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DATE 08-14-2013 BY 60322 UCBAW/STP

1572 HOUSE RESOURCES

2004 Annual Fishing license fees by state (ranked by resident)

2004 Annual Fishing license fees by state (ranked by non-resident)

State	Freshwater		Saltwater	
	Resident	Non-resident	Resident	Non-resident
Texas	\$38.00	\$65.00		
New Hampshire	\$35.00	\$53.00		
California	\$32.80	\$88.20		
Nevada	\$29.00	\$69.00		
Massachusetts	\$27.50	\$37.50		
Michigan	\$27.00	\$41.00		
Utah	\$26.00	\$70.00		
Oregon	\$24.75	\$61.50		
Idaho	\$23.50	\$74.50		
New Jersey	\$22.50	\$34.00		
Maine	\$22.00	\$53.00		
Washington	\$21.90	\$43.80	\$19.71	\$39.42
South Dakota	\$21.00	\$59.00		
Tennessee	\$21.00	\$51.00		
Colorado	\$20.25	\$40.25		
Connecticut	\$20.00	\$40.00		
Oklahoma	\$20.00	\$37.00		
Vermont	\$20.00	\$41.00		
Montana	\$19.25	\$69.25		
Kansas	\$19.00	\$41.00		
New York	\$19.00	\$40.00		
Ohio	\$19.00	\$40.00		
Arizona	\$18.00	\$51.50		
Minnesota	\$18.00	\$35.00		
Rhode Island	\$18.00	\$35.00		
Wyoming	\$18.00	\$75.00		
Iowa	\$17.50	\$39.50		
New Mexico	\$17.50	\$39.00		
Pennsylvania	\$17.00	\$35.00		
Wisconsin	\$17.00	\$40.00		
Alaska	\$15.00	\$100.00		
Kentucky	\$15.00	\$35.00		
Nebraska	\$15.00	\$45.00		
North Carolina	\$15.00	\$30.00		
Indiana	\$14.25	\$1.75		
Florida	\$13.50	\$31.50	\$13.50	\$31.50
Illinois	\$12.00	\$24.50		
Missouri	\$12.00	\$35.00		
Virginia	\$12.00	\$30.00	\$7.50	\$7.50
West Virginia	\$11.00	\$30.00		
Arkansas	\$10.50	\$32.00		
North Dakota	\$10.00	\$35.00		
South Carolina	\$10.00	\$35.00	\$10.00	\$35.00
Alabama	\$9.50	\$31.00	\$16.00	\$31.00
Louisiana	\$9.50	\$60.00	\$5.50	\$30.00
Georgia	\$9.00	\$24.00		
Maryland	\$9.00	\$14.00	\$10.50	variable
Delaware	\$8.50	\$15.00		
Mississippi	\$8.00	\$30.00	\$4.00	\$30.00
Hawaii	\$5.00	\$25.00		

State	Freshwater		Saltwater	
	Resident	Non-resident	Resident	Non-resident
Alaska	\$15.00	\$100.00		
California	\$32.80	\$88.20		
Wyoming	\$18.00	\$75.00		
Idaho	\$23.50	\$74.50		
Utah	\$26.00	\$70.00		
Montana	\$19.25	\$69.25		
Nevada	\$29.00	\$69.00		
Texas	\$38.00	\$65.00		
Oregon	\$24.75	\$61.50		
Louisiana	\$9.50	\$60.00	\$5.50	\$30.00
South Dakota	\$21.00	\$59.00		
New Hampshire	\$35.00	\$53.00		
Maine	\$22.00	\$53.00		
Arizona	\$18.00	\$51.50		
Tennessee	\$21.00	\$51.00		
Nebraska	\$15.00	\$45.00		
Washington	\$21.90	\$43.80	\$19.71	\$39.42
Michigan	\$27.00	\$41.00		
Vermont	\$20.00	\$41.00		
Kansas	\$19.00	\$41.00		
Colorado	\$20.25	\$40.25		
Connecticut	\$20.00	\$40.00		
New York	\$19.00	\$40.00		
Ohio	\$19.00	\$40.00		
Wisconsin	\$17.00	\$40.00		
Iowa	\$17.50	\$39.50		
New Mexico	\$17.50	\$39.00		
Massachusetts	\$27.50	\$37.50		
Oklahoma	\$20.00	\$37.00		
Minnesota	\$18.00	\$35.00		
Rhode Island	\$18.00	\$35.00		
Pennsylvania	\$17.00	\$35.00		
Kentucky	\$15.00	\$35.00		
Missouri	\$12.00	\$35.00		
North Dakota	\$10.00	\$35.00		
South Carolina	\$10.00	\$35.00	\$10.00	\$35.00
New Jersey	\$22.50	\$34.00		
Arkansas	\$10.50	\$32.00		
Florida	\$13.50	\$31.50	\$13.50	\$31.50
Alabama	\$9.50	\$31.00	\$16.00	\$31.00
North Carolina	\$15.00	\$30.00		
Virginia	\$12.00	\$30.00	\$7.50	\$7.50
West Virginia	\$11.00	\$30.00		
Mississippi	\$8.00	\$30.00	\$4.00	\$30.00
Hawaii	\$5.00	\$25.00		
Indiana	\$14.25	\$24.75		
Illinois	\$13.00	\$24.50		
Georgia	\$9.00	\$24.00		
Delaware	\$8.50	\$15.00		
Maryland	\$9.00	\$14.00	\$10.50	variable

## Justification for Building a New Hatchery in Anchorage

April 7, 2005

At one time, the Alaska Department of Fish and Game's Division of Sport Fish stocked fish produced at six state-owned hatcheries in Southcentral and Interior Alaska waters. Funding constraints closed all but two of these hatcheries and production was consolidated at the Fort Richardson and Elmendorf hatcheries. Free waste heat from power plants located on adjacent military bases allowed for quick growth and efficient hatchery operations. But as of October 2005, both of these hatcheries will lose that heat source.

The loss of heat is only one part of the larger picture. The facilities, at over 30 years old, are outdated, and are presenting an ever-growing list of problems in maintaining the Sport Fish Hatchery program:

- Concrete is crumbling, structural problems are increasing, pipes are failing, electrical systems are deteriorating;
- Facilities are inefficient, water and heat conservation systems are non-existent;
- Competition for water rights and ground water sources requires more efficient use of water;
- Open air raceways violate many state mandated fish disease prevention standards;
- Facilities were not designed for Alaska's severe climate, personnel safety issues occur during the winter; and
- Facility designs that did not anticipate multiple species production, jerry rigged accommodations have a limited life.

The loss of heat and other facility problems will result in the loss of 25% of the king salmon smolt, 10% of the rainbow trout, 90% of the arctic grayling production and 100% of the lake trout. This lost production and lost angling opportunity translates into a loss of millions of dollars of annual economic benefit to Alaska. Plus, with fewer hatchery fish available, anglers will turn towards harvesting more wild fish stocks, which in many cases, cannot withstand additional harvest pressures or are already fully allocated to various user groups.

Sport Fish staff have worked for many years to address these and other problems, but none of the remedies have addressed all of the facility problems and demands. A CH2M Hill report completed in December 2004 is a comprehensive study of the hatchery system and their recommendation is to construct a new hatchery facility rather than continuing to "Band-Aid" the existing ones. A new facility in Anchorage will: (1) fully address all of the problems that exist; (2) increase fish production by 50%; and (3) meet both current and future stocking demands. A new hatchery in Anchorage is clearly the most economically sound alternative.

The new facility will be:

- **Enclosed** to protect fish from birds and mammals, reducing direct predation and eliminating exposure to disease from outside sources to meet all state mandated disease management standards. This will also protect employees from the arctic environment.
- **Based on Recirculating Technology** to allow for conservation of water and heat. Using 90% less water would also reduce heating costs by 90%.

**More Efficient** automated feeding systems and facility design facilitate movement of fish for stocking and grading. Reduces costs per fish raised.

Construction of a new hatchery will all but eliminate the risk of system failure due to aging plumbing and structural decay. Simply installing large boilers, drilling more wells and repairing pipes and cement raceways will not solve the problem. The existing facilities would continue to deteriorate and remain inefficient.

Therefore, the Department of Fish and Game recommends that plans to construct a new hatchery facility in Anchorage move forward as quickly as possible.

**HB**

**254**

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

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PHONE (907) 465-4958  
FAX (907) 465-2061

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SPONSOR STATEMENT FOR HB 254

By: Representative Norman Rokeberg

**Title: An Act directing the Alaska Natural Gas Development Authority to use money appropriated from the Railbelt energy fund and from other sources for preliminary engineering and related work for the construction of pipeline facilities to transport Alaska North Slope natural gas to the Southcentral Alaska gas distribution grid, and amending the definition of 'project' as applied to the work of the Alaska Natural Gas Development Authority; and providing for an effective date.**

House Bill 254 is a companion to an appropriation bill (HB 253) that grants \$8,000,000 to the Alaska Natural Gas Development Authority (ANGDA) for purposes described in AS 41.41.210. This bill, HB 254, creates the referenced statute, AS 41.41.210.

AS 41.41.210 creates the statutory authority for the Alaska Natural Gas Development Authority to use monies appropriated from the Railbelt energy fund to initiate and continue the preliminary engineering, design and construction of the gas transmission pipeline and other facilities for delivering gas from the principal Alaska North Slope natural gas pipeline to the Southcentral Alaska gas distribution grid.

HB 254 clarifies the project definition and ANGDA's scope of work to include: 1) a spur line route adjacent to the Parks Highway to Southcentral from an appropriate Northern point of the main gas pipeline; 2) a direct ("bullet line") pipeline from Prudhoe Bay to Southcentral; 3) the spur pipeline from Glennallen to Southcentral; and 4) the Prudhoe Bay to Valdez gas pipeline.

The expanded activities and routes will allow the State of Alaska to be prepared to meet future deadlines for construction of the main natural gas pipeline project or provide an alternative means of transporting Alaska's stranded gas to a market servicing the needs of the majority of our citizens.

I urge your support of this legislation.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

Website: <http://www.aklegis.state.ak.us/roks/rokeberg/index.html>



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## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SECTIONAL ANALYSIS FOR HB 254

By: Representative Norman Rokeberg

**Title:** An Act directing the Alaska Natural Gas Development Authority to use money appropriated from the Railbelt energy fund and from other sources for preliminary engineering and related work for the construction of pipeline facilities to transport Alaska North Slope natural gas to the Southcentral Alaska gas distribution grid, and amending the definition of 'project' as applied to the work of the Alaska Natural Gas Development Authority; and providing for an effective date.

**Section 1:** Provides legislative findings.

**Section 2:** Establishes AS 41.41.210, which provides the authority for the Alaska Natural Gas Development Authority (ANGDA) to initiate the preliminary engineering, design, and construction of the gas transmission pipeline and other facilities for delivering gas from the principal Alaska North Slope natural gas pipeline to the Southcentral Alaska gas distribution grid.

**Section 3:** Amends the definition of "project" to provide ANDGA with several project options.

**Section 4:** Immediate effective date.



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 254  
 (H) Publish Date: 4/29/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Net. Gas Spur Line and Transportation Grid RDU ANGDA  
 Component \_\_\_\_\_  
 Sponsor Rokeberg  
 Requester House Oil and Gas Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 254 authorizes the Alaska Natural Gas Development Authority to contract for preliminary engineering and related work for the construction of pipeline facilities to transport Alaska North Slope natural gas to the Southcentral Alaska gas distribution grid. This authorization is specifically contingent upon appropriation of funding for that purpose, thus the passage of HB 254 without a separate appropriation from the Railbelt Energy Fund or other source will have no fiscal impact on ANGDA.

Prepared by: Jerry Boutin Phone 465-2302  
 Division Special Assistant to the Commissioner Date/Time 4/26/05 12:01 PM  
 Approved by: Tom Boutin, Deputy Commissioner Date 4/26/2005  
 Agency Revenue

Walter J. Hickel

Box 101700  
Anchorage, Alaska 99510-1700  
Telephone 907-343-2400  
Fax 907-343-2211  
Email wjhickel@gci.net

April 19, 2005

The Honorable Norm Rokeberg  
Chairman, House Rules Committee  
Alaska State Capitol, Room 214  
Juneau, AK 99801-1182

FAX 907-465-2040

Dear Chairman Rokeberg:

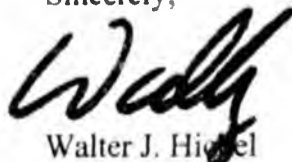
On behalf of the citizen organization Backbone 2, I am writing in support of your legislation HB253 and HB254. We feel that the options for gas-line development that will bring gas into Southcentral Alaska and provide the basis for an ongoing economy for our state are very important. It is clear that the majority of the people of Alaska support an all-Alaska pipeline.

Your legislation will provide the necessary funds for the Alaska Natural Gas Development Authority to move forward with such a project.

Thank you for your leadership for the future of Alaska.

With best regards.

Sincerely,

  
Walter J. Hickel

**SUPPORT**

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Anchorage Daily News

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**Natural gas line from Nenana to Southcentral proposed****ASSEMBLY MEETING: Anchorage, Mat-Su bodies heard from Enstar official.**

By RINDI WHITE

Anchorage Daily News

*(Published: April 29, 2005)*

CHUGIAK -- A pipeline from natural gas fields in the Nenana Basin could provide the gas needed to carry Southcentral Alaska through an impending shortage, the president of Enstar Natural Gas Co. told lawmakers Thursday.

Enstar's Tony Izzo and Municipal Light & Power general manager Jim Posey presented information about a natural-gas line to untapped fields near Fairbanks at a joint meeting of the Anchorage and Matanuska-Susitna Borough assemblies. The two elected bodies meet quarterly to discuss issues of import to Southcentral Alaska.

Natural gas is one of those issues. Anchorage and the Mat-Su are home to more than 473,000 customers of Municipal Light & Power, Chugach Electric Association and Enstar. The two utilities use Enstar natural gas to generate power for customers across the region.

Anchorage Mayor Mark Begich said Southcentral Alaska's economy could be in danger if inexpensive utilities are no longer available. "If we don't move on this issue in some form, or have someone move on it, we're going to choke off economic development," he said. At best, Begich said, natural gas stores in Cook Inlet could hold out until 2012. But even that could dampen business opportunities, due to higher natural gas prices. Izzo told members of both assemblies that the price of Enstar gas jumped 14 percent in 2004 and another 17 percent in January.

Posey said two-thirds of the gas produced in Cook Inlet goes to two industrial users, a urea plant and a liquid natural gas plant, both on the Kenai Peninsula. The companies, in the next five years, will be deciding whether or not to continue operations in Cook Inlet.

But, Posey said, those two users pay two-thirds of the cost of gas production. If they're no longer using gas, he said, gas prices for general consumers could go through the roof. And gas shortages would still be felt in 2012 unless new gas is found.

If exploration and production by Cook Inlet gas producers succeed, Posey said, they could add about 10 years to the lifespan of the Cook Inlet field, at a cost of about \$465 million. Changing to a different fuel source would take money too -- \$300 million a year more to consumers to purchase fuel oil or nearly \$600 million a year for propane, Izzo said. That's where Enstar, Chugach Electric and Municipal Light & Power's line to the Nenana Basin comes in.

"Heck, we could build a spur line somewhere between those numbers and get it to Fairbanks, and it's a one-time shot," Izzo said, referring to the estimated \$500 million cost of building a northern pipeline route to Nenana.

Izzo said Usibelli, Doyon Industries and Andex Resources have all teamed up to explore natural gas stores in the Nenana Basin. They've estimated between five and 15 trillion cubic feet of gas are available in an area about 50 miles from Fairbanks. At today's usage rates, that could mean an additional 50 to 150 years of natural gas for Southcentral consumers.

**ADN SUPPORT STORY**

ENSTAR, in cooperation with Cook Inlet Tribal Council, has received \$2.5 million from the U.S. Department of Energy to study a route from Nenana to Southcentral Alaska. They'll start the 18-month study period in June, Izzo said.

According to Izzo, it's likely the gas spur-line, a 24-inch pipe, would follow the routes of the Alaska Railroad, the Parks Highway and electric lines that run from Mat-Su to Nenana. Studying the route, he said, could take as much as \$6 million, and the company is looking for more funding. In a best-case scenario, he said, the line could be studied and built in four years.

Izzo said this line could move forward whether a gas line is built from Prudhoe Bay to Valdez or to Canada. If a line from Prudhoe Bay is built, he said, it would likely connect to that gas line near Fairbanks. But even if no line is built, this project can move forward.

Izzo said proponents of the Nenana Basin line are working with representatives from the Alaska Natural Gas Development Authority. The two groups share members, he said. However, the authority proposes a separate, competing line from Glennallen to Palmer.

"What we're working on is a private industry initiative. We have a different level of urgency," Izzo said. "Private industry, supported by the federal government, believes the impact on the majority of Alaskans is so great that it's imperative."

Representatives from both municipalities said they'd consider resolutions in favor of the proposed Enstar gas line at upcoming assembly meetings.

Daily News reporter Rindi White can be reached at [rwhite@adn.com](mailto:rwhite@adn.com) or 1-907-352-6709.

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**HB**

**256**

**Representative Jay Ramras**  
**Co-Chair, House Resources**  
**V-Chair, Economic Develop.**  
**Tourism & Trade**  
**House State Affairs**

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## **Alaska State Legislature**



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**House District 10**

**House of Representatives**

### **Sponsor Statement** **HB 256**

#### **"An Act naming the Ruth Burnett Sport Fish Hatchery in Fairbanks"**

HB 256 is based on the belief that Fairbanks will soon be constructing a much needed fish hatchery, and the much of the credit for that project belongs to the late former Mayor Ruth Burnett.

Mayor Burnett's efforts were instrumental in securing approximately \$10 million in federal funding for the construction of the hatchery. Passage of HB 256 will show that the Alaska Legislature believes in the hard work of its local citizens, in not only supporting an idea but assisting in making it a reality.



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 256  
 (H) Polish Date: 4/11/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: An Act Naming the Ruth Burnett RDU: Sport Fisheries  
Sport Fish Hatchery in Fairbanks Component: Sport Fisheries  
 Sponsor: Representative Ramras  
 Requester: House Fisheries Committee Component No. 145

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone 465-6137  
 Division: Legislative Liaison Date/Time 04/07/05 8:35 a.m.  
 Approved by: McKie Campbell, Commissioner Date 4/7/2005  
 Agency: Alaska Department of Fish & Game

## AS 35.40 NAMES OF PUBLIC WORKS

### Section

1. Reeve Boulevard.
5. Klondike Highway.
10. E. L. Patton Bridge.
15. Douglas Bridge.
20. Brenwick/Craig Road.
25. Dillingham to Aleknagik Road.
30. Woodrow Johansen Expressway.
35. Veterans' memorials.
40. Robert J. Mitchell Expressway.
45. Crabbie's Crossing.
50. Ralph M. Bartholomew Veterans' Memorial Bridge.
55. Clint Starnes Memorial Bridge.
60. Charles E. Carney Memorial Bridge.
65. Chief Eddie Hoffman Road.
70. Bob Blodgett Nome-Teller Highway.
75. Ina Johnston Bridge.
80. Briggs Bridge.
82. Sergeant James Bondsteel Bridge of Honor.
85. Black Veterans Recognition Bridge.
90. Manvil H. Olson Bridge.
95. Mountain View Road.
100. George W. Palmer Memorial Bridge.
105. East Egan Drive.
110. Robert B. Atwood Building.
115. Herman Leirer Road.
120. State Trooper Bruce A. Heck Memorial Corridor.
125. Terry Miller Legislative Office Building.
130. Ted Stevens Anchorage International Airport.
135. Alaska Native Veterans' Honor Bridge.
140. Joe Redington, Sr., Memorial Trail.
145. Fred Zharoff Memorial Bridge.
150. Trooper Hans-Peter Lothar Roelle Memorial Weigh Station.
155. Officer Justin Todd Wollam Memorial Bike Trail.
160. Mail Carrier Emil Wegner Memorial Corridor.
165. Wendy Ann Cogdell Memorial Rest Area.
170. Katelyn Ohmer Markley Bridge.
175. William Ransom Wood Centennial Bridge.
180. Tom Madsen Airport.
185. Sven Haakanson, Sr., Airport.
190. Jack Coghill Bridge to the Interior.

# Alaska State Legislature

Representative Jay Ramras  
Co-Chair, House Resources  
V-Chair, Economic Development,  
Tourism & Trade  
House State Affairs  
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Fairbanks, Alaska 99701  
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House District 10

## House of Representatives

April 4, 2005

Dear Mr. <sup>Wally</sup> ~~Burnett~~,

It was a pleasure speaking to you on Friday. I have known your family since I was a child.

Thank you for expressing interest and support in naming the new Fairbanks fish hatchery, the Ruth Burnett Sport Fish Hatchery.

After Ruth's service to the community as City Mayor and your family's long storied commitment to the betterment of Fairbanks; along with Ruth's special passion about the fish hatchery idea that she expressed to Senator Stevens, I think it is a fitting honor.

Please fax back to us a letter indicating your consent to use Ruth's name.

We would like to finish drafting our bill in the next day or two, so we can get it read across the floor of the State House and begin the process of making the Ruth Burnett Sport Fish Hatchery a reality.

Please fax your return correspondence back to (907) 465-2070

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Ramras".

Representative Jay Ramras  
District 10

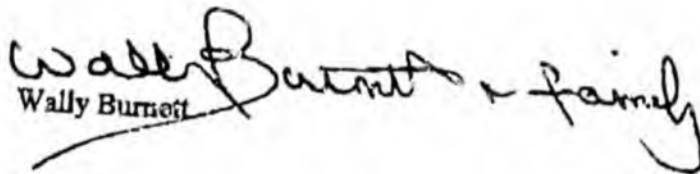
Arctic Fire and Safety  
707 30<sup>th</sup> Ave  
Fairbanks, AK 99701  
907-452-7806

April 4, 2005

Dear Representative Jay Ramras,

Thank you so much for considering and taking interest in the Fairbanks fish hatchery bill, using Ruth's name is quite an honor, I'm sure she would be very pleased. You have my consent to use Ruth's name for the bill, we are very excited to see this happen.

Thank you,

  
Wally Burnett

**HB**

**2669**

Representative Jay Ramras  
Co-Chair, House Resources  
V-Chair, Economic Develop.  
Tourism & Trade

House State Affairs  
119 N. Cushman St. Suite 207  
Fairbanks, Alaska 99701  
Phone: (907) 452-1088  
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# Alaska State Legislature



While in Session  
State Capitol, Room 104  
Juneau, Alaska 99801-1182  
(907) 465-3004  
Fax: 465-2070  
Toll Free: (877) 465-3004

House District 10

## House of Representatives Sponsor Statement HB 269

House Bill 269 addresses contribution actions relating to the costs of environmental cleanups and the damages associated with hazardous substance releases. Current statutes impose joint and several liability associated with hazardous substance releases. They are known as responsible parties. A party who incurs cleanup costs and damages may bring a court action against other responsible parties to have them pay for their fair share of the environmental cleanup.

Voluntary cleanups form the vast majority of the cleanups conducted in the State of Alaska. Voluntary cleanups allow the State of Alaska to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense. The right to these contribution actions creates an important incentive for voluntary cleanups, by allowing responsible parties to undertake effective cleanups themselves, and then be able to share the costs and other related damages with other responsible parties, who may be unwilling to voluntarily undertake or assist with the cleanup.

The United States Supreme Court, in *Cooper Industries v. Avall Services*, found that a responsible party could not bring a contribution action until such time as it has been sued by the by a state or federal government, or had entered into a formal administrative settlement of liability. The *Avall* decision has created confusion as to the contribution rights of responsible parties who undertake voluntary cleanups, and has placed in jeopardy the process of voluntary cleanups under AS 46.03.822.

Furthermore, the *Avall* decision is in conflict with an earlier Alaska Supreme Court decision in, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in the absence of legislative action, responsible parties in Alaska may be fearful of undertaking voluntary cleanups at their own expense.

The purpose of HB 269, is to respond to the *Avall* and *Laidlaw* decisions by clarifying the language in AS 46.03.822(j), ensuring that responsible parties who conduct voluntary cleanups may bring contribution actions against other responsible parties.

\*\*\*\*\*

**Representative Jay Ramras**  
**Co-Chair, House Resources**  
**V-Chair, Economic Develop.**  
**Tourism & Trade**

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**House District 10**

## House of Representatives Sectional Summary HB 269 Work Order 24-LS0879\A

**Section 1.** Describes the Legislative Findings and Purpose of this bill. The United States Supreme Court, in *Cooper Industries v. Aviall Services*, found that a responsible party could not bring a contribution action unless a state or the federal government had brought a suit against them, or had entered into a formal administrative settlement of its liability. The *Aviall* decision has created confusion as to the contribution rights of responsible parties, who have or will conduct voluntary cleanups, and has placed in jeopardy the process of voluntary cleanups under AS 46.03.822.

Furthermore, the *Aviall* decision is in conflict with an earlier Alaska Supreme Court decision, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and in the absence of legislative actions, responsible parties in Alaska may be fearful of undertaking voluntary cleanups.

Voluntary cleanups form the vast majority of the cleanups conducted in the State of Alaska. Voluntary cleanups allow the State of Alaska to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense. The right to these contribution actions creates an important incentive for voluntary cleanups, by allowing responsible parties to undertake effective cleanups themselves, and then be able to share those costs with other responsible parties, who may be unwilling to voluntarily undertake or assist with the cleanup.

**Section 2.** Ensures that a party may seek contribution from any other person who is liable for the contamination after the issuance of a potential liability determination by the Department of Environmental Conservation.

**Section 3.** Defines "potential liability determination".

**Section 4.** States that the changes made in sections 2 and 3 apply to liability for the release or threatened release of hazardous substances that occurred before or after this law takes effect.

**Section 5.** States that this Act will take effect immediately.

Representative\_Jay\_Ramras@leg

**SECTIONAL SUMMARY**

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB269-LAW-Env-4-20-0!  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to contribution actions relating RDU CIVIL  
to the release of a hazardous substance..." Component Environmental  
 Sponsor Representative Ramras  
 Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<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 (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill would remove uncertainty caused by the United States Supreme Court's December 2004 decision in Cooper Industries v. Aviall Services concerning the contribution rights of persons conducting voluntary cleanups under the state's hazardous substance liability law. HB 269 clarifies that parties responsible for hazardous substance cleanup costs and damages can seek contribution under AS 46.03.822(j) from other responsible parties in the absence of a lawsuit brought by the state or others to force cleanup. Without such clarifying legislation, the Department of Law could incur an increase in costs in the future. The uncertainty caused by Aviall would likely force the state to pursue additional costly administrative or judicial enforcement actions to force cleanups or to undertake cleanups at public expense in absence of voluntary cleanups by private parties. The likelihood and magnitude of these unanticipated

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 4/20/05 12:03 PM  
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date 4/20/2005  
 Agency: Department of Law

**FISCAL NOTE**

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

**BILL NO. HB269-LAW-Env-4-20-05**

**ANALYSIS CONTINUATION**

and unbudgeted costs to the Department of Law is not known. However, enactment of this legislation would prevent these costs from occurring in the future by removing the uncertainty caused by the Aviall ruling as it applies to the state's hazardous substance liability statute.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 269  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title An Act relating to contribution actions relating to the release of a hazardous substance  
 Sponsor Representative Ramras  
 Requester Resources, Judiciary

Dept. Affected: Environmental Conservation  
 RDU Spill Prevention and Response  
 Component Contaminated Sites  
 Component No. 2386

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>
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<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** (Thousands of Dollars)

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 Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**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)

Passage of HB 269 would not result in any fiscal impact to the Department because it preserves the voluntary cleanup program now in place.

Prepared by: Larry Dietrick  
 Division: Spill Prevention and Response  
 Approved by: Kurt Fredriksson  
 Agency: Department of Environmental Conservation

Phone 465-5250  
 Date/Time 4/20/2005 12:45 p.m.  
 Date 4/20/2005 12:45 p.m.



**Sec. 46.03.822. Strict liability for the release of hazardous substances.**

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

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

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

(C) an act of God; and

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

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

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

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

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

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

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

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

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

(1) any specialized knowledge or experience the person has;

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

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

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

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

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the

facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

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

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

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

- (1) the harm caused by the release or threatened release is divisible; and
- (2) there is a reasonable basis for apportionment of costs and damages to that person.

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

(k) A unit of state or local government that acquired ownership or control of a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax delinquency proceeding, abandonment, escheat, the exercise of eminent domain authority by purchase or condemnation, or circumstances in which the governmental unit involuntarily acquired title by virtue of its function as a sovereign is not liable as an owner or operator under this section unless the governmental unit has caused or contributed to the release or threatened release of a hazardous substance at or from the facility or vessel, in which case, the governmental unit is subject to liability under this section in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. A hazardous substance release shall be determined to

have occurred as provided in this section. For purposes of this subsection, "caused or contributed to the release or threatened release of a hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility or vessel of a hazardous substance in the air, land, or water that had first been released to the environment by a person other than the governmental unit that acquired the facility or vessel;

(2) does not include the exercise or failure to exercise regulatory or enforcement authority;

(3) after the ownership or control of the facility or vessel has been acquired by the governmental unit, includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(l) For purposes of determining liability in an action to recover damages or costs under this section, a person who acquires a facility and who, upon discovering a release or threatened release on, in, or at the facility that occurred before acquisition of the facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, and who, upon discovering the release or threatened release, acted in accordance with (b)(2) of this section to begin operations to contain and clean up the hazardous substance, may not be held liable under this section unless the person has caused or contributed to the release or threatened release of the hazardous substance, in which case, the person is subject to liability under this section in the same manner as any other person. For purposes of this subsection, "caused or contributed to the release or threatened release of the hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility of a hazardous substance in the air, land, or water that had first been released into the environment by a person other than the person that acquired the facility;

(2) after the ownership or control of the facility has been acquired by the person includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(m) In this section, "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825.

#### History

(§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976; am § 2 ch 39 SLA 1989; am §§ 9, 10 ch 83 SLA 1991; am §§ 1, 3 ch 92 SLA 1991; am §§ 2 - 5 ch 83 SLA 1992; am § 14 ch 71 SLA 1997; am §§ 1, 2 ch 91 SLA 1999)

## Annotations

Revisor's notes. In 1995, in (b)(1)(B) of this section, "AS 46.03.825(d)" was substituted for "46.03.825(e)", to reflect the 1992 reorganization of AS 46.03.825".

Subsections (k) and (l) were enacted as (l) and (m), respectively. Relettered in 1999, at which time former subsection (k) was relettered as (m) and an internal reference in subsection (d) was conformed.

Cross references. For provision that actions brought under this section may be brought directly against insurers or other persons providing evidence of financial responsibility, see AS 46.04.040(e); for applicability of the 1989 amendment of this section to releases or threats of releases that occurred before May 13, 1989, see § 8, ch. 39, SLA 1989 in the Temporary and Special Acts; for limited immunity from liability under this section, see § 4, ch. 96, SLA 1990, as amended by § 13, ch. 70, SLA 1999, in the 1990 and 1999 Temporary and Special Acts; for detention of vessel as security for payment of damages, see AS 46.03.770; for legislative purpose in connection with the 1992 amendments to this section, see § 1, ch. 83, SLA 1992 in the Temporary and Special Acts; for applicability of the 1992 amendments to this section, see § 18, ch. 83, SLA 1992 in the Temporary and Special Acts.

Administrative Code. - For discharge reporting, cleanup, and disposal of oil and other hazardous substances, see 18 AAC 75, art. 3.

For cleanup levels, see 18 AAC 78, art. 6.

Effect of amendments. The first 1991 amendment, effective June 28, 1991, in subsection (a), rewrote the introductory paragraph, and, in subsection (h), inserted ", or a village" in two places and made stylistic changes.

The second 1991 amendment, effective July 3, 1991, rewrote the introductory paragraph in subsection (a) and added subsection (k).

The 1991 amendments to subsection (a) were harmonized by the revisor.

The 1992 amendment, effective June 18, 1992, inserted "and the limitation on liability provided under AS 46.03.825," and made stylistic changes in subsection (a); inserted a section reference in subparagraph (b)(1)(B); rewrote subsection (h); and inserted "has the meaning given in AS 46.03.824 and includes" and made a stylistic change in subsection (k).

The 1997 amendment, effective September 9, 1997, inserted "the exception set out in AS 09.65.240," near the beginning of the introductory language in subsection (a).

The 1999 amendment, effective July 2, 1999, inserted "and (m)" and "voluntary" in the first sentence in subsection (d) and added subsections (k) and (l).

Editor's notes. Section 22, ch. 83, SLA 1991 makes the amendment to subsection (a) by § 9, ch. 83, SLA 1991 retroactive to March 24, 1989.

Section 3, ch. 91, SLA 1999 provides that subsection (k) "applies to a vessel or facility acquired by a governmental entity on or after July 2, 1999," and that for purposes of § 3, ch. 91, SLA 1999, "when foreclosure by a municipality is involved, the property is acquired on the date it is deeded to the municipality under AS 29.45.450."

Opinions of attorney general. Subsection (g) does not bar a hold harmless agreement between a rural community and the state. However, such a hold harmless agreement probably would not adequately protect the state from liability under subsection (a).  
March 22, 1991, Op. Att'y Gen.

The Department of Natural Resources may require an environmental property audit as a prerequisite to acceptance of an interagency land transfer. March 22, 1991, Op. Att'y Gen.

For general discussion of issues regarding reuse of certain Trans Alaska Pipeline System construction camp pads for the benefit of a proposed natural gas pipeline by the Yukon Pacific Corporation, see September 5, 1991, Op. Att'y Gen.

For a general discussion of landowner's liability for contaminated property under state and federal law, see December 1, 1993, Op. Att'y Gen.

## NOTES TO DECISIONS

Intent. - Division (b)(1)(B)(ii) does not impose a duty to exercise reasonable care to prevent the negligent acts of third parties, but provides a defensive escape hatch for otherwise liable parties. *Parks Hiway Enters., LLC v. CEM Leasing, Inc.* 995 P.2d 657 (Alaska 2000).

Federal maritime law. - In allowing recovery for purely economic damages, the state's hazardous substances statutes do not unduly interfere with the harmony or uniformity of federal maritime law. *Kodiak Island Borough v. Exxon Corp.* 991 P.2d 757 (Alaska 1999).

Control over product. - Under the doctrine of ejusdem generis, the appellate court interpreted the general definition of "having control" in AS 45.03.826(4) in light of the more specific language found in paragraph (a)(1) of this section. *Parks Hiway Enters., LLC v. CEM Leasing, Inc.* 995 P.2d 657 (Alaska 2000).

"Owner." - Because title to, and thus ownership of, fuel transferred to the service station when the supplier deposited it into the station's tanks, the supplier was not an "owner" at the time of a fuel leak from the station's tanks. *Parks Hiway Enters., LLC v. CEM Leasing, Inc.* 995 P.2d 657 (Alaska 2000).

"Operator." - Because a showing that the potentially liable party exercised actual control over the facility is required to establish strict liability upon the "operator" of that facility, where a fuel supplier did not oversee, control, or manage a service station, and its only interaction with the station's tanks involved refilling them as requested by the station owner, the supplier was not an "operator" within the meaning of paragraph (a)(2). *Parks Hiway Enters., LLC v. CEM Leasing, Inc.* 995 P.2d 657 (Alaska 2000).

Governmental services. - The breadth of the language in AS 46.03.824 and the statute's specific provision for recovery of costs incurred by "the state, a municipality, or a village," strongly suggest a legislative intent to permit compensation for governmental services, including those services rendered non-compensable at common law by the free public service doctrine. *Kodiak Island Borough v. Exxon Corp.* 991 P.2d 757 (Alaska 1999).

Negligence not resulting in physical harm. - The maritime law rule that provides that in those situations where negligence does not result in any physical harm, thereby providing no basis for an independent tort, and only pecuniary loss is suffered, a plaintiff may not recover for the loss of the financial benefits of a contract or prospective trade, applies to limit the damages recoverable under this section in excess of \$100 million, which is the amount recoverable under the federal Trans-Alaska Pipeline Authorization Act, which

also provides for strict liability for oil spills. *In re Exxon Valdez*, 767 F. Supp. 1509 (D. Alaska 1991).

Statute gives private plaintiffs cause of action. - This section provides private plaintiffs with a cause of action for joint and several strict liability, not just for contribution, and suits under the statute, both direct and for contribution, are governed by a statute of limitations. *FDIC v. Laidlaw Transit, Inc.* 21 P.3d 344 (Alaska 2001).

Statute of limitations defense. - A statute of limitations defense is available for a direct cause of action under AS 46.03.822(a). *FDIC v. Laidlaw Transit, Inc.* 21 P.3d 344 (Alaska 2001).

Contribution actions during pendency of direct actions. - A cause of action for contribution under subsection (j) may be brought during the pendency of a direct action under subsection (a), but does not accrue for purposes of the statute of limitations until the direct action concludes. *FDIC v. Laidlaw Transit, Inc.* 21 P.3d 344 (Alaska 2001).

Allowable damages. - Both the progressive expansion of compensable harms covered by the post-spill amendments to this statute and the comprehensive nature of the damages provisions strongly suggest that the legislature acted not to narrow compensation or limit liability but to clarify and confirm the broad scope of the original provisions by describing concrete examples of allowable damages. *Kodiak Island Borough v. Exxon Corp.* 991 P.2d 757 (Alaska 1999).

Municipal damages. - While the specific costs listed in subsection (a) of this section provide useful examples of harms that the legislature clearly considered compensable, they cannot properly be construed to define the outer limits of the right of municipalities to assert their diverted services claims. *Kodiak Island Borough v. Exxon Corp.* 991 P.2d 757 (Alaska 1999).

Standing. - By defining damages to include costs incurred "by a state, a municipality, or a village," this section itself vests injured municipalities with standing to sue. *Kodiak Island Borough v. Exxon Corp.* 991 P.2d 757 (Alaska 1999).

Applied in *In re Glacier Bay*, 865 F. Supp. 629 (D. Alaska 1991).

Cited in *Tope v. Christianson*, 959 P.2d 1240 (Alaska 1998).

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

COOPER INDUSTRIES, INC. v. AVIALL SERVICES,  
INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

No. 02-1192. Argued October 6, 2004—Decided December 13, 2004

The enabling clause of §113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides that any person “may” seek contribution from any other person liable or potentially liable under CERCLA §107(a) “during or following any civil action” under CERCLA §106 (which authorizes the Federal Government to compel responsible parties to clean up contaminated areas, see *Key Tronic Corp. v. United States*, 511 U. S. 809, 814), or CERCLA §107(a) (which empowers the Government to recover its response costs from potentially responsible persons (PRPs)). Section 113(f)(1)’s saving clause provides: “Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under” §106 or §107. SARA also created a separate express right of contribution, §113(f)(3)(B), for “[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement.”

Cooper Industries, Inc., owned four Texas properties until 1981, when it sold them to Aviall Services, Inc. After operating those sites for several years, Aviall discovered that both it and Cooper had contaminated them when hazardous substances leaked into the ground and ground water. Aviall notified the State of the contamination, but neither the State nor the Federal Government took judicial or administrative measures to compel cleanup. Aviall cleaned up the properties under the State’s supervision and sold them to a third party, but remains contractually responsible for \$5 million or more in cleanup

## Syllabus

costs. Aviall filed this action against Cooper to recover such costs. The original complaint asserted, *inter alia*, a claim for cost recovery under §107(a) and a separate claim for contribution under §113(f)(1). Aviall later amended the complaint to, among other things, combine its two CERCLA claims into a single, joint claim that, pursuant to §113(f)(1), sought contribution from Cooper as a PRP under §107(a). Granting Cooper summary judgment, the District Court held that Aviall had abandoned its freestanding §107 claim, and that contribution under §113(f)(1) was unavailable because Aviall had not been sued under §106 or §107. The Fifth Circuit ultimately reversed, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. The court reasoned in part that "may" in §113(f)(1)'s enabling clause did not mean "may only."

**Held:** A private party who has not been sued under CERCLA §106 or §107(a) may not obtain contribution under §113(f)(1) from other liable parties. Pp. 6–12.

(a) Section 113(f)(1) does not authorize Aviall's suit. This Court disagrees with Aviall's argument that the word "may" in §113(f)(1)'s enabling clause should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. First, the natural meaning of "may" in this context is that it authorizes certain contribution actions that satisfy the subsequent specified condition—*i.e.*, those that occur "during or following" a specified civil action—and no others. Second, reading §113(f)(1) to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, would render entirely superfluous the section's explicit "during or following" condition, as well as §113(f)(3)(B), which permits contribution actions after settlement. This Court is loath to allow such a reading. See, *e.g.*, *Hibbs v. Winn*, 542 U. S. \_\_\_\_\_. Congress would not have bothered to specify conditions under which a person may bring a contribution claim, and at the same time allowed contribution actions absent those conditions. Section 113(f)(1)'s saving clause does not change the Court's conclusion. That clause's sole function is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1), thereby rebutting any presumption that the express right of contribution provided by the enabling clause is the exclusive contribution cause of action available to a PRP. The saving clause, however, does not itself establish a cause of action, nor expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action, nor specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the clause to authorize §113(f)(1) contribution ac-

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tions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that the Court must, if possible, construe a statute to give every word some operative effect. In light of provisions specifying two 3-year limitations periods for contribution actions beginning at the date of judgment, §113(g)(3)(A), and at the date of settlement, §113(g)(3)(B), the absence of any such provision for cases in which a judgment or settlement never occurs also supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B). Given the clear meaning of CERCLA's text, there is no need to resolve the parties' dispute about CERCLA's purpose or to consult that purpose at all. See *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79. Because Aviall has never been subject to a civil action under §106 or §107(a), it has no §113(f)(1) claim. Pp. 6–9.

(b) The Court declines to address in the first instance Aviall's claim that it may recover costs under §107(a)(4)(B) even though it is a PRP. In view of the importance of the §107 issue, the question whether Aviall waived a freestanding §107 claim, and the absence of briefing and decisions by the courts below, this Court is not prepared to resolve the §107 question solely on the basis of dictum in *Key Tronic*. Pp. 9–11.

(c) In addition, the Court declines to decide whether Aviall has an implied right to contribution under §107. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery), the Court notes that it has visited the subject before, see, e.g., *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647, and that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law, cf. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U. S. 11, 19 Pp. 11–12.

312 F. 3d 677, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

No. 02-1192

**COOPER INDUSTRIES, INC., PETITIONER v. AVIALL  
SERVICES, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

[December 13, 2004]

JUSTICE THOMAS delivered the opinion of the Court.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)<sup>1</sup> allows persons who have undertaken efforts to clean up properties contaminated by hazardous substances to seek contribution from other parties liable under CERCLA. Section 113(f)(1) specifies that a party may obtain contribution “during or following any civil action” under CERCLA §106 or §107(a). The issue we must decide is whether a private party who has not been sued under §106 or §107(a) may nevertheless obtain contribution under §113(f)(1) from other liable parties. We hold that it may not.

I

Under CERCLA, 94 Stat. 2767, the Federal Government may clean up a contaminated area itself, see §104, or it may compel responsible parties to perform the cleanup,

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<sup>1</sup>Section 113(f)(1) is codified at 42 U. S. C. §9613(f)(1). We refer throughout, for the most part, to sections of CERCLA rather than the U. S. Code.

## Opinion of the Court

see §106(a). See *Key Tronic Corp. v. United States*, 511 U. S. 809, 814 (1994). In either case, the Government may recover its response costs under §107, 42 U. S. C. §9607 (2000 ed. and Supp. I), the “cost recovery” section of CERCLA. Section 107(a) lists four classes of potentially responsible persons (PRPs) and provides that they “shall be liable” for, among other things, “all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.” §107(a)(4)(A).<sup>2</sup> Section 107(a) further provides that PRPs shall be liable for “any other necessary costs of response incurred by any other person consistent with the national contingency plan.” §107(a)(4)(B).

After CERCLA’s enactment in 1980, litigation arose over whether §107, in addition to allowing the Government and certain private parties to recover costs from PRPs, also allowed a PRP that had incurred response costs to recover costs from other PRPs. More specifically, the question was whether a private party that had incurred response costs, but that had done so voluntarily and was not itself subject to suit, had a cause of action for cost recovery against other PRPs. Various courts held that §107(a)(4)(B) and its predecessors authorized such a cause of action. See, e.g., *Wickland Oil Terminals v. Asarco, Inc.*, 792 F. 2d 887, 890–892 (CA9 1986); *Walls v. Waste Resource Corp.*, 761 F. 2d 311, 317–318 (CA6 1985); *Philadelphia v. Stepan Chemical Co.*, 544 F. Supp. 1135, 1140–1143 (ED Pa. 1982).

After CERCLA’s passage, litigation also ensued over the separate question whether a private entity that had been sued in a cost recovery action (by the Government or by

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<sup>2</sup>The national contingency plan specifies procedures for preparing and responding to contaminations and was promulgated by the Environmental Protection Agency (EPA) pursuant to CERCLA §105, 42 U. S. C. §9605 (2000 ed. and Supp. I). The plan is codified at 40 CFR pt. 300 (2004).

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another PRP) could obtain contribution from other PRPs. As originally enacted in 1980, CERCLA contained no provision expressly providing for a right of action for contribution. A number of District Courts nonetheless held that, although CERCLA did not mention the word "contribution," such a right arose either impliedly from provisions of the statute, or as a matter of federal common law. See, e.g., *United States v. New Castle County*, 642 F. Supp. 1258, 1263–1269 (Del. 1986) (contribution right arises under federal common law); *Colorado v. ASARCO, Inc.*, 608 F. Supp. 1484, 1486–1493 (Colo. 1985) (same); *Wehner v. Syntex Agribusiness, Inc.*, 616 F. Supp. 27, 31 (ED Mo. 1985) (contribution right is implied from §107(e)(2)). That conclusion was debatable in light of two decisions of this Court that refused to recognize implied or common-law rights to contribution in other federal statutes. See *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647 (1981) (refusing to recognize implied or common-law right to contribution in the Sherman Act or the Clayton Act); *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77, 90–99 (1981) (refusing to recognize implied or common-law right to contribution in the Equal Pay Act of 1963 or Title VII of the Civil Rights Act of 1964).

Congress subsequently amended CERCLA in the Superfund Amendments and Reauthorization Act of 1986 (SARA), 100 Stat. 1613, to provide an express cause of action for contribution, codified as CERCLA §113(f)(1):

"Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law.

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In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." *Id.*, at 1647, as codified in 42 U. S. C. §9613(f)(1).

SARA also created a separate express right of contribution, §113(f)(3)(B), for "[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement." In short, after SARA, CERCLA provided for a right to cost recovery in certain circumstances, §107(a), and separate rights to contribution in other circumstances, §§113(f)(1), 113(f)(3)(B).<sup>3</sup>

## II

This case concerns four contaminated aircraft engine maintenance sites in Texas. Cooper Industries, Inc., owned and operated those sites until 1981, when it sold them to Aviall Services, Inc. Aviall operated the four sites for a number of years. Ultimately, Aviall discovered that both it and Cooper had contaminated the facilities when petroleum and other hazardous substances leaked into the ground and ground water through underground storage tanks and spills.

Aviall notified the Texas Natural Resource Conservation Commission (Commission) of the contamination. The

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<sup>3</sup>In *Key Tronic Corp. v. United States*, 511 U. S. 809 (1994), we observed that §107 and §113 created "similar and somewhat overlapping" remedies. *Id.*, at 816. The cost recovery remedy of §107(a)(4)(B) and the contribution remedy of §113(f)(1) are similar at a general level in that they both allow private parties to recoup costs from other private parties. But the two remedies are clearly distinct.

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Commission informed Aviall that it was violating state environmental laws, directed Aviall to clean up the site, and threatened to pursue an enforcement action if Aviall failed to undertake remediation. Neither the Commission nor the EPA, however, took judicial or administrative measures to compel cleanup.

Aviall cleaned up the properties under the State's supervision, beginning in 1984. Aviall sold the properties to a third party in 1995 and 1996 but remains contractually responsible for the cleanup. Aviall has incurred approximately \$5 million in cleanup costs; the total costs may be even greater. In August 1997, Aviall filed this action against Cooper in the United States District Court for the Northern District of Texas seeking to recover cleanup costs. The original complaint asserted a claim for cost recovery under CERCLA §107(a), a separate claim for contribution under CERCLA §113(f)(1), and state-law claims. Aviall later amended the complaint, combining its two CERCLA claims into a single, joint CERCLA claim. That claim alleged that, pursuant to §113(f)(1), Aviall was entitled to seek contribution from Cooper, as a PRP under §107(a), for response costs and other liability Aviall incurred in connection with the Texas facilities.<sup>4</sup> Aviall continued to assert state-law claims as well.

Both parties moved for summary judgment, and the District Court granted Cooper's motion. The court held that Aviall, having abandoned its §107 claim, sought contribution only under §113(f)(1). The court held that §113(f)(1) relief was unavailable to Aviall because it had

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<sup>4</sup>Aviall asserts that it framed its claim in the manner compelled by Fifth Circuit precedent holding that a §113 claim is a type of §107 claim. *Geraghty & Miller, Inc. v. Conoco, Inc.*, 234 F. 3d 917, 924 (CA5 2000); see also, e.g., *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 153 F. 3d 344, 349-353 (CA6 1998); *Sun Co., Inc. v. Browning-Ferris, Inc.* 124 F. 3d 1187, 1191 (CA10 1997); *Pinal Creek Group v. Newmont Mining Corp.*, 118 F. 3d 1298, 1301-1302 (CA9 1997).

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not been sued under CERCLA §106 or §107. Having dismissed Aviall's federal claim, the court declined to exercise jurisdiction over the state-law claims.

A divided panel of the Court of Appeals for the Fifth Circuit affirmed. 263 F. 3d 134 (2001). The majority, relying principally on the "during or following" language in the first sentence of §113(f)(1), held that "a PRP seeking contribution from other PRPs under §113(f)(1) must have a pending or adjudged §106 administrative order or §107(a) cost recovery action against it." *Id.*, at 145. The dissent reasoned that the final sentence of §113(f)(1), the saving clause, clarified that the federal common-law right to contribution survived the enactment of §113(f)(1), even absent a §106 or §107(a) civil action. *Id.*, at 148–150 (opinion of Wiener, J.).

On rehearing en banc, the Fifth Circuit reversed by a divided vote, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. 312 F. 3d 677 (2002). The court held that "[s]ection 113(f)(1) authorizes suits against PRPs in both its first and last sentence[,] which states without qualification that 'nothing' in the section shall 'diminish' any person's right to bring a contribution action in the absence of a section 106 or section 107(a) action." *Id.*, at 681. The court reasoned in part that "may" in §113(f)(1) did not mean "may only." *Id.*, at 686–687. Three members of the en banc court dissented for essentially the reasons given by the panel majority. *Id.*, at 691–693 (opinion of Garza, J.). We granted certiorari, 540 U. S. 1099, and now reverse.

## III

## A

Section 113(f)(1) does not authorize Aviall's suit. The first sentence, the enabling clause that establishes the right of contribution, provides: "Any person *may* seek

## Opinion of the Court

contribution . . . *during or following* any civil action under section 9606 of this title or under section 9607(a) of this title," 42 U. S. C. §9613(f)(1) (emphasis added). The natural meaning of this sentence is that contribution may only be sought subject to the specified conditions, namely, "during or following" a specified civil action.

Aviall answers that "may" should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. We disagree. First, as just noted, the natural meaning of "may" in the context of the enabling clause is that it authorizes certain contribution actions—ones that satisfy the subsequent specified condition—and no others.

Second, and relatedly, if §113(f)(1) were read to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, then Congress need not have included the explicit "during or following" condition. In other words, Aviall's reading would render part of the statute entirely superfluous, something we are loath to do. See, e.g., *Hibbs v. Winn*, 542 U. S. \_\_\_\_ (2004) (slip op., at 10). Likewise, if §113(f)(1) authorizes contribution actions at any time, §113(f)(3)(B), which permits contribution actions after settlement, is equally superfluous. There is no reason why Congress would bother to specify conditions under which a person may bring a contribution claim, and at the same time allow contribution actions absent those conditions.

The last sentence of §113(f)(1), the saving clause, does not change our conclusion. That sentence provides: "Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." 42 U. S. C. §9613(f)(1). The sole function of the sentence is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1). In other words, the

## Opinion of the Court

sentence rebuts any presumption that the express right of contribution provided by the enabling clause is the exclusive cause of action for contribution available to a PRP. The sentence, however, does not itself establish a cause of action; nor does it expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action; nor does it specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the saving clause to authorize §113(f)(1) contribution actions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that we must, if possible, construe a statute to give every word some operative effect. See *United States v. Nordic Village, Inc.*, 503 U. S. 30, 35–36 (1992).

Our conclusion follows not simply from §113(f)(1) itself, but also from the whole of §113. As noted above, §113 provides two express avenues for contribution: §113(f)(1) ("during or following" specified civil actions) and §113(f)(3)(B) (after an administrative or judicially approved settlement that resolves liability to the United States or a State). Section 113(g)(3) then provides two corresponding 3-year limitations periods for contribution actions, one beginning at the date of judgment, §113(g)(3)(A), and one beginning at the date of settlement, §113(g)(3)(B). Notably absent from §113(g)(3) is any provision for starting the limitations period if a judgment or settlement never occurs, as is the case with a purely voluntary cleanup. The lack of such a provision supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B).

Each side insists that the purpose of CERCLA bolsters its reading of §113(f)(1). Given the clear meaning of the text, there is no need to resolve this dispute or to consult the purpose of CERCLA at all. As we have said: "[I]t is ultimately the provisions of our laws rather than the

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principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998). Section 113(f)(1), 100 Stat. 1647, authorizes contribution claims only "during or following" a civil action under §106 or §107(a), and it is undisputed that Aviall has never been subject to such an action.<sup>5</sup> Aviall therefore has no §113(f)(1) claim.

## B

Aviall and *amicus* Lockheed Martin contend that, in the alternative to an action for contribution under §113(f)(1), Aviall may recover costs under §107(a)(4)(B) even though it is a PRP. The dissent would have us so hold. We decline to address the issue. Neither the District Court, nor the Fifth Circuit panel, nor the Fifth Circuit sitting en banc considered Aviall's §107 claim. In fact, as noted above, Aviall included separate §107 and §113 claims in its original complaint, but then asserted a "combined" §107/§113 claim in its amended complaint. The District Court took this consolidated claim to mean that Aviall was relying on §107 "not as an independent cause of action," but only "to the extent necessary to maintain a viable §113(f)(1) contribution claim." Civ. Action No. 3:97-CV-1926-D (ND Tex., Jan. 13, 2000), App. to Pet. for Cert. 94a, n. 2. Consequently the court saw no need to address any freestanding §107 claim. The Fifth Circuit panel likewise concluded that Aviall no longer advanced a standalone §107 claim. 263 F. 3d, at 137, n. 2. The en banc court found it unnecessary to decide whether Aviall had waived the §107 claim, because it held that Aviall could rely instead on §113. 312 F. 3d, at 685, n. 15. Thus, the court did not address the waiver issue, let alone the merits

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<sup>5</sup>Neither has Aviall been subject to an administrative order under §106; thus, we need not decide whether such an order would qualify as a "civil action under section 9606 . . . or under section 9607(a)" of CERCLA. 42 U. S. C. §9613(f)(1).

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of the §107 claim.

"We ordinarily do not decide in the first instance issues not decided below." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001) (*per curiam*) (internal quotation marks omitted). Although we have deviated from this rule in exceptional circumstances, *United States v. Mendenhall*, 446 U.S. 544, 551–552, n. 5 (1980), the circumstances here cut against resolving the §107 claim. Both the question whether Aviall has waived this claim and the underlying §107 question (if it is not waived) may depend in part on the relationship between §§107 and 113. That relationship is a significant issue in its own right. It is also well beyond the scope of the briefing and, indeed, the question presented, which asks simply whether a private party "may bring an action seeking contribution pursuant to CERCLA Section 113(f)(1)." Pet. for Cert. i. The §107 claim and the preliminary waiver question merit full consideration by the courts below.

Furthermore, the parties cite numerous decisions of the Courts of Appeals as holding that a private party that is itself a PRP may not pursue a §107(a) action against other PRPs for joint and several liability. See, e.g., *Bedford Affiliates v. Sills*, 156 F.3d 416, 423–424 (CA2 1998); *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 153 F.3d 344, 349–356 (CA6 1998); *Pneumo Abex Corp. v. High Point, T. & D. R. Co.*, 142 F.3d 769, 776 (CA4 1998); *Pinal Creek Group v. Newmont Mining Corp.*, 118 F.3d 1298, 1301–1306 (CA9 1997); *New Castle County v. Halliburton NUS Corp.*, 111 F.3d 1116, 1120–1124 (CA3 1997); *Redwing Carriers, Inc. v. Saraland Apartments*, 94 F.3d 1489, 1496, and n. 7 (CA11 1996); *United States v. Colorado & E. R. Co.*, 50 F.3d 1530, 1534–1536 (CA10 1995); *United Technologies Corp. v. Browning-Ferris Industries*, 33 F.3d 96, 98–103 (CA1 1994). To hold here that Aviall may pursue a §107 action, we would have to consider whether these decisions are correct, an issue that Aviall has flagged but not briefed. And we

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might have to consider other issues, also not briefed, such as whether Aviall, which seeks to recover the share of its cleanup costs fairly chargeable to Cooper, may pursue a §107 cost recovery action for some form of liability other than joint and several. We think it more prudent to withhold judgment on these matters.

In view of the importance of the §107 issue and the absence of briefing and decisions by the courts below, we are not prepared—as the dissent would have it—to resolve the §107 question solely on the basis of dictum in *Key Tronic*. We held there that certain attorney's fees were not "necessary costs of response" within the meaning of §107(a)(4)(B). 511 U. S., at 818–821. But we did not address the relevance, if any, of *Key Tronic*'s status as a PRP or confront the relationship between §§107 and 113. In discussing §107, we did not even classify it precisely as a right of cost recovery or a right of contribution, as the dissent's descriptions of the decision reveal. *Post*, at 1–2 (opinion of GINSBURG, J.) (describing *Key Tronic* as recognizing a right to "seek recovery of cleanup costs" (quoting 511 U. S. at 818), but in the following paragraph saying that *Key Tronic* identified a "right to contribution"). "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U. S. 507, 511 (1925). Aviall itself recognizes the need for fuller examination of the §107 claim; it has simply requested that we remand for consideration of that claim, not that we resolve the claim in the first instance.

## C

In addition to leaving open whether Aviall may seek cost recovery under §107, Part III–B, *supra*, we decline to decide whether Aviall has an implied right to contribution under §107. Portions of the Fifth Circuit's opinion below might be taken to endorse the latter cause of action, 312

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F. 3d, at 687; others appear to reserve the question whether such a cause of action exists, *id.*, at 685, n. 15. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery),<sup>6</sup> we note that this Court has visited the subject of implied rights of contribution before. See *Texas Industries*, 451 U. S., at 638-647; *Northwest Airlines*, 451 U. S., at 90-99. We also note that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law. Cf. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U. S. 11, 19 (1979). Nonetheless, we need not and do not decide today whether any judicially implied right of contribution survived the passage of SARA.

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We hold only that §113(f)(1) does not support Aviall's suit. We therefore reverse the judgment of the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

*It is so ordered.*

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<sup>6</sup>As noted above, we do not address whether a §107 cost recovery action by Aviall (if not waived) may seek some form of liability other than joint and several.

GINSBURG, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 02-1192

**COOPER INDUSTRIES, INC., PETITIONER v. AVIALL  
SERVICES, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

[December 13, 2004]

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins,  
dissenting.

Aviall Services, Inc., purchased from Cooper Industries, Inc., property that was contaminated with hazardous substances. Shortly after the purchase, the Texas Natural Resource Conservation Commission notified Aviall that it would institute enforcement action if Aviall failed to remediate the property. Aviall promptly cleaned up the site and now seeks reimbursement from Cooper. In my view, the Court unnecessarily defers decision on Aviall's entitlement to recover cleanup costs from Cooper.

In *Key Tronic Corp. v. United States*, 511 U. S. 809, 818 (1994), all Members of this Court agreed that §107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U. S. C. §9607, “unquestionably provides a cause of action for [potentially responsible persons (PRPs)] to seek recovery of cleanup costs.” The Court rested that determination squarely and solely on §107(a)(4)(B), which allows *any person who has incurred costs for cleaning up a hazardous waste site to recover all or a portion of those costs from any other person liable under CERCLA.*<sup>1</sup>

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<sup>1</sup>Key Tronic, a PRP, asserted a cost-recovery claim under §107(a) to recoup approximately \$1.2 million in costs that it allegedly incurred

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The *Key Tronic* Court divided, however, on the question whether the right to contribution is implicit in §107(a)'s text, as the majority determined, or whether §107(a) expressly confers the right, as the dissenters urged. The majority stated: Section 107 "implies—but does not expressly command—that [a PRP] may have a claim for contribution against those treated as joint tortfeasors." 511 U. S., at 818, and n. 11 (emphasis added). The dissent maintained: "Section 107(a)(4)(B) states, as clearly as can be, that '[c]overed persons . . . shall be liable for . . . necessary costs of response incurred by any other person.' Surely to say that A shall be liable to B is the *express* creation of a right of action." *Id.*, at 822. But no Justice expressed the slightest doubt that §107 indeed did enable a PRP to sue other covered persons for reimbursement, in whole or part, of cleanup costs the PRP legitimately incurred.

In its original complaint, Aviall identified §107 as the federal-law basis for an independent cost-recovery claim against Cooper, and §113 as the basis for a contribution claim. App. 8A, 16A–17A. In amended pleadings, Aviall alleged both §§107 and 113 as the federal underpinning for its contribution claim. *Id.*, at 27A, 48A. Aviall's use of §§113 and 107 in tandem to assert a contribution claim conformed its pleading to then-governing Fifth Circuit precedent, which held that a CERCLA contribution action arises through the joint operation of §107(a) and §113(f)(1). See *Geraghty and Miller, Inc. v. Conoco, Inc.*, 201 F.3d 917, 924 (2000) ("[W]hile section 113(f) is the

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cleaning up its site "at its own initiative." *Key Tronic Corp. v. United States*, 984 F.2d 1026, 1026 (CA9 1993). Although Key Tronic settled a portion of its liability with the Environmental Protection Agency (EPA), the claim advanced in Key Tronic's §107(a) suit rested on remedial action taken before the EPA's involvement, remediation that did not figure in the settlement. *Id.*, at 1026–1027; *Key Tronic Corp. v. United States*, 511 U. S. 809, 811–812 (1994).

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vehicle for bringing a contribution action, it does not create a new cause of action or create any new liabilities. Rather, it is a mechanism for apportioning costs that are recoverable under section 107." (footnote omitted)). A party obliged by circuit precedent to plead in a certain way can hardly be deemed to have waived a plea the party could have maintained had the law of the Circuit permitted him to do so. But cf. *ante*, at 9–10.

In the Fifth Circuit's view, §107 supplied the right of action for Aviall's claim, and §113(f)(1) prescribed the procedural framework. 312 F.3d 677, 683, and n. 10 (2002) (stating that §107 "impliedly authorizes a cause of action for contribution" and §113(f) "govern[s] and regulate[s]" the action (citing *Geraghty and Miller*, 234 F.3d, at 924) (internal quotation marks omitted)); see §113(f)(1) (calling for the governance of "Federal law" and the application of "the Federal Rules of Civil Procedure," and specifying that "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate"). Notably, Aviall expressly urged in the Court of Appeals that, were the court to conclude that §113(f)(1)'s "during or following" language excluded application of that section to this case, Aviall's suit should be adjudicated independently under §107(a). See Response of Appellant Aviall Services, Inc., to the *Amicus Curiae* Brief of the United States in No. 00–10197 (CA5), p. 24 ("[P]arties who are excluded from seeking contribution under section 113(f)(1) must therefore have available to them the broader right of cost recovery [covering both full recovery and contribution] under section 107(a."); cf. *Key Tronic*, 511 U. S., at 16 ("[T]he statute now expressly authorizes a cause of action for contribution in §113 and impliedly authorizes a similar and somewhat overlapping remedy in §107.").

I see no cause for protracting this litigation by requiring

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the Fifth Circuit to revisit a determination it has essentially made already: Federal courts, prior to the enactment of §113(f)(1), had correctly held that PRPs could “recover [under §107] a proportionate share of their costs in actions for contribution against other PRPs,” 312 F. 3d, at 687;<sup>2</sup> nothing in §113 retracts that right, *ibid.* (noting that §113(f)’s saving clause preserves all preexisting state and federal rights of action for contribution, including the §107 implied right this Court recognized in *Key Tronic*, 511 U. S., at 816). Accordingly, I would not defer a definitive ruling by this Court on the question whether Aviall may pursue a §107 claim for relief against Cooper.

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<sup>2</sup>The cases to which the Court refers, *ante*, at 12, *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630 (1981), and *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77 (1981), do not address the implication of a right of action for contribution under CERCLA. *Texas Industries* concerned the Sherman and Clayton Acts, 451 U. S., at 639–646; *Northwest Airlines*, the Equal Pay Act and Title VII, 451 U. S., at 90–99. A determination suitable in one statutory context does not necessarily carry over to a different statutory setting.

## Westlaw.

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**H**

Supreme Court of Alaska.  
**FEDERAL DEPOSIT INSURANCE  
 CORPORATION**, as statutory successor to the  
 Resolution  
 Trust Corporation, in its capacity as Receiver for  
 Sun Savings and Loan  
 Association, Plaintiff,

v.

**LIDLAW TRANSIT, INC.** d/b/a Laidlaw Transit  
 (AK), Inc., Burton Carver & Co., K  
 Beach Parts & Equipment, Peninsula Sanitation  
 Co., Inc., Defendants.  
 No. S-8540.

April 12, 2001.

Current landowner brought action against former landowner and its tenants, seeking to recover hazardous waste cleanup costs. The United States District Court for the District of Alaska, James K. Singleton Jr., J., certified questions. The Supreme Court, Bryner, J., held that: (1) statute imposing strict liability on polluters for the release of hazardous substances provides a private cause of action for the owner of private property damaged by a release; (2) affirmative defenses, such as the statute of limitations, may be applied to such an action; (3) an action for contribution accrues after the direct action is concluded; and (4) current landowner's action could not be characterized as one for continuing nuisance or trespass.

Questions answered.

## West Headnotes

**[1] Federal Courts** ⇨392

170Bk392 Most Cited Cases

Because the Supreme Court addresses questions of law and essentially stands in the shoes of the certifying court, it must exercise its independent judgment when answering certified

questions. Rules App.Proc., Rule 407.

**[2] Action** ⇨3

13k3 Most Cited Cases

Statute imposing strict liability on polluters for the release of hazardous substances provides a private cause of action for the owner of private property damaged by a release. AS 46.03.822(a).

**[3] Environmental Law** ⇨444

149Ek444 Most Cited Cases

Actions.

(Formerly 199k25.5(5.5) Health and Environment)  
 Statute imposing strict liability on polluters for the release of hazardous substances allows a potentially responsible party who denies responsibility to pursue a direct cause of action for joint and several strict liability against other potentially responsible parties. AS 46.03.822(a), (j).

**[4] Environmental Law** ⇨461

149Ek461 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

**[4] Environmental Law** ⇨669

149Ek669 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

Affirmative defenses, such as the statute of limitations, may be applied to a private cause of action to recover costs that is brought by an owner of private property damaged by a release of hazardous substances. AS 46.03.822(a).

**[5] Statutes** ⇨190

361k190 Most Cited Cases

The threshold question in ascertaining the correct interpretation of a statute is whether the language of the statute is clear or arguably ambiguous.

**[6] Statutes** ⇨190

361k190 Most Cited Cases

Even when the meaning of a statute's language seems plain on its face, ambiguity may arise if

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applying that meaning would yield anomalous consequences.

**[7] Statutes** ⇨188

361k188 Most Cited Cases

**[7] Statutes** ⇨205

361k205 Most Cited Cases

In ascertaining the plain meaning of a statute, the court must look to the particular language at issue, as well as to the language and design of the statute as a whole.

**[8] Statutes** ⇨223.1

361k223.1 Most Cited Cases

When a statute or regulation is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole.

**[9] Statutes** ⇨206

361k206 Most Cited Cases

In general, a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.

**[10] Limitation of Actions** ⇨49(6)

241k49(6) Most Cited Cases

In actions to recover costs for cleanup of hazardous waste, a potentially responsible party's cause of action for contribution does not accrue until the direct cause of action concludes. AS 46.03.822(a), (j).

**[11] Contribution** ⇨9(1)

96k9(1) Most Cited Cases

In actions to recover costs for cleanup of hazardous waste, potentially responsible parties may assert contribution claims in actions prosecuted either in court or through administrative proceedings. AS 46.03.822(j).

**[12] Environmental Law** ⇨670

149Ek670 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

Current landowner's action against former landowner and its tenants to recover hazardous

waste cleanup costs could not be characterized as one for continuing nuisance or trespass, so as to avoid the statute of limitations applicable to suit to recover costs by the owner of private property damaged by the release of hazardous substances, where former owner and tenants did not exacerbate the contamination that they allegedly caused over a decade earlier. AS 46.03.822(a).

\*345 Joseph R.D. Loescher and Carl J.D. Bauman, Hughes, Thorsness, Powell, Huddleston & Bauman LLC, Anchorage, for Plaintiff.

Ann W. Resch and Richard L. Waller, Brown, Waller & Gibbs, Anchorage, for Defendant Peninsula Sanitation Company, Inc.

Nelson G. Page, Burr, Pease & Kurtz, Anchorage, for Defendant Laidlaw Transit Alaska, Inc.

Before MATTHEWS, Chief Justice, EASTAUGH, FABE, BRYNER, and CARPENETI, Justices

## OPINION

BRYNER, Justice.

## I. INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC), as receiver of a failed bank's assets, acquired land that had been contaminated by hazardous waste many years previously. After undertaking voluntary cleanup at the request of the Alaska Department of Environmental Conservation, the FDIC filed suit in federal court against the former landowner and the owner's tenants, seeking to recoup its cleanup costs. FDIC claimed a right to compensation under AS 46.03.822, which imposes strict liability on a joint and several basis for release of hazardous substances and, in addition, allows responsible parties to sue for contribution.

Since this court had not yet determined whether section .822 creates a private cause of action other than for contribution or is governed by a statute of limitations, the federal district court certified these questions to us. We conclude that the statute allows private parties to sue directly for damages,

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not just for contribution, and that suits under the statute--both direct and for contribution--are governed by a statute of limitations.

## II. FACTS AND PROCEEDINGS

For purposes of this decision, we accept the facts alleged in FDIC's complaint. In May 1988 Sun Savings and Loan Association, F.A., foreclosed on land that was owned by Burton Carver & Co. and that had been occupied by Carver and three tenants, Laidlaw Transit, K Beach Parts and Equipment, and Peninsula Sanitation Co. Carver and these tenants allegedly had contaminated the land by releasing various hazardous substances, including fuel oil.

In December 1989, a year and a half after Sun Savings foreclosed on the land, the Alaska Department of Environmental Conservation asked it to enter into a Compliance Order by Consent for the purpose of investigating and remediating contamination on the property. Not long after this, Sun Savings failed, and the Resolution Trust Corporation took over its assets. In July 1990 Resolution Trust wrote two of Carver's tenants--Peninsula Sanitation and Laidlaw--to inform them of the Department's action.

Nearly seven years later, in February 1997, FDIC, which by then had become the Resolution Trust Corporation's statutory successor, filed suit in federal district court against Laidlaw, K Beach Parts, Peninsula Sanitation, and Carver. FDIC alleged that these defendants were both strictly liable under AS 46.03.822(a) and liable in contribution under AS 46.03.822(j) for cleanup costs and other damages resulting from contamination of its land by their release of hazardous substances. FDIC alternatively alleged liability for the same damages under other theories, including continuing nuisance and trespass.

\*346 Peninsula moved for summary judgment, alleging that FDIC's claims are barred by AS 09.10.070(a), Alaska's statute of limitations for liability created by a statute. Finding that FDIC's complaint and Peninsula's summary judgment motion raised unresolved issues of Alaska law, the

federal district court certified four questions for our review:

1. Is a statute of limitations defense available for a direct cause of action under AS 46.03.822(a)?
2. Does a private cause of action imposing joint and several liability exist under AS 46.03.822(a)?
3. When does a cause of action for contribution accrue under AS 46.03.822(j)?
4. Can continuing trespass and nuisance claims for environmental contamination be brought where the original act leading to the contamination occurred outside of the limitations period?

We accepted these questions under Alaska Appellate Rule 407 and answer them as follows.

## III. DISCUSSION

### A. Standard of Review

[1] Under Appellate Rule 407, a decision by this court upon certification from another court necessarily involves determinative questions of Alaska law as to which there is no controlling precedent. [FN1] Because we address questions of law and essentially stand in the shoes of the certifying court, we must exercise our independent judgment. [FN2]

FN1. Appellate Rule 407(a) provides:

The supreme court may answer questions of law certified to it by ... a United States district court ... when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of this state.

FN2. See *M.A. v. United States*, 951 P.2d 851, 853 (Alaska 1998).

B. Alaska Statute 46.03.822(a) Provides Private Plaintiffs with a Cause of Action for Strict Joint and

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*Several Liability.*

[2] FDIC alleges that the defendants are subject to joint and several strict liability under AS 46.03.822(a), which provides that "the owner and the operator of a ... facility, from which there is a release ... of a hazardous substance" are among those "strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village...." The passive language of this provision does not specify whether a private party may sue for damages. But the legislative history of this provision and our case law dealing with the creation of statutory causes of action establish that it provides a private cause of action for the owner of private property damaged by a release.

1. *The legislative history behind subsection .822(a) supports a private cause of action.*

The original version of AS 46.03.822, enacted in 1972, created a cause of action imposing strict liability on polluters who damaged private property:

To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry.... [FN3]

FN3. Ch. 122, § 1, SLA 1972 (emphasis added).

The act defined "damages" to include "injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit." [FN4] A separate provision, AS 46.03.870, specified that causes of action under AS 46.03 "inure solely to and are for the benefit of the state" "[e]xcept as provided under AS 46.03.822--46.03.828," implying that those sections provide for private causes of action. [FN5]

FN4. *Id.*

FN5. Ch. 122, § 2, SLA 1972. Title 46, Chapter 3 includes AS 46.03.010-900.

\*347 In 1989 the legislature amended section .822 to "strengthen the State's ability to obtain cleanup of hazardous substance spill sites." [FN6] The amendments explicitly allowed the state and municipalities to recover damages, including cleanup and remediation costs, under the strict liability language of subsection .822(a):

FN6. Position Paper, March 16, 1989, Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation.

Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section[,] ... the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality, and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance....

(2) the owner and the operator of a vessel or facility from which there is a release ... of a hazardous substance[.] [FN7]

FN7. Ch. 39, § 2. SLA 1989 (emphasis added).

Legislative history indicates that this amendment was modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), [FN8] which Congress enacted in 1980. [FN9]

FN8. See 42 U.S.C. §§ 9601-9675 (1994).

FN9. The Department of Environmental Conservation stated in its position paper: The bill [CSHB 68 (Resources)] was introduced at the request of the Governor. The Department strongly supports the bill

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and feels that it is necessary to provide appropriate tools to ensure that hazardous substance releases may be responded to properly. The first two sections of the law [including the re-enacted section .822] incorporate provisions similar to [those in] the federal "Superfund" law into state law.

See Position Paper, March 16, 1989, Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation.

In addition, Senate Judiciary Chairwoman Jan Faiks explained that the 1989 amendments to AS 46.03.822 were modeled after CERCLA. See Committee Minutes, Senate Judiciary Committee (May 2, 1989).

In 1991 the legislature passed a number of amendments to AS 46.03.822. First, it amended subsection .822(a) to add villages to the governmental entities that could recover cleanup and remediation costs. [FN10] In so doing, the legislature retained the "public or private" damages language quoted above. [FN11] Later in the same session, the legislature moved the damages language from subsection .822(a) to a new subsection, .822(k), but did not change its content. [FN12]

FN10. See Ch. 83, § 9, SLA 1991.

FN11. *Id.*

FN12. See Ch. 92, §§ 1, 3, SLA 1991 (including "damage to persons or to public or private property [and] damage to natural resources of the state or a municipality" in subsection .822(k) among the harms that trigger strict liability, as section .822 has always done). The amendments contained in §§ 1 and 3 took effect July 3, 1991. In the same Act, these sections were to be repealed effective July 1, 1992, with the language in the new subsection (k) reverting to subsection (a). See *id.* at §§ 10, 12. However, this repeal and re-enactment was itself repealed in 1992.

See Ch. 83, § 15, SLA 1992.

In each of the foregoing amendments, the legislature also retained AS 46.03.824, a provision defining damages to include injuries to persons or property, real or personal, and loss of income. [FN13] The legislature likewise retained the original version of AS 46.03.870, which, as mentioned above, specifically provides that causes of action under section .822 are not limited to the state. Moreover, every version of section .822 has subjected polluters \*348 of either private or public property to joint and several strict liability.

FN13. While the definition of damages does not expressly include cleanup costs outside the context of those incurred by the state, a municipality, or a village, other courts have held that damages include cleanup costs. See, e.g., *One Wheeler Road Assocs. v. Foxboro Co.*, 843 F.Supp. 792, 796-97 (D.Mass.1994) (applying Massachusetts law); *Borough of Rockaway v. Klockner & Klockner*, 811 F.Supp. 1039, 1051 (D.N.J.1993) (applying New Jersey law). The inclusion of cleanup costs in damages also furthers the legislative purpose of protecting the environment from pollution. See *Stock v. State*, 526 P.2d 3, 12 (Alaska 1974).

In sum, this history strongly suggests that the legislature originally contemplated a private cause of action against parties who release hazardous substances and that it never repealed that cause of action. It would be incongruous for the legislature to create strict liability for damage to private land without providing a way for private parties to get compensation for that damage.

2. *Alaska Statute 46.03.822(a) necessarily implies a private cause of action under the Hendsch Analysis.*

In *Alaska Marine Pilots v. Hendsch*, we identified six factors as relevant to determine whether a statute implies a private cause of action in tort: "the nature of the legislative provision, the adequacy of existing

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remedies, the extent to which a tort action will interfere with existing remedies, the importance of the purpose of the provision, how drastically the new tort will change the law, and the burden the [cause of action] will place on the court system." [FN14] Here, these factors support a private cause of action.

FN14. 950 P.2d 98, 104-05 (Alaska 1997) (citing Restatement (Second) of Torts § 874A cmt. h (1977)); *see also Walt v. State*, 751 P.2d 1345, 1351 n. 12 (Alaska 1988).

(1) *Nature of subsection .822(a)*: Subsection .822(a) is easily amenable to individual enforcement. The prohibited conduct and the potential defendants are clearly identified by subsection .822(a), which attaches strict liability for the release of hazardous substances, and by subsection 822(k), which identifies damage to "persons or to public or private property" as a kind of damage covered by subsection .822(a). [FN15] An injured property owner who, like FDIC, identifies parties responsible for contaminating the property need only show that the parties owned or operated the facility causing the contamination. [FN16]

FN15. *See* AS 46.03.822(k) (" '[D]amages' has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and [certain damages caused by cleanup contractors]."). AS 46.03.824 reads: "Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit."

FN16. *See* AS 46.03.822(a).

(2) *Adequacy of existing remedies*. When the legislature created a strict liability regime for hazardous substance contamination, it expressed its judgment that negligence remedies were not

adequately controlling the hazardous substance contamination problem. Nevertheless, Peninsula and Laidlaw insist that the subsection .822(j) right of contribution is an adequate remedy. We disagree. Under subsection .822(j), a damaged party can seek contribution only "during or after" an action against the party under subsection .822(a). Since private parties who voluntarily undertake cleanup efforts cannot compel the state to commence an action against them, they would be forced to wait for government action and, if no action were brought, would lose funds spent cleaning up another's contamination. That is not an adequate remedy. A more convincing reading of subsections .822(a) and (j) gives private parties the means to recover private damages, while allowing defendants a way to spread the costs of that recovery among the responsible parties.

(3) *Interference with existing remedies, and (4) importance of purpose of the provision*: A private cause of action under subsection .822(a) would not interfere with existing remedies, such as contribution claims; and it would enhance the important purposes of Alaska's contamination responsibility regime. As discussed above, allowing private parties to initiate cleanup while they bring an action against others who may be responsible--without waiting for government action--promotes the goal of quick response to discovered contamination. At the same time, actions for contribution allow the parties to sort out ultimate responsibility for the contamination afterwards.

(5) *Scope of change in the law*: Allowing a private cause of action under subsection .822(a) is not a departure from the way the law already operates in Alaska. In *Chenega Corp. v. Exxon Corp.*, for example, the parties\*349 litigated a complex private strict liability claim under subsection .822(a) stemming from the EXXON VALDEZ disaster. [FN17] No party questioned that subsection .822(a) allowed the action, and Exxon ultimately conceded strict liability, contesting only causation and damages. [FN18]

FN17. 991 F.2d 769, 776 (Alaska 1999).

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FN18. See *id.* Several Alaska superior courts have adopted similar approaches. See *University of Alaska v. Texaco*, No. 4FA-93-2486 CI (Alaska Super., November 14, 1995) (memorandum decision) *Parks Hiway Enters., LLC v. CEM Leasing, Inc.*, No. 4FA-95-2117 CI (Alaska Super., December 22, 1997) (memorandum and order granting defendant's motion for summary judgment).

(6) *Burden on the courts of creating a private action:* While allowing private parties to bring causes of action may increase the number of claims under subsection .822(a), it will be consistent with what the legislature intended. We do not see that as an undue burden on the courts.

Because subsection .822(a) meets all of the criteria for an implied cause of action under our *Hendsch* analysis, and since the legislative history of the provision supports the conclusion that the legislature meant to permit private actions, we hold that subsection .822(a) creates a private cause of action for joint and several strict liability. In the following section, we briefly consider the scope of this private action.

3. *The private cause of action created in subsection .822(a) extends to potentially responsible parties.*

[3] In arguing that the only remedy available to FDIC is a subsection .822(j) action for contribution, the defendants place great weight on FDIC's status as a potentially responsible party. They contend that potentially responsible parties should not be allowed joint and several recovery, but should be limited to contribution from other potentially responsible parties.

Any entity that may be required to take financial responsibility for cleaning up a contaminated site is a potentially responsible party. Alaska Statute 46.03.822(a)(3) imposes strict liability on the owners of a facility that releases hazardous material. Insofar as FDIC stands in the shoes of the owner of the contaminated property at the time of the

release—allegedly Sun Savings--FDIC is a potentially responsible party and, as such, is theoretically subject to the same liability as those who caused the contamination. [FN'19]

FN19. We note in passing that FDIC's exact status is not clear. FDIC is the ultimate receiver of property owned by Carver that was pledged as security to Sun Savings. The defendants allege that FDIC is potentially responsible, but FDIC does not address the question. Under AS 46.03.826(8) "owner" and "operator" are defined to exclude a person who "without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility." The federal district court's certified questions do not require us to interpret this provision or to determine whether FDIC is a potentially responsible party, and we decline to do so here. Nevertheless, we note that federal courts that have interpreted the CERCLA equivalent of this section are divided. Compare *United States v. Fleet Factors Corp.*, 901 F.2d 1550, 1557-58 (11th Cir.1990) (actual management unnecessary for secured creditor liability) with *In re Bergsoe Metal Corp.*, 910 F.2d 668, 672 (9th Cir.1990) ("[T]here must be some actual management of the facility before a secured creditor will [be liable under CERCLA]."). Moreover, AS 46.03.822(a) differs from its federal counterpart in the way it describes owner liability. Compare AS 46.03.822(a)(2) (imposing liability on "the owner ... of a ... facility, from which there is a release ... of a hazardous substance") with 42 U.S.C. § 9607(a)(1) (imposing liability on "the owner ... of a ... facility"). Alaska's law appears to focus on the owner at the time of the release, rather than on subsequent owners.

The defendants maintain that allowing one potentially responsible party to claim direct

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damages under subsection .822(a) from other potentially responsible parties would give the claimant an unfair advantage over the defending parties, because the claimant's joint and several recovery under subsection .822(a) might include compensation for damages caused by absentee or judgment-proof polluters; the claimant would then receive full compensation despite being a potentially responsible--and possibly culpable--party, whereas the defending parties might be left with a worthless claim for contribution under subsection .822(j). The defendants reason that, in these situations, cleanup costs should \*350 be borne by all potentially responsible parties equally.

This argument seems to assume that courts cannot distinguish among potentially responsible parties to avoid inequitable results. But federal case law shows that courts can. In *Rumpke of Indiana, Inc. v. Cummins Engine Co.*, the Seventh Circuit Court of Appeals found that when a potentially responsible party sues for direct damages under the federal counterparts to subsections . 822(a) and (j), the federal statutes allow the claim, but leave room for equitable distinctions upon conclusion of the litigation. [FN20] Thus, the court approved a direct action for joint and several liability by Rumpke--a potentially responsible party that denied actual responsibility for the contamination:

FN20. 107 F.3d 1235, 1240-42 (7th Cir.1997).

[W]e see nothing in the language of § 107(a) [the subsection .822(a) analog] that would make it unavailable to a party suing to recover for direct injury to its own land, under circumstances where it is not trying to apportion costs (i.e., where it is seeking to recover on a direct liability theory, rather than trying to divide up its own liability for someone else's injuries among other potentially responsible parties).[ [FN21]]

FN21. *Id.* at 1240.

But the court went on to observe: "If the facts show, contrary to Rumpke's protestations, that it

was partially responsible for the mess ..., it can proceed only under § 113(f)(1) [the subsection .822(j) analog] in a suit for contribution." [FN22]

FN22. *Id.* at 1242 (citing *Akzo Coatings, Inc. v. Aigner Corp.*, 30 F.3d 761 (7th Cir.1994)). More recently, other federal courts have similarly allowed CERCLA's direct cost-recovery action to be recast as an action for contribution when brought by a potentially responsible party who is ultimately determined not to be "innocent."

*See, e.g., Pinal Creel Group v. Newmont Mining Corp.*, 118 F.3d 1298 (9th Cir.1997). The *Pinal* court found that CERCLA's analog to subsection .822(a) placed cleanup responsibility on the plaintiff Pinal Group because it was a potentially responsible party. At the same time, Pinal Group was entitled to recover from other potentially responsible parties for their share of the cleanup costs under CERCLA's subsection .822(j) analog. The court found that "this duality is best implemented by permitting a [potentially responsible party] who has incurred cleanup costs to assert only a contribution claim against other [potentially responsible parties]." *Id.* at 1301.

We agree with *Rumpke* that the possibility of inequitable results need not bar a potentially responsible party who denies responsibility from pursuing a direct cause of action for joint and several strict liability against other potentially responsible parties. Insofar as a plaintiff is an "innocent" potentially responsible party, that is, one who ultimately would not be liable for contribution, that plaintiff should recover jointly and severally. On the other hand, if a plaintiff ends up being among those responsible for the damage, the court may recast the direct claim as a claim for contribution upon conclusion of the litigation.

C. *Alaska's Statute of Limitations Applies to Actions Under Subsection . 822(a).*

[4] The defendants contend that FDIC's action is

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barred by the statute of limitations. FDIC responds that subsection .822(a) precludes a statute of limitations defense. [FN23] In advancing this argument, FDIC points to the opening language of AS 46.03.822(a):

FN23. The defendants assert, without elaboration, that this case is governed by AS 09.10.070(a), which establishes a two-year limit for "an action ... upon a liability created by statute." But it seems that this case might alternatively be governed by AS 09.10.050, which specifies a six-year limit for "an action for waste or trespass upon real property." Yet the relevant portion of the federal court's certification order only asks us to address FDIC's claim that no statute of limitations defense is available for a direct cause of action under AS 46.03.822(a). The question of which statute applies has not been adequately briefed, and the facts recited in the federal court's certification order suggest that the point may be time-barred under any applicable limit. Given these circumstances, we decline to consider which statute of limitations provision would govern FDIC's direct cause of action.

*Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages [and \*351 other costs associated with hazardous substance spills].* [FN24]

FN24. AS 46.03.822(a) (emphasis added).

Asserting that this provision's "notwithstanding" phrase plainly excludes all "defenses" to a subsection .822(a) action except those listed in subsection .822(b), FDIC argues that the provision's plain meaning precludes a statute of limitations defense.

We reject FDIC's plain meaning argument, for, as we explain below, FDIC's literal reading of the "notwithstanding" phrase strains common sense, is contextually implausible, and is at odds with legislative history.

[5][6] "[T]he threshold question in ascertaining the correct interpretation of a statute is whether the language of the statute is clear or arguably ambiguous." [FN25] Here, subsection .822(a)'s "notwithstanding" phrase's meaning may indeed seem clear and unambiguous. But " 'words are necessarily inexact and ambiguity is a relative concept.' " [FN26] Hence, even when a statute's language meaning seems plain on its face, ambiguity may arise if applying that meaning would yield anomalous consequences. [FN27]

FN25. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 293 n. 4, 108 S.Ct. 1311, 100 L.Ed.2d 313 (1988).

FN26. *State v. Alex et al.*, 646 P.2d 203, 208-09 n. 4 (Alaska 1982) (quoting *United States v. United States Steel Corp.*, 482 F.2d 439, 444 (7th Cir.1973) and adopting a sliding scale approach to statutory interpretation).

FN27. Thus, courts adhering to the "plain meaning" rule of statutory interpretation commonly define the rule to apply only "where language of a statute is clear and construction according to its terms does not lead to absurd consequences." *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 n. 7 (Alaska 1978).

FDIC's proposal to enforce subsection .822(a)'s literal meaning by categorically barring all "defenses" except those listed in subsection .822(b) would have the nonsensical effect of eliminating a host of generally available "defenses" serving vital purposes wholly unrelated to the elements or underlying purposes of a direct action arising under subsection .822(a). If enforced literally, for instance, the "notwithstanding" phrase would bar a defendant who had previously settled and paid a

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claim from defending on the basis of accord and satisfaction. A defendant who had already prevailed in an identical action by the same plaintiff could not raise the defense of res judicata. A defendant sued by a plaintiff who lacked an interest would be forbidden to claim lack of standing; one sued by a minor could not assert the plaintiff's lack of capacity; and one subjected to a claim without service of process could not raise lack of personal jurisdiction as a defense. The anomalies--all unavoidable consequences of adopting FDIC's proposed "plain meaning"--cast ambiguity on the seemingly clear language of subsection .822(a)'s "notwithstanding" provision. [FN28]

FN28. At least one federal court interpreting CERCLA has recently suggested that the "notwithstanding" language in the federal statute should not be interpreted to bar defendants from asserting res judicata, collateral estoppel, accord and satisfaction, or statutes of limitations, because such an interpretation would yield "absurd results that Congress could not have intended." See *Town of Munster, Indiana v. Sherwin-Williams Co., Inc.*, 27 F.3d 1268, 1271-72 (7th Cir.1994); cf. *Alaska Sport Fishing Ass'n v. Exxon Corp.*, 34 F.3d 769, 771-74 (9th Cir.1994) (affirming dismissal of section .822 claim on the ground of res judicata without expressly considering the "notwithstanding" language).

[7][8] Moreover, because "plain meaning" cannot exist in a vacuum, ambiguity is necessarily a creature of context. "As the Supreme Court has stated, 'in ascertaining the plain meaning of [a] statute, the court must look to the particular language at issue, as well as the language and design of the statute as a whole.'" [FN29] And "[w]hen a statute or regulation is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole." [FN30]

FN29. *Homer Elec. Ass'n v. Towsley*, 841 P.2d 1042, 1048 (Alaska 1992) (Compton,

J., dissenting) (quoting *K Mart Corp.*, 486 U.S. at 29; 78 S.Ct. 1811); see also *Nash v. State, Commercial Fisheries Emergency Comm'n*, 679 P.2d 477, 478 (Alaska 1984).

FN30. *Millman v. State*, 841 P.2d 190, 194 (Alaska App.1992).

\*352 Considered in context with other relevant provisions, subsection .822(a)'s meaning is hardly plain. The "notwithstanding" phrase must initially be read together with other parts of section .822 to which subsection .822(a) specifically refers: subsection .822(b)'s list of "defenses" and the "exception" created in subsection .822(i). [FN31] The relevant language is as follows:

FN31. Subsection .822(a)'s "notwithstanding" phrase currently refers to two other provisions: "the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825." See AS 46.03.822(a). But neither of these references appeared in the originally enacted version of subsection .822(a). See Ch. 39, § 2, SLA 1989. Since both references were added after the original enactment of subsection .822(a), they are not relevant to establish the intent of the legislature that originally enacted the statute.

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

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

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

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

(ii) took reasonable precautions against the act or

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omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person [discovered the release and began containment and clean up within a reasonable period of time].

....

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

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

(2) there is a reasonable basis for apportionment of costs and damages to that person. [FN32]]

FN32. AS 46.03.822(b) & (i).

As can be seen, subsection .822(b) creates three defenses to subsection .822(a)'s strict liability scheme: an act of God, an act of war, or an unavoidable act of a third party. Each of these listed "defenses" centers on causation; each is triggered by the intervention of an outside actor, to which the law attributes the hazardous release, away from the original defendant. Hence, this specific category of defenses ameliorates the otherwise harsh effects of strict liability. So too, subsection (i) creates a specific exception that, when triggered by particular circumstances justifying the apportionment of partial responsibility to an outside actor or third party, ameliorates the harsh effects of joint and several liability.

The narrow focus of these defenses has significance in its own right, because "[w]here ... specific words follow [ ] general ones, [the statutory interpretation doctrine of *ejusdem generis*] restricts application of the general term to things that are similar to those enumerated." [FN33] As applied to the statutory phrase at issue, then--"notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section"--this interpretive canon strongly suggests

that the terms "defenses" and "exception" refer not to the entire universe of potential general defenses, but to provisions and rules outside the original legislation that specifically mitigate the effects of joint and several liability.

FN33. 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.17 (6th ed.2000); see *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 412-13 (Alaska 1982) (applying this doctrine).

A companion provision of Alaska's 1989 hazardous substances legislation lends further \*353 credence to this reading. The statute immediately following subsection .822--AS 46.03.823--expressly creates a partial exception to strict liability for "hazardous substance response action contractors" (cleanup contractors), making them liable for hazardous releases only on the basis of negligence. [FN34] This provision certainly qualifies as a "defense" to subsection .822(a)'s strict liability provision--at least in the broad sense of "defense" that FDIC urges us to adopt insofar as it relates to the statute of limitations. Yet because this defense is not mentioned in subsection .822(a), it necessarily conflicts with FDIC's proposed "plain meaning" of subsection .822(a)'s "notwithstanding" phrase: according to FDIC, the phrase's categorical preclusion of all conceivable defenses except those set out in section .822-- subsections .822(b) and (i).

FN34. As originally enacted by chapter 39, § 3, SLA 1989, section .823 provided, in relevant part: (a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under

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the response action contract were not in accordance with generally accepted professional standards and practices at the time the response action services were performed.

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

[9] To apply FDIC's plain meaning of subsection .822(a), then, would nullify the section .823 defense, rendering the provision entirely superfluous. This, in turn would clash with the rule of construction holding that, as a general rule, a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." [FN35]

FN35. *Alasco, Inc. v. North Slope Borough Bd. of Equalization*, 659 P.2d 1175, 1178 r. 5 (Alaska 1983) (quoting 2A C. Sands, *Statutes and Statutory Construction* § 46.06 (4th ed.1973)).

Legislation outside AS 46.03 reinforces the uncertainty generated by section .823. Just as subsection .822(a)'s "notwithstanding" phrase must be considered in context with the hazardous substances act as a whole, so too other relevant laws must be considered, for "a seemingly unambiguous statute [may be] restricted by another act or where it must be considered in pari materia with another act." [FN36] In this regard, the comprehensive regime of statutes of limitations listed in AS 09.10 is particularly relevant, [FN37] because, as Laidlaw correctly observes, "if, as FDIC suggests, § .822(a) has no statute of limitations whatsoever, it appears to be the only cause of action in Alaska with this distinction." [FN38]

FN36. *Hafling v. Inland Boatmen's Union of Pacific*, 585 P.2d 870, 872 (Alaska 1978); see also *Anderson v. Anderson*, 736 P.2d 320, 321 (Alaska 1987) (seemingly unambiguous provision of Exemptions Act affected by Alaska

Limited Entry Act).

FN37. AS 09.10.010 provides: "A person may not commence a civil action except within the periods prescribed in this chapter after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute." AS 09.10.100 provides: "An action for a cause not otherwise provided for may be commenced within ten years after the cause of action has accrued."

FN38. See generally AS 09.10.010--AS 09.10.100.

The final factor to consider in determining subsection .822(a)'s meaning is its legislative history. In our view, this factor further indicates that the legislature did not intend to exclude the statute of limitations as an available "defense" to a private cost recovery action. In 1989 the legislature amended section .822, using the federal CERCLA statute as a pattern. [FN39] Congress originally passed CERCLA in 1980, including the defense-limiting "notwithstanding" language that appears in subsection .822(a). [FN40] When first enacted, CERCLA incorporated a three-year \*354 statute for damages actions. [FN41] But two federal trial courts ruled that this statute of limitations did not apply to cost recovery actions under 42 U.S.C. § 9607--the CERCLA analog to subsection .822(a). [FN42]

FN39. See *supra* note 8 and accompanying text.

FN40. See Comprehensive Environmental Response, Compensation & Liability Act of 1980, Pub.L. No. 96-510, Title I, § 107, 94 Stat. 2767, 2768 (1980).

FN41. See 42 U.S.C. § 9612(d) (1994).

FN42. See *United States v. Dickerson*, 640 F. Supp. 448, 450-51 (D.Md.1986); *United States v. Mottolo*, 605 F.Supp. 898, 901-10 (D.N.H.1985).

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In 1986, evidently responding to these rulings, Congress added statutes of limitations specifically covering CERCLA's counterparts to subsections .822(a) and (j). [FN43] Congress codified these new statutes as separate provisions within CERCLA, and did not amend CERCLA's "notwithstanding" language to mention them as "defenses" to a cost recovery action under CERCLA. [FN44] Obviously, then, Congress did not consider these statutes of limitations to be included among the kinds of "defenses" that were limited by CERCLA's "notwithstanding" provision--a provision directly corresponding to subsection 822(a).

FN43. See Pub.L. No. 99-499, § 113(b), 100 Stat. 1613, 1647 (1986).

FN44. See 42 U.S.C. § 9613(g) (1994). CERCLA's analog to AS 46.03.822(a) appears at 42 U.S.C. § 9607(a).

When the 1989 Alaska legislature revised section .822 by incorporating many features of CERCLA, [FN45] it omitted CERCLA's internal statutes of limitations. FDIC argues that this omission evinces the legislature's intent to withdraw any statute of limitations defense. But the defendants respond that the Alaska legislature's omission merely reflects its awareness that, unlike federal law, Alaska law already incorporated general statutes of limitations outside its hazardous substances act that would govern a direct action brought under subsection .822(a).

FN45. See *supra* note 8 and accompanying text.

The defendants' view is more plausible than FDIC's. As pointed out above, it is apparent that Congress considered CERCLA's internal statute of limitations to lie outside the sphere of "defenses" described by CERCLA's "notwithstanding" provision. If we accepted FDIC's proposed view of legislative intent, then, we would have to conclude that the Alaska legislature meant to give the "notwithstanding" language imported from CERCLA more significance in subsection .822(a) than Congress gave it in the federal context. Since

no legislative history supports this interpretation, there is no reason to suppose that the Alaska legislature intended subsection .822(a) to abrogate Alaska's general statutes of limitations.

In sum, we conclude that the limiting language of subsection .822(a) does not preclude affirmative defenses, like the defense of statute of limitations, that have no inherent relation to subsection .822(a)'s imposition of joint and several strict liability for release of hazardous substances.

*D. An Action for Contribution Under Subsection .822(j) May Be Filed When a Subsection .822(a) Action Is Brought but "Accrues" for Purposes of the Statute of Limitations When Judgment Is Entered or Settlement Is Reached.*

[10] One of the certified questions before us is when a cause of action for contribution "accrues" under subsection .822(j). In 1989, when the legislature amended subsection .822(a) to mirror CERCLA, it also enacted a new subsection, AS 46.03.822(j), that gave defendants an action for contribution:

*A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section. ... In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section. [FN46]*

FN46. Ch. 39, § 2, SLA 1989.

The statutory language is clear that any party named in a direct subsection .822(a) action may commence an action for contribution at any time "during or after" the direct §355 action. [FN47] We nevertheless conclude that even though subsection .822(j) allows a contribution action to be brought while a subsection .822(a) action is still in progress, the contribution action does not "accrue" for purposes of the statute of limitations until the

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subsection .822(a) action concludes.

FN47. Conversely, subsection .822(j)'s "during or after" language strongly suggests that a party has no right to seek contribution *before* an action has been commenced under subsection .822(a). Yet subsection .822(j) also provides that "this subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section." In light of our decision that subsection .822(a) creates a private cause of action, these provisions are not contradictory. In the absence of a third-party claim under subsection .822(a), a potentially responsible party is free to bring a private action under subsection .822(a) against other potentially responsible parties and, in so doing, may seek or ultimately be limited to apportioned damages under subsection .822(j). See, e.g., *Pinal Creek Group v. Newmont Mining Corp.*, 118 F.3d 1298, 1301 (9th Cir.1997). While this kind of anticipatory action might plausibly be characterized as a claim for contribution under subsection .822(j), because it derives from subsection .822(a)'s creation of a private right of action, the anticipatory contribution action must accrue with the related subsection .822(a) action and be governed by its statute of limitations.

[11] Under CERCLA, an action for contribution accrues according to a contribution-specific statute of limitations, 42 U.S.C. § 9613(g)(3). Alaska has no analog to this provision on its books. Because the legislature unreservedly specified that contribution actions may be brought after a subsection .822(a) action concludes, and since an action under the subsection .822(a) could conceivably remain pending for many years after its inception, the statute of limitations on such actions cannot realistically begin to run upon commencement of the action under subsection .822(a). [FN48]

FN48. In this regard, we believe that subsection .822(j)'s language allowing potentially responsible parties to assert contribution claims "during" a subsection .822(a) action must be read to extend to actions prosecuted either in court or through administrative proceedings. If subsection .822(j) did not apply to parties who became subject to DEC administrative compliance actions, the benefit of a contribution action would accrue only to those who, through their recalcitrance, forced DEC to court. We do not believe that the legislature intended to force such cases into court. We note, however, that before the state's administrative process could qualify as an action, it would have to have the formal attributes of an administrative proceeding, including "a complaint-like pleading, which in turn set[s] in motion a formal process of dispute resolution." *Koss v. Koss*, 981 P.2d 105, 108 (Alaska 1999); see also *Agan v. State, CSED*, 945 P.2d 1215, 1219 (Alaska 1997); cf. *Hickel v. Halford*, 872 P.2d 171, 176 (Alaska 1994) (listing a formal charging document that triggers a formal mechanism for dispute resolution as indicia of an agency "proceeding").

Moreover, interpreting subsection .822(j) to authorize a contribution action accruing upon or after judgment comports with general contribution case law elsewhere, [FN49] as well as with our own case law governing contribution in other contexts. For example, in *Providence Washington Insurance Co. of Alaska v. McGee* we recognized "that a claim for contribution is substantively separate from the underlying tort and does not arise until the contribution claimant has paid more than his or her proportionate share of the total claim." [FN50]

FN49. See Maurice T. Brunner, Annotation, *When Statute of Limitations Commences to Run Against Claim for Contribution or Indemnity Based on Tort*, 57 A.L.R.3d 867, 912-13 (1974).

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FN50. 764 P.2d 712, 715 (Alaska 1988);  
 see also *Alaska General Alarm, Inc. v. Grinnell*, 1 P.3d 98, 106-07 (Alaska 2000).

In the absence of statutory guidance other than the language of subsection .822(j), and because subsection .822(j) specifically authorizes an action for contribution to be brought "during or after" a direct action under subsection .822(a), we conclude that a contribution action under subsection .822(j) should not accrue for statute of limitations purposes until the direct cost recovery ends, either by judgment, settlement, or the conclusion of an administrative action. [FN51]

FN51. In our view, the rule we adopted in *Providence Washington Insurance Co. of Alaska v. McGee* should generally govern the date of accrual when a party who has paid damages assessed jointly and severally under subsection .822(a) files a contribution action to recoup the disproportionate payment. In at least one situation, however, reliance on the *Providence Washington* rule may not be warranted. When a party who has not been forced to pay an award or make cleanup efforts under subsection .822(a) files a contribution action to apportion liability for the damages, the contribution action should be treated as accruing at the time of judgment on the subsection .822(a) action. Applying the *Providence Washington* rule to such cases would encourage subsection .822(a) judgment debtors to delay payment or cost recovery efforts, since any delay would be essentially cost-free and they could always trigger a new period for filing a contribution action by making a small payment on the judgment. In these situations and in other exceptional cases, subsection .822(j)'s express grant of discretion to consider "equitable factors determined to be appropriate by the court" will, we believe, empower trial courts to treat the contribution action as accruing upon entry of the subsection .822(a)

judgment.

\*356 E. *Nuisance and Trespass Actions Are Subject to Statutes of Limitations and the Discovery Rule.*

[12] Finally, we consider whether hazardous substance contamination can escape the statute of limitations by being characterized as a continuing nuisance or trespass. FDIC maintains that because the contamination of the Soldotna property "continued over time, and continue[s] up to the present time," no statute of limitations bars its claims for nuisance and trespass. To support this argument, it relies on our ruling in *Wood v. Alm*. [FN52]

FN52. 516 P.2d 137, 142 (Alaska 1973).

We are not persuaded that *Wood* is controlling. In *Wood*, we let stand the superior court's ruling that the defendant's failure to prevent the flooding of the Woods' property was a continuing nuisance that should be abated. [FN53] FDIC reads that case as describing a situation analogous to this case. But in *Wood*, the continuing nuisance was caused by a faulty dike for which the defendants were responsible. [FN54] While damage did occur soon after the dike began to leak, we recognized that compensation for that damage was time barred. [FN55] Nevertheless, the defendants were under a continuing obligation to prevent the inundation of the Woods' land, which they continuously failed to do; their leaky dike allowed water to seep onto the Woods' property up to the day the suit was filed. [FN56]

FN53. *See id.* at 141-42.

FN54. *See id.*

FN55. *See id.*

FN56. *See id.* (indicating that the superior court judge viewed the unrepaired conditions around the Woods' property).

In contrast, the defendants here are not

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exacerbating the contamination that they allegedly caused during the late 1980s. And since they have lost their connection to the land, they cannot be characterized as maintaining an ongoing nuisance. Thus, we do not see how the contamination in this case differs from the harm ordinarily at issue in cases involving torts of a non-continuing nature, where discrete wrongful acts often have lasting consequences.

Insofar as there is a difference that relates to statutes of limitations, it is that injuries from seeping pollutants may be difficult to discover. That characteristic, however, does not militate in favor of describing the defendants' alleged actions as a continuing nuisance or trespass. Rather, the discovery rule adequately addresses this problem by delaying a cause of action's accrual until the plaintiff is aware, or reasonably should be aware, of its existence. [FN57]

FN57. See *Cameron v. State*, 822 P.2d 1362, 1365-68 (Alaska 1991) (laying out the discovery rule and its purpose).

Here, given the parties' briefing, the undisputed facts discussed in the federal court's certification request, and the available record, we conclude that FDIC's allegations do not lend themselves to being framed as a continuing trespass or nuisance. [FN58]

FN58. For the reasons that we advanced in discussing the availability of a statute of limitations defense to direct actions under subsection . 822(a), see *supra* Part III.C, we need not consider what statute of limitations applies to FDIC's trespass claim.

#### IV. CONCLUSION

In sum, we answer the certified questions as follows:

1. A statute of limitations defense is available for a direct cause of action under AS 46.05.822(a).
2. Alaska Statute 46.03.822(a) creates a private cause of action imposing joint and several strict

liability.

\*357 3. A cause of action for contribution under AS 46.03.822(j) may be brought during the pendency of a direct action under subsection .822(a) but does not accrue for purposes of the statute of limitations until the direct action concludes.

4. Continuing trespass and nuisance claims for environmental contamination cannot be brought outside the limitations period under the undisputed circumstances presented here.

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**HB**

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## FAX

Please deliver the following pages to: Kathryn Kurtz

Fm: Staff, Resources Committee

Fax #: 2029

Total number of pages including cover: 1

Date: 5/2/05 5:16 PM

Re: CSHB 280 (RES) 24-LS0933\F

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Please amend the above reference bill and final as the Resources CS

Page 6, Line 20 and 21 Delete all language in (2)

Renumber accordingly

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Thank you

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## Sponsor Statement HB 280

**"An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date."**

HB 280 is interestingly enough a bill requested of this body by the industry. Under its language, mines operating in the state would be taxed by the state on the true and real value of real and tangible property.

Precious metal exploration has continued in the state and several of the locations being developed are not located in organized boroughs. Without the language of HB 280 development companies are operating with an uncertain and potentially unstable set of rules for taxation. Using AS 14.17.410 (b) (2) as a tax base, mines in unorganized boroughs would be assessed a four-mill levy. Boroughs organizing after this year would be able to add two-mills to that tax rate with all of the funds being paid to the new borough.

Language in the bill also creates a special mining property tax account and allows the legislature to appropriate that money into the public education fund. Essentially this is an offer by the mining industry to assure funding for Alaska's Education System.

HB 280 is limited to large producers only. Mines producing less than \$10,000,000 are exempt from the tax formula. This keeps what is left of our once profitable mom and pop mines in operation.

In a world market, stability both politically and financially are critical to success for these companies that invest millions of dollars just searching for precious metals. Creating a stable tax base for an industry that creates hundreds of jobs in Alaskan communities makes sound fiscal sense. It also gives unorganized areas of the state a clear understanding of the income they will receive from a mine, once they become a borough and can receive the tax benefit.

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## CSHB 280(RES) Sectional

### Section 2

Creates a property tax program for local municipalities either current or future should they incorporate a mine into their borough for the purposes of local taxation.

### Section 3

Restricts a local municipality from imposing a severance tax on produced minerals unless it is imposed prior to January 6, 2005

### Section 4

Establishes a state property tax on mines not located in an organized borough with a levy of four mills. Maintains the mill levy in existing boroughs at the same rate as is levied against other real and tangible personal property. There is also language regarding payments in lieu of taxes and how a contract may be negotiated.

.020 Clarifies a term 15 years for which only property taxes may be imposed on mines within a newly established borough or an existing borough that annexes the mine.

.030- .150 Directs the state assessor to assess the mine's property with details on what must be submitted when. Language also includes the investigation process and authority, notice requirements, objection process to the assessment including appeal. It allows for an assessment to be resubmitted following an appeal. The language in section 120 also includes collection and deposit and where the funds will go and a recommendation as to how the funds should be allocated. Further language in the reference paragraphs establishes penalties, remedies and regulation authority.

.160 Establishes facilities that are available for public use are exempt as is property used in production or transportation of minerals. The language also protects small miners from taxes.

.170 Definitions

### Section 5

Allows the Department to begin promulgating regulations pending the effective date of the bill.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 290 (RES)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue 04  
 Title Minerals Tax Payments to Munis in Lie RDU Tax and Treasury  
 Component Tax  
 Sponsor Senator Therriault  
 Requester (H) RES Component No. 2476

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	76.1	76.1	76.1	76.1	76.1
Travel	0.0	5.6	5.6	5.6	5.6	5.6
Contractual	0.0	4.4	4.4	4.4	4.4	4.4
Supplies	0.0	1.0	1.0	1.0	1.0	1.0
Equipment	0.0	4.5	4.5	4.5	4.5	4.5
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>91.6</b>	<b>91.6</b>	<b>91.6</b>	<b>91.6</b>	<b>91.6</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>
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<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	91.6	91.6	91.6	91.6	91.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>91.6</b>	<b>91.6</b>	<b>91.6</b>	<b>91.6</b>	<b>91.6</b>

Estimate of any current year (FY2005) cost: 0.0  
 Check  if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	0	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 (see discussion on page 2)

Prepared by: Randy Hoffbeck & Brett Fried Phone 465-3682  
 Division: Tax Division Date/Time 4/21/05 4:26 PM  
 Approved by: Jerry Burnett, Special Assistant to the Commissioner Date 4/21/2005  
 Agency: Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB 280 (RES)

### ANALYSIS CONTINUATION

#### Discussion

We discuss revenue, exemptions and cost below.

#### Revenue

We did not include an estimate for revenue because we cannot foresee if municipalities will be formed within the unorganized borough or if planned mines will actually materialize.

This bill levies a tax rate equivalent to one mill rate "required to meet the local contribution (to schools) required of that municipality" on the full and true value of mining real and tangible personal property on land in the unorganized borough as of January 1, 2005. In general this is 4 mills or .4 percent. One exception is that the 4 mill levy on the taxable value cannot exceed 45% of the district's basic need. The tax rate does not go into effect until after production commences at the mine.

However, if a municipality is incorporated after January 1, 2005, the mill rate is two mills above the local contribution rate on mining property. This tax replaces all other potential municipal taxes imposed on the property for a period of 15 years after production starts with the exception that a municipality may levy a tax on the first \$1,000 of the retail sale or use of the taxable property and the first \$1,000 of the sale or use of services associated with the property. Although the tax sunsets fifteen years after production commences, it does not appear that the mining property exemptions under Sec. 43.67.160 (a) expire as well (see exemption discussion below). Also, until the mine starts production it is subject to municipal taxation unless it is specifically precluded by Sec. 43.67.160 (a). However, a mine is only subject to the tax if its capital costs are \$10 million or greater. A small mine would thus not have to pay the state property tax but would be subject to municipal taxation not covered under Sec. 43.67.160 (a) exemptions. A small mine could, however, elect to opt into the provisions of this bill if they so chose.

The State Assessor (Steve Van Sant) has estimated that the full value of the real and tangible property for the Pogo mine at about \$250 million. Pogo, a mine currently under construction, was located within the unorganized borough as of January 1, 2005. Consequently, if this bill passes and Pogo goes into production then for a full year of production the property tax under this bill would be about \$1 million without considering the exemptions discussed below or the basic need cap. Another proposed mine that was within the unorganized borough in 2005 and is currently in the advanced exploration phase is Donlin Creek. Construction on this mine could begin as early as 2007 and production by 2008. NovaGold, a partner in the Donlin Creek project, has estimated capital costs of \$522.5 million which would translate to possible \$2 million at a 4 mill tax rate (excluding exemptions and basic needs cap). For comparison, Fort Knox, a mine with a real property value of \$221 million pays at a millage rate of 15.2 mills and paid approximately \$3.4 million to the Fairbanks North Star Borough in 2004.

#### Exemptions

Sec 43.67.160 (a) exempts from municipal taxation:

- (1) property rights attached to or inherent in the right to explore for or produce minerals;
- (2) mineral leases or properties whether producing or not;
- (3) minerals in place;
- (4) minerals produced or extracted in the state;
- (5) the value of intangible exploration expenses;
- (6) tangible property used for the exploration and development of minerals;
- (7) roads, storage facilities, terminals, docks and other port facilities, and airstrips, publicly owned or privately owned and open to public use.

It does not appear that these exemptions sunset after 15 years. Consequently, it appears that a great deal of mining property would be exempt from municipal taxation after 15 years.

Sec 43.67.160 (b) exempts roads, storage facilities, terminals, docks and other port facilities, and airstrips, publicly owned or privately owned and open to public use from the state tax in 43.67.010. Also exempted is mining property that has been in production for 15 or more years. We are assuming that all mining storage facilities would be private and not exempt in our rough estimates above.

Sec. 43.67.160 (c) exempts mining property where the total capital cost incurred or accrued with respect to the mine and related facilities is less than \$10 million from state taxation under 43.67.010.

#### Other Issues

There is some concern that equipment used for oil and gas exploration and development might be classified as mining equipment to take advantage of the lower tax rate.

#### Costs

Although we are not entirely certain of the extent of future mining that would be subject to the provisions of this bill, we are assuming that at least the Pogo mine will go into production. Consequently, we would have to hire an additional person at the Revenue Auditor III level to implement the provisions of the bill. This would involve total costs of \$91,600.



## SB 179/HB280 Talking Points

It appears that SB 179/ HB 280 would do two primary things:

1. Requires mines in the Unorganized Borough to pay a 4 mills property tax to the State.  
**Acceptable:** As the de facto assembly for the unorganized borough, the legislature has basically the same rights as any assembly.
2. However, if a borough forms, the state would still assess the mine and collect the property tax for the new borough up to 6 mills, but all other possible municipal taxes and fees, such as local sales taxes, would be prohibited for the expected life of the mine. **Unacceptable:** The bill would take away almost all taxing authority regarding mines from future local assemblies and make it unlikely that a borough could form if local taxpayers had to subsidize services to the mine due to the exemptions.

### Key issues:

- ❑ Local taxes already have "fail-safes" to avoid inequitable treatment of one taxpayer:
  1. By law, all local taxpayers must pay the same property tax rate. If mines pay more, so does everyone else.
  2. If taxes are too high for a mine to exist, everybody loses. Unfair taxation of mines has not been identified as a problem in Alaska.
  3. If a borough formation petition appeared to treat one taxpayer unfairly the Local Boundary Commission has the authority to reject it, or refer it to the legislature.
- ❑ Local taxpayers subsidize mines It would most likely make it financially impossible for a new borough to form because State law requires a borough to:
  1. Pay 4 mills of property tax as the minimum contribution to schools, plus
  2. Pay the local cost of building new schools necessitated by the mine, plus
  3. Pay any additional option local contribution to schools to maintain an acceptable level of education, and provide adequate local services such as road maintenance and public safety.The allowable remaining 2 mills would almost certainly be insufficient to pay for schools, school bonds, and provide other services. Therefore, other local taxpayers would likely have to subsidize local public services used by the mine.
- ❑ No other industry gets virtually permanent tax breaks: No city, borough, or the state promises a permanent low tax rate for a single industry.
- ❑ If special industry tax breaks are given by the State, they should be financed by the State: If the State adopts policy to subsidize the mining industry it should be done at the State level, not by asking future local taxpayers to subsidize it.
- ❑ New mines get tax breaks, existing mines don't: Mines in boroughs formed after January 2005 would be taxed at inequitable compared to existing or new mines in existing boroughs. Besides being inequitable, this could jeopardize taxation for communities with existing mines.

## Synopsis of Alaska Mining Industry- Local Revenues

### Greens Creek Mine

Located in the City & Borough of Juneau:

Valuation:

Real Property	\$63,054,400
Personal Property	<u>\$47,101,020</u>
Total Value	\$110,155,420

#### **Local Revenue Generation:**

Based on mill rate of 6.61 mills equals \$728,128 per year

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### Fort Knox Mine

Located in the Fairbanks North Star Borough

Valuation:

Real Property	\$230,400,000
Personal Property	<u>\$ -0- (not assessed in FNSB)</u>
Total Value	\$230,400,000

#### **Local Revenue Generation:**

Based on mill rate of 15.224 mills equals \$3,507,610 per year

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### Red Dog Mine

Located in the Northwest Arctic Borough

Valuation:

Real Property	\$263,801,940
Personal Property	<u>\$ included above</u>
Total Value	\$263,801,940

#### **Local Revenue Generation:**

PILT - \$5,000,000 to \$6,000,000 per year

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*20.8 mills @ S. Smilgen*

### Healy Coal Mine

Located in the Denali Borough

Severance Tax on extraction of coal and gravel

#### **Local Revenue Generation**

\$56,000 per year

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