

BROKEN PROMISE #7

Not-so-strict Environmental Regulations



Workers test for weakness due to corrosion in a Prudhoe Bay oil pipeline.

Al Grillo / Associated Press

The Promise

The oil industry in Alaska operates under the strictest environmental regulations.

The Reality

Many rules regulating the oil industry in Alaska are already weak, and getting weaker.

Industry and government officials make promises time and again to hold oil development activities to the “strictest environmental standards,”¹ and assure the American people that proposed new development will only move forward in the most environmentally safe and responsible manner possible.² But state and federal agencies have actually weakened rules and given exemptions for oil development activities in Alaska.

Oil spill prevention, planning, and preparedness standards weakened

After the Exxon Valdez oil spill the Alaska Legislature enacted laws that revised oil spill contingency plan requirements, specified oil spill response standards, and strengthened the Alaska Department of Environmental Conservation's (ADEC) ability to enforce those rules. Under Governor Frank Murkowski's administration, however, the Alaska legislature adopted amendments to the oil spill contingency plan requirements that weakened them in many respects. Since then, ADEC has been interpreting the regulations so as to further weaken contingency planning.³ For example, multiple facilities may now be grouped under a single contingency plan;⁴ and contingency plans are no longer required to include procedures for controlling a well blowout. Although well blowouts have rarely occurred in Alaska, as long as oil exploration and production facilities operate, they pose a risk for which responders may not be adequately prepared.⁵

Hazardous wastes and toxic releases exempt from regulation

The Resource Conservation and Recovery Act (RCRA) is a federal law that governs the disposal of hazardous waste. But certain oil and gas extraction wastes, including drilling muds and cuttings, rig waste, and produced water, are exempt from regulation by RCRA⁶ despite containing many hazardous compounds. Drilling muds may be composed from over 1,000 different chemical compounds, but the formulas are considered proprietary information and are not even made available to the Environmental Protection Agency.⁷ If any other industry, such as dry cleaning, produced these same wastes, they would be regulated as hazardous and require special handling.⁸

- ▷ Laws regulating the oil industry in Alaska are weak and getting weaker.
- ▷ Oil spill plans are less stringent than in the past.
- ▷ The oil industry is exempt from some hazardous waste regulation, toxic release reporting, and air pollution controls.
- ▷ Laws protecting Alaska's wetlands and coasts favor industry interests.

The 1986 Emergency Planning and Community Right to Know Act requires many polluters to report annually their toxic releases for inclusion in a public database.⁹ In 1996, the oil industry obtained exemption from this Act for most of their exploration and production facilities. No facilities on Alaska's North Slope are required to report their toxic releases.¹⁰

Air Pollution Exemptions

Diesel exhaust contains pollutants that may increase asthma, respiratory problems, and cancer, and contribute to acid rain and ozone formation. The U.S. Environmental Protection Agency (EPA) passed new rules requiring very low levels of sulfur in diesel fuel.¹¹ In 2004, the state of Alaska asked for and received some temporary exemptions to the rules, including a 4-year delay for using low sulfur diesel in all on-road vehicles on the North Slope. As part of the agreement, British Petroleum and ConocoPhillips promised to retrofit their small refineries to produce low sulfur diesel starting January 1, 2008 and to use this cleaner

fuel more widely than federal regulations required. The companies have since announced that they will not be making low sulfur diesel on the North Slope after all.¹² It remains to be seen how industry will meet the requirement that all diesel powered vehicles use low sulfur by June 2010. Oil companies operating on Alaska's North Slope already have permission to pollute areas larger than normally allowed,¹³ and hundreds of "minor" sources of pollution remain unregulated.¹⁴

Reduced Protection for Wetlands and Coasts

While serving as Governor, Frank Murkowski weakened Alaska water law by eliminating requirements for public notice and comment on temporary water use permits. These 5-year permits enable the oil industry to use hundreds of millions of gallons of water for ice roads, drilling and other uses with potentially serious impacts for wetlands and lake ecology and fish habitat.¹⁵



Oil workers perform a 'work over' on a thirty-year-old well head in Prudoe Bay.

Joel Sartore

Since 1979, of the thousands of Clean Water Act Section 404 permit applications filed by North Slope operators seeking permission to discharge dredge material, fill, and other pollutants into waters and wetlands, only three had been denied as of 2002. Fewer than one percent of these permits contain specific restoration requirements, and the oil industry is also not required to mitigate any wetlands damage.¹⁶

Also at Governor Murkowski's request, the Alaska legislature gutted the local community role in its Alaska Coastal Management Program (ACMP), handing over that authority to the pro-development Alaska Department of Natural Resources.¹⁷ The result could have profound impacts for offshore oil and gas development, for example by denying citizens the right to challenge consistency determinations¹⁸ -- special certifications required to ensure that federal projects are in compliance with state coastal zone management programs.



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¹ United States government Office of Management and Budget. U.S. Department of Interior budget description, FY2008. Retrieved from website: <http://www.whitehouse.gov/omb/rewrite/budget/fy2008/interior.html>; Brune, Jason. (2008, December). Finding ways to say yes. Resource Development Council, Resource Review Newsletter.

² Committee on Natural Resources, Republican Site, press release. <http://republicans.resourcescommittee.house.gov/PRArticle.aspx?NewsID=1639>; Begich, Mark. (2007, January 8). Letter to Congressman Ed Markey. Retrieved August 28, 2009 from <http://www.adn.com/static/includes/alaskapolitics/markeyletter.pdf>.

³ Trustees for Alaska. (2006, February). A fair warning: diminished state oversight of oil spill contingency plans. Memo. P.1. Retrieved from: <http://www.trustees.org/Supporting%20Documents/C-Plan/A%20Fair%20Warning%20C-Plan%20FINAL%202-2006.pdf>.

⁴ Trustees for Alaska. (February, 2006). A fair warning. P. 9-10.

⁵ Ibid. pp. 4-6.

⁶ Trustees for Alaska. (2005). Above the Law: Oil Industry Exemptions from Federal Regulations. Fact sheet. Retrieved from website: http://138group.com/alaska/oil_in_the_artic/FSExemptions.htm

⁷ Wills, Jonathan. (2000, May). Muddied waters: a survey of offshore drilling wastes and disposal techniques to reduce the ecological impact of sea dumping. Sakhalin Environmental Watch.

⁸ Trustees for Alaska. See 40 CFR § 261.4(b) (5) (1990).

⁹ Trustees for Alaska. (2005). Above the law.

¹⁰ Emergency Planning and Community Right to Know Act, Section 313, Title III; Superfund Amendments and Reauthorization Act of 1986; 42 USC 11023; Offshore Magazine. (1997, May 1). Activity review of U.S. regulatory, legislative issues. 57(5).

¹¹ Alaska Department of Environmental Conservation, Division of Air Quality. <http://www.dec.state.ak.us/AIR/anpms/ulsd/ulsdhome.htm> (last visited June 7, 2009).

¹² Burke, Jill. (2007, November 25). ConocoPhillips cancels refinery upgrades on slope. <http://www.ktuu.com/global/story.asp?s=7407161>

¹³ Air Quality Construction Permit No. 9973-AC015, section B.11.a-b, at 3.

¹⁴ Trustees for Alaska. 2005. Air pollution. Fact Sheet.

¹⁵ Alaska Legislature. 2002. House Bill 420; United Voices, Newsletter of Alaska Conservation Alliance, August 2002.

¹⁶ U.S. General Accounting Office. (2002). Alaska's North Slope, requirements for restoring lands after oil production ceases. GAO-02-357. Washington DC: General Accounting Office. P. 41.

¹⁷ Alaska State Legislature. 2003. House Bill 191. See also, Alaska Conservation Voters. August 2003. Conservation Vote newsletter.

¹⁸ Email and telephone communication with Vicki Clark and Mike Frank, Trustees for Alaska. April 16, 2009.