

Poisoning the Well

Whistleblower Disclosures of Illegal Hazardous Waste Disposal on Alaska's North Slope

By the Alaska Forum for Environmental Responsibility
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Note to the Reader: Numbers in the text in parentheses [for example "(1)"] refer to footnotes, which can be found at the end of the document. Footnotes 3 and 13 were purposely left out; they refer to the sources of graphics that we could not get to load. (Still learning!)

I. INTRODUCTION

One year has passed since the Anchorage Daily News reported the existence of a whistleblower who disclosed illegal hazardous waste injections into North Slope oil well holes by Doyon Drilling Services., Ltd. (1) The incidents took place at the Endicott oil field, which is operated by British Petroleum (BP).

This report provides the first detailed account of the illegal and environmentally destructive practices at Endicott. It also discusses the relevance of these illegal practices to the public debate over opening the Arctic National Wildlife Refuge and the National Petroleum Reserve in Alaska to oil development. Each time the oil industry and congressional backers seek to open the Arctic Refuge to drilling, they tout the industry's environmental record as evidence that the Arctic Refuge could be developed without serious environmental consequences. The incidents on Endicott Island suggest otherwise.

The breadth of violations, retaliatory acts against a whistleblower, and an on-going criminal investigation suggest that improper disposal of solvents and other toxic materials may be standard operating procedure on the North Slope. The incident also suggests a failure of regulatory oversight by state and federal agencies charged with enforcing environmental laws on the North Slope. (2)

II. NORTH SLOPE UNDERGROUND INJECTION WELLS: DESCRIPTION AND REGULATORY STRUCTURE

Underground injection wells are regulated by the Environmental Protection Agency (EPA) under its Underground Injection Control (UIC) program. (4) For purposes of this report, injection wells can be divided into Class I wells and Class II wells. In Alaska, the Alaska Oil and Gas Conservation Commission (AOGCC) has signed a memorandum of agreement with EPA to oversee the Class II UIC program. (5)

Class I wells are for disposal of industrial hazardous materials and are defined by EPA regulations as those wells which "inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well-bore, an underground source of drinking water." (6) Class I wells also exist for the injection of non-hazardous fluids near drinking water reserves. (7) According to the EPA, Class I wells have a steel casing surrounded by cement that extends to the bottom of the well, and the well is

subject to sophisticated and continuous monitoring. (8)

Class II wells are specific to the oil and gas industry. Class II wells allow for the injection of fluids “brought to the surface in connection with... conventional oil and natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.” (9) In a Class II production well, fluids may be injected into the “annulus” surrounding the well bore. (10) The annulus leads to a perforated area at the bottom of the well, which allows the fluids to disperse out horizontally into the stratum. (11)

The general rule regarding Class II wells is that nothing may be injected back down the well that has not originated from the well. Thus, Class II fluids are generally mud and water. Additives are allowed to change mud viscosity or provide freeze protection. Class II wells are often associated with Enhanced Oil Recovery (EOR) practices where salt water is injected into the well to prolong the life of the well and ease recovery. (12)

III. THE ENDICOTT OIL FIELD

The Endicott Oil Field is the third largest of the seven main North Slope oil fields and is 57 percent owned by BP. BP Exploration, Alaska (BPXA) is the main developer of oil resources in the field. Endicott is an artificial gravel island just offshore of the North Slope and consists of a main production island and a satellite production island.

Endicott does not have wells capable of handling Class I industrial wastewater fluids. Endicott does have a Class II disposal well, designated as “P-18.” Acceptable wastes injected into this well include crude oil, condensate from crude oil lines, well treatment fluids, and produced water (water that is pumped up along with crude). (14)

In addition, Endicott’s production wells are classified as Enhanced Oil Recovery wells and are capable of annular injection of seawater and produced water. (15)

As the following incidents show, Endicott’s P-18 disposal well and its production wells were illegally used to dispose of Class I fluids, including contaminated snow melt, solvents, paint thinners and other toxic materials.

IV. IMPROPER WASTE DISPOSAL AT BP’S P-18 DISPOSAL WELL

Despite key differences between Class I and Class II wells, the first of two separate but related incidents at Endicott indicates that BPXA managers and staff did not have a firm grasp of the distinction. This apparent “confusion” was fostered by a lack of record-keeping and lax regulatory oversight. Despite its assurances to the contrary, evidence suggests that BPXA and/or its contractors had, in fact, been disposing of Class I industrial wastes down Class II wells for at least two years, and possibly up to five years. (16)

The first public indication that waste disposal practices at Endicott were out of compliance with environmental laws came in May, 1995. On May 23, 1995, Ellis Armstrong, BPXA’s Endicott Asset Manager, formally advised AOGCC in writing that Class I fluids were disposed of improperly in the P-18 Class II disposal well. The fluids were not precisely defined, although their origin was described as

a tank containing melted snow and run-off. On June 9, Armstrong identified the Class I fluids more precisely. They included snow clearance run-off and wastewater, and snow melt contaminated with production chemicals. "Sump waters" were also disposed of in the P-18 well. BPXA insisted that, although none of these fluids originated from a well, they nonetheless contained no hazardous characteristics.

The initial regulatory response to BPXA's notification did not indicate concern. An AOGCC internal memo characterized the Class I fluids as, "basically snow melt waters from the Island (around docks, modules, wells, and parking areas); from spill cleanups; from containment pits, troughs, and tank farms, from Plant sumps and vehicle maintenance facilities such as vehicle wash water, floor rinseate, and snow runoff..." The memo by AOGCC staff member Blair Wondzell recommended no further action in light of BPXA's corrective measures to be in place by September 30, 1995. The memo ended: "Note: I called and discussed this situation with Grover Partee, EPA, Seattle Region 10. He stops short of wanting to classify the subject fluids as Class II but agrees that we should not get too excited over the incident." (17)

By November, when an investigation into the separate Doyon 15 incident (discussed below) was in full swing, BPXA had apparently taken a closer look at the disposal practices at P-18. On November 1, 1995, Janet Platt of BPXA notified the National Response Center that "hazardous materials may have been injected in the P-18 injection well." (18) In December 1995, Ellis Armstrong again wrote to AOGCC regarding the P-18 improper disposal and Doyon 15. Citing numerous deficiencies, Armstrong's report noted a failure to maintain P-18 disposal records. However, in addition to the materials previously reported, "vacuum truck drivers occasionally commingled a 55-gallon drum of used oil or small quantities of antifreeze (glycol) from the Vehicle Maintenance Shop (VMS) with the snowmelt waters and sump fluids sent to P-18." Armstrong attributed these errors to confusion among Endicott workers about the types of wastes that can be properly disposed of down a Class II well, and a failure to track non-hazardous materials not subject to RCRA's strict reporting requirements. (19) Adding some credence to Armstrong's admission of "confusion" by Endicott staff was his notable mischaracterization of the P-18 well as a "Class II Industrial well."

This mischaracterization was corrected in a AOGCC response, which noted that P-18 is not an industrial disposal well but a Class II oil and gas disposal well. As such, only wastes pulled from oil production wells may be injected into a well such as P-18. (20)

An AOGCC internal memo summarized the P-18 incident as a misrouting of industrial wastewater to the P-18 well for a period of 18 months from 1993 to 1995. As early as 1990, truckloads of snowmelt may have also been disposed of in the well. The summary relied exclusively on BPXA information and concluded that all injected materials were non-hazardous. (21) Independent verification of this conclusion was not possible because consistent and accurate records, regular reporting and independent audits were not kept by BPXA nor apparently required by AOGCC. (22)

The P-18 incident demonstrates not only BPXA's poor grasp of procedures and record keeping at its disposal well, but that regulatory enforcement prior to and during the early stages of the P-18 investigation did not flag the situation. Clearly, BPXA, EPA, and AOGCC took a more stringent look at the P-18 practices because another, more serious problem at Endicott was revealed in 1995.

V. A WHISTLEBLOWER AT DOYON RIG 15

BPXA and regulatory agencies gave extra scrutiny to disposal practices at P-18 because the disclosures

of a whistleblower at another facility, Doyon Rig 15 (“Doyon 15”) raised serious questions about disposal practices at Endicott Island. The whistleblower’s disclosures led to retaliatory acts and the necessity that he leave his job for the safety of himself and his family. A criminal investigation has been undertaken by the Seattle Region 10 EPA office and the U.S. Attorney’s office, and a federal grand jury has been convened. Lastly, the Doyon 15 incident also demonstrates BPXA’s failure to properly regulate the practices of its contractors at Endicott.

Although BP owns a majority stake in Endicott, other owners include ARCO, Exxon, Unocal, Amoco, Cook Inlet Region Inc., NANA Regional Corp., and Doyon Ltd. (23) Doyon Ltd., is an Athabaskan native corporation based in Fairbanks. Doyon’s subsidiary, Doyon Drilling, Inc., J.V., operates five large-scale, mobile drilling rigs on the North Slope. (24) Doyon Drilling provides drilling services for the Endicott field under a contract with BPXA.

Doyon Drilling’s five huge drilling rigs represent a technical advancement in North Slope oil drilling. A key feature is mobility. Hydraulic jacks raise the rig and propels itself on giant tires at 2.5 miles per hour. Doyon 15 was designed to specifications to drill the Endicott field, which has two rows of 76 wells on ten-foot centers. The main drilling unit is entirely enclosed and winterized. The drilling mast cantilevers out over the well-head while in operations mode. Multiple power units and heat recovery systems, containing superheated glycol, keep Doyon’s systems operating 24 hours a day. Doyon’s 15’s rockwashing unit cleans and sorts mud and rocks pulled up by the drill, and allows for processing of the mud before it is injected back down the well as a drilling lubricant or for disposal via “annular” injection. (25)

“No one lives on the North Slope anyway.”

The whistleblower [hereinafter referred to as “WB” (26)] began employment with Doyon Drilling on July 5, 1993 as a rockwasher on Doyon 15. From October 1994 to January 1995, WB received training in rockwashing, sampling, and annular injection. WB’s training included descriptions of regulatory guidelines on which materials can and cannot be injected down an oil well. (27) WB has 22 years experience in the oil industry. (28)

On January 16, 1995, working on the swing shift, WB received orders to mix some 23 to 26 (there is a slight inconsistency in numbers in the record), 55-gallon barrels of rig and shop waste into his rockwashing unit for disposal via annular injection into well 1-23. The wastes consisted of used oil, solvents, paints, paint thinners, hydraulic fluid, and glycol. WB refused to dispose of the waste because he recognized that environmental laws and BPXA’s annular injection permit prohibited disposal of the waste in that manner. WB was subsequently berated for his refusal and told that the improper disposal was of no consequence because “no one lives on the North Slope anyway.”

BPXA’s annular injection permit made numerous references to the terms and conditions under which injections could be made on Endicott Island. First, the permit required a list of materials, and their estimated volumes and sources, to be maintained. Second, the permit was limited to wastes directly associated with drilling. “Other wastes, including substances pursuant to the Toxic Substances Control Act, and the Resource Conservation and Recovery Act are not authorized to be discharged.” (29) The permit specifically prohibited discharges of hazardous wastes, including solvents. (30) Third, the permit imposed civil and criminal liability for violations of its terms. (31)

WB took daily notes of his experiences and mailed them home. These letters and diary entries provide a

detailed account of events.

On the morning of January 16, Doyon 15's crew held a staff meeting. During the meeting, a senior crew member allegedly said that annular injections of waste were improper, but had been on-going for the last five years.

Part of WB's letter for January 16 reads:

I have stated to [my co-workers] that according to DEC Reg's [Department of Environmental Conservation regulations] we are not allowed to dispose of this material through injection into well 1-23 on Endicott Island. Once again I was told to mind my own business and that they have been doing this for 5 years until came I along and questioned their procedure! I just want to state that I do not agree with this policy but if I do not inject this waste I will lose my job. [My co-worker] said he could not give me anything in writing telling me to dispose of all the fluids. I think that no one wants take the blame if they are caught. I just don't know why they just don't get rid of it properly. It all comes down to \$\$\$ money. They always preach about safety and the environment for the press and the general public but the fact is the oil co's are still cutting corners whenever possible no matter who or what it hurts. I'm damned if I do and damned if I don't. I cannot believe that in this day and age the oil cos are still breaking the law. But more than that with all my safety and haz mat training they are putting me in this position... (32)

Under pressure on his shift the next day, January 17, WB mixed the 23 barrels into the rockwashing facility's "mud pits." WB retained a sample of the wastes. However, WB refused to dispose of the waste himself. Another crew member injected the waste on his day shift. WB's January 17 diary entry shows his frustration: "I do not know what I should do. If I say anything I will lose my job!" WB had no illusions that the fluids were legitimate freeze protection: "They have told other people that they are using fluid to freeze protect. This is a lie."

WB's Doyon performance evaluation, dated January 18, 1995, shows that he exceeded expectations; in the area of safety, his performance was "outstanding."

During February 1995, WB received threats to himself and his family from other crew members. The threats were of the nature that he better watch his own safety and that of his children.

On February 28, WB was ordered to inject 20 drums of chemicals. He refused.

In late February or early March, WB recorded a meeting in Anchorage between himself and Doyon Drilling managers. (33) The transcript of the recording reveals that WB informed the managers of the violations at Doyon 15 and advised them of the penalties. WB stated that he was told by Doyon 15 hands that the practice had been on-going for five years. (34) He also stated that Doyon 15 managers had told him that the cost of proper disposal was between \$1,000 and \$1,500 per barrel of hazardous waste. WB advised the managers that barrels of waste were emptied into the rockwashing unit's Number 3 "slop tank" and thereafter injected down the well. (35)

The managers acknowledged that the practice was wrong, and suggested that they would undertake a survey of practices and "take care of it." One manager stated that "if the [BPXA] environmental group ever found out, there'd be hell to pay." (36)

On March 20, 1995, the same manager informed WB that BPXA had okayed Doyon's injection of

wastes. On March 29, WB learned that waste was still being improperly injected at Doyon 15.

Through the next several months, WB continued to gather information and continued to receive warnings by crew members to “be careful.”

In July 1995, WB informed Doyon’s Personnel Department of the practices at Doyon 15. The department consulted with the manager with whom WB had previously met, and told WB that the manager had advised it that the practices were proper. The department also noted that WB might be transferred to another rig in light of his difficulties at Doyon 15.

On August 31, WB informed BPXA managers of the improper practices at Doyon 15.

By early September, threats by co-workers to WB had intensified. Co-workers insinuated that if the rig were shut down because of his whistle-blowing, his family might face danger. WB’s entry from September 5 reads:

The more I think about what Doyon is doing to me and all the other hands, it makes me sick... For all the hands that lose their jobs over this. (What should I do?) I have lots of friends here in the oil field and there will be many of them who will turn against me! Doyon hasn’t given me any choice. They will not give me anything in writing telling me to do it. So my head is on the chopping block if they get caught.

An added entry for 2:00 PM September 5, 1995 reads:

I just had [a coworker] tell me while I was blowing down injection line that if I ever went to the DEC or EPA and the rig was shut down he might consider killing me. He has also told me that in order to work in the oil field you have to learn to play their game. He said he didn’t care about the law and he has broken the environmental laws many times...

By September 5, Doyon crew members also began taking actions, including the preparation of stencils for marking barrels of hazardous waste, to create the appearance that wastes were properly stored and accounted for. A Doyon 15 crew member allegedly stated that if an investigation occurred, Doyon would say all waste was delivered to BP’s dock and BP disposed of it. (37)

On September 9, WB noted that someone had dumped more solvent in the mud pits.

On September 11, BPXA began an audit of Doyon 15’s rig waste. In the following days WB met with BPXA environmental department staff. He also received an additional threat. On September 14, WB asked to go home a day early but was told by managers that the threats to him and his family were only jokes. WB responded that he took “all” threats to his family seriously. Doyon’s Personnel Department advised him from Anchorage that he needed a doctor’s order before he could leave the rig early. If he left, such an act would be considered a voluntary quit. WB received still more threats.

Finally, in late September, WB asked for paid leave from Doyon 15. This request was denied and he took vacation time so he would not have to return to the rig.

BPXA issues report on Doyon 15 waste handling practices.

On September 25, 1995, BPXA environmental supervisor Janet Platt and her team completed a report on Doyon 15 waste handling practices. The report noted improper injections of solvents, glycols and

thinners, as well as inadequate documentation of materials injected in well I-23. Significantly, the report also noted the possible injection of “Chevron 325 stoddard solvent,” a material listed as hazardous under the Resource Conservation and Recovery Act (RCRA).

The BPXA report, designated as “confidential,” relied on interviews of Doyon 15 staff, logs, procedures, laboratory data, training records and other reports. The investigation made these findings:

Based on the interviews of the Doyon staff, the investigation team determined that used oil, used solvents, used glycol and potentially used paint thinners had been disposed of via annular pumping from some time in 1993 until August of 1995... it is possible some these wastes were hazardous when discarded. Injection was intermittent over the two-year period, with some loads received in batches of 20 to 30 55-gallon drums and other drums managed one at a time... (38)

The Doyon rock washers reported that while the rock washing unit was conducting annular pumping of excess drilling muds, the forklift drivers would deliver drums and empty them into a tank outside the rock washing unit. The waste liquids were then pumped into the rock washing tank, which may or may not have contained drilling muds at the time. The rock washers interviewed saw the practice of pumping the waste oils and solvents down the annulus as disposal and not freeze protection. This practice was reported to occur only at night. (39)

BPXA company personnel on the rig and Endicott HSE [Health, Safety and Environment] personnel reported that they were unaware of improper disposal of these wastes. BPXA company personnel thought that Endicott HSE personnel handled the waste once it was taken to the drum storage facility for the rig. (40)

The report concluded that the practices were improper and recommended that Doyon management cease the practices, inform the regulatory agencies, and undertake training for better handling and documentation of wastes. (41)

On October, 6, 1996, BPXA notified the EPA of non-compliance in waste handling at Doyon 15.

On October 12, Doyon itself notified the National Response Center of the improper activities at Doyon 15, as per its obligations under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). (42) The agencies notified included the U.S. Coast Guard, ADEC, and the Alaska operations office of EPA. Doyon Drilling General Manager Randy Ruedrich later forwarded a copy of the notification to AOGCC. (43)

Doyon’s notification reserved any admission of liability. The letter stated, “Notifiers believe that the ‘persons in charge of’ and ‘owners and operators’ of the Endicott Island facilities were and are the BPXA supervisors under whose guidance Doyon and its staff operates.” (44) Doyon’s letter attempted to create the impression that BPXA personnel were aware of and even supervised Doyon staff in the injections, and that the objective in most cases was freeze protection. (45) Doyon’s notification letter identifies the same chemicals in BPXA’s September 25 report, including the RCRA-listed “Chevron 325 stoddard solvent.” (46) The letter concluded that “no action is possible to ‘respond to and contain the release’” because the injections were historic, and the materials could not be recovered. (47)

On December 7, 1995, Ellis Armstrong of BPXA notified AOGCC of the Doyon 15 incident in a memo which also covered the P-18 well incident.

In late February 1996, AOGCC Chairman David Johnston wrote to EPA Region 10 notifying them of AOGCC's intent to investigate the P-18 and Doyon 15 incidents. The letter requested information on the scope of EPA's investigation and raised the possibility that the two agencies could coordinate their efforts. (48)

The response from EPA one month later suggested that EPA was now taking the incidents very seriously. EPA Region 10 criminal enforcement counsel James Oesterle responded to AOGCC's notification and inquiry. "As you know, the EPA is currently conducting a criminal investigation of waste disposal practices on Endicott Island." Oesterle went on to state that both EPA and the US Attorney's Office request that AOGCC defer its investigation until the criminal investigation is complete. (49) As of mid-January 1997, the criminal investigation is still on-going. (50)

WB subsequently testified before the federal grand jury. According to one document, other Doyon 15 crew members pled the Fifth Amendment and refused to give testimony to the grand jury. (51)

In March 1996, Doyon 15 was shut down. (52) When Doyon 15 recommenced operations in September 1996, the rockwashing unit remained closed because AOGCC had suspended annular injections on Endicott. (53)

WB files and wins a whistleblower complaint with U.S. Department of Labor.

In October 1995, WB filed a whistleblower complaint against Doyon Drilling, Inc., with the U.S. Department of Labor (USDOL). The complaint, drafted by his attorney, was filed under the whistleblower provisions of the "environmental Acts." (54) The complaint was accompanied by documents and submissions substantiating his claims and requested an end to threats and harassment, compensatory damages, exemplary damages, and attorney's fees.

By late January 1996, Richard Backer, Assistant District Director for USDOL's Seattle office of the Wage and Hour Division, prepared to investigate WB's complaint. WB's attorney, Lee Holen of Anchorage, suggested that the USDOL complaint be stayed pending the outcome of EPA's investigation. (55) Doyon's attorney Robert Stewart resisted a stay and asserted Doyon's position that, "it promptly conducted thorough investigations commensurate with [WB's] allegations of harassment by co-workers and took appropriate corrective measures." (56)

Backer met with WB in late April 1996. Backer made the following notes:

I found him to be an energetic and sincere person. Someone who would be troubled by knowingly not doing the right thing... I became convinced that [WB] correctly presumed that improper material was being pumped back down the well hole. He brought the matter to the attention of management several times. His concerns were largely deflected and ignored. He was intimidated by coworkers and he is currently a casualty of the current results of an investigation into the matters he raised. (57)

The next day Backer interviewed one of WB's supervisors at Doyon 15 and a Doyon manager. Also present was Doyon's attorney Stewart and the supervisor's criminal attorney. Backer's summary of the meeting noted, "During the course of our discussion it became clear that [the managers] were aware of [WB's] concerns as to pumping waste down the well hole and of the harassment and intimidation from his coworkers. What they did about it was not sufficient to stop it." Backer concluded that Doyon treated the issue as a "school yard dispute" and never gave WB's concerns serious attention. (58)

In August 1996, USDOL issued its finding. The decision concluded that WB had made protected disclosures under the “environmental Acts” and had suffered resulting retaliation. The decision ordered that Doyon restore back pay and benefits to WB, and offer him comparable employment. A cash settlement could replace back pay and reinstatement. Doyon was also ordered to cover WB’s legal fees. (59)

Doyon appealed the decision. WB subsequently settled his complaint with Doyon on December 19, 1996. The terms of the settlement are confidential.

One factor which may have encouraged Doyon to settle WB’s case was attorney Lee Holen’s efforts to compel production of a September 13, 1995 internal investigation of WB’s allegations. At first, Doyon was willing to produce the internal investigation (60) but Doyon later claimed the investigation was protected by an unspecified legal privilege. (61) Holen then sought, and was granted, an order compelling production of the investigation. (62) Doyon settled the case the next day, and did not release its internal report.

VI. IMPLICATIONS FOR OIL DEVELOPMENT OF THE ARCTIC NATIONAL WILDLIFE REFUGE AND THE NATIONAL PETROLEUM RESERVE IN ALASKA

They send us to environmental & rig safety schools (all for show). They tell us to report non-compliance. We have covered up so many spills and broken so many environmental-mental laws, I’m just sick.

- WB Diary, September 7, 1995

If illegal hazardous waste injections on the North Slope and other environmentally destructive practices are demonstrated to be consistent and standard operating procedure, such evidence could influence the debate regarding proposed oil development in the Arctic National Wildlife Refuge (Arctic Refuge) and the National Petroleum Reserve in Alaska (NPR).

Since The Exxon Valdez disaster, the oil industry has portrayed itself as utilizing the latest technologies to minimize the impact of its operations. This public relations effort has emphasized the industry’s environmental responsibility towards the North Slope environment. But the incidents at the Endicott oil field clearly suggest that the oil industry has presented the public and Congress with a one-sided, self-serving presentation of its practices.

For instance, a 1993 article about ARCO’s winter exploration 60 miles south of the Kuparuk field touted ARCO’s operations, and that of Doyon Rig 14, as “an exercise in future invisibility.” Exploratory drilling is described as having minimal impact:

Dual goals -- finding oil and zero impact -- go hand in hand at the site. Drip pans sit under stationary vehicles to prevent oil drips onto the ice. Trucks move continuously between the exploratory pad and the Kuparuk production area, bringing in needed supplies and trucking out wastes generated by the drilling activity and the crew. (63)

Although there is no evidence to suggest that these practices were not in effect at the Doyon 14 drilling site, the incidents at Endicott Island show a very different pattern and practice.

In 1995, Congress held hearings regarding Arctic Refuge oil development. Alaska's congressional delegation offered the oil companies and their contractors a liberal opportunity to demonstrate their progressive environmental practices.

In July 1995, -- while WB was fighting to have Doyon managers take his concerns seriously -- Randy Ruedrich, general manager for Doyon Drilling, testified before the Senate Committee on Energy and Natural Resources, chaired by Sen. Frank Murkowski (R-AK). Ruedrich stated that along with safety, "Environmental protection is an equally critical part of daily operations. Innovative drilling and production technology provide new approaches for Arctic land use." Ruedrich went on to testify that the most significant environmental progress has been made in the area of injected drilling muds and cuttings so that large "reserve pits" for mud storage are no longer necessary. He made no mention of hazardous waste disposal. "In summary improvements in drilling and production technology can support orderly future Arctic oil development in a safe and environmentally sound manner." Other statements were made by representatives of ARCO, BP, and Alaska's Division of Oil and Gas. (64)

In the days preceding President Clinton's December 1995 veto of a budget reconciliation bill which contained provisions for coastal exploration of the Arctic Refuge, Sen. Murkowski kept up a steady drum beat in favor of development. On the floor of the Senate, Sen. Murkowski's arguments included the national security aspects of domestic oil production, deficit reduction, native employment, and the oil industry's progressive environmental record.

As evidence for that record, he cited the Endicott field's small "footprint," without any mention of the oil industry's hazardous wastes and toxic emissions. (65) Sen. Murkowski stated that,

Environmentalists are predictably sounding alarms that Arctic Refuge development would destroy vast areas of pristine natural beauty. The facts show otherwise... Advances in oil-production technology, such as horizontal drilling, would further minimize the environmental impact. Horizontal drilling, with pipes stemming underground from a single pad, sharply reduces the number of traditional oil rigs needed to produce from a wide area. (66)

In another floor speech, Sen. Murkowski concluded, "There is no way that one can make a case that this would have any detrimental effect on the environment. We have proven this in opening up Prudhoe Bay. There is absolutely no evidence to suggest that we cannot open up this area safely." (67)

Sen. Murkowski has also sought to distance the Prudhoe Bay development and the Trans-Alaska Pipeline System from the Exxon Valdez disaster. "Clearly, we can do it safely. We have been able to develop Prudhoe Bay. We have developed an 800-mile pipeline. We had a bad accident with the vessel [the Exxon Valdez], but that is something that had nothing to do with a pipeline. It was one of those human failures." (68)

As the incidents at Endicott Island show, illegal dumping of hazardous wastes occurred precisely because of negligent and willful human failures, and a company's deliberate refusal to take the word of a concerned worker seriously.

Instead of directly addressing the issue of underground injections of toxic materials that may remain hidden for generations to come, advocates for Arctic Refuge oil development have relied on technological advances that have minimized the above-ground surface area required for oil development.

Moreover, Arctic Refuge development advocates have labeled the environmental community as alarmist

and elitist. When the Presidio Omnibus Parks Bill was up for consideration last fall, Sen. Murkowski vented his frustration when notified that President Clinton would veto any provisions for a number of developments on protected federal lands, including Arctic Refuge. “[W]e have become an environmental cause... So we feel a little sensitive when we are criticized with any development scenario. The environmental community has in many cases established a fear mentality in the American public that somehow we cannot develop resources safely...” (69)

In early 1997, the Clinton Administration, at the urging of Alaska Governor Tony Knowles and the Alaska congressional delegation, announced that it will consider opening portions of the 23 million acre National Petroleum Reserve, Alaska (NPRA) for leasing and oil development. (70) This huge tract of land to the west of the Prudhoe Bay field is home to migratory waterfowl, including thousands of geese, and other wildlife.

According to one report, the Knowles administration views NPRA as an opportunity to showcase environmentally-responsible oil development. Jim Ayers, chief of staff to the governor, has said that developing NPRA oil development will show the rest of the country that Alaska can “do it right.” Ayers also said, “I am confident we can work with the environmentalists on this lease. (71)

An 18-month planning process, lead by the U.S. Department of the Interior, will determine whether parts of NPRA will be opened for oil development. Senator Ted Stevens (R-AK) has remarked that he and the rest of the Alaska delegation want “no strings attached” to the development. (72)

In light of the incidents at Endicott Island, a close examination of oil industry practices should precede any future development of ANWR and/or NPRA.

VII. CONCLUSION

The incidents of illegal injections of Class I hazardous wastes into Class II oil and gas wells on Endicott Island may well be isolated events. However, the frequency of the practices at P-18 and Doyon 15, as well as the length of time (18 months for P-18 and up to five years for Doyon 15) suggest that injections of hazardous waste into oil wells may be widespread on the North Slope.

BPXA took the responsible course of action when it became aware of the P-18 and Doyon 15 practices. However, the incidents also underscore BPXA’s failure to maintain records of underground waste injections and its failure to ensure that its contractors adhered to the letter of the law.

The Endicott Island incidents also demonstrate a failure on the part of the regulatory agencies to effectively police the oil and gas industry on the North Slope. Indeed, when first notified of the P-18 incident, EPA’s initial reaction was to “not get too excited over the incident.” (73) The regulatory agencies took a more serious look at the Endicott Island incidents only after a whistleblower came forward, in the face of retaliation by his co-workers and management, to disclose illegal practices. Following his disclosures, BPXA itself did a thorough examination and reported the incidents to the National Response Center on its own initiative.

Had an irresponsible operator chosen to conduct a less thorough investigation, or swept the incidents under the rug, the likelihood of substantial regulatory agency involvement is by no means certain. Indeed, the fact that the criminal investigation is still underway a year later suggests that there may be far more to the incidents than the regulatory agencies initially suspected. Hopefully, the results of this

investigation will demonstrate government's renewed interest in policing environmental practices on the North Slope.

Lastly, the incidents at Endicott Island should be reflected in the debate over opening the Arctic Refuge and NPRA to oil exploration and development. The industry, and its backers in the media and Congress, have touted technological advances as proof that the Arctic Refuge can be "safely" developed. However, a minimal surface "footprint" may obscure significant "hidden" impacts underground. Illegally injected hazardous wastes may one day seep to the surface, long after the oil is gone, and the industry has left in search of new fields.

Sadly, the evidence suggests that the oil industry has not, in fact, proven environmentally responsible development of the North Slope. The industry's practices should be critically examined in the Arctic Refuge and NPRA debate before a legacy of toxic wastes is imposed on future generations.

FOOTNOTES

Note to Reader: Footnotes 3 and 13 were purposely left out; they refer to the sources of graphics that we could not get to load. Still learning!

(1) "Improper Waste Probed," Helen Jung, Anchorage Daily News, Jan. 10, 1996; "Doyon Whistle-blower, Case Sheds Light on Oil Patch," Editorial, Anchorage Daily News, Jan. 12, 1996; "Illegal Dumping Lasted For Years," Kim Fararo, Anchorage Daily News, Jan. 20, 1996.

(2) The materials cited in this report for both the P-18 and Doyon 15 incidents were primarily gathered by the Alaska Forum for Environmental Responsibility pursuant to Freedom of Information Act requests submitted to the Department of Labor and public records disclosure requests submitted to the Alaska Oil and Gas Conservation Commission.

(4) The regulatory scheme was established under the provisions of the Safe Drinking Water Act (SDWA) of 1974, which sets minimum state standards and delegates regulation of some wells to the states.

(5) AOGCC inherited its oversight duties regarding Class II annular pumping from the Alaska Department of Environmental Conservation (ADEC) in July 1995. AOGCC letter to ADEC Commissioner Brown, Feb. 27, 1996.

(6) 40 CFR 144.6(a)(1).

(7) 40 CFR 144.6(a)(2).

(8) "Injection Wells, An Introduction to Their Use, Operation and Regulation," EPA, no date.

(9) 40 CFR 144.6(b)(1).

(10) Literally, an "annulus" is the gap inside two concentric circles. American Heritage Dictionary, 1973. In an annular injection well, the annulus is the space between the inside well casing and the outside of the well, usually packed with drilling mud. *Op. cit.* at fn. 8

(11) "Injection Wells," *op. cit.* at fn. 8.

(12) "Injection Wells," *op. cit.* at fn. 8.

(14) The only Class I well on the North Slope is the ARCO Prudhoe Bay Unit, Pad 3. Endicott is considered a “third party” to the ARCO facility and can only use the facility by a “ballot agreement” between the oil companies. Endicott Operating Procedure, Sept. 27, 1995.

(15) Ibid.

(16) AOGCC to EPA, February 22, 1996. See also, Ellis Armstrong, BPXA, to AOGCC, December 7, 1995, page 4, wherein BPXA admitted to the lack of “useful records” for disposal well injections, yet stated with apparent confidence that, “BPX believes that all of the discharges at P-18 involved nonhazardous substances.”

(17) AOGCC memorandum, June 20, 1995. Notably, this memorandum was initially withheld under the Alaska Forum’s public records disclosure request to the AOGCC, but was subsequently released.

(18) Reference to this notification is made in correspondence from Ellis Armstrong to AOGCC, December 7, 1995. Notification of possible hazardous waste releases is a requirement of the Comprehensive Environmental Cleanup and Liability Act (CERCLA), 42 U.S.C. 9603(b)(3).

(19) Ellis Armstrong to AOGCC, December 7, 1995, pp. 2-4.

(20) David Johnston, Chairman AOGCC to Ellis Armstrong, BPXA, December 28, 1995.

(21) AOGCC internal memorandum, staff member Wendy Mahan to Tuckerman Babcock, February 12, 1995.

(22) See, Ellis Armstrong, BPXA, to AOGCC, December 7, 1995, page 4: “In the absence of Drum Log tracking, injection log entries or other useful records, BPX has not been able to determine the frequency or volumes of commingled fluids disposal at P-18 for disposals that occurred from the time the 1986 EPA-AOGCC MOA [memorandum of agreement] was amended in 1991 until May 1995.” In other words, BPXA lacked useful records for a period of approximately four years.

(23) Anchorage Daily News, Jan. 20, 1996.

(24) In 1995, Doyon Ltd. reported profits of \$9.4 million, up 37 percent over 1994. Anchorage Daily News, February 8, 1996. Doyon Drilling is a joint-venture between Doyon, Ltd. and Nuggets Drilling, a Canadian company. Doyon promotional materials, not dated (possibly from an annual report).

(25) Doyon Drilling, promotional materials.

(26) The whistleblower’s (WB’s) identity is being withheld to protect him from further retaliatory acts and blacklisting in the oil industry. In addition, the identities of WB’s coworkers at Doyon 15, some of whom may still face criminal indictment and penalties, are being withheld to protect an on-going grand jury investigation.

(27) This information, and much of the material which follows, was gathered from WB’s whistleblower complaint and was obtained by Freedom of Information Act requests submitted to the U.S. Department of Labor. The complaint was accompanied by other factual information.

(28) Amended damages disclosure, December 16, 1996.

(29) ADEC, General Wastewater Disposal Permit, Permit No. 9240-DB002, May 1, 1992, Appendix A,

page 3.

(30) Ibid, Appendix A, pp. 4, 8.

(31) Ibid, Appendix B, p. 10.

(32) WB diary, January 16, 1995. Minor spelling and grammatical errors have been corrected here and in all subsequent quotes from WB's diary.

(33) A transcript of this recording was submitted as evidence in WB's U.S. Department of Labor complaint. Unlike most other states, Alaska law does not prohibit recording individuals without their consent.

(34) Transcript, p. 14.

(35) Transcript, p. 22.

(36) Transcript, p. 14.

(37) WB diary, September 5, 1995.

(38) Endicott Development, Doyon Rig 15, Waste Disposal Investigation Report, September 25, 1995, p. 4.

(39) Ibid, p. 11.

(40) Ibid, p. 12.

(41) Ibid, p. 14.

(42) 42 U.S.C. 9603(b)(3).

(43) Ruedrich to Tuckerman Babcock, AOGCC, February 12, 1996.

(44) Doyon to National Response Center (U.S. Coast Guard), EPA, and state agencies, October 12, 1995, p. 3.

(45) Ibid, p. 4.

(46) Ibid, p. 3-4.

(47) Ibid, p. 6, citing to the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11004(c).

(48) AOGCC to Grover Partee, EPA Region 10, February 22, 1996. AOGCC sent a similar letter on February 27, 1996 to ADEC Commissioner Michele Brown.

(49) James Oesterle, EPA criminal enforcement counsel Region 10, to AOGCC, March 27, 1996.

(50) Telephone communication with James Oesterle, EPA Region 10, January 14, 1997.

(51) Pre-hearing statement of position in WB's whistleblower case, October 1, 1996, filed by WB's attorney Lee Holen.

- (52) The closure of Doyon 15 resulted in the layoff of all Doyon employees working on that rig. Although the rig appears to have begun operations again in September 1996, the rockwashing unit on which WB was employed was deactivated under instructions from BPXA. Thus Doyon eliminated all rockwasher positions on Doyon 15. Letter from Robert K. Stewart, Davis Wright Tremaine (attorney for Doyon), to Gordon L. Wilson, District Director, Wage and Hour Divisions, USDOL, September 4, 1996.
- (53) Amended damages disclosure, December 16, 1996, filed by Lee Holen.
- (54) The anti-retaliation provisions of the Toxic Substances Control Act, 15 U.S.C. 2622; the Water Pollution Control Act, 33 U.S.C. 1367; the Safe Drinking Water Act, 42 U.S.C. 300j; the Clean Air Act, 42 U.S.C. 742; the Solid Waste Disposal Act, 42 U.S.C. 6971; and CERCLA, 42 U.S.C. 9610, (collectively known as the “environmental Acts”), prohibit retaliation against workers who disclose alleged violations to management and regulatory agencies.
- (55) Lee Holen, Lee Holen Law Office, to Robert K. Stewart, Davis Wright Tremaine (attorney for Doyon), January 25, 1996.
- (56) Stewart to Holen and Richard Backer, February 28, 1996.
- (57) Interview meeting notes, Richard Backer, April 25, 1996.
- (58) Summary of meeting, Richard Backer, April 26, 1996.
- (59) Gordon Wilson, District Director, Wage and Hour Division (Seattle Office), USDOL, to Doyon Drilling, August 7, 1996.
- (60) Memorandum in support of motion to compel, filed December 6, 1996 by Lee Holen before Judge Thomas Schneider, Office of Administrative Law Judges, USDOL. Attached to the memorandum is an October 4, 1996 letter from Doyon attorney Robert K. Stewart to Holen stating a willingness to produce the internal investigation.
- (61) Robert K Stewart (attorney for Doyon) to Holen, November 22, 1996, and December 3, 1996.
- (62) Order granting motion to compel, Judge Thomas Schneider, USDOL Office of Administrative Law Judges, December 18, 1996.
- (63) Alaska Journal of Commerce, “Icy drilling site to be a summer memory,” March 1, 1993 (emphasis added).
- (64) FDCH Congressional Testimony, July 18, 1995.
- (65) November 27, 1995, 141 Cong Rec S @ 17526.
- (66) Ibid, 141 Cong Rec S @ 17527.
- (67) November 9, 1995, 141 Cong Rec S 16841, @ S16843.
- (68) November 7, 1995, 141 Cong Rec S 16713, @ S16714. Contrary to Sen. Murkowski’s suggestion, the Trans-Alaska pipeline has come under critical scrutiny. For a complete look at the pipeline’s safety and environmental record, see “Pipeline in Peril: A Status Report on the Trans-Alaska Pipeline System,” prepared for the Alaska Forum on Environmental Responsibility by Richard A. Fineberg, Ester, Alaska, September 1996.

(69) September 25, 1996, 142 Cong Rec. 11260 @ 11263.

(70) "Clinton OKS Oil-Lease Sale Planning, Proposal Would Open Part of National Petroleum Reserve," Ralph Thomas and Steve Rinehart, Anchorage Daily News, January 14, 1997.

(71) Ibid.

(72) "Babbit Vows to Study Oil Field," Steve Rinehart, Anchorage Daily News, January 15, 1997.

(73) Op. cit., at ftn. 17.

[Return to Executive Summary.](#)

[Return to Alaska Forum Home Page.](#)

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