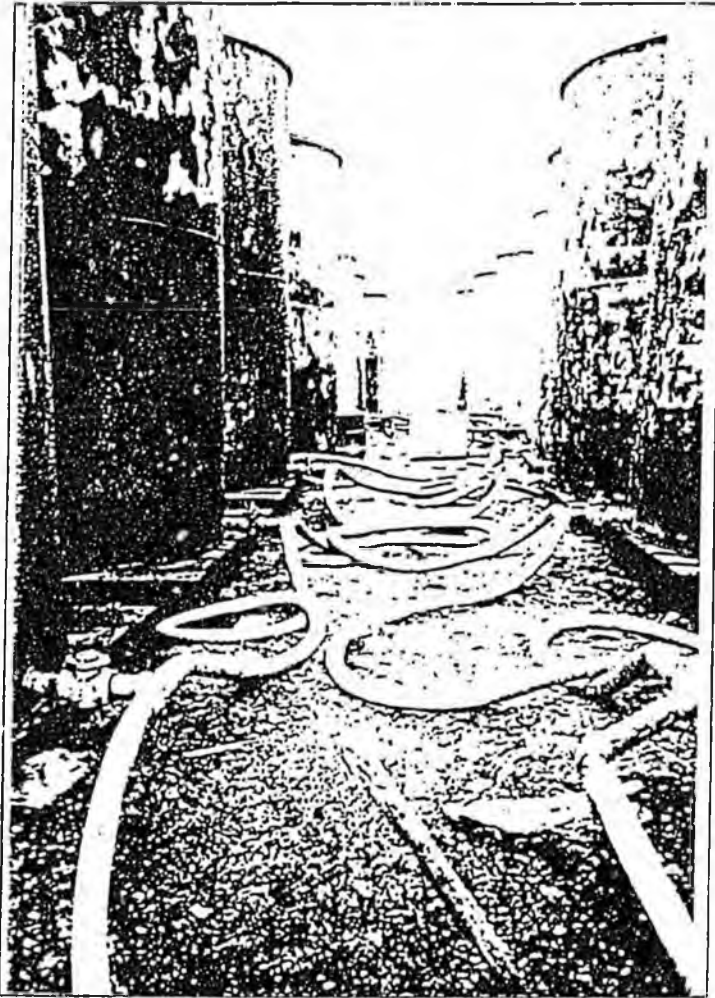
### 3.2 State Effort to Upgrade Rural Utilities

Since 1990, the State has expended over \$10 million for upgrade of electric utility systems in rural communities receiving power cost equalization payments, excluding expenditures for evaluation and construction of alternatives such as rural hydroelectric projects. Included in Attachment 3 is appropriation and expenditure detail for \$6 million committed by the State for this purpose in fiscal years 91-93.

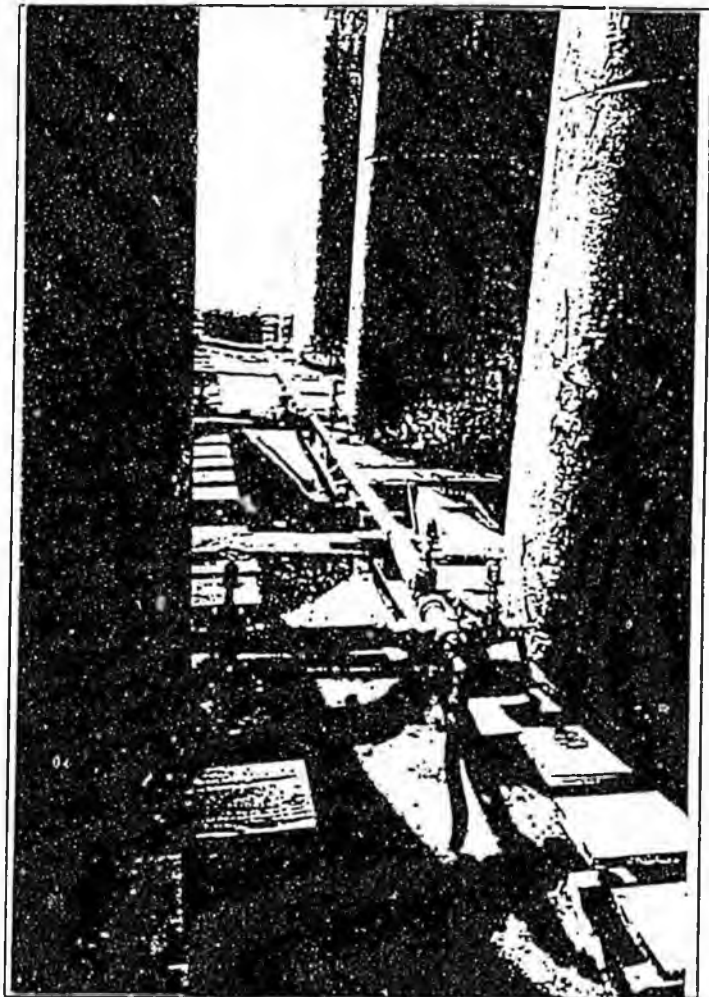
### 3.3 Estimated Cost to Upgrade Rural Utility Systems to Industry Standards

Approximately 80 rural villages are each served by their own electric utility organization. For 52 of these villages, cost estimates totaling \$16.2 million have recently been prepared to upgrade generation and distribution systems in accordance with minimum accepted utility standards. Appendix B includes the system evaluation and cost estimate summaries for each of these 52 village electric utilities. Based on these results, the estimated upgrade cost for the 80 independent, single-village utility systems is approximately \$25 million, excluding any adjustment for future inflation. Detailed estimates of required upgrade costs have not been systematically prepared for the additional communities that are served by regional utility organizations, or for the larger communities that serve as regional centers.

The estimates presented for the 52 single-village utilities in Appendix B provide only for code compliance of diesel dependent remote utilities, and do not include any additional amount for funding alternatives to local diesel generation such as small hydro or wind generation where appropriate resources are available, or transmission lines linking villages where feasible. Implementing these alternatives throughout rural Alaska is estimated to require considerably more capital resources. The State will continue to support such alternatives over the long term, but is seeking in this proposal the more limited objective of meeting basic utility standards as a prerequisite for energy self-reliance.

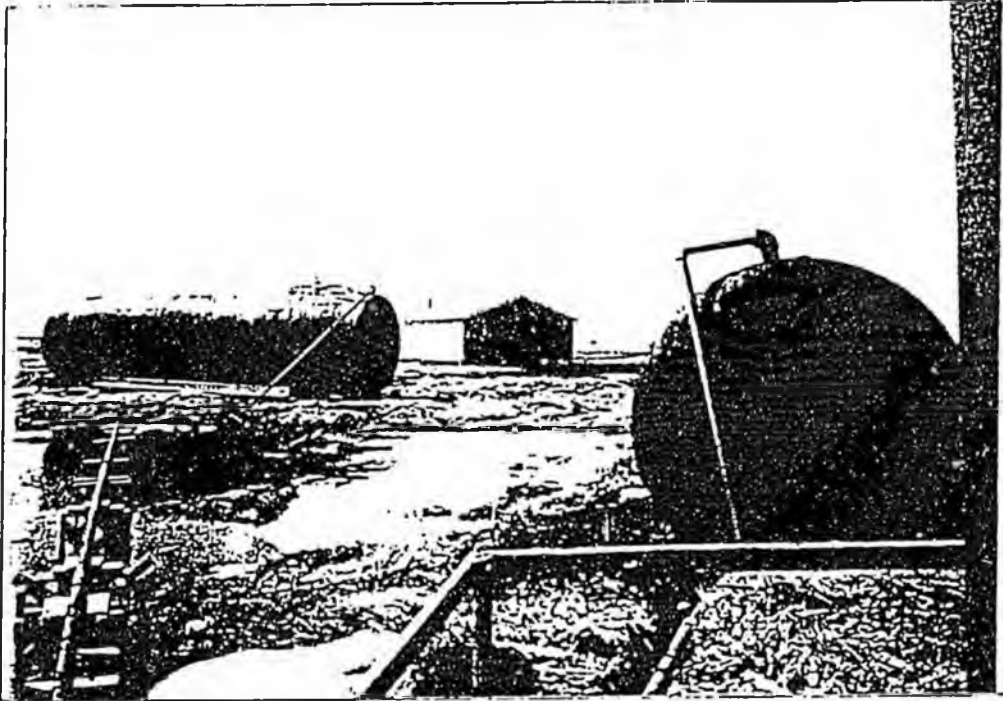


**Photograph A.1**  
Severely corroded tanks connected by rubber hose. Evidence of fuel spillage throughout area.

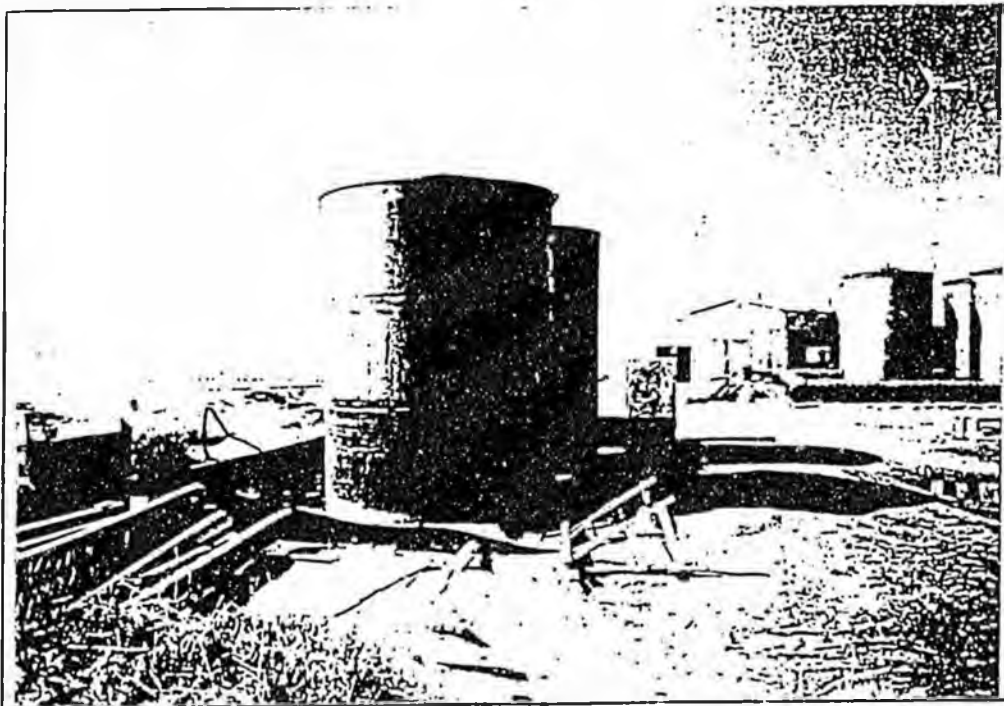


**Photograph A.2**  
Severely corroded tanks on improper foundations (small dimension wood cribbing).

ALASKA ENERGY AUTHORITY  
RURAL ALASKA BULK FUEL ASSESSMENT  
SUMMARY REPORT AND RECOMMENDATIONS



**Photograph A.3**  
Tanks on improper foundations with no means of secondary containment. Facility located in close proximity to a river.



**Photograph A.4**  
Corroded tanks located immediately adjacent to ocean. Steel dike completely rusted out and useless as secondary containment.

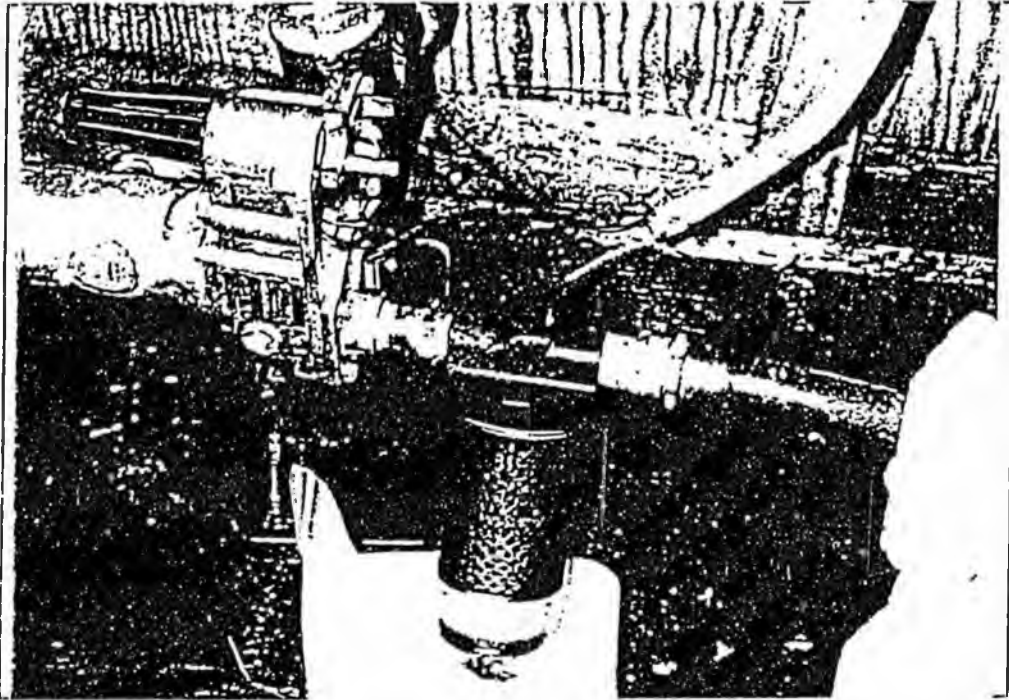
ALASKA ENERGY AUTHORITY  
RURAL ALASKA BULK FUEL ASSESSMENT  
SUMMARY REPORT AND RECOMMENDATIONS



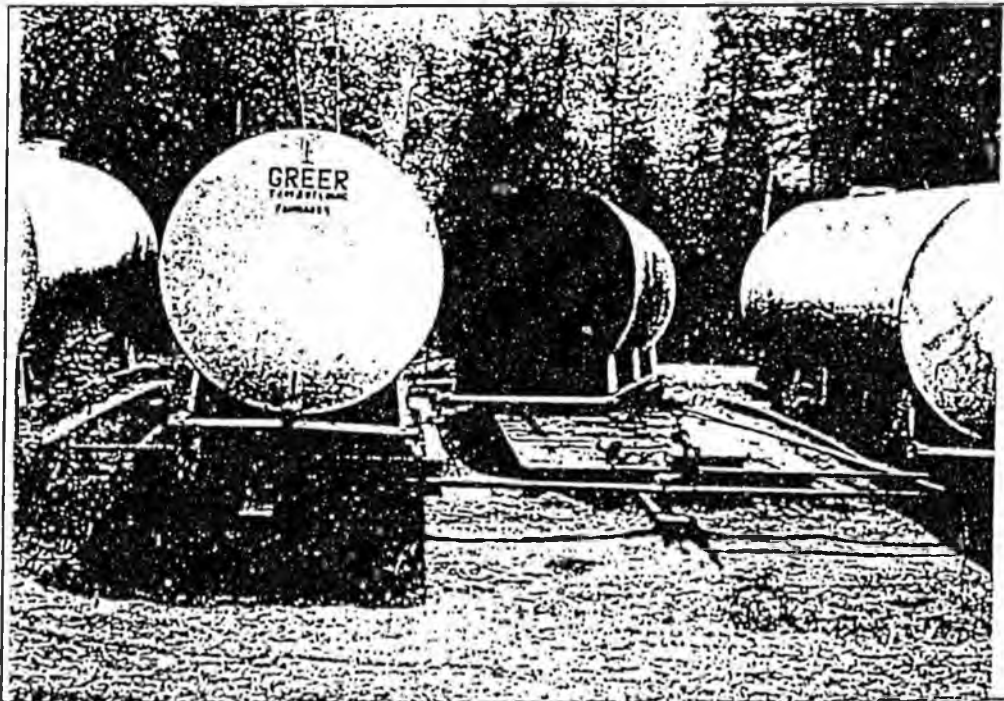
**Photograph A.5**  
Tanks scattered along  
river bank with no dikes,  
no security, and improper  
foundations.



**Photograph A.6**  
Severely dented tank with  
no foundation. Placed at  
edge of beach with no  
dike. Gravity dispensing  
of fuel. No security.

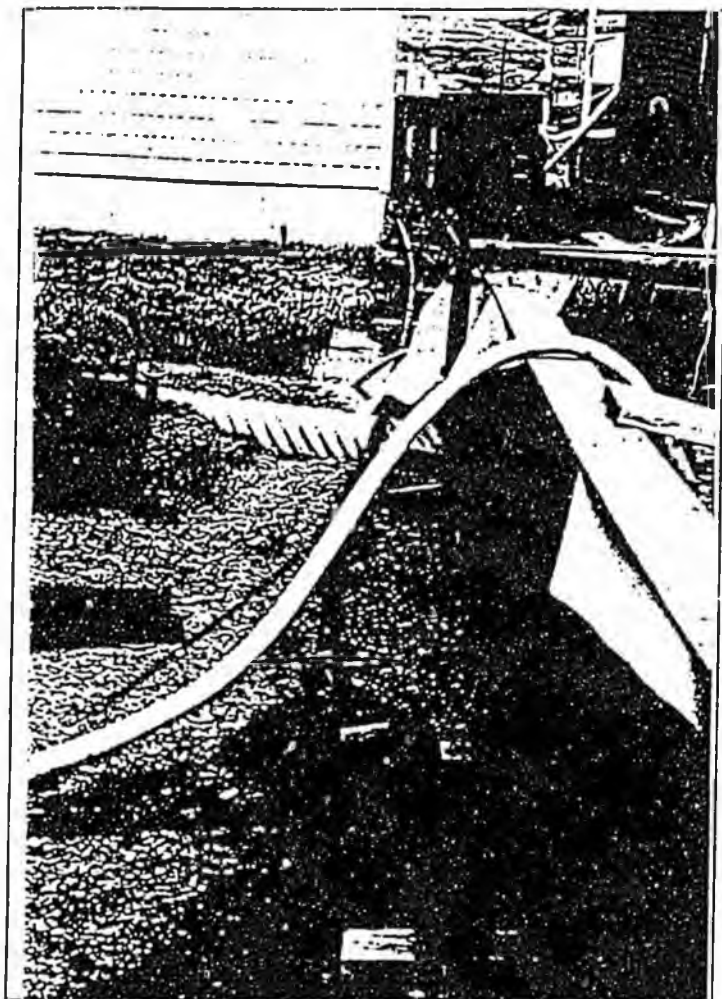


Photograph A.7  
Improper wiring adjacent  
to leaking gasoline piping.



Photograph A.8  
Improper piping system  
and poor operational  
procedures resulted in  
explosion of tank.

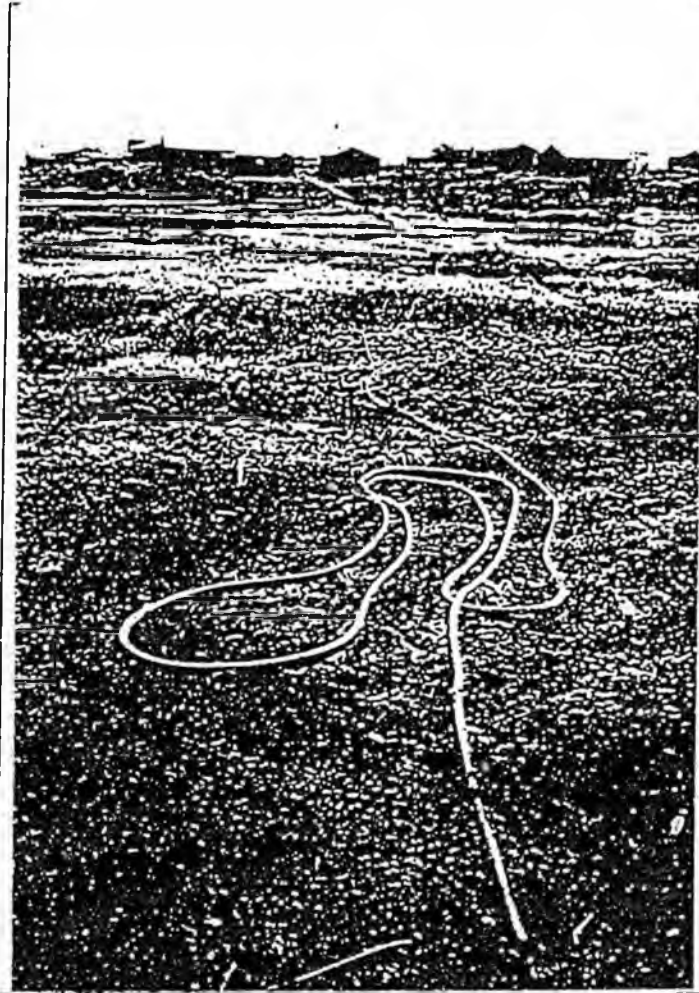
ALASKA ENERGY AUTHORITY  
RURAL ALASKA BULK FUEL ASSESSMENT  
SUMMARY REPORT AND RECOMMENDATIONS



Photograph A.9  
Fuel stain on ground caused by leaking  
piping joints.

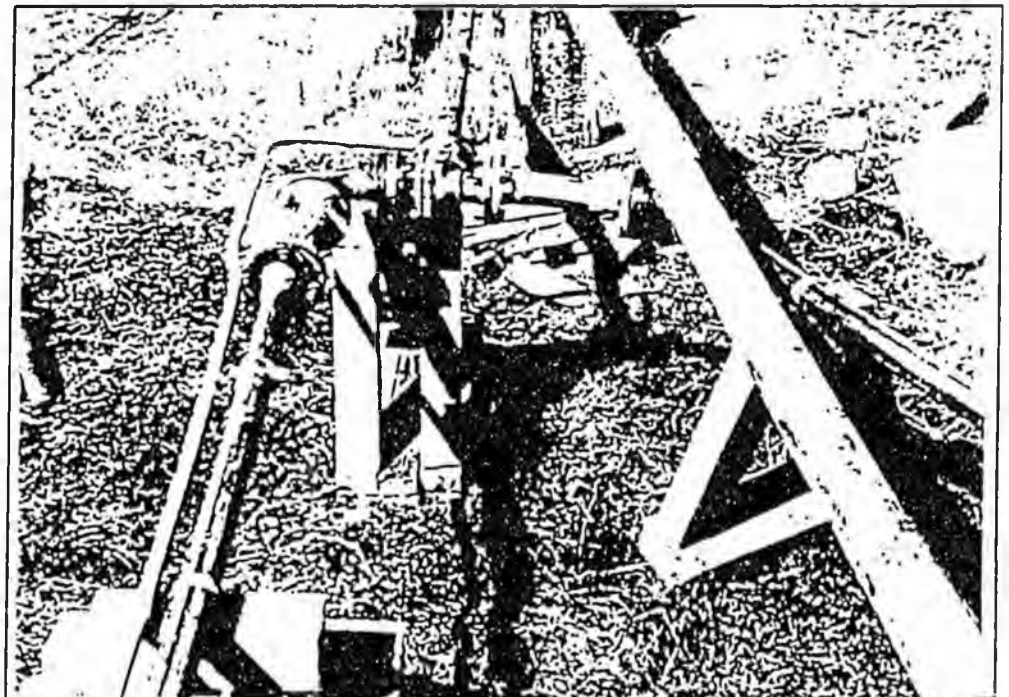
Photograph A.10  
Faulty piping system  
reportedly broke during  
winter, spilling an  
estimated 50 gallons of  
fuel.





**Photograph A.11**  
1200' long hose used to transfer diesel fuel from storage tanks to power plant on a weekly basis.

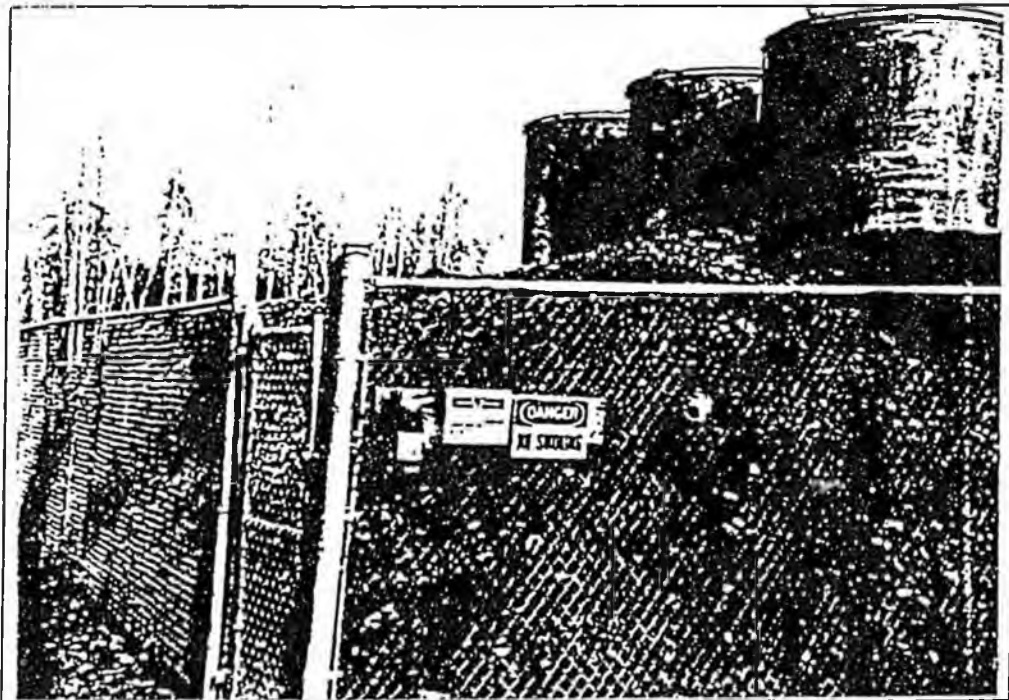
**Photograph A.12**  
Hose replaced with proper welded steel pipeline by AEA with Bulk Fuel Emergency Repair program funds.



ALASKA ENERGY AUTHORITY  
RURAL ALASKA BULK FUEL ASSESSMENT  
SUMMARY REPORT AND RECOMMENDATIONS

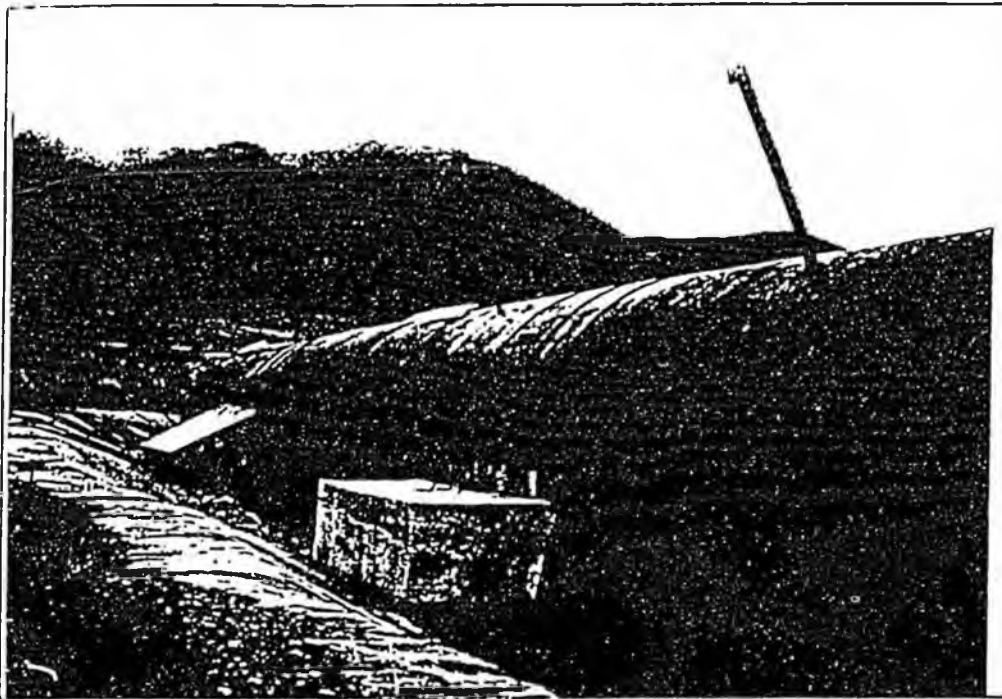


**Photograph A.13**  
Tank farm located within a flood plain. Tanks tipped over and facility severely damaged by flood.

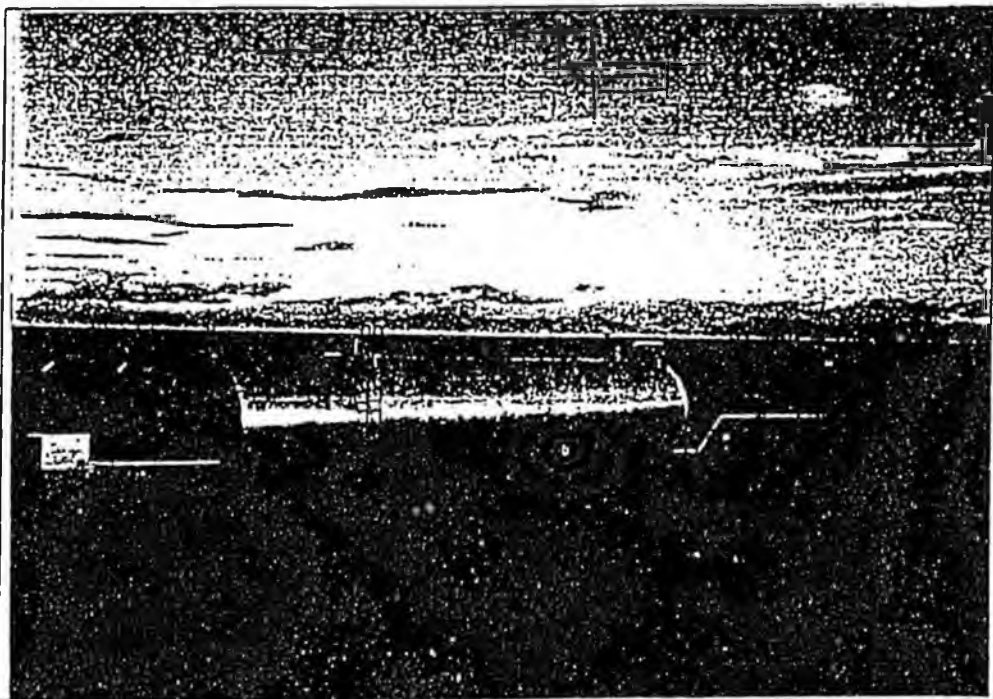


**Photograph A.14**  
Tanks placed in new lined dike on gravel pad above flood stage. Facility repaired to meet applicable code and regulation requirements. Construction administered by AEA, supported by State and Federal disaster relief funds.

ALASKA ENERGY AUTHORITY  
RURAL ALASKA BULK FUEL ASSESSMENT  
SUMMARY REPORT AND RECOMMENDATIONS



**Photograph A.15**  
Tank installed in improper  
dike with no foundation.  
Due to poor installation,  
facility was never used.



**Photograph A.16**  
Tank refurbished and  
installed on proper  
foundations in new dike.  
Construction administered  
by AEA using capital  
appropriation funds.

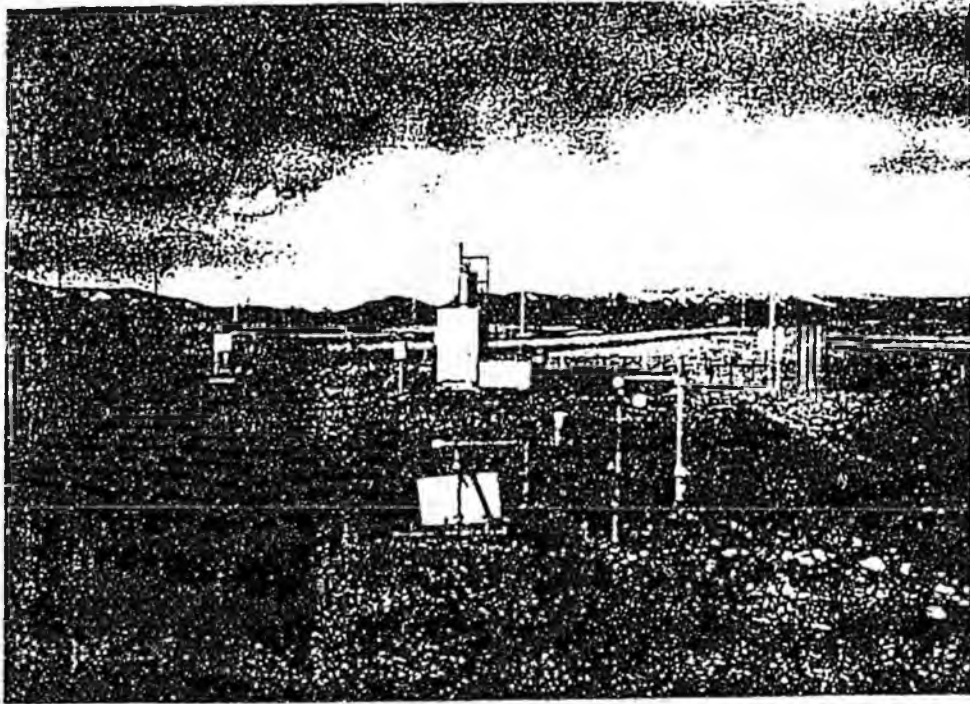


PHOTO #4

-At Left: Solar powered communications to report status  
-At Center: Water Gas separator with filters.  
-At Right: Metering system with separate communications system  
-Well head in the foreground.  
Near Farmington, New Mexico

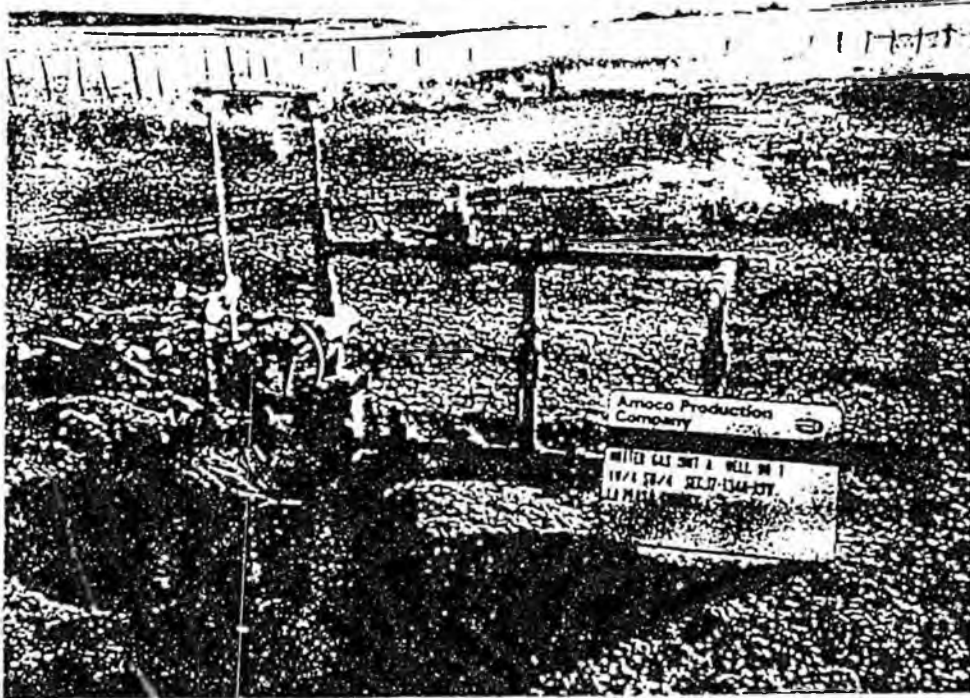


PHOTO #5

Coal Bed Methane well head  
Near Farmington, New Mexico

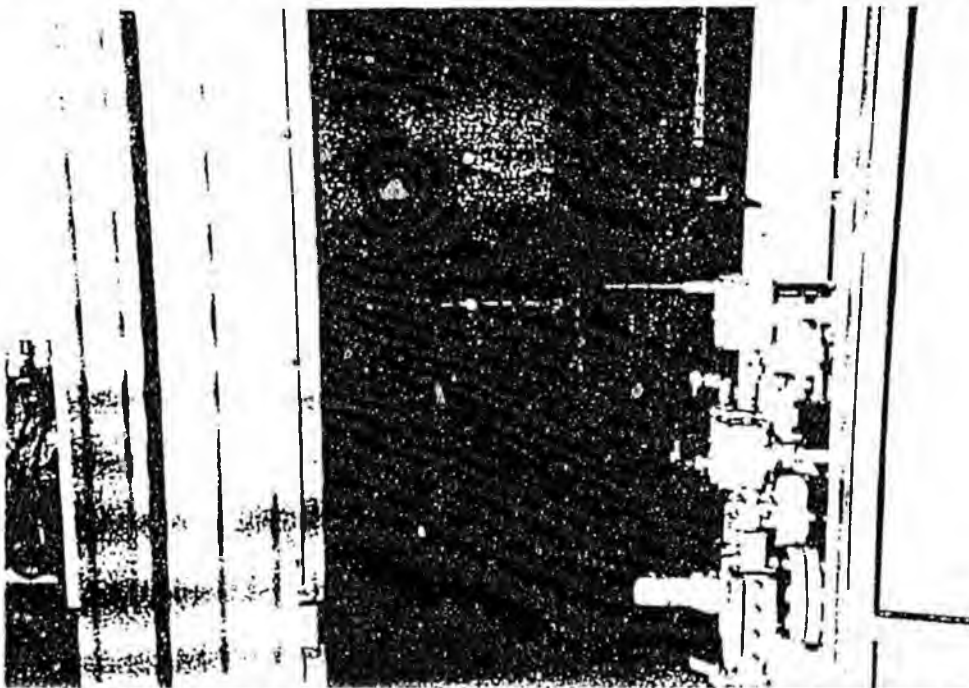


PHOTO #6

Meter Skid; Note the chart in the upper-center of photo important for well operations  
All equipment is gas or solar powered.  
Near Farmington, New Mexico

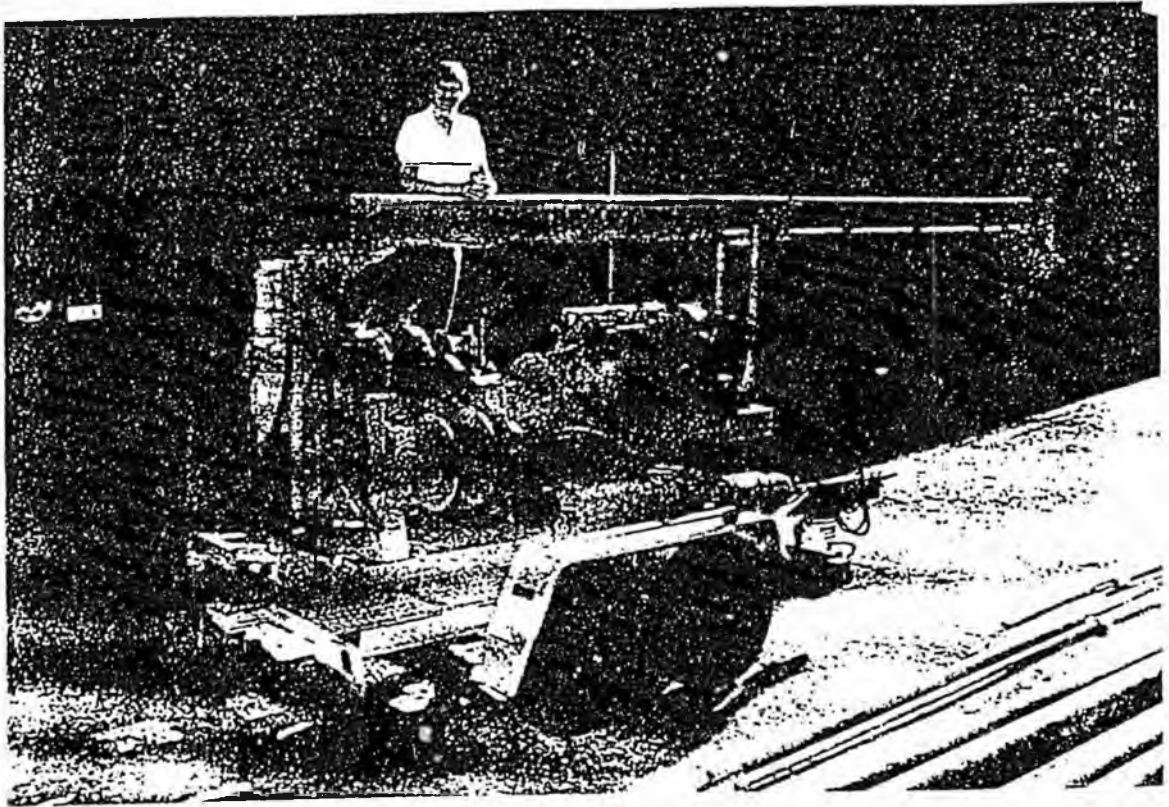


PHOTO #12

*Lapp Resources' portable drill rig, used for exploratory drilling for coal bed methane.  
courtesy, Lapp Resources, Inc., 1995*

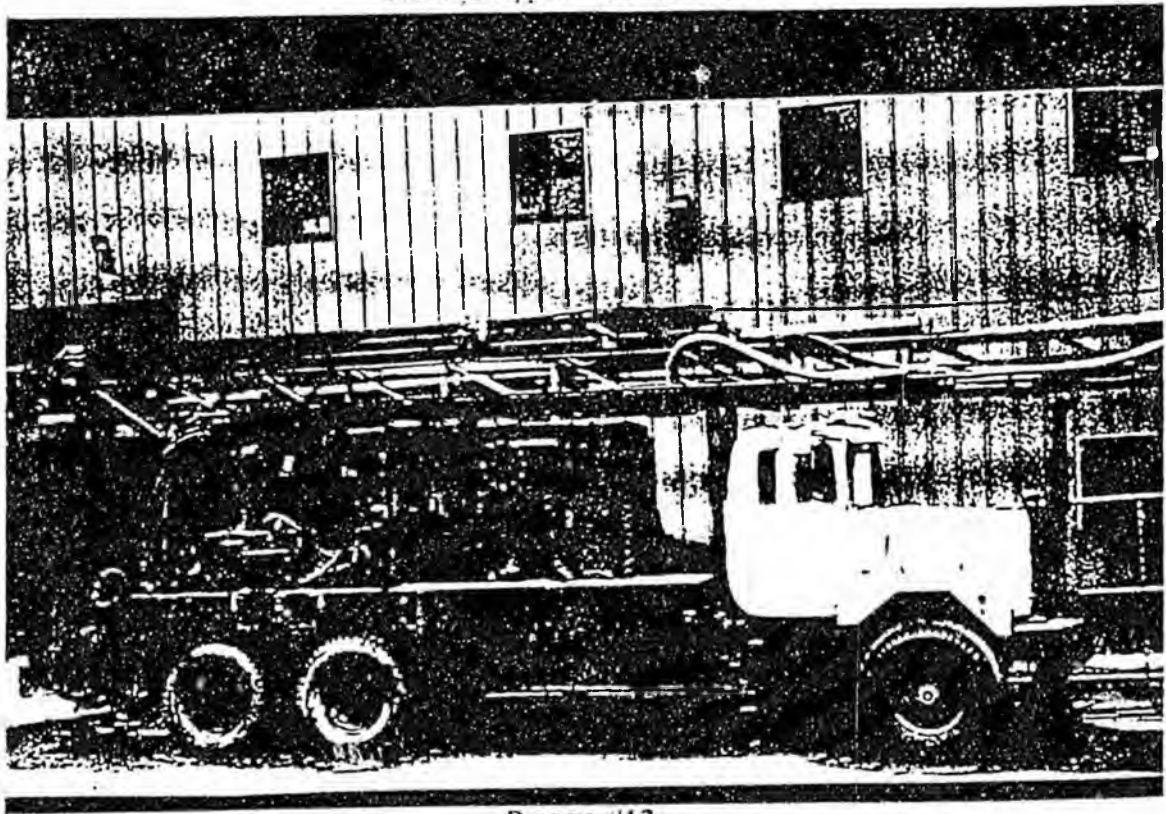


PHOTO #13

*Ambler Drilling's rotary-hammer drill rig.  
courtesy, Ambler Drilling, 1995*

JAN 7 1993

# ***RURAL BULK FUEL TASK FORCE***

Preliminary  
Report to the Governor



*Policy Recommendations*

November 25, 1993

# FINANCE

## *Issues:*

- *The Rural Alaska Bulk Fuel Assessment Program, Summary Report and Recommendations, March 1992, prepared by the Alaska Energy Authority, the Noncrude Facility Survey, January 1992, and the Small Noncrude Oil Terminal Report, Task One: Facility Identification and Inventory, November 1992, prepared for the State of Alaska, Department of Environmental Conservation, are testimony to the extreme costs related to repairs, improvements, new construction and remediation for Alaska's many rural bulk fuel storage facilities. Preliminary estimates range from between \$155.0 M to \$200.0 M for facility improvements and another \$200.0 M for remediation!*
- Access to funding for communities is extremely limited and practically non-existent for small "for-profit" private sector operators.
- Funding that is available has few conditions attached for ensuring long range commitment by grantee or borrower for proper construction or continued facility maintenance or operator training programs.
- Remediation costs are often extraordinary. Existing funding programs require neither planning nor commitment to necessary facility clean up. Consequently, public health and safety are under continual threat.
- There is little access to federal funding, even when federal agencies acknowledge previous ownership of non-compliant facilities. The state receives no direct federal funding at this time for coordinated resolution of fuel storage problems.

# Alaska Oil and Gas Association

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121 West Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907) 272-1481 Fax: (907) 279-8114

March 6, 1996

The Honorable Scott Ogan  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska

## HB 394, Gas and Coal Methane Licenses & Leases

Dear Representative Ogan:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

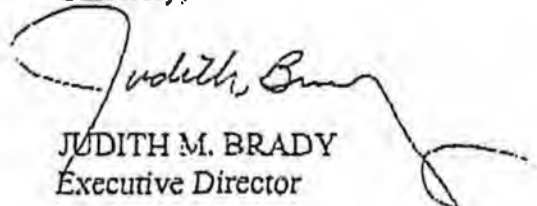
On February 7, 1996, the Association expressed its concern about provisions in HB 394, which also were embodied in CSSB 176, exempting natural gas exploration facilities from compliance with financial responsibility requirements.

The Association has reviewed the Oil and Gas Committee Substitute for HB 394 and believes Section 9 of CSHB 394 which establishes financial responsibility requirements for onshore shallow bed natural gas exploration facilities addresses its concern. AOGA strongly supports retention of adequate financial responsibility requirements in subsequent versions of the bill.

AOGA supports Section 12 of CSHB 394, which prohibits use of the '470 Fund' for clean up of releases attributable to shallow bed natural gas operations, and prefers that it be retained if possible.

The Association continues to believe that it is in the state's best interest to require that consistent, equitable and adequate financial responsibility requirements be met by all persons/companies conducting oil and gas exploration operations in Alaska.

Sincerely,



JUDITH M. BRADY  
Executive Director

**HB**

**397**



# Alaska State Legislature

House of Representatives  
Special Committee on Fisheries

## SPONSOR STATEMENT SSHB 397 FISHERY RESOURCE LANDING TAX & SEAFOOD MARKETING ASSESSMENT

### Summary

This legislation is designed to more precisely align the current fisheries resource landing tax (AS 43.77) with the fisheries business tax (AS 43.75) and the ASMI seafood marketing assessment provisions (AS 16.51). This is needed to avoid future legal questions and add a measure of fairness to the tax. Specifically, SSHB 397 clarifies that the landing tax is an occupational tax and equalizes tax rates and credits with the fisheries business tax.

In SSHB 397, the 3.3 percent landing tax which includes .3 percent for ASMI is reestablished to a 3 percent landing tax with a separate .3 percent seafood marketing assessment application. This separates the marketing assessment in the landing tax statutes and equalizes the landing tax with the shore-based fisheries business tax.

Throughout SSHB 397, the term "purchased" is replaced with "produced" in order to eliminate the loophole of those who do not specifically purchase seafood and thereby avoid the ASMI assessment. Then, in Section 14, the word "produced" is then defined to include "purchase, production, landing, or export of a fisheries resource." The point of valuation at which the product is taxed the ASMI assessment does not change with this legislation.

Also, this legislation specifies that a person subject to the landing tax is liable for the .3 percent seafood marketing assessment and that all persons who produce less than \$50,000 in seafood products per calendar year would be exempt from the assessment. This encourages small operator value added processing.

The provisions in SSHB 397 retroactively apply effective January 1, 1994.

### Background

Two years ago the Legislature passed the Fishery Resource Landing Tax which established a tax on offshore fisheries which landed product in Alaska. Prior to January 1, 1994, these fishery resources were not subject to any Alaska state fishery tax.

The landing tax provisions apply to fishery resources that are caught and processed outside Alaska's three mile jurisdiction and thereafter brought into the state and first landed in this state. As currently in statute, the Landing Tax levies a 3.3% tax on the value of the unprocessed resource which is landed in Alaska for shipment to market elsewhere.

The 3.3 percent is the same percentage applied to shore-based fisheries businesses under the Fisheries Business Tax and the ASMI provisions combined. Of the 3.3 percent landing tax, ASMI receives .3 percent of the tax collected. 50 percent of the tax revenues collected (excluding the ASMI portion) are shared with local governments. This mirrors the fisheries business tax municipal sharing.

The fisheries business tax has been around since 1949 and applies to those fishery resources that are either caught or processed in Alaska's waters. The landing tax does not apply to fishery resources subject to the fisheries business tax.

### Update

The American Factory Trawler Association filed suit on February 17, 1994 in the State Superior Court claiming the Landing Tax discriminated against interstate commerce. The Superior Court dismissed the case for failure to exhaust administrative remedies. The case is now being tried administratively in the Department of Revenue.

H753: DOR 1/17/96

**DEPARTMENT OF REVENUE  
INCOME & EXCISE AUDIT DIVISION  
SECTIONAL ANALYSIS OF SPONSOR SUBSTITUTE FOR HB NO. 397  
A BILL FOR AN ACT ENTITLED**

*"An Act relating to the fishery resource landing tax and to the seafood marketing assessment; and providing for an effective date."*

**Section 1** provides a statement of the legislative findings, intent, and purpose for the imposition of the landing tax. The proviso confirms those findings made by the Department of Revenue in regulations adopted contemporaneous in time with the enactment of the landing tax legislation. This section will make it clear that the landing tax is a compensatory fisheries occupation tax on in-state activities that is intended to complement the fisheries business tax under AS 43.75. Section 1 will strengthen the state position in litigation since it encompasses findings that are currently being disputed by the trawler industry.

**Sections 2 through 6** amend AS 16.51.120 to substitute the word "produce" for "purchase". Currently, the seafood marketing assessment is levied on the value of products purchased in Alaska. A processor pays the assessment on a percentage of the value the processor paid for the seafood products. The levy of the assessment on seafood products purchased based on value paid by the processor arguably might not encompass the custom processor and exporter situations where the purchase is not made by the processor. It also would not fit the landing of fishery resources. The value of seafood products produced is addressed in Section 11 to include all these situations.

**Section 7** amends AS 16.51.120 by adding a subsection to exempt from the assessment processors, as defined in Section 13, who produce less than \$50,000 in value of seafood products. The tax liability under AS 43 would be unaffected by this exemption. This exemption is consistent with current law.

**Sections 8, 9 and 10** are conforming amendments to AS 16.51.130 and AS 16.51.150 to substitute the word "produce" for "purchase".

**Section 11** amends AS 16.51.150 by adding new subsections to generally provide that the value of seafood products produced is the sum of the values under AS 43.75.015 (fisheries business tax), AS 43.75.100 (export and custom processor situations under fisheries business tax), and AS 43.77 (landing tax). Thus, the value used for purposes of the ASMI ("ASMI") assessment will be the identical value used for purposes of AS 43.

**Section 12** amends AS 16.51.160 to correspond with the change from purchase

h753:DOR 1/17/96

to produce. In addition, a technical correction is made to move the return due date from April 1 to March 31 to correspond to the due dates for fisheries business and landing tax returns.

**Section 13** repeals and reenacts AS 16.51.180(3) to define a processor as a person who processes, custom processes, or exports fishery resources and is liable for the fisheries business tax under AS 43.75, or who is liable for the landing tax under AS 43.77.

**Section 14** amends AS 16.51.180 by adding a new paragraph to define "produce" as an activity upon which a fisheries business or landing tax liability is imposed. In conjunction with taxpayers other than those subject to the tax under AS 43.75.015 being made subject to AS 16.51, an eligible processor is defined as a person liable for the assessment levied under AS 16.51.120. This gives equal voting and other rights under AS 16.51 to all persons liable for the ASMI assessment.

**Sections 15 through 20** make technical amendments to the education credit provisions throughout AS 43 to include the landing tax education credit in the combined \$150,000 limitation.

**Section 21** amends AS 43.77.010 by using language similar to that found in AS 43.75 to articulate that the tax applies to a person who engages or attempts to engage in a fisheries business in the state. This provision corroborates the Department of Revenue position that the tax is a business occupation tax, as opposed to a property tax on the resource as argued by the trawler industry.

This section also reduces the tax rate from 3.3% to 3% to coincide with the fisheries business shore based tax rate under AS 43.75. As originally enacted, the 3.3% tax rate was composed of a 3% tax and a .3% Alaska Seafood Marketing Institute levy. The trawler industry attacked the 3.3% as imposing a higher rate under AS 43.77 than is imposed under AS 43.75. This amendment extinguishes that argument by removing the ASMI levy from AS 43.77 to achieve equal tax rates under both AS 43.77 and AS 43.75.

The tax rate for a developing commercial fish species is established at 1% of the value of the fishery resource. Developing fish species are those species designated by Fish and Game under AS 16.05.050. These developing species are eligible for a 1% tax rate under the fisheries business tax provisions. The trawler industry argued that AS 43.77 imposed an unconstitutionally higher tax burden than was imposed under AS 43.75 for these species. The amendment addresses that argument and corrects an unintended consequence of the original legislation.

h753:DOA 1/17/96

**Section 22** amends AS 43.77 by adding a new provision to provide an education credit identical to that contained in AS 43.75 and other state tax provisions. The trawler industry argued that the failure to provide equal credits in AS 43.77 was unconstitutional. The amendment addresses that argument and corrects an unintended consequence of the original legislation.

**Sections 23 and 26** amend the revenue sharing provision in AS 43.77.050 to repeal the ASMI allocation under AS 43.77 consistent with the amendments in Section 21. All tax revenue will continue to be deposited into the general fund with Community Development Quota tax credits paid from revenue otherwise shared with municipalities.

**Section 26** would also repeal, in conformity with value under Section 11, the present definition of value in AS 16.51.180(6).

**Section 24** amends AS 43.77.200 to define "engages or attempts to engage in a floating fisheries business in the state" as any part of the comprehensive occupation of harvesting or taking, processing, transportation, or delivery of a fishery resource.

**Section 25** provides that the ASMI portion of the current landing tax is to be applied by the Department as a credit against the ASMI assessment that is retroactively imposed under Sec. 27. In practice, the retroactive imposition of the ASMI assessment under AS 16 will only amount to a reallocation of monies paid under AS 43.77 to AS 16.51.

**Section 27** provides that the act is retroactive to January 1, 1994. This retroactive application does not create an additional tax liability on any person and effectively averts some of the constitutional arguments advanced by the trawler industry.

**Section 28** provides that the act takes effect immediately.

**Table 9 - Fishery Resource Landing Tax**

	<b>FY 95</b>	<b>FY 94 *</b>	<b>FY 93 *</b>	<b>FY 92 *</b>	<b>FY 91 *</b>	<b>Total All Years</b>
<b>Borough</b>						
Aleutians East	\$ 3,641	-	-	-	-	\$ 3,641
Kenai Peninsula	10,315	-	-	-	-	10,315
Kodiak Island	18,533	-	-	-	-	18,533
Yakutat	3,266	-	-	-	-	3,266
<b>Total Boroughs</b>	<b>35,756</b>	-	-	-	-	<b>35,756</b>
<b>City</b>						
Alka	8,511	-	-	-	-	8,511
Kodiak	60,164	-	-	-	-	60,164
Saint Paul	229,839	-	-	-	-	229,839
Sand Point	1,042	-	-	-	-	1,042
Seward	45,036	-	-	-	-	45,036
Unalaska	2,512,253	-	-	-	-	2,512,253
<b>Total Cities</b>	<b>2,858,845</b>	-	-	-	-	<b>2,858,845</b>
<b>GRAND TOTAL</b>	<b>\$2,892,601</b>	-	-	-	-	<b>\$2,892,601</b>
<b>Number of Communities Subject to Sharing</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>
<b>Additional Sharing with DCRA **</b>	<b>\$89,195</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>\$89,195</b>

\* Fishery resource landing tax took effect January 1, 1994. Calendar year 1994 landing tax returns were due June 30, 1995.

\*\* As part of the fisheries resource landing tax statute enacted by the 1993 legislature, section 43.77.060(d) authorizes sharing 50% of fisheries resource landing tax revenue for landings in the unorganized borough (Ch 67 SLA 1993). DCRA is responsible for disbursing the 50% share of revenue to eligible communities.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SS for HB 397

Revision Date: January 29, 1996 Department: Commerce and Economic Development  
 Title: An Act relating to the fisheries resource landing and the seafood marketing assessment; BRU: Alaska Seafood Marketing Institute  
 Component: Alaska Seafood Marketing Institute  
 Sponsor: Austerman  
 Requestor: House Special Committee on Fisheries COMPONENT SERIAL NO. 393

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1,300.0	700.0	700.0	700.0	700.0	700.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,300.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	1,300.0	700.0	700.0	700.0	700.0	700.0
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>1,300.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>

Estimate of any current year (FY 96) cost: \$ \_\_\_\_\_

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS** (Attach a separate page if necessary)

SS HB 397 amends AS 16.51.120(a) to include floating processors in the seafood marketing assessment. This assessment will generate up to \$700,000 of additional program receipts per year for the Alaska Seafood Marketing Institute to utilize in marketing Alaska seafood products.

Prepared by: Dwayne Peoples Phone: 465-5571  
 Division: Alaska Seafood Marketing Institute Date: January 29, 1996  
 Approved by Commissi: William L. Hensley Date: 1-29-96  
 Agency: Commerce and Economic Development

## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SS HB 397

ANALYSIS: (continued)

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT Fiscal Note Calculations for SS HB 397

The seafood marketing assessment is a tax levied on the value of seafood products produced in Alaska to be utilized for promoting seafood consumption. The assessment is a voluntary tax which can be terminated by the Commissioner of the Department of Revenue with approval of the eligible processors who together purchase 51 percent of the value of the products, or by a vote of two thirds of the Alaska Seafood Marketing Institute (ASMI) Board of Directors as specified in AS 16.51.130.

The funds generated from this assessment are collected by the Department of Revenue and transferred to ASMI to be use in generic promotion of Alaskan seafood products. In order to comply with the statutory intent for these funds, ASMI is requesting program receipt authority of \$1,300,000 in FY 97 to expend those fund collected in 1994 and 1995 as prescribed by Section 28 of SS HB 397. In addition, ASMI is requesting \$700,000 authority in the subsequent years for the same purposes.

**CONTRACTUAL:** Purchase of advertising, and printing services to promote the consumption of Alaskan seafood products.

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SS for HB 397

1996 LEGISLATIVE SESSION

Revision Date: January 17, 1996

Department: Commerce and Economic Development

Title: An Act relating to the fisheries resource landing tax and the seafood marketing assessment;

BRU: Alaska Seafood Marketing Institute

Component: Alaska Seafood Marketing Institute

Sponsor: Austerman

Requestor: House Special Committee on Fisheries

COMPONENT SERIAL NO. 393

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1,300.0	700.0	700.0	700.0	700.0	700.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,300.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES</b>						
---------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	1,300.0	700.0	700.0	700.0	700.0	700.0
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>1,300.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>	<b>700.0</b>

Estimate of any current year (FY 96) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Sec. 5 AS 16.51.120(d) as amended by SS HB 397 will generate up to \$700,000 of program receipts per year for the Alaska Seafood Marketing Institute to utilize in marketing Alaska seafood products. These funds will be utilized to purchase advertising and promotional services to increase the consumption of seafood products.

Section 27 of this bill would allow ASMI to utilize an estimated \$1,300,000 collected from 1994 and 1995 which is held in escrow by the Department of Revenue. These fund will be received and expended in FY97.

Prepared by: Dwayne Peoples

Phone: 465-5571

Division: Alaska Seafood Marketing Institute

Date: January 16, 1996

Approved by Commissioner: William L. Hensley

Date: 1-16-96

Agency: Commerce and Economic Development

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LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Fisheries Resource Landing Tax & ASMI BRU: Audit Operations  
 Component: Income and Excise Audit  
 Sponsor: Rep. Austerman  
 Requestor: (H) FSH Committee COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

The statutory amendments requested in SSHB 397 have no financial impact on the operating budget of the Department of Revenue. There may be a very small impact on revenues. Section 21 of the bill amends the Fishery Resource Landing Tax to change the tax rate on developing species from 3% to 1%. This change impacts a very small portion of seafood products taxed and could reduce revenues by less than 2 tenths of 1% (approximately \$8,000).

Prepared by: Robert Bartholomew Phone: 465-2320  
 Division: Income and Excise Audit Date: 1/16/96  
 Approved by Commissioner: \_\_\_\_\_ Date: 1/16/96  
 Agency: Department of Revenue

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 AMERICAN FACTORY TRAWLER )  
4 ASSOCIATION, )  
5 )  
6 Plaintiff, )  
7 )  
8 v. )  
9 )  
10 STATE OF ALASKA, WALTER J. HICKEL )  
Governor of the State of Alaska, )  
DARREL J. REXWINKEL, Commissioner )  
of Revenue of the State of Alaska, )  
11 Defendants. )

12 Case No. 1-JU-94-177 Civil

13 REPLY MEMORANDUM AND OPPOSITION TO DEFENDANTS'  
14 CROSS-MOTION FOR SUMMARY JUDGMENT

15 Most of the arguments raised in the State's Memorandum  
16 have already been extensively discussed in our opening  
17 memorandum. There is no need to repeat that discussion here.  
18 This reply will first address the procedural arguments raised  
19 by the State -- standing and exhaustion of administrative  
20 remedies. We will then review the substantive constitutional  
21 issues, focusing on only a few aspects of the State's arguments  
22 -- those that we believe demonstrate in and by themselves the  
23 complete lack of merit to the State's position.

24 I. AFTA HAS STANDING TO CHALLENGE THE CONSTITUTIONALITY  
25 OF AS 43.77 AND NEED NOT FIRST PURSUE ADMINISTRATIVE  
26 REMEDIES.

The State initially claims, as a procedural matter, that  
AFTA has no standing to raise the constitutional issues and

1  
2 Emerald Resource Management, Inc.; Glacier Fish Company, Ltd.;  
3 Golden Age Fisheries; Golden Alaska Seafoods; Morning Star  
4 Fisheries; M/V Savage, Inc.; Oceantrawl Inc.; and Premier  
5 Pacific Seafoods, Inc.

6         2. Defendant State of Alaska is a sovereign State of the  
7 United States; defendant Hickel is Governor of the State of  
8 Alaska and is responsible, under Article III, sec. 16, of the  
9 Alaska Constitution, for the faithful execution of the laws of  
10 the State; defendant Rexwinkel is the Commissioner of Revenue  
11 of the State of Alaska and under AS 44.25.020 has the specific  
12 duty of enforcing the tax laws of the State.

13         3. Fish are caught and processed by AFTA's members in the  
14 Gulf of Alaska and Bering Sea off the coast of Alaska but  
15 outside of the territorial waters of the State of Alaska in  
16 what is designated as the Exclusive Economic Zone of the United  
17 States. After the fish are caught, they receive primary  
18 processing on board the vessels owned or operated by AFTA's  
19 members. The fish are cleaned, headed and gutted, and then  
20 processed into a variety of product forms such as surimi,  
21 fillets, blocks and related by-products before being frozen on  
22 board the vessels. The frozen product is then stored on the  
23 vessels in refrigerated holds.

24         4. From time to time during the course of a fishing  
25 season, some of the vessels owned or operated by AFTA's members  
26 and carrying processed fish enter Alaskan territorial waters

1  
2 for the purpose of transferring the processed fish to other  
3 vessels for continued transportation of the products to foreign  
4 or domestic destinations. In some instances, the fish is  
5 simply transferred from one vessel to another while the vessels  
6 are at sea but inside territorial waters; in other instances,  
7 the ships may dock at Alaska ports for the purpose of transfer.  
8 After being transferred, all of the previously processed fish  
9 is promptly transported out of Alaska.

10 5. Approximately 75 percent of the total fisheries  
11 resources taken and processed by AFTA's members on the high  
12 seas is sold to foreign purchasers and transported by ship to  
13 foreign countries, primarily Japan and Korea. The remaining 25  
14 percent is transported by ship and motor transportation to  
15 various final destinations within the United States for sale or  
16 further processing. In the course of transportation, the  
17 fisheries products enter the jurisdictions of various states  
18 and foreign countries outside of Alaska, where the products are  
19 either transferred from one form of transportation to another  
20 and then moved to new jurisdictions or unloaded for additional  
21 processing or sale.

22 6. In 1993, the Alaska legislature adopted Ch. 67, SLA  
23 1993, "An Act levying and providing for the collection of and  
24 disposition of the proceeds of a fishery resource landing tax."  
25 The Act is set out in AS 43.77.010 -- AS 43.77.200. AS  
26 43.77.010 imposes a tax of 3.3 percent on the entire

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unprocessed value of any fishery resource "that is brought into the jurisdiction of, and first landed in," the State of Alaska. "Landing" a fishery resource in the State is defined in AS 43.77.200 to mean "the act of unloading or transferring a fishery resource" in the State.

7. Ch. 67, SLA 1993 became effective on January 1, 1994, and AFTA's members are required, under the terms of the Act, to file returns and taxes on April 1 of each year, beginning in 1995, on the unprocessed value of any fish "landed" in Alaska during the previous calendar year. The tax applies to fish that were caught and processed outside of Alaska by AFTA's members.

8. AS 43.77.010 provides that persons who pay tax under AS 43.75 are exempt from payment of the landing tax. AS 43.75 imposes a tax on persons engaged in "a fisheries business," inside of the State of Alaska. A "fisheries business" is defined in AS 43.75.200 as "processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants."

9. The landing tax under AS 43.77 and the processing tax under AS 43.75 do not impose equal tax burdens. For example, the tax rate imposed under the processing tax (AS 43.75.015) on persons who land raw fish in the state and process them on shore in Alaska is 3 percent of the unprocessed value of the

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fisheries resources; the tax rate imposed under the landing tax (43.77) on persons who merely unload or transfer processed fisheries products in Alaska and do not catch or process them at all in Alaska is 3.3 percent of the unprocessed value of the harvested fish. The processing tax (43.75) provides for tax credits for certain contributions that may be applied against 100 percent of the taxes owing under the processing tax on the value of 100 percent of the fisheries resources processed by in-state processors; tax credits under the landing tax for similar contributions may be applied against only 45.45 percent of the taxes owing on the value of only those fish taken under a community development quota. The processing tax (AS 43.75.015) provides for a tax rate of 1 percent on shore based processors for fisheries resources that have been designated by the Commissioner of Fish and Game as "developing species"; "developing species" that are taken and processed outside of Alaska but unloaded or transferred in Alaska are taxed under the landing tax at the rate of 3.3 percent of the unprocessed value of the fish.

10. The landing tax under AS 43.77, imposed on fish caught and processed outside of Alaska's jurisdiction, but not imposed on a fisheries business conducted within the State, provides an economic advantage to those persons who conduct fisheries businesses within the State. The advantage stems both from the fact that an in-state fisheries business need not

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1  
2 pay the landing tax at all, and from the fact that an in-state  
3 fisheries business pays a lower total tax for unloading,  
4 transferring and processing fish in Alaska than an out-of-state  
5 processor pays for merely unloading or transferring previously  
6 processed fisheries resources within Alaska.

7 11. An unapportioned tax imposed on the full value of  
8 fisheries resources, landed in Alaska solely for the purpose of  
9 subsequent shipment through and landing in a variety of other  
10 states and foreign jurisdictions, unfairly subjects the  
11 fisheries resources to the risk of multiple taxation in all  
12 jurisdictions in or through which the fish is landed or  
13 transported, and constitutes a deterrence to the free movement  
14 of goods in interstate and foreign commerce.

15 12. Article I, Sec. 8, of the Constitution of the United  
16 States provides that Congress has the authority to "regulate  
17 commerce with foreign nations, and among the several states . .  
18 ." Pursuant to this allocation of governmental responsibility,  
19 individual states are prohibited from imposing taxes that place  
20 a heavier burden on businesses involved in interstate or  
21 foreign commerce than imposed upon businesses carrying on  
22 similar business activities purely within the boundaries of the  
23 State. Taxes imposed on interstate and foreign business  
24 activities must be non-discriminatory and must be fairly  
25 allocated dependent upon the proportion of the total interstate  
26 business activity that takes place within the State.

1  
2 13. AS 43.77 unlawfully discriminates against interstate  
3 commerce in violation of Article I, Sec. 8, of the United  
4 States Constitution in that:

5 (a) the activity taxed has an insufficient nexus  
6 with the State of Alaska to justify imposition of any tax;

7 (b) the tax discriminates against interstate and  
8 foreign commerce in favor of purely local activities;

9 (c) the tax is not fairly apportioned;

10 (d) the tax is not fairly related to services  
11 provided by the State of Alaska.

12 14. AS 43.77 unlawfully discriminates against foreign  
13 commerce in violation of Article I, Sec. 8, of the United  
14 States Constitution for the reasons outlined in Paragraph 13 of  
15 this complaint and for the additional reasons that:

16 (a) the tax, even if were fairly apportioned (which  
17 it is not) creates a substantial risk of international multiple  
18 taxation; and

19 (b) the tax prevents the federal government from  
20 speaking with one voice when conducting commercial relations  
21 with foreign governments.

22 15. AS 43.77, to the extent that it taxes the value of  
23 fisheries resources that are brought into Alaska for the sole  
24 purpose of transferring them to vessels for export to foreign  
25 nations, imposes a tax on exports in violation of Article I,  
26 Section 10, Clause 2, of the United States Constitution.

1  
2 16. AS 43.77 is in direct conflict with economic and  
3 resource management policies and purposes of the United States  
4 government as set forth in 16 U.S.C. sections 1801 et seq. (the  
5 Magnuson Act), and therefore void as in violation of Article VI  
6 of the United States Constitution (the Supremacy Clause).

7 17. AS 43.77 violates the equal protection clauses of  
8 Article I, sec. 1, of the Alaska Constitution and Amendment  
9 XIV, sec. 1, of the United States Constitution.

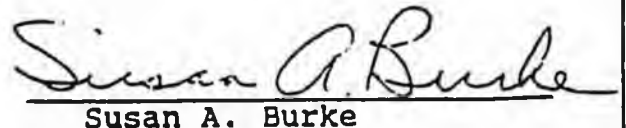
10 WHEREFORE, AFTA requests that this court issue a judgment:

- 11 (a) declaring AS 43.77 invalid and unconstitutional;  
12 (b) permanently enjoining each and every defendant  
13 and their agents from taking any action to enforce collection  
14 of the tax;  
15 (c) awarding AFTA its costs and attorneys fees;  
16 (d) for such other relief as the court deems  
17 appropriate in the circumstances.

18 DATED this 17th day of February, 1994 at Juneau, Alaska.  
19  
20

21 GROSS & BURKE

22   
23 Avrum M. Gross

24   
25 Susan A. Burke

26 COUNSEL FOR AMERICAN  
FACTORY TRAWLER ASSOCIATION

THIS MATTER IS FORMALLY  
ASSIGNED TO  
LARRY R. WEEKS  
SUPERIOR COURT JUDGE

1 Instead, the State argues that the Landing Tax is not a tax on  
2 goods or property at all; it is a tax on an "occupation."  
3 (State's Memorandum at 16.) The State goes on to claim that,  
4 "A trawler that only moves property through the jurisdiction is  
5 not subject to the landing tax." (Id.)

6 At the outset, one might ask just what "occupation" is  
7 being taxed here. The Landing Tax is imposed upon the owner of  
8 fisheries products that are being "landed" in the state; there  
9 is no provision of AS 43.77 that even refers to an  
10 "occupation," much less imposes a tax on one. The owner of the  
11 fish "landed" need not have caught them or processed them  
12 himself; so long as the fish are owned by him when they come  
13 into the State, he must pay a tax on them if he transfers them  
14 for further transportation, whether his "occupation" is  
15 fisherman, processor, fish broker, or what have you. The  
16 reason the statute does not seek to tax an "occupation" and  
17 specifically, the occupation of plaintiff's members is, of  
18 course, obvious; all of the crucial elements of that occupation  
19 -- the catching of fish, the processing of fish and the sale of  
20 fish take place outside of Alaska. The state cannot tax an  
21 occupation that occurs outside of its borders and AS 43.77, on  
22 its face at least, makes no effort to do so.

23 A comparison with Alaska v. Arctic Maid, 366 U.S. 199  
24 (1961), cited as support for the State's argument, is  
25 instructive. The tax in Arctic Maid was specifically placed by  
26 statute on those "prosecuting or attempting to prosecute . . .  
lines of business in connection with Alaska's commercial

1 eastern markets." 8/ Yet the State, nonetheless, claims that  
2 the Landing Tax "does not tax property moving through the  
3 State." It is hard even to understand this position. If, for  
4 instance, a catcher/processor vessel comes in from the high  
5 seas, anchors in the "protected waters of Southeast Alaska" for  
6 a few days and continues with its cargo to Seattle, the State  
7 would apparently recognize that the taxpayer is "only moving  
8 property through the jurisdiction" and is "not subject to tax."  
9 If the same vessel, however, anchors in the same protected  
10 waters and unloads its cargo to a tramp steamer through  
11 stevedoring (which is uniformly recognized as an integral part  
12 of the shipment of goods in interstate commerce) 9/ that  
13 activity apparently makes some kind of difference and confers  
14 power on the State to tax an entire "occupation" which, of  
15 course, is not defined in the act and which the State makes no  
16 real effort to define even in its memorandum.

17 The Landing Tax is clearly not an occupation tax. It is  
18 not defined as one and it could not reach the occupation of  
19 offshore harvesting and processing even if it purported to do  
20 so. It is, plainly and simply, a tax on property being  
21

22 8/ (State's Memorandum at p.1.) Actually, as noted in  
23 our opening memorandum and supporting affidavit, the fisheries  
24 products are either loaded on tramp steamers or delivered to a  
25 common carrier. In either case, the transportation to  
26 interstate and foreign destinations continues and the fisheries  
products are immediately removed from the State.

9/ Puget Sound Stevedoring Co. v. State Tax Commission,  
302 U.S. 90, 82 L.Ed. 68 (1937); Joseph v. Carter & Weeks  
Stevedoring Co., 330 U.S. 442, 91 L.Ed. 992 (1947); Washington  
Revenue Department v. Association of Washington Stevedoring  
Cos., 435 U.S. 734, 55 L.Ed.2d 682 (1978).

1 transported by a series of vessels through the state to other  
2 states and foreign countries. 10/ The State itself recognizes  
3 that goods purely in transit were never meant to be subject to  
4 the Landing Tax. We emphasize here that the immunity of such  
5 goods from taxation is not simply a matter of legislative  
6 choice; it is a matter of constitutional necessity.

7 B. Nexus.

8 The State spends much of its argument on nexus seeking to  
9 demonstrate that the AFTA members' vessels that enter Alaskan  
10 waters for a few days a year cause sufficient impact to create  
11 adequate nexus for the State to impose the Landing Tax on them.  
12 As we noted in our opening memorandum, if the State believes  
13 that through occasional contacts, various vessels have  
14 established some sort of nexus with Alaska, it can seek to

15 \_\_\_\_\_  
16 10/ This is exactly the kind of tax that the Supreme  
17 Court distinguished in Arctic Maid from the local occupation  
18 tax imposed there. As opposed to a tax on a local business,  
19 the court noted, "[a] tax on an integral part of an interstate  
20 movement might be imposed by other states, with the net effect  
21 of unduly burdening commerce". . . . The "integral part of  
22 interstate movement" referred to in Arctic Maid was  
23 stevedoring. And while subsequent decisions have recognized  
24 stevedoring as a local business that may be taxed as such, no  
25 court has ever held that a state may tax goods that are merely  
26 transferred during the course of their interstate shipment.  
This is because the mere act of transferring goods from one  
mode of transportation to another in the course of interstate  
shipment is not a purely local event. It can be repeated again  
and again during the course of interstate shipment. It is  
important to keep in mind here that unlike the business tax  
imposed on stevedoring companies in Association of Washington  
Stevedores (whose local business was unloading for hire), the  
Landing Tax is not imposed on the person doing the unloading or  
transferring -- it is imposed on the owner of the fisheries  
products, who may never even touch the products while they are  
being transferred within Alaska and may continue to own them as  
they are shipped through and "landed" in many states.

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1 equal right what is the source of concern over multiple  
2 taxation. Whatever tax the state imposes (which, incidentally,  
3 must be imposed on intra-state commerce as well) must be  
4 apportioned to reflect the portion of business activity  
5 attributable to the State. No effort was made to do that here.  
6

7 D. The Landing Tax Discriminates Against Interstate  
8 Commerce.

9 The State's claim that the Landing Tax does not  
10 discriminate against interstate commerce is based on a series  
11 of arguments. First, the State argues that its "unified tax  
12 scheme" (comprised in the State's view of the Landing Tax and  
13 the fisheries business tax imposed under AS 43.75) provides no  
14 economic advantage to local processors; second, the State  
15 argues that the Landing Tax validly compensates for the  
16 fisheries business tax imposed under AS 43.75; third, the State  
17 claims that the tax rates under both taxes are actually  
18 identical; finally, the State argues that the State's failure  
19 to have provided Landing Tax taxpayers with tax rate reductions  
20 for developing species (available to AS 43.75 taxpayers) and  
21 the State's failure to have provided Landing Tax taxpayers with  
22 tax credits of comparable magnitude to those available under AS  
23 43.75 is of no constitutional significance. None of these  
24 arguments has merit.

25 The State initially attempts to justify the clear  
26 discrimination here by arguing that the Landing Tax and the  
fisheries business tax under AS 43.75 are nothing more than  
parts of a single "unified tax scheme" -- one that imposes

1 essentially the same tax on any entity that "conducts a  
2 substantial fishery business in Alaska, subsequent to the  
3 actual catching of the fish." In the State's view, the  
4 legislature could just as well have expanded the definition of  
5 "fisheries business" under AS 43.75 to include the mere  
6 activity of offloading or transferring fish caught and  
7 processed outside the state. In that case, under the State's  
8 view, there would be no discrimination at all since all  
9 "fisheries businesses" would be taxed at exactly the same rate.  
10 The flaw in this argument is that the activities that are  
11 conducted within Alaska by AFTA's members are of a vastly  
12 different nature and vastly different magnitude from those  
13 conducted by local processors subject to taxation under AS  
14 43.75 and cannot rationally be stretched to cover an entire  
15 "fisheries business" conducted within the state. The State  
16 cites Alaska v. Arctic Maid, 366 U.S. 199, 6 L.Ed.2d 227  
17 (1961), as being dispositive of this issue. But as noted  
18 earlier in this memorandum, the critical fact in that case was  
19 that the fish caught by the processors who were challenging the  
20 tax were all caught in Alaska waters, and the Court made it  
21 crystal clear that Alaska could not impose a "fisheries  
22 business" tax on persons who neither catch nor process fish  
23 within the state. Id., 366 U.S. at 203.

24 It is unquestionably for this reason, rather than an  
25 arbitrary choice on the legislature's part (or as the State  
26 suggests at p. 28 of its memorandum some "historical anomaly"),  
that the Landing Tax was enacted as a separate and distinct tax

1 and not included within the fisheries business tax. What we  
2 are left with, then, is a clearly discriminatory landing tax  
3 imposed on persons who catch and process fish outside Alaska  
4 and from which local processors are exempt. Moreover, there is  
5 a distinct and very real element of protectionism at play here,  
6 for as the State itself argues, the Landing Tax is intended to  
7 compensate for the 3 percent fisheries business tax and the 0.3  
8 percent ASMI assessment that local processors pay -- a way of  
9 attempting to ensure that local businesses are not placed at a  
10 competitive disadvantage to interstate commerce.

11 This leads, of course, to the State's argument concerning  
12 compensating taxes. While it may be a legitimate goal for a  
13 State to insure that its local businesses are not disadvantaged  
14 by lower taxes paid by interstate competitors, there are three  
15 tests that must be met before such a compensating tax will be  
16 held valid. There must be an identifiable local burden for  
17 which the State has an interest in compensating; the local tax  
18 and the alleged compensating tax must be on "substantially  
19 equivalent" activities; and the tax rates on interstate  
20 commerce may not exceed those imposed on local business.

21 Oregon Waste Systems, Inc. v. Oregon, Department of  
22 Environmental Quality, 62 U.S.L.W. 4209 (April 4, 1994). The  
23 Landing Tax meets none of these tests.

24 The State identifies as the "local burden" the fisheries  
25 business tax imposed on local processors under AS 43.75. While  
26 the State attempts to characterize AS 43.75 as simply a tax on  
one who "utilizes Alaska resources and infrastructure," there

1 is in fact no real question that the fisheries business tax is  
2 an occupation tax imposed on those who actually conduct a  
3 fisheries business within Alaska -- catching and processing  
4 fish within Alaska. 20/ Since AFTA's members neither catch nor  
5 process any fish within Alaska, it is difficult to understand  
6 why they should be required to compensate for the burden placed  
7 on local processors who do engage in that activity within  
8 Alaska and whose operations are heavily dependent on  
9 significant state and local resources and infrastructure. Just  
10 as Oregon could not, in Oregon Waste Systems, justify  
11 differential rates on out of state businesses that used  
12 Oregon's waste disposal sites on the basis that local waste  
13 disposal businesses paid income taxes to Oregon, Alaska cannot  
14 justify a landing tax imposed only on out of state processors  
15 simply because its local processors pay a state processing tax.  
16 And just as Louisiana "had no interest" in offshore gas such  
17 that a discriminatory tax on in-state uses of that gas could be  
18 justified as compensating for state severance taxes on locally  
19 produced gas, Alaska has no interest in either the resources  
20 that are taken from the high seas or in the processing  
21 activities that take place there. Maryland v. Louisiana, 451  
22 U.S. 725, 68 L.Ed.2d 576 (1981).

23 As we noted in our opening memorandum, the Landing Tax  
24 rates are higher both nominally and effectively than those  
25 imposed under the fisheries business tax. The Landing Tax, of  
26

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20/ See, Alaska v. Arctic Maid, 366 U.S. at 202.

1 course, is imposed at a rate of 3.3 percent, while the  
2 fisheries business tax is imposed at the rate of 3 percent.  
3 The State contends that the nominal tax rates imposed on AFTA  
4 members and local processors are actually identical, since AFTA  
5 failed to take into account the fact that local Alaska  
6 processors pay a 0.3 percent assessment levied to finance the  
7 Alaska Seafood Marketing Institute ("ASMI"). (State's  
8 memorandum at 24.) AFTA is perfectly aware of the 0.3 percent  
9 ASMI assessment imposed under AS 16.51.120 on Alaska processors  
10 who purchase and process fish within Alaska. AFTA is also  
11 aware of the fact that this is a self-imposed assessment -- one  
12 that is imposed at all only if a majority of Alaska processors  
13 vote to impose it on themselves. See, AS 16.51.120 (a). AFTA  
14 members do not serve on the ASMI Board and have no say over how  
15 ASMI funds are spent. Similarly, AFTA members are not eligible  
16 to vote in elections to determine whether the assessment will  
17 be terminated or the rate of the assessment increased or  
18 decreased. See, AS 16.51.120. Although the State claims on  
19 page 10 of its memorandum that the fisheries products produced  
20 by AFTA members are "extensively marketed as "Alaska  
21 Seafood," the State has not offered one whit of evidence to  
22 support that claim. AFTA members do not catch "Alaska fish"  
23 and reap little, if any, benefits from ASMI's promotions, the  
24  
25  
26

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1 vast majority of which feature salmon. 21/ Equally important,  
2 the ASMI assessment is not part of the State's fisheries  
3 business occupation tax, but a special assessment for a  
4 specific and limited purpose -- providing reimbursement from  
5 Alaska processors to the State for state expenditures on ASMI  
6 to promote the marketing of their products. 22/ Forcing AFTA  
7 members to contribute to ASMI is tantamount to requiring Juneau  
8 property owners to pay additional property taxes to help  
9 Anchorage retire its municipal bonded indebtedness. Even under  
10 the State's expansive and totally unjustified characterization  
11 of the "substantial fisheries activities" that AFTA members  
12 conduct in Alaska, the proper comparison of tax rates is  
13 between the Landing Tax at 3.3 percent and the fisheries  
14 business tax under AS 43.75 at 3 percent. There is no  
15 justification for imposing a Landing Tax that is 0.3 percent  
16 higher than the tax imposed under the fisheries business tax in

17  
18 21/ See, 1993 ASMI annual report, attached to the State's  
19 memorandum. AFTA members may, of course, derive some indirect  
20 benefit from ASMI's promotions to the extent that they promote  
21 the general consumption of fish products; but that benefit is  
22 no different from that received by any processor of fish  
23 anywhere in the world that ASMI conducts Alaska seafood  
24 promotions.

25 22/ The legislative findings adopted as part of the  
26 enactment establishing ASMI expressly articulate this purpose.  
See, secs. 1 and 2, Ch. 106, SLA 1981.

Moreover, the ASMI assessment is as close to creating a  
dedicated fund as Article IX, sec. 7, would permit. While the  
money collected from the assessments is subject to annual  
appropriation and technically could be used for any state  
purpose, there is no question that if the legislature  
appropriated the money received from those assessments for  
purposes other than to fund ASMI, there would be a quick and  
decisive vote by the processors to terminate the assessments.

1 AS 43.75, and the State's argument concerning the ASMI  
2 assessment provides none.

3 The State's memorandum does not really even address the  
4 argument in our opening memorandum that the tax rates under the  
5 Landing Tax are effectively even more than 0.3 percent higher  
6 than the AS 43.75 tax rate because of the vastly reduced  
7 credits allowable under the Landing Tax. The State merely  
8 argues that it does not matter in "economic terms" whether a  
9 taxpayer contributes \$10,000, for instance, to an educational  
10 institution or pays the same amount to the Department of  
11 Revenue in taxes. However, the State confuses "monetary terms"  
12 with "economic terms." A taxpayer is likely to view a  
13 contribution to an educational institution as a form of  
14 business investment for training future employees or for  
15 advancing technical or scientific knowledge that will benefit  
16 the industry. A taxpayer is not likely to view payment of tax  
17 to the state as any kind of investment. But more important,  
18 the State totally ignores the major thrust of our argument --  
19 that even the educational credits under the Landing Tax are  
20 allowed only for those taxpayers who enter into joint ventures  
21 with local Alaska communities in the federal Community  
22 Development Quota program. This limitation not only involves a  
23 clear and flagrant discrimination against interstate commerce  
24 (as we pointed out at p. 57 of our opening memorandum); it  
25 results in a vast reduction in the total amount of available  
26 contribution tax credits under the Landing Tax as compared to  
similar credits under AS 43.75. Such a vast reduction in

1 allowable credits of necessity increases the effective tax rate  
2 under the Landing Tax. 23/

3 Similarly, the State's memorandum never really comes to  
4 terms with the obvious discrimination against the offshore  
5 catcher/processor fleet found in the legislature's failure to  
6 provide in the Landing Tax for the same reduction in tax rates  
7 for developing species as is provided under AS 43.75. 24/ The  
8 State's only argument is that the legislature legitimately did  
9 not afford offshore catcher/processors a rate reduction for  
10 developing species because they catch and process too much of  
11 those species to be considered "developing." The basis for  
12 this argument is to compare the 84,000 metric tons of  
13 developing species caught last year by AFTA members with

14  
15 23/ The restriction of the Landing Tax educational and  
16 infrastructure credits to fisheries products produced under a  
17 Community Development Quota results in precisely the kind of  
18 economic protectionism that the Court in Maryland v. Louisiana  
19 found so discriminatory. Landing Tax taxpayers can obtain a  
20 credit only if they participate with a local Alaska community  
21 and only if they invest in training and infrastructure that  
22 will benefit Alaska based processors. This credit system  
23 clearly discriminates against the majority of the offshore  
24 catcher/processor fleet who do not participate in the Community  
25 Development Quota program by subsidizing the operations of  
26 those who do through tax credits for employee training and  
capital improvements in shore based facilities.

24/ The State's argument that this claim is not ripe  
because no taxpayer has actually been denied such a reduction  
is meritless. The discrimination is clear on the face of the  
two statutes. Any Landing Tax taxpayer who has harvested  
species on the list of "developing species" is clearly harmed  
by the obvious discrimination. The State does not dispute the  
fact presented in the Affidavit of Joseph R. Blum that AFTA  
taxpayers indeed harvest species that are on the list that  
applies during 1994 -- the current Landing Tax tax year. And  
the State cannot seriously dispute the fact that the Department  
of Revenue would have absolutely no statutory authority to  
grant the rate reduction even if an AFTA member applied for it.

1 "minimal" amount of revenue the Department received from in-  
2 state processors for developing species. However, as the 1993  
3 Revenue Report cited by the State indicates at p. 12, the State  
4 received last year \$200,628 in tax revenues from shore based  
5 processors for developing species. Since those fish are taxed  
6 at only 1 percent of value, it means that in-state processors  
7 processed developing species having an unprocessed value of  
8 \$20,062,800 -- hardly a "minimal amount."

9 The State makes two other claims with respect to the  
10 clearly discriminatory tax credits. The first is that there is  
11 no discrimination because taxpayers under the Landing Tax will  
12 never pay more than the 3 percent reduced tax for developing  
13 species paid by floating processors. This argument was  
14 addressed in our opening memorandum in a slightly different  
15 context, but it applies with equal force to the State's  
16 argument here. 25/ The higher tax rate imposed on in-state  
17 floating processors is justified only as a means of encouraging  
18 floating processors to move their operations on shore. See,  
19 State v. Reefer King, 559 P.2d 56, 66 (Alaska 1977). While a  
20 state may have differential tax rates to encourage local  
21 businesses to conduct their businesses in certain ways that  
22 inure to that state's overall economic well being, it may not  
23 do so with respect to interstate businesses. 26/ The State  
24 here may not, therefore, justify the higher tax rates under the

25  
26 25/ See, AFTA's opening memorandum at 54 n. 37.

26/ See, Halliburton Oil Well Co. v. Reily, 373 U.S. 64,  
72, 10 L.Ed.2d 202 (1963).

1 Landing Tax for developing species on the basis that the  
2 Landing Tax, without the reduced rate for developing species,  
3 will never exceed the lowest possible tax rate imposed on  
4 floating processors. 27/

5 The most serious flaw in the State's argument that the  
6 Landing Tax is a valid compensating tax for the fisheries  
7 business tax is its claim that the two taxes are imposed on  
8 "substantially equivalent" events. The sole argument that the  
9 State makes is that the "substantially equivalent" event taxed  
10 under both the Landing Tax and the fisheries business tax is  
11 utilizing "Alaska's infrastructure to conduct a fisheries  
12 business." The State's argument never comes to grips with the  
13 palpably obvious differences between the two taxable events or  
14 with the fact that it cannot impose a tax on conducting a

15  
16 27/ The State also argues that even if the failure to  
17 provide a reduced rate for developing species under the Landing  
18 Tax is held discriminatory, the court need not declare the  
19 entire act unconstitutional because the State can "cure" the  
20 defect. The only case cited for this remarkable proposition is  
21 McKesson Corporation v. Division of Alcoholic Beverages,  
22 Department of Business Regulation of Florida, 496 U.S. 18, 110  
23 L.Ed.. 2d. 17 (1990), and the case in no way supports the  
24 State's argument. The only issue before the United States  
25 Supreme Court was whether the taxpayer was entitled to relief  
26 retroactively for taxes already paid under a tax that the state  
court had invalidated. At issue before the state court was a  
reduced tax rate under Florida's alcoholic beverage tax for  
alcoholic beverages made from products grown in Florida. The  
state court allowed the overall beverage tax to stand, and  
apparently severed the offending rate reduction section. That  
sort of "surgery" is not possible here since the court is faced  
with two wholly separate taxes imposed on two entirely  
different activities -- one that grants the reduction and one  
that does not. In any event, there is no possible way that the  
court could simply instruct the Department of Revenue to "cure"  
the discrimination. The Department may have the authority to  
interpret tax laws, but it does not have the authority to amend  
them. Only the legislature has that authority.

1 "fisheries business" that does not take place in Alaska. 28/  
2 The fisheries business tax under AS 43.75 is an occupation tax  
3 on conducting a fisheries business in the state -- that is,  
4 processing fish. The Landing Tax is imposed on the mere act of  
5 transferring fisheries products that have been caught and  
6 processed elsewhere, not necessarily by the same person who  
7 "owns" the fish products brought through Alaska and "landed"  
8 there. The activity of processing fish is no more equivalent  
9 to the activity of transferring already processed fisheries  
10 products than manufacturing is to wholesaling. 29/

11 In summary, the State has offered no justification for the  
12 obvious and clear discriminatory treatment that the Landing Tax  
13 imposes on interstate commerce.

14 E. The Rate of Taxation Under the Landing Tax is Not  
15 Fairly Related to the Services Provided by the  
16 State.

17 The State claims that on page 16 of our opening  
18 memorandum, AFTA "concedes that they cannot prevail on the

19 28/ As noted earlier, the State cannot, under Arctic  
20 Maid, impose a fisheries business tax on persons who neither  
21 catch nor process fish in Alaska.

22 29/ The weakness in the State's attempt to characterize  
23 transferring fisheries products as "utilizing Alaska's  
24 infrastructure to conduct a fisheries business" is best  
25 demonstrated by the State's admission on pages 15 and 16 of its  
26 memorandum that the Landing Tax is not imposed on an offshore  
catcher/processor who merely transports its products through  
Alaska without unloading or transferring them here -- even  
though that same vessel may, during the course of transporting  
its products to some interstate or foreign destination, enter  
an Alaska port, take on fuel, make emergency repairs, and  
transfer crew members prior to continuing its transportation of  
the products. Under the State's analysis, then, so long as the  
fisheries products remain in the vessel's hold, the vessel is  
not conducting a "fisheries business" in Alaska.

**HB**

**401**

# FISCAL NOTE

No. 2  
 Bill Number: HB 401  
 (H) Bill Date: 1-8-96

## STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Clean Water Fund Bonds  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Environmental Conservation  
 BRU: Facility Construction & Operation  
 Component: Facility Construction & Operation

### COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Alaska Clean Water Fund	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ \_\_\_\_\_ \*

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.)

- \* Projected bond costs have not yet been determined. Please see attached explanations.

The department supports this bill that authorizes the sale of revenue bonds to be used by the Alaska Clean Water Fund to fund construction of public wastewater systems, nonpoint source water pollution control projects, including solid waste management systems, and estuary conservation and management projects.

Prepared by: Larry Jones *Larry Jones*  
 Division: Director, Division of Administrative Services

Phone: 465-5010  
 Date: 1/2/96

Approved by Commissioner: Larry Jones for  
 Agency: Department of Environmental Conservation

Date: 1/4/96

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Alaska Clean Water Fund - Bond Sales / Reasons why costs can not be determined:

The proceeds from the sale of bonds is to supplement available loan funds. Therefore, bonds will only be sold if the demand for construction loans exceeds the amount available in the Alaska Clean Water Fund (ACWF). However, the sale will have to be timed to allow a certain amount of the ACWF to be held as collateral for the bonds sold. Further considerations in the timing of the sale of bonds includes several financial issues such as rebate as it applies to selling bonds.

The department is working closely with the State Pond Committee, the Bond Committee's bond counsel and financial advisors to ensure all of these concerns are adequately addressed and that a bond sale only occurs when it is advantageous to the state. Consequently, the costs related to the sale of the bonds is unknown at this time. Finally, costs associated with the sale of bonds are usually paid from the proceeds of the bond sale.

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Clean Water Fund Bonds BRU: Revenue Operations  
 Component: Treasury Management  
 Sponsor: Rules Committee  
 Requestor: Governor COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY96) impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

All costs of issuance, administration, and debt service on the bonds will be paid from the Alaska Clean Water Fund. The proceeds of the bond issue will be deposited in the Clean Water Fund, thereby increasing the money available for loans to municipalities. There is no estimated fiscal impact on other State funds.

Prepared by: Forrest R. Browne *F.R. Browne* Phone: 465-3750  
 Division: Treasury Management Date: 1/3/96  
 Approved by Commissioner: *[Signature]* Date: 1/3/96  
 Agency: Department of Revenue

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# FISCAL NOTE

STATE OF ALASKA  
**1996 LEGISLATIVE SESSION**

BILL NO. \_\_\_\_\_ CS FOR HOUSE BILL NO. \_\_\_\_\_  
 401 (STA)

Revision Date: 3/19/96  
 Title: AK Clean Water Fund - Bond Sales

Department Affected: Environmental Conservation

Sponsor: ~~Systems~~ Rules  
 Requestor: House Resources Committee

BRU: Facility Construction & Operation  
 Component: Facility Construction & Operation

COMPONENT SERIAL NO. 637

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Alaska Clean Water Fund	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ \_\_\_\_\_ \*

**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.)

\* Projected bond costs have not yet been determined. Please see attached explanations.

The department supports this bill that authorizes the sale of revenue bonds to be used by the Alaska Clean Water Fund to fund construction of public wastewater systems, nonpoint source water pollution control projects, including solid waste management systems, and estuary conservation and management projects.

Prepared by: Keith Kelton  
 Division: Director, Facility Construction & Operation

Phone: 465-5180  
 Date: 3/19/96

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

Date: 3/19/96

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**ALASKA CLEAN WATER FUND - Bond Sales / Reasons why costs can not be determined:**

The proceeds from the sale of bonds is to supplement available loan funds. Therefore, bonds will only be sold if the demand for construction loans exceeds the amount available in the Alaska Clean Water Fund (ACWF). However, the sale will have to be timed to allow a certain amount of the ACWF to be held as collateral for the bonds sold. Further considerations in the timing of the sale of bonds includes several financial issues such as rebate as it applies to selling bonds.

The department is working closely with the State Bond Committee, the Bond Committee's bond counsel and financial advisors to ensure all of these concerns are adequately addressed and that a bond sale only occurs when it is advantageous to the state. Consequently, the costs related to the sale of bonds is unknown at this time. Finally, costs associated with the sale of bonds are usually paid from the proceeds of the bond sale.

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Clean Water Fund Bonds BRU: Revenue Operations  
 Component: Treasury  
 Sponsor: Rules Committee  
 Requestor: (H) Resources Committee COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

All cost of issuance, administration, and debt service on the bonds will be paid from the Alaska Clean Water Fund. The proceeds of the bond issue will be deposited in the Clean Water Fund, thereby increasing the money available for loans to municipalities. There is no estimated fiscal impact on other State funds.

Prepared by: Betty Martin, Comptroller *Betty Martin* Phone: 465-2300  
 Division: Treasury Division Date: March 15, 1996  
 Approved by Commissioner: Wilson L. Condon *Wilson L. Condon* Date: March 15, 1996  
 Agency: Department of Revenue

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AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 401

Amendment 1: Clarification in the bond cap language.

Page 2, lines 14 - 15:

Following "revenue bonds"

Insert "under AS 37.15.560 - 37.15.605"

Page 2, line 15:

Following "total"

Insert "unpaid principal"

Page 2, line 16:

Following "bonds"

Delete "outstanding at any one time"

Insert ", including refunding bonds, but excluding  
refunded bonds, issued under the provisions of AS  
37.15.560 - 37.15.605,"

Page 2, lines 16-17

Following \$150,000,000

Delete "including principal and interest owed on the  
bonds"