

The Alaska Forum

◆ *The Quarterly Newsletter of the Alaska Forum for Environmental Responsibility* ◆

WINTER '97

New Study Questions Alyeska's Ability to Respond to Pipeline Oil Spill

Alyeska Pipeline Service Co. is not ready or able to adequately respond to or contain an oil spill on land, says an Alyeska Pipeline Service Company field engineer.

Ronald Miller, a 20-year Alyeska employee who oversees oil spill response along the 800-mile line, conducted a seven-year study of Alyeska's oil spill contingency plan (or C-Plan) for the twenty year old pipeline. The study, Miller's master's thesis, alleges hundreds of flaws which could lead to injuries to would-be responders and damage to the environment.

The 1989 Exxon Valdez spill highlighted the issue of safe transport of Alaska crude oil all the way from the North Slope to the Valdez marine terminal and to outside Alaska via ocean tankers. Miller's thesis focuses on the pipeline portion of the transportation system, which currently pumps about 1.4 million barrels a day over three major mountain ranges and over 800 streams and rivers.

Miller evaluated the plan in five areas -- scenario development, containment and control techniques, written instructions, visual aids and safety. Based on an exhaustive review of oil spill response literature, the thesis identifies 45 essential elements of an effective spill response plan. Evaluating Alyeska's C-plan against these criteria, the study concludes that it lacks 42 of the 45 elements that experts say are necessary to control and contain an oil spill on land.

"This thesis calls into question the sincerity of Alyeska's commitments to Congress and the public after the Exxon Valdez disaster that it would improve its oil spill response capabilities," said Alaska Forum President Stan Stephens.

Other significant findings of the thesis include:

- ◆ the core of the plan's response measures have not changed since the original contingency plan was approved in June 1977, yet industry standards call for

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Scientific Committee Recommends Changes to Forest Practices Act

Unique Opportunity to Improve Protections of Water Quality and Fish and Wildlife Habitat

A scientific panel established to review the Forest Practices Act presented its findings and recommendations to improve implementation of the Act to the Board of Forestry in late January.

The Board of Forestry created the Science and Technical Committee in February 1996 to examine concerns raised by Alaska's Department of Fish and Game. The Committee was also asked to make recommendations to improve the Act based on current scientific knowledge. Its 24 members included representatives from timber, fishing and tourism industry, as well as members from the state and federal governments.

The Committee presented its final report, including 75 consensus recommendations, to the Board of Forestry at its meeting in Juneau on January 22. The Committee found that the FPA and its implementing regulations were deficient in several areas. The Committee's report includes recommended changes to agency implementation practices and state policy, regulation, and law.

"The Science and Technical Committee's work is the first hard look at the implementation of the Forest Practices Act since it was passed in 1990," said Riki Ott, Alaska Forum board member and a fishing industry

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ABOUT THIS PUBLICATION

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The Alaska Forum for Environmental Responsibility is dedicated to holding industry and government accountable to the public mandate to safeguard the environment, provide a safe and retaliation-free workplace, and achieve a sustainable economy in Alaska.

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A Message from the President *by Stan Stephens*

Recent events do not leave me encouraged about environmental protection and whistleblower rights in Alaska. Ignoring real problems, corporate greed and the failure of state and federal government to do their job seem to rule the day.

As Richard Fineberg points out in this newsletter, events over the last six months confirm the basic conclusion of *Pipeline in Peril*: the integrity of the pipeline is questionable and Alyeska and its government monitors are either unable or unwilling to aggressively address the root causes of the problems.

The most recent example was last week's scare on the pipeline. Alyeska thought it had a 9,000 gallon per hour leak near the Tiekel River, a tributary of the Copper River, which nourishes the famous Copper River red salmon run and huge numbers of migratory shore birds. Fortunately for Alaska, the leak turned out to be a false alarm. But it proved Fineberg right -- Alyeska's leak control system remains a failure after nearly 20 years of pipeline operations.

Worse yet, had that spill been real, a new study by a long-time Alyeska employee raises serious questions about whether Alyeska would have been able to control and contain it. Miller's study shows that Alyeska's oil spill contingency plan still does not meet industry standards.

Miller's study also raises more questions about government oversight of Alaska's oil industry. How did Alyeska's contingency plan receive government approval if it did not meet generally accepted standards?

Farther north, at the Endicott oil field on Alaska's North Slope, we again find signs of lax government oversight. State and federal regulators did not take seriously evidence of illegal waste disposal until after a courageous whistleblower came forward to disclose the illegal practices.

Finally, our political leadership in Juneau and Washington DC seem to have turned their back on conscientious employees and the environment. Governor Knowles has essentially ignored *Pipeline in Peril*, despite early promises to respond to its recommendations. Ditto for the federal government.

Meanwhile, our state legislature considers bills that would grant immunity to polluters, gut whistleblower rights, seriously weaken the state's water quality standards, and change the Department of Environmental Conservation's mission from environmental protection to environmental development.

Alaska is North America's last frontier. We still have time to do development right in this great land. Instead, we seem to have become a state where jobs and profits are the highest priority, no matter the cost. What happened to the people who came here for a way of life that required clean air and water, abundant wildlife and vast wilderness?

The days before large scale industrial development -- be it big oil or big tourism -- are gone. But Alaskans still can, and should, seek a balance between economic development and environmental protection. Alaska's natural heritage is its most valuable asset.

Our political leaders, both state and federal, should be working toward this balance. Instead, they're ignoring real problems, failing to protect the environment, and introducing bills that protect corporate greed and power and punish the little guy. If they have their way, this legacy could take years to reverse.

If Alaska means as much to you as it does to me, then join me in the battle to create a balance between industry and the environment. We cannot allow arrogant men who worship profit to destroy Alaska. We must continue to let our political leadership know that we care, that we are watching, and that we will hold them accountable.



Senate Bill Grants Immunity to Polluters and Threatens Whistleblower Rights

An "environmental audits" bill has reared its ugly head again in the state Legislature.

Senate Bill 41 (SB 41), sponsored by Sen. Loren Leman (R-Anchorage), would grant immunity to companies which discover violations of environmental laws during internal environmental self-audits and then voluntarily disclose the violations to government regulators. The bill also would make the audits themselves exempt from public disclosure requirements and undiscoverable in civil litigation.

Senator Leman and other proponents of the bill argue that it provides the incentive necessary to encourage companies to initiate internal audits and discover and correct environmental violations on their own. They argue that the current lack of immunity discourages the use of audits because they can be used as the basis for litigation and imposing sanctions and liabilities on industry.

The Alaska Forum and other opponents of the bill come to the opposite conclusion. We support the fundamental goal of SB 41: to foster compliance with worker safety, public health and environmental laws by providing

incentives for regulated entities to voluntarily find, disclose and correct violations of these laws. But SB 41, as written, will not achieve this goal. We believe that audit secrecy is likely to discourage companies from cleaning up their environmental and safety records by allowing "bad actors" to hide violations from public scrutiny, thereby gaining an unfair advantage over corporations that comply with environmental laws.

"The greater portion of evidence of wrongdoing by an organization or its representatives is usually found in the official records and documents of that organization. Were the cloak of privilege to be thrown around these records and documents, effective enforcement of many federal and state laws would be impossible."

- US Supreme Court in *Braswell v. US*, 108 S. Ct.

As Sue Schrader of the Alaska Environmental Lobby put it, "SB 41 replaces corporate responsibility and accountability with secrecy."

The concept of immunity for environmental audit bills is not unique to Alaska. According to a report by the Environmental Action Foundation, SB 41 is part of a well-organized, well-funded, nation-wide campaign to create an environmental audit privilege. The report describes how "many of the corporations active in the push for this legislation [primarily from the chemical, oil, paper, and waste disposal industries] face controversy growing out of public and regulatory scrutiny of their operations."

This bill is of particular concern to the Alaska Forum because of its potentially far-reaching, negative impacts on whistleblowing in Alaska. SB 41 would take away one of the primary legal tools a concerned employee has to defend herself from reprisals by her employer.

That tool is access, through the discovery phase of litigation, to a wide range of internal company documents for use in administrative and civil proceedings against an employer. It is often precisely these internal documents -- many of which would fall under SB 41's definition of a self-audit -- that are essential to prove an employer unfairly and illegally retaliated against an employee.

Losing access to these documents would cripple the already weak protections for blowing the whistle under Alaska law. SB 41 sends a clear message to conscientious workers: remain silent or else.

Secrecy is not necessary to encourage self audits. Self-audits make good business sense -- they improve a company's bottom-line by identifying and correcting compliance and other problems early. That is why many companies across the nation and in Alaska already conduct self-audits without laws that grant them immunity and privilege.

This is true even in Alaska. As the Alaska Oil and Gas Association's January

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Partnering Will Not Remove Poison from the Well

By Stan Stephens

This story originally appeared in the opinion section of the Anchorage Daily News, 2/6/97.

Last week, the Alaska Forum for Environmental Responsibility published "Poisoning the Well," a report about illegal waste disposal practices at British Petroleum's Endicott oil field on the North Slope. The report summarizes the story of a courageous whistle-blower who refused to collaborate in the illegal and environmentally destructive practices.

Doyon Drilling, a BP Exploration (Alaska) contractor at Endicott, instructed its workers to violate environmental regulations by putting toxic materials into the drilling wastes that were re-injected as a part of routine drilling operations. These secret and potentially damaging practices continued for at least two years and perhaps as long as five years.

This story surfaced briefly in the press in January 1996. Then, like so many other whistle-blower stories, it was forgotten. The Alaska Forum reviewed the record and discovered that although BP eventually investigated the incidents responsibly, the illegal practices never would have come to light if the whistle-blower had not stood up to peer pressure. He endured death threats from co-workers and sacrificed his 22-year career to do the right thing.

These events call into question the partnership that Gov. Tony Knowles has worked so hard to form between the oil industry and the State of Alaska. While the relationship between the oil industry and the residents of Alaska is at the highest level of openness that I can remember, the partnership still has a long way to go.

Everyone acknowledges the impor-

tance of oil to Alaska's economy. A government-industry partnership is not only good business but is necessary for the healthy development of Alaska's oil industry. But "Poisoning the Well" tells the story of naked pursuit of profit at the expense of the environment.

As documented in the report, toxic wastes were illegally injected into oil wells to save Doyon and BP \$1,000 to \$1,500 per barrel of waste. One of the whistle-blower's fellow employees told him the improper disposal had been ongoing for five years and was of no consequence because "no one lives on the North Slope anyway." That's the last kind of statement one would expect to hear from a subsidiary of an Alaska Native corporation.

Even as these events unfolded, Sen. Frank Murkowski heralded Endicott as a shining example of environmentally safe development. At the same time that the company was ignoring the whistle-blower's concerns, Doyon's general manager proclaimed to Congress in July 1995 that "environmental protection is an equally critical part of daily operations" on the North Slope.

BP says the Endicott pollution problems were isolated events. However, the volume and length of time of these illegal waste disposal practices suggest that environmentally degrading practices on the North Slope may be widespread. For a period of up to five years, 1990 to 1995, thousands of gallons of used glycol, paints, solvents, and other toxins were illegally re-injected at Endicott.

Where were the government regulators who were supposed to be ensuring environmentally safe operations? The record indicates that the U.S. Environmental Protection Agency and the Alaska Oil and Gas Conservation Commission did not take the first of two incidents seriously until after a whistle-blower came forward to disclose the illegal practices.

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Everyone acknowledges the importance of oil to Alaska's economy. A government-industry partnership is not only good business but is necessary for the healthy development of Alaska's oil industry. But "Poisoning the Well" tells the story of naked pursuit of profit at the expense of the environment.
— Stan Stephens

Pipeline Still in Peril

Recent Events and New Studies Confirm Thesis of Report

By Richard Fineberg, author of *Pipeline in Peril*

In the six months since the Alaska Forum published *Pipeline in Peril: A Status Report on the Trans-Alaska Pipeline*, several events and new studies have confirmed that Alaska's environment and ten percent of the nation's oil supply is at increasing risk of interruption due to an oil spill or breakdown.

Pipeline Rattles Thompson Pass

Two months after *Pipeline in Peril* was released, Alyeska went into emergency operating status as it responded to a potential spill at Thompson Pass in the rugged and scenic Chugach Mountains, 25 miles from the south end of the pipeline. Alyeska received substantial praise from JPO and the media for its energetic response in November 1996. But that praise ignored several serious questions.

The problem at Thompson Pass was identified several months earlier, in July 1996, when residents near the foot of Thompson Pass told Alyeska that earthquake like shocks were emanating from their pipeline. The phenomena that cause pipelines to shake are well known to Alyeska. Why then did pipeline operators fail to notice that the pipeline was bouncing around in Thompson Pass until they were alerted by nearby residents?

Alyeska had previously put six protective sleeves over damaged portions of the pipeline in the five-mile stretch between the lower portion of Thompson Pass and Keystone Canyon. Why then did it take the pipeline company another 14 weeks to figure out that regular jolting of the line at or very near the deepest unrepaired dent in the area might weaken the pipe further, creating the possibility of an oil spill?

Finally, the fact that Alyeska could not tell whether or not there was a spill demonstrates the inadequacy of the pipeline's small leak detection system, confirming the concerns raised in *Pipeline in Peril*.

Alyeska Reorganizes

In January, Alyeska announced that it was restructuring its organization, reducing the size of its Anchorage headquarters and putting key managers closer to the operations for which they are responsible. Under the new plan, the vice president in charge of pipeline operations will be located in Fairbanks, while terminal and tanker escort and response operations will be managed by a second vice president based in Valdez.

The proposed reorganization represents a welcome effort to improve management of the pipeline. *Pipeline in Peril* noted that managers in Anchorage often seemed to have a difficult time getting accurate information from the remote, 800-mile corridor.

However, the timing of the reorganization is questionable.

After the *Exxon Valdez* ran aground in 1989, the TAPS owners conducted a major reorganization. Three years later, Alyeska announced it had retained a renowned consulting firm to conduct a second major reorganization study in response to congressional hearings that spotlighted Alyeska management problems. Why did it take another four years for Alyeska to discover that the third major re-organization in a decade was necessary?

Alyeska has linked the current reorganization to the closing of pump stations along the line due to reduced throughput. But Alyeska announced the plan to close the pump stations in December 1995. Why wasn't the management reorganization implemented then?

Economic Analysis Documents Windfall Profits to Pipeline Owners

In a 1996 Master's thesis from the University of Wisconsin, researcher Antony Scott concludes that the TAPS tariff (shipping charge) allows tremendous overcharges and bestows on the owners an unusual monopoly. The state ratified, and a federal agency approved, the tariff procedures in 1985 in a settlement with the pipeline owners that established a controversial rate-making mechanism known as the TAPS Settlement Methodology (TSM).

Scott reports that "TSM deviates in important ways from conventional tariff methodologies." His calculations show that, during the assumed life of the pipeline, excessive tariffs will have enriched the TAPS owners by \$4.9 billion while reducing Alaska State revenues by \$4.5 to \$9.2 billion and saving the companies \$1.8 to \$2.7 billion in Federal income taxes (all in 1995 dollars).

On top of these industry gains and government losses from excessive shipping charges, Scott further shows that a little-noticed provision in the 1985 settlement covering dismantling, removal and restoration (DR&R) costs will give the pipeline's owners an additional windfall of enormous proportions. According to Scott, over the assumed life of the pipeline, the carriers will collect between \$9 and \$13 billion (in 1995 dollars) in excess DR&R charges.

That sum will grow larger still if the date when DR&R disbursements are made is postponed, rather than conducted between 2012 and 2015, as the 1985 calculations for the settlement assumed. And that date is almost certain to be postponed -- current projections and industry investment patterns on the North Slope show TAPS will pump significant quantities of oil until at least 2040.

Scott also suggests that the TAPS owners have used the pipeline to drive non-owners such as Conoco from the North Slope. He notes that immediately after TAPS majority owner BP took over operation of the Milne Point field from Conoco, BP began increasing production there. Archie Dunham, president and CEO of Conoco, lent credence to Scott's analysis. He told *The Investor* magazine that a major reason Conoco left Milne Point was that "all the value of that prop-

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erty was taken away from us in the pipeline tariffs" (1/96, p. 41).

Thoughtful citizens are left wondering just how such an unfair and unreasonable tariff came into being. Scott concludes that the Federal Energy Regulatory Commission (FERC), the agency which approved the TSM, was reluctant to regulate, preferring settlement agreements to enforcement action.

Given their enormous windfall profits, the least the pipeline owners could do is make good on all those fine-sounding environmental promises they made when they sought permission to build the pipeline. Right?

Wrong.

New Study Criticizes Alyeska's Spill Response Plan

A second recent Master's thesis criticizes Alyeska's plans to control and contain oil spills from the 800-mile pipeline. The author, Ronald Miller, is a 20-year Alyeska field worker whose current assignments include preparations for spill response.

From spill response literature, Miller identified 45 characteristics of an effective initial response to a spill. After reviewing Alyeska's contingency plan in detail, he concluded that the present Alyeska plan is deficient in 42 of those 45 aspects. (For more details on this study, see the related story on page 1 of this newsletter.)

Miller suggests a closer look at government actions in approving the TAPS spill response plan, confirming Pipeline in Peril's conclusion that government oversight of the pipeline is lax. Miller notes that "it is important to distinguish between a spill response plan that complied technically with government requirements and one that actually achieves the . . . minimization of spill damage through rapid and effective response."

Here, too, there is good news and bad news. The good news is that Alyeska management, recognizing the thesis as a positive contribution to improve its performance, has indicated that Miller will not be scapegoated as a whistleblower. The bad news is that even after two major upgrades since the *Exxon Valdez* spill, the contingency plan still does not pass muster.

TAPS Remains a Pipeline in Peril

Taken together, the events and rigorous academic studies described above continue to raise serious questions about the conduct of the oil companies that own and operate TAPS — and about the government regulators who are supposed to ensure that our oil patch partners fulfill their promises to protect Alaska's environment with vigor that equals their pursuit of profit.



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After more than a year of glacially paced criminal investigations, government officials have not yet held Doyon accountable nor specified firm corrective actions. It remains unclear what has been done to prevent future illegal practices.

Our state's leaders in Juneau and Washington, D.C., argue that a new "partnership" with Alaska's oil industry means we can "do it right" on the North Slope. But the evidence from Endicott is typical of the problems in the North Slope oil delivery system that should keep us all concerned.

Credible government-industry partnerships require mutual trust. Events like those at Endicott undermine the public's trust in an environmentally responsible partnership on the North Slope. And the public will remain skeptical until Doyon is held accountable.

Contrary to a massive public relations campaign and the lobbying efforts of Alaska's congressional delegation, "Poisoning the Well" suggests that the oil industry has not yet proven environmentally responsible development on the North Slope. At Endicott "a supposed model of environmentally friendly development" illegal dumping of hazardous wastes occurred because of negligent and willful human failures.

Clearly, a close examination of oil industry practices and government oversight of the North Slope, the trans-Alaska oil pipeline and the marine transportation must precede any future development of the Arctic National Wildlife Refuge and/or the National Petroleum Reserve-Alaska. Development of those areas should not proceed until it is clear that practices such as Doyon's have ended and that strong government oversight is in place.

Alaska needs a true and honest partnership designed for the betterment of the oil industry and the State of Alaska. Top-flight industry practices and strong government oversight for the protection of this great land must take precedence over political moves designed for profit alone.

Poisoning the Well: Whistleblower Disclosures of Illegal Hazardous Waste Disposal on Alaska's North Slope is available from the Alaska Forum for \$5 or can be downloaded from the world wide web at <http://www.accessone.com/~afersa>



TAGS Takes Giant Steps Forward North Slope Gas Exports Look More Likely than Ever

by Mike Macy

This megaproject promises to alter Alaska's social, political and environmental landscape much the way the Trans-Alaska (oil) pipeline did more than 20 years ago. All the effects of a population boom -- housing shortages, increased pollution, higher demand for government services, and rising pressure on fish, wildlife, air and water quality -- should be expected.

— Mike Macy

For the past fourteen years, Yukon Pacific Corporation has been quietly building momentum behind its North Slope gas export megaproject, the Trans Alaska Gas System (TAGS). Yukon Pacific has secured virtually all of its major permits and has developed good relations with potential Asian customers.

TAGS would deliver 6 trillion cubic feet or more of natural gas from the North Slope's Point Thompson gas field to Valdez. The project includes a new pipeline from Prudhoe Bay to a new marine terminal in Valdez, where specially designed tankers would load super-cooled liquid natural gas for delivery to customers, primarily the largest electrical utilities in Japan, Taiwan, and South Korea.

North Slope natural gas sales now look more likely than ever before. This is not because the primary obstacle -- the unavailability of gas -- has changed. The North Slope lease holders (ARCO, BP, and Exxon) officially remain unwilling to sell gas.

What has changed is the attitude of Alaska's political leaders. Two years ago, Yukon Pacific couldn't get anyone to talk about gas sales. Recently, however, both the Legislature and the Governor have taken a new interest in TAGS.

As Governor Knowles put it in his 1997 State of the State address, "Over the past year, the prospects for a North Slope Gas export project have gone

from impossible, to unlikely, to doable."

Knowles got behind the project last summer. His administration worked hard to develop "memorandums of understanding" between the State and the North Slope producers as well as between the state and Yukon Pacific. While non-binding, the memorandums lay out what each party would have to do to launch TAGS.

The legislature recently passed unanimously a resolution supporting gas exports, as it did in 1996. Because of their frustration at the producer's foot-dragging, legislators also are poised to introduce a second resolution on North Slope gas sales. The resolution would call for state agencies to answer two questions. First, are the Prudhoe Bay unit agreements impeding gas sales? And second, have the owners of the giant Point Thompson gas field lived up to their contractual obligations to the state to develop and market the field's gas?

Depending on the answers, the resolution would direct the Department of Natural Resources to consider canceling the leases and to develop the gas itself.

Yet more evidence that TAGS may soon be a reality:

- ◆ Cook Inlet gas resources are declining. The prospect of South-central Alaska running out of a reliable, inexpensive supply of clean energy promises to turn more legislators into rabid advocates for a north slope gas export project. Why? Because a feeder line could be built from Glennallen to Anchorage and then on to the Kenai Peninsula.
- ◆ Even Alyeska is talking about participating in the gas project. "We really want to get our oar in the water for constructing and operating the gas line when it's built," said Alyeska President Bob Malone in early February.

In terms of the lead time necessary to deliver gas to market in 2005 -- 2 years for final design and remaining permitting, 4 years for construction -- Yukon Pacific's

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(*Science and Technical Committee, Continued from page 1*)
representative on the committee.

“Because the Committee’s findings and recommendations are based on the most current science and lessons learned since 1990, and represent a consensus of all user groups, the public has a unique opportunity to improve protection of water quality and fish and wildlife habitat, even in this dismal political environment,” continued Ott.

The Forest Practices Act requires the Alaska Department of Fish and Game (ADFG) to annually report to the Board of Forestry on the Act’s implementation and effectiveness, and point out problems that need to be addressed. The Board then uses this report, along with similar reports from other natural resource management agencies, to prepare its own report to the Legislature about the Act.

In January 1996, ADFG told the Board that Alaska’s Forest Practices Act is deficient in protecting non-timber resources, that budget cuts prevent adequate state field work and monitoring, and that scientific studies indicate some logging practices destroy important wildlife and fish habitat. ADFG concluded that Alaska “can anticipate a continued degradation in the abundance, quality, and availability to humans of non-timber resources,” much like that experienced in the Pacific Northwest (*1995 Report to the Board of Forestry*; January 16, 1996; p. 2).

Fish and Game’s report was very controversial. The timber industry was sharply critical of ADFG, arguing that the agency had no evidence of negative impacts. But the Alaska Forum, Natives Alaskans, and fishermen commended ADFG for finally presenting the Board with an accurate assessment.

As a result of the controversy generated by ADFG’s report, and public support of ADFG’s findings, the Board of Forestry was unable to agree on and submit a report to the Legislature in 1996. Instead, it created the Science and Technical Committee to research the issues raised by ADFG and to make recommendations to the board.

One important limitation of the Committee’s findings and recommendations is that they pertain only to the coastal forests of southeast Alaska (Region 1). Why? Because ADFG’s controversial report only dealt with Region 1 coastal forests.

Another reason is that the Forest Practices Act was written primarily to address logging operations on coastal forests. Transitional forests in south-central (Region 2) and boreal forests in the interior (Region 3) receive little if any protections under the Act.

But this limitation does not necessarily mean the Committee’s work will have no impacts outside southeast Alaska. The federal government recently informed the State of Alaska that unless it established protections for anadromous fish habitat in transitional forests in south-central and some portions of the boreal forests in the interior, the State would be out of compliance with the federal

Coastal Zone Management Act. The State risks losing substantial federal dollars for local community planning and development unless it complies within the next two years.

How can Alaska achieve compliance? Ott has an answer: “Governor Knowles could create another science-based consensus group to improve fish and wildlife habitat protections for transitional and boreal forests.”

The Board of Forestry has endorsed the Committee’s final report in concept but reserved final approval for early April, after the Committee considers timber industry claims that some of the recommendations will result in significant economic impacts.

Ott believes there is merit to the industry’s concerns and that they can be addressed while still providing significant improvements for water quality and fish and wildlife habitat.

Assuming Ott is correct, the Board will incorporate the Committee’s final report, as well as recommended changes to regulations and law, into its 1997 report to the Governor and Legislature, recommending action in this legislative session.

See “Call to Action!” at the end of this newsletter for what you can do to ensure the recommendations of the Science and Technical Committee are implemented.



Summary of the Science and Technical Committee’s Recommendations

[This is a very brief, somewhat crude summary of a detailed scientific report. The complete report is available from the Board of Forestry by calling (907)269-8447. A more detailed summary is also available on the Alaska Forum’s home page, at <http://www.accessone.com/~afarsea>]

General

The Board of Forestry should undertake a comprehensive review of the Forest Practices Act, its implementing regulations and current science once every five years.

Fish Habitat

The Fish Subcommittee produced the vast majority of the 75 total recommendations, which addressed five broad areas:

- ◆ Improvements in stream classification procedures and

(Timber, Continued from page 8)

- post-harvest implementation monitoring and enforcement.
- ◆ The stream classification system was revised so that many streams currently not classified as anadromous would be, and the protections (such as buffers and large woody debris requirements) for various stream types were strengthened.
 - ◆ Reduction of mass wasting and erosion resulting from poor roading practices and a new requirement that roading and harvesting activities be planned to minimize cumulative impacts by conducting watershed analyses prior to harvest.
 - ◆ Revised the definition of anadromous fish habitat to include both the presence of anadromous fish and the ability of fish to navigate the stream up to a barrier or blockage; and recommended revisions to the current blockage standards based on site specific performance standards (similar to Oregon).
 - ◆ Strengthened protections for riparian zones.

Wildlife Habitat

The Wildlife Subcommittee made two recommendations:

- ◆ Greater up-front cooperation and involvement of interested parties in landscape level planning to help protect wildlife species and habitats on private lands. This would be accomplished through geographically specific working groups convened by ADFG and DNR that address issues and land use patterns in the specific area.
- ◆ The state should assess the cumulative impacts to wildlife from timber harvesting in selected areas where cumulative impacts are of concern to agencies and the public; the Kenai Peninsula was identified as the top priority.



Alaska Forum Launches Community Forest Watch Project

This summer, the Alaska Forum will launch a community forest watch project. The project is designed to educate citizens about forest ecology and sustainable forest practices and involve them in monitoring implementation of the Forest Practices Act in the field.

The community forest watch project was inspired by the Alaska Forum's concern that state agencies conduct little monitoring of timber harvesting activities.

Passing the Forest Practices Act in 1990 was a major struggle. Environmentalists and the timber industry both compromised to create a workable law. But since the passage of the Act there has been little attention to its implementation on individual timber sales, where it really matters, to assess whether timber operators are following the requirements of the Act and whether the requirements are effective over the long-term.

"Do the currently required logging practices actually protect fish and wildlife habitat? Water quality? We don't really know" said Riki Ott, Alaska Forum board member. "We do know that we cannot have sustainable forestry without this information."

The community forest watch project will supplement — not replace — state agencies' monitoring efforts. After two evenings of classroom instruction and a one day field trip learning data gathering techniques in Anchorage, participants will then spend four days monitoring logging activities on state forest lands on the Kenai Peninsula. They will then compile the data, which will be given to the state to add to its monitoring database.

Lorvel Shields, a field biologist and teacher, is the project director. He describes the program this way:

"Forests are important to the ecology and economy of Alaska. They provide clean water and habitat for fish and

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(Thesis, Continued from page 1)

constant updating as circumstances change and better spill response techniques are developed;

- ◆ Alyeska does not have an adequate exercise program to discover deficiencies in planning, or to accurately determine the level of preparedness;
- ◆ while the plan contains adequate response techniques for Alaska's short summer season, it largely ignores potential problems caused by the inclement conditions of Alaska's long winter.
- ◆ the plan often relies on materials to control and contain spills that are no longer available along the pipeline, such as gravel and hay;
- ◆ the plan includes "smorgasbord" lists of confusing instructions; and
- ◆ the plan recommends response actions that may be dangerous for workers, such as using heavy equipment in unstable riverbeds.

Miller's thesis also includes a list of recommendations to improve the spill response plan. In addition to revising the old C-plan, he recommends the development of more -- and more realistic -- spill scenarios; improved training programs; and implementing computer technology to make C-plan information more quickly available to responders.

We're glad Ron cares about the pipeline," Alyeska president Bob Malone told the *Valdez Vanguard*. "We have given the report to the people who are responsible for oil spill response along the pipeline, and they are reviewing Ron's recommendations," Malone said.

The Joint Pipeline Office, the consortium of state and federal regulators that oversees the pipeline, said it is also reading the report.

"Where we find areas in which (Miller) suggests improvement we're going to adopt those and move forward on it," JPO spokesman Rob McWhorter told the *Valdez Vanguard*.

Stephens said he hopes Alyeska and its regulators are serious about taking corrective action. So far, he is encouraged by Alyeska's response to the the-

sis.

"The Alaska Forum commends Bob Malone for his positive response to Miller and his thesis, finally showing that Alyeska values concerned employees who speak the truth. Now we hope Alyeska acts quickly to fix the problems with the contingency plan."

But Stephens remains very skeptical of government regulators.

"Miller's thesis once again calls into question the effectiveness of government oversight of the pipeline," said Stephens. "Why did the government approve the plan if it did not meet generally accepted standards? We are not getting oversight from the state and federal government and that's a major problem."

Selected portions of the Miller's master's thesis can be found on the world wide web at <http://www.accessone.com/~afersa>



Thank You!

We want to thank the following foundations and government agencies for their recent grants to the Alaska Forum: the Alaska Conservation Foundation, Rockefeller Family Fund, Tortuga Fund, Turner Foundation, and US Environmental Protection Agency.

We also thank the nearly fifty individuals who gave generously in response to our year-end fundraising appeal.

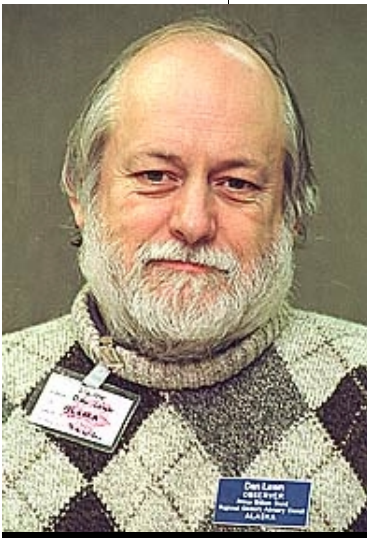
To all our supporters, we appreciate your continued moral and financial support!

TAPS Whistleblower News



Dan Lawn Reinstated (Sort of) to Some of His Former Duties

But Agency Can't Resist One Last Stab



Dan Lawn, once called a "jerk" and a "hard-ass" by some oil industry representatives because of his tough stands on enforcement of environmental laws at the marine terminal in Valdez.

After an eight-year effort to force him out of the agency, the Alaska Department of Environmental Conservation (DEC) has finally restored Dan Lawn to a job that encompasses some of his former duties overseeing the Alyeska marine terminal in Valdez. Lawn is a co-founder of the Alaska Forum, along with Stan Stephens and Riki Ott.

Lawn's partial reinstatement follows a December ruling in his favor by Alaska's Supreme Court. The Court agreed with an earlier arbitrator's decision that Lawn was wrongfully demoted in the wake of the 1989 Exxon Valdez oil spill and must be given back his Alyeska oversight duties.

DEC issued a statement in early March saying the agency "went ahead and placed [Lawn] in a job that meets the court and the arbitrator's decisions," said Kurt Fredriksson the DEC Director of Spill Prevention and Response.

The new job permits Lawn to spend 80-percent of his time at the Valdez marine terminal as a DEC staff person attached to the state-federal Joint Pipeline Office, and 20 percent as a district community liaison. He also gets a modest pay raise and remains based in Valdez.

"This is the vindication Dan has sought and deserved all these years," said Alaska Forum President Stan Stephens. "Dan is a hard working public servant. He was fired for doing his job too well

and upsetting a lot of important people in the process."

Lawn, called a "jerk" and a "hard-ass" by some oil industry representatives because of his tough stands on enforcement of environmental laws at the marine terminal, is best known for his warnings before the Exxon Valdez oil spill.

Lawn warned his superiors at DEC that Alyeska was unprepared to control, contain and clean-up a large oil spill in Prince William Sound. He also exposed some of the underlying causes of the Exxon Valdez disaster to the press and Congress, incriminating both DEC and Alyeska.

Under pressure from the oil industry, DEC demoted Lawn in August 1989. The stated reason was a minor altercation with an Alyeska security guard over a site inspection pass and for writing "This sucks" on the cover of an Alyeska proposed oil spill contingency plan that he considered inadequate.

Lawn and his union fought the demotion. In 1992, an arbitrator ordered DEC to reinstate Lawn to his former duties. But DEC fought the arbitrator's decision in Superior court and won. Lawn appealed to the Alaska Supreme Court, where he finally prevailed last December.

Even as DEC grudgingly and partially complied with the Supreme Court ruling, the agency could not resist harassing Lawn one last time. Lawn and his union representative Bob Watts, of the Alaska Public Employees Association, were surprised and angered by DEC's announcement.

Lawn and Watts had been negotiating an agreement with DEC for several weeks. The day before DEC's announcement, it was their understanding that several important details -- including a lump sum payment for lost back wages and a job description -- remained to be worked out and that they would release a joint press release with DEC once all details had been finalized.

"Instead, DEC issued a unilateral press release that that paints Lawn as a money-grabber," said Watts.

(Continued on page 14)

TAPS Whistleblower News



US BLM "Evaluates" Alyeska's Employee Concerns Program Also Looks at Oversight by Joint Pipeline Office

The US Bureau of Land Management (BLM) is due to release its "evaluation" of Alyeska's employee concerns programs later this month. The purpose of the evaluation is to assess the effectiveness of Alyeska's program and the Joint Pipeline Office's oversight of the program, and to suggest how to improve both.

BLM began its evaluation shortly after the September 1996 release of *Pipeline in Peril*, Richard Fineberg's report on the condition of the pipeline. *Pipeline in Peril* was sharply critical of Alyeska's employee concerns program, concluding that "Alyeska has attempted to solve its 'whistleblower problem' through a combination of public pronouncements and shooting enough messengers to silence others who might consider speaking the truth."

Fineberg's report also criticized JPO oversight and recommended that JPO (of which BLM is the lead federal agency) take steps to improve the confidentiality, independence and credibility of the program.

What is an Employee Concerns Program?

Employee concerns programs exist to provide a confidential means for conscientious workers to bring their concerns forward and get them resolved, thereby protecting workers from the hazards of whistleblowing. First developed in the nuclear industry in the 1980s, employee concerns programs (or ECPs) are now in use in a variety of industries that pose significant risks to public health, worker safety, and/or the environment.

ECPs are generally the only internal option available to an employee who wants to report wrongdoing but fears for her job. ECPs also provide an important source of feedback to quality assurance/quality control and regulatory compliance programs in complex industrial facilities, thus playing an important role in protecting worker safety, public health and the environment.

Alyeska's Program

Alyeska launched its own ECP after a turbulent period in which a dozen or so pipeline inspectors complained about harassment and retaliation for reporting problems. Some were fired and others said their jobs or personal safety were threatened.

The inspectors' concerns led the BLM to order an independent audit of the pipeline in 1993. The audit criticized Alyeska for a cultural attitude among upper-level managers that "demonstrated a tolerance for negative practices such as harassment and intimidation of quality control inspectors and others." Alyeska's ECP was intended to reverse such attitudes by encouraging workers to report problems and ensuring prompt investigations of complaints. The Joint Pipeline Office is responsible for overseeing Alyeska's ECP as part of its pipeline oversight mandate.

The Alaska Forum and others have been highly critical of Alyeska's ECP. We believe Alyeska has largely failed to eliminate harassment and retaliation or resolve employee concerns, and that JPO provides no meaningful oversight. (See the next story for a summary of our critique.)

BLM's Evaluation

The first step in BLM's evaluation was a survey of all Alyeska employees and employees of its contractors last Fall. Survey results were tabulated and analyzed by the evaluation team in Washington, DC, and then used to develop questions for field interviews on the pipeline and at JPO. Follow-up interviews were conducted in early February.

The Alaska Forum welcomes BLM's evaluation and hopes it provides meaningful recommendations to improve the program and JPO's oversight. But we also have serious concerns about how BLM conducted its evaluation and thus BLM's ability to obtain an accurate assessment of the pipeline's ECPs.

Our concerns, which we have communicated in person and writing to BLM, include:

- ◆ **BLM's evaluation is a self-assessment rather than an independent, objective assessment and runs the risk of further undermining both employee and public confidence in TAPS ECPs.**

We know from experts in the nuclear industry that self-assessments by, for example, the US Department of Energy, generally produce much rosier assessments than do evaluations of the same programs conducted by independent, neutral third parties. Additionally, BLM's evaluation process appears to have repeated an old Alyeska tactic: let the wrongdoers investigate themselves. Alyeska and JPO staff were active participants in the evaluation; neither concerned employees (former or current) nor public representatives were included on the team.

(Continued on page 13)

(Newton, continued from page 12)

- ◆ **BLM does not appear to have any objective criteria by which it can assess actual resolution of employee concerns on the pipeline, a key measure of the effectiveness of Alyeska's ECP.**

The results of the employee survey will provide some clues about the overall perceptions of the ECP and corporate culture. But performance must also be tied to actual implementation of corrective action plans on the pipeline. This goes to the heart of re-building employee and public confidence in the ECP -- if fixes do not occur on the pipeline then the program will correctly be perceived as meaningless.

BLM has assured the Alaska Forum that its team will do everything possible to protect employee confidentiality. The agency said its goal was to find and report the truth and that neither Alyeska nor JPO would have any undue influence over its findings and recommendations.

We will know if BLM achieved its goal later this month.



The Alaska Forum's Critique of TAPS Employee Concerns Program

Problems with Alyeska's ECP

- ◆ Alyeska's ECP has two fundamental problems: 1) TAPS employees and the public are not confident the program can achieve its goals; and 2) while Alyeska's ECP may look good on paper it falls apart on implementation. These two problems result from the combination of the following specific program failures:
 - ⇒ The ECP program manager and his immediate supervisor (the Business Practices Officer) have no prior professional expertise in ECPs.
 - ⇒ Alyeska continues to focus on the source of the concern rather than the concern itself.
 - ⇒ The ECP does not adequately protect concerned worker (CW) confidentiality.
 - ⇒ The ECP does not adequately engage the CW throughout investigations.

⇒ Alyeska's Legal Department remains intimately involved in the operations of the ECP. This fact gives the program a "protect Alyeska first" approach that undermines confidentiality and program independence, and thus the credibility of the program as a whole.

- ◆ ECP staff spend minimal time in the field (i.e., on the pipeline and at the Valdez Marine Terminal) and thus have not built trust among employees and made the program accessible (both in appearance and practice).
- ◆ The ECP does not have a champion at the top.
- ◆ The ECP does not tie its success to actual field correction of employees' technical concerns but only to development of a corrective action plan.
- ◆ Accountability among supervisors and co-workers remains virtually non-existent. Few if any have been reprimanded or fired after it has been proved they harassed and retaliated concerned individuals or failed to implement corrective action plans. Instead of firing the wrongdoers, Alyeska continues to dismiss or otherwise force out those employees who report concerns to the ECP.

Problems with JPO Oversight

- ◆ JPO is generally unsympathetic to concerned employees. The agency downplays the significance of employee concerns and is quick to dismiss employee allegations of harassment and retaliation, thereby ignoring the chilling effect of retaliation and harassment.
- ◆ JPO explicitly refuses to guarantee employee confidentiality.
- ◆ Like Alyeska, JPO staff do not spend enough time in the field to engage employees on a regular basis and thereby build employee confidence in JPO's oversight activities.
- ◆ To our the best of our knowledge, JPO has failed to develop and/or follow through on aggressive oversight goals, objectives and milestones for Alyeska's ECP. As a result, JPO is unwilling to confront Alyeska publicly on employee concerns and passively lets deadlines pass for ECP improvement.



(SB 41, Continued from page 3)

1997 position paper on SB 41 points out, the majority of its members already "conduct self-audits as a means of ensuring compliance" without SB 41. Why then does Alaska need the secrecy of SB 41 to encourage self-audits?

If the Legislature is serious about fostering self-discovery and voluntary disclosure and correction of environmental laws, SB 41 is not the answer. A better approach would be a very simple bill that provides clear incentives through leniency for voluntary self disclosure and corrective action, that narrowly and explicitly defines the time window within which self-disclosure and corrective action must occur, and contains no secrecy provisions. US EPA has implemented just such a policy.

The Alaska Forum opposes SB 41. The essence of our message is this: To leniency for self-discovery and self-disclosure, we say "Yes!" But to secrecy and silencing workers we say "No!"

As we go to print, SB 41 is before the Senate Finance Committee. See "Call to Action!" on the next page for what you can do to prevent this bad bill from becoming law.

Dirty Secrets: The Corporations' Campaign to Create an Environmental Audit Privilege is available for \$5 from Environmental Action Foundation, 6930 Carroll Avenue, Suite 600, Takoma Park, MD 20912; (301)891-1100.



(TAGS, Continued from page 7)

project is now at a critical juncture. The company is in a race against several other competing projects around the globe to be the first large gas supplier to Asian markets.

Meanwhile, as pressure builds to make TAGS a reality, environmentalists have had a hard time getting anyone to focus on the inevitable impacts. This megaproject promises to alter Alaska's social, political and environmental landscape much the way the Trans-Alaska (oil) pipeline did more than 20 years ago. All the effects of a population boom -- housing shortages, increased pollution, higher demand for government services, and rising pressure on fish, wildlife, air and water quality -- should be expected.

As TAGS moves forward, Alaskans concerned about quality of life and environmentally responsible development will need to voice their concerns about the impacts of TAGS. The TAGS Environmental Review Committee (of which the Alaska Forum is a member) will keep you posted on when and how to do so.

Mike Macy is coordinator of the TAGS Environmental Review Committee, which works to identify and address environmental impacts associated with the TAGS project. He can be reached at the Alaska Conservation Foundation, (907)279-8247.



(Dan Lawn, Continued from page 11)

The March 1 release, written by DEC negotiator Kurt Fredriksson, states: "The department was surprised by a last minute demand for a \$27,000 payment, and significant changes Mr. Lawn wanted in the job duties." Fredriksson called the "demand" for payment "inappropriate."

"We nevertheless placed Dan in the job and hope that he is prepared to focus, with the rest of the team, on working to ensue the safe operation of the Valdez Marine Terminal," Fredriksson said.

Watts said the discussion to pay Lawn \$26,898 in lost wages (roughly \$320/month for 7 years) had been ongoing during negotiations. "It was not a last-minute demand for money. In fact, the sum was based on DEC's own estimates of Lawn's lost wages," said Watts.

Watts also pointed out that Lawn's job description included requirements not found in descriptions for comparable jobs and thus seemed to single him out for special treatment.

"It is blatantly obvious that DEC is continuing the pattern of harassment and intimidation of Dan lawn," said Watts.

Watts said he and Lawn will continue to meet with the DEC to completely resolve the conflict. And they are confident that, finally, the details will work out in Dan's favor.



(Community Forest Watch, Continued from page 9)

wildlife. They are important to our quality of life. The Forest Practices Act is a living document. In some areas it is probably working fine to protect these 'non-timber' resources; in others it may not be. Data from the field should provide feedback to forest managers about what's working with the Act and what's not. Our purpose will be to gather a small portion of the data."

If you are interested in participating in the program, contact Lorvel (his friends call him "Smiley") at (907)344-6220 or afercfw@pobox.alaska.net



Call to Action!

Improve Protections for Water Quality and Fish and Wildlife Habitat!

Write a letter to Governor Knowles and your state senator and representative urging them to adopt the recommendations of the Science and Technical Committee on how to improve implementation of Alaska's Forest Practices Act. (See the story on page 1 for details.) Make the following points in your letter:

- ⇒ Tell them that you understand that the Board of Forestry's Science and Technical Committee recently found significant shortcomings in the implementation of the Forest Practices Act in southeast Alaska and developed recommendations to address the shortcomings.
- ⇒ Thank the Governor and his administration for encouraging and supporting this timely, scientifically credible, consensus process that represents the first critical analysis of the effectiveness of the Forest Practices Act since it was passed.
- ⇒ Ask the Governor and your representatives to support implementation of all 75 recommendations.
- ⇒ Tell the Governor that you remain concerned about the Forest Practices Act's lack of fish, wildlife and water quality protections for transitional forests in south-central and boreal forests in interior Alaska. Ask the Governor to create a science-based consensus group similar to the Science and Technical Committee to improve fish and wildlife habitat protections for these currently unprotected forests.

Send a copy of your letter to Dean Brown, Acting State Forester.

Governor Tony Knowles
P.O. Box 110001
3rd Floor State Capitol
Juneau, AK 99811-0001

Your Senator/Representative
State Capitol
Juneau, AK 99801-1182

Dean Brown, Acting State Forester
Division of Forestry/ADNR
3601 C Street, #1034
Anchorage, AK 99503-5937

Help Stop Senate Bill 41 — The Polluter's Secrecy Act!

Write a letter to your Senator and representative asking him/her to oppose SB 41 — "an Act relating to environmental audits and health and safety audits to determine compliance with certain laws, permits and regulations" (Senate sponsor Loren Leman). In your letter, make the following points:

You support the fundamental goal of SB 41: to foster compliance with environmental laws by providing incentives for regulated entities to voluntarily find, disclose and correct violations of these laws. But SB 41, as written, will not achieve this goal. SB 41 is bad public policy because:

- ⇒ the bill replaces corporate responsibility and accountability with secrecy;
- ⇒ rather than providing incentives for compliance, the bill effectively rewards noncompliance by providing immunity from all civil and administrative penalties; and
- ⇒ SB 41 will greatly reduce the already limited ability of concerned workers to defend their right to speak the truth in the workplace without fear of reprisals.

If the Legislature is serious about fostering self-discovery and voluntary disclosure and correction of violations of worker safety, public health and environmental laws, SB 41 is not the answer. A better approach would be a very simple bill that provides clear incentives through leniency for self disclosure and correction, that narrowly and explicitly defines the time window within which self-disclosure must occur (US EPA's policy uses 10 days), and contains no secrecy provisions.

Send a copy of your letter to Governor Knowles.

See the addresses above.



P.O. 188
Valdez, AK 99686

In This Issue...

- ◆ New Study Questions Alyeska's Ability to Respond to Oil Spill
- ◆ Scientists Recommend Changes to Forest Practices Act



Please Join Us in Our Efforts to Sustain Alaska's Future.

The Alaska Forum needs your help. Your membership dues directly support our work to protect the rights of conscientious employees to speak the truth about threats to worker safety, and the environment in Alaska. Please join by filling out the membership form below and returning it to us. The Alaska Forum is a 501(c)(3) nonprofit corporation. Donations in excess of benefits are tax deductible to the extent allowed by law.

___ \$25 ___ \$50 ___ \$100 ___ \$250 Other \$ _____

Name: _____ Occupation: _____

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City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ E-mail: _____

Thank you! Please mail this form with your check to: Alaska Forum, P.O. Box 188, Valdez, AK 99686.

**Because some of our members are concerned about maintaining their confidentiality,
we do not share our mailing list with other organizations.**