

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**

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May 19, 1982

The Honorable Frank H. Murkowski  
United States Senate  
2104 Dirksen Office Building  
Washington, D.C. 20510

Dear Senator Murkowski:

Thank you for your letter of May 11 concerning aspects of oil spill reporting and civil penalties. Section 311.(b).(6).(A) of the Clean Water Act requires that a civil penalty be assessed for each spill of oil into the navigable waters of the United States. Discussions with the U.S. Coast Guard, the federal agency responsible for assessing these penalties, reveals that the law provides no discretion as to whether a fine will be imposed, regardless of the merits of the case. The amount of the fine can be adjusted downward, and often is, based upon certain extenuating factors.

After working with oil spill enforcement jointly with the Coast Guard and the Environmental Protection Agency for over a decade, it is this department's analysis that the federal law could well be amended to provide some discretion. The present system quite often results in a mandatory penalty which is far less than the Coast Guard's costs of imposing the penalty--particularly in de minimis cases or instances which were totally beyond the ability of the alleged spiller to prevent. It might be possible to amend the law to provide direction to the Coast Guard in deciding whether or not to improve a civil penalty, rather than leave the decision totally at its discretion.

The Clean Water Act also requires notification by the spiller to the appropriate federal agency. State law requires that the Department of Environmental Conservation also be notified. Several federal agencies are involved, including the Coast Guard, EPA, the BLM (for trans-Alaska pipeline spills) and the Office of the Federal Inspector (for Alaska Natural Gas Transmission System spills). By memorandum with EPA, my agency is now the predesignated federal on-scene coordinator for spills under EPA's jurisdiction. We are working on extending the memorandum to other areas where appropriate. This action will help somewhat, but the principal problem, that marine spills must be reported to both DEC and the U.S. Coast Guard, cannot be solved in this way. For some time we have been discussing with the Coast Guard

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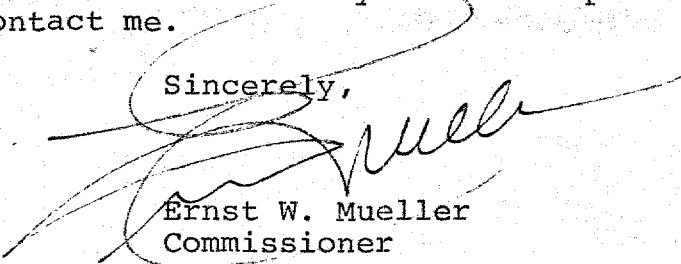
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the possibility of using the USCG system as the single statewide oil spill reporting point; the USCG would then notify appropriate DEC personnel. The basic problem with this is that DEC's responsibility is over all oil spills, whether on land or into fresh or salt water, whereas the Coast Guard has jurisdiction only over spills into marine waters. We are working on this, however, and hopeful that we can successfully solve it in the near future.

If there is any other information I or my staff can provide, please feel free to contact me.

Sincerely,



Ernst W. Mueller  
Commissioner