

COPS OFF THE BEAT:

PROBLEMS WITH ALASKA'S ENVIRONMENTAL ENFORCEMENT UNDER THE MURKOWSKI ADMINISTRATION



I want to assure all stakeholders that enforcement will be the predictable consequence of failure to comply –

Alaska Department of Environmental Conservation
Commissioner Ernesta Ballard, February 11, 2004

June 2004

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About Cook Inlet Keeper: Cook Inlet Keeper is a member-supported nonprofit organization dedicated to protecting Alaska's Cook Inlet watershed and the life it sustains. Keeper works to give citizens the legal, science and policy tools they need to protect our public water resources for current and future generations. Cook Inlet Keeper has its main office in Homer and a satellite office in Anchorage. For more information call 907.235.4068 or visit www.inletkeeper.org.

Cover Photo: Alaska Department of Environmental Conservation photo taken on May 28, 2003 of the approximately 6,000 gallons of crude oil and contaminated produced water released from a BP underground pipeline located at a caribou crossing on Alaska's North Slope. The time of the spill is unknown, but it was reported to ADEC on May 27, 2003. As of the date of this report, there has been no state enforcement action for violations associated with this spill.

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<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Executive Summary.....	1
I. Introduction.....	2
II. Analysis of Alaska Department of Environmental Conservation Enforcement Data From December 1, 2002-January 15, 2004.....	2
III. Analysis of Alaska Department of Environmental Conservation Spill Report Data From December 1, 2002-January 15, 2004.....	7
IV. Recommendations Based on the Enforcement and Spill Report Data Findings.....	9
V. Conclusion.....	10

<u>Tables and Figures</u>	<u>Page</u>
Table 1: Breakdown of the 329 Enforcement Actions by Type of Pollution.....	3
Table 2: Top 10 Reported Liquid Spills from 12/1/02 – 1/15/04.....	7
Table 3: Examples of Facilities with Spill Reports More than Approx. Once Each Month.....	8
Figure 1: Environmental Enforcement Actions by Type of Pollution.....	3
Figure 2: Environmental Enforcement Actions by Location.....	4
Figure 3: Environmental Enforcement Actions by Violator Type.....	5
Figure 4: Number of Enforcement Actions by Month.....	6

Appendices (see www.inletkeeper.org/enforcement.htm)

Appendix A: ADEC Enforcement Database – 12/1/02-1/15/04 (sorted by date, 12 pp.)

Appendix B: ADEC Spill Report Database – 12/1/02-1/15/04 (sorted by facility name, 86 pp.)

COPS OFF THE BEAT: PROBLEMS WITH ALASKA'S ENVIRONMENTAL ENFORCEMENT UNDER THE MURKOWSKI ADMINISTRATION

EXECUTIVE SUMMARY: Environmental enforcement programs are necessary to prevent future violations and to ensure that society is compensated for violations of pollution laws and regulations. Using the Alaska Department of Environmental Conservation's enforcement database (the Complaint Automated Tracking System, or "CATS"), additional environmental enforcement data from ADEC, and reported spill data from December 1, 2002 through January 15, 2004, Cook Inlet Keeper analyzed the performance of the Murkowski Administration's environmental enforcement program.

KEY FINDINGS: Criminal fines represented only 0.2% of all penalties collected; there were no criminal fines against industry, only against individuals for vehicle emissions violations in Fairbanks and Anchorage; there was an overwhelming emphasis on enforcement of violations of air pollution requirements – nearly 9 of every 10 enforcement actions; only 7% of the enforcement actions were taken against the state's biggest industries, i.e., oil production and related activities, tourism (including cruise ships), fishing/seafood processing, logging, and mining, even though these industries have the greatest potential to pollute and represented 34% of the reported spills; the number of enforcement actions taken declined over time; the top 10 oil and hazardous substance spills (5 from oil production, 3 from mining, 1 each from logging and "other") did not result in penalties; and there have been only 5 penalties for oil spill damages and no penalties for hazardous substance damages, while there were 2,356 reported liquid spills (nearly 6 spills per day of oil and hazardous substances), with an average size of 150 gallons and with 13% of the spills greater than 50 gallons.

RECOMMENDATIONS: As a result of its data analyses, Cook Inlet Keeper's recommendations to ADEC and the state Attorney General's office include the following:

- The state should seek criminal fines for egregious environmental conduct, including outside of the Fairbanks and Anchorage areas, and for greater amounts;
- While enforcement of air rules and laws is critical, the state also needs to recognize the importance of Alaska's water and land resources by increasing the percentage of environmental enforcement actions against violators of water and land pollution requirements;
- The state should prioritize environmental enforcement actions against industry over actions against individuals since industry has the greatest potential to pollute;
- The state should increase the overall number of environmental enforcement actions; and,
- Since the state has the authority to fine those who spill oil and hazardous substances, at a minimum the state should penalize those with high spill volumes, those with repeated releases, and those who spill in environmentally sensitive areas.

While there have been a small number of high-dollar civil penalties collected during this period, it's notable that the state has the authority to collect fines for every oil or hazardous substance spill which results in environmental damage. While collecting penalties for every spill may not be feasible, it's reasonable to expect better compensation to the state for spill-related harm to Alaska's water and land resources.

I. INTRODUCTION

In addition to appropriate standards, an effective environmental regulatory program requires adequate resources to oversee and enforce requirements developed under the laws covering pollution. Strong civil and criminal enforcement programs ensure that the environment is protected through deterrence of future violations, by society being “made whole” when violators pay penalties for the damage they cause, and by creating a “level playing field” so violators do not benefit economically over their non-violating competitors.

Environmental laws encourage voluntary compliance and contain many self-reporting provisions, but effective environmental compliance requires vigorous enforcement. Just as there are many who would not pay their tax bill if there was no penalty for non-compliance, there are some who would violate environmental requirements if there was little or no likelihood of a penalty. Thus, we cannot expect voluntary compliance with environmental laws unless those laws and their corresponding regulations are adequately enforced.

Cook Inlet Keeper undertook this study to measure how the current state government is doing in the area of environment enforcement and, specifically, to evaluate the validity of Alaska Department of Environmental Conservation (ADEC) Commissioner Ernesta Ballard’s often-stated policy that “enforcement will be the predictable consequence of failure to comply.” The results of this enforcement analysis, which particularly focuses on enforcement actions directed at oil and hazardous substance spills, should provide guidance to enforcement personnel and decisionmakers in the Administration, namely Governor Frank Murkowski, ADEC Commissioner Ernesta Ballard, and Alaska Attorney General Greg Renkes, as well as to members of the Alaska Legislature and the regulated community.

II. ANALYSIS OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION ENFORCEMENT DATA FROM DECEMBER 1, 2002-JANUARY 15, 2004

Number of environmental enforcement actions, corrected for duplicates: 329¹

Total civil penalties: 19 = \$2,327,014

Total suspended civil penalties: 12 = \$512,700 (22% of total civil penalties)

Total criminal fines: 20 = \$4,200

FINDINGS:

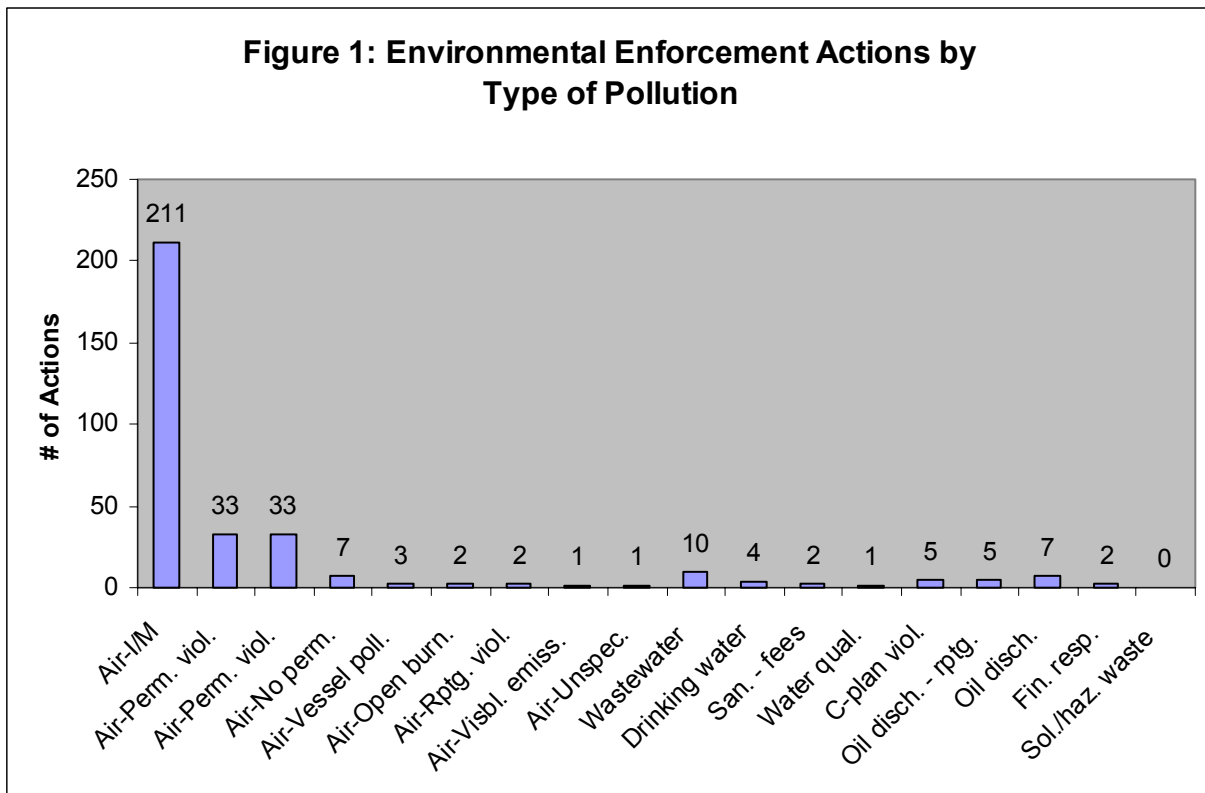
- Average civil penalty was over \$100,000, while the average criminal fine was \$210.
- For the 12 cases with non-zero criminal fines (8 in Fairbanks, 4 in Anchorage, all individuals), the average criminal fine was \$350.
- Criminal fines are a minuscule fraction of all penalties (criminal and civil) collected, representing less than 0.2%.

¹ See Appendix A for data on individual enforcement actions and Table 1 for a summary breakdown of the enforcement actions by the type of pollution. In response to a Cook Inlet Keeper Alaska Public Records Act request, ADEC gave Keeper non-manipulable enforcement information derived from the Complaint Automated Tracking System (CATS) database (i.e., the state refused to supply Keeper with information in a spreadsheet format, which would allow for electronic analysis). As a result, Keeper transferred the state’s information over a period of several days into a spreadsheet format. Because the state’s CATS data were incomplete, however, Keeper obtained 4 additional enforcement actions with penalties from ADEC staff; it’s likely that a number of other enforcement actions, with and without penalties, were not entered into the CATS database.

Table 1: Breakdown of the 329 Enforcement Actions by Type of Pollution

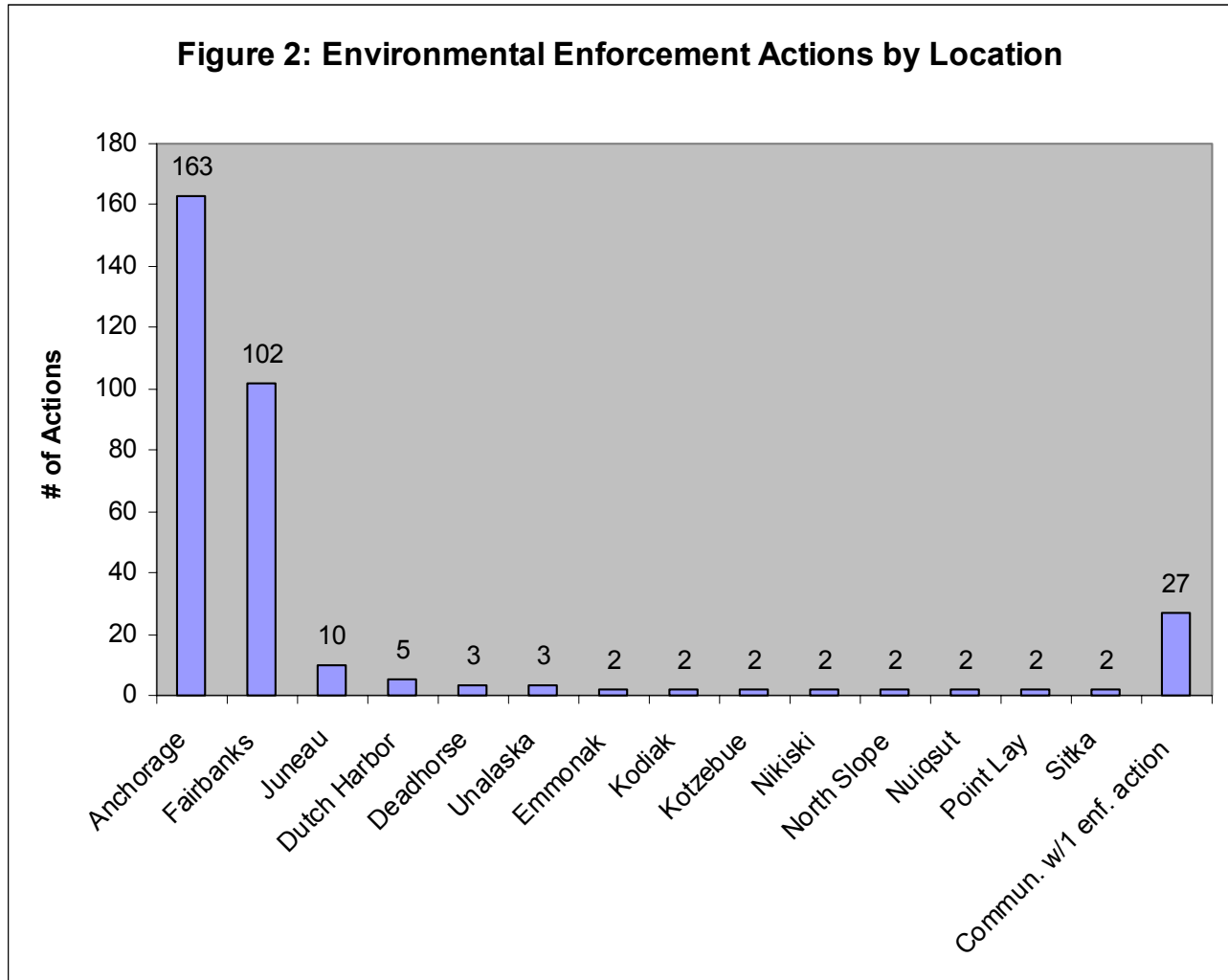
AIR (293 or 89%) –	
Air – Inspection/Maintenance or I/M (sometimes w/other violations)	211
Air - Motor Vehicle Pollution	33
Air - Permit Violation(s)	33
Air - No Permit (sometimes w/other violations)	7
Air - Open Burning (once w/another violation)	2
Air - Reporting Violation(s)	2
Air - Vessel Pollution	3
Air - Visible Emissions	1
Air - Unspecified	1
WATER, WASTEWATER (17 or 5%) –	
Wastewater (sometimes w/other violations)	10
Drinking Water	4
Sanitation, Fees	2
Water Quality, Unspecified	1
OIL (19 or 6%) -	
Contingency or C-plan Violations	5
Oil Discharge Reporting Violation (once w/another violation)	5
Oil Discharge	7
Lack of Financial Responsibility	2
SOLID OR HAZARDOUS WASTE (0 or 0%)	

Figure 1 is a graphic representation of these data:



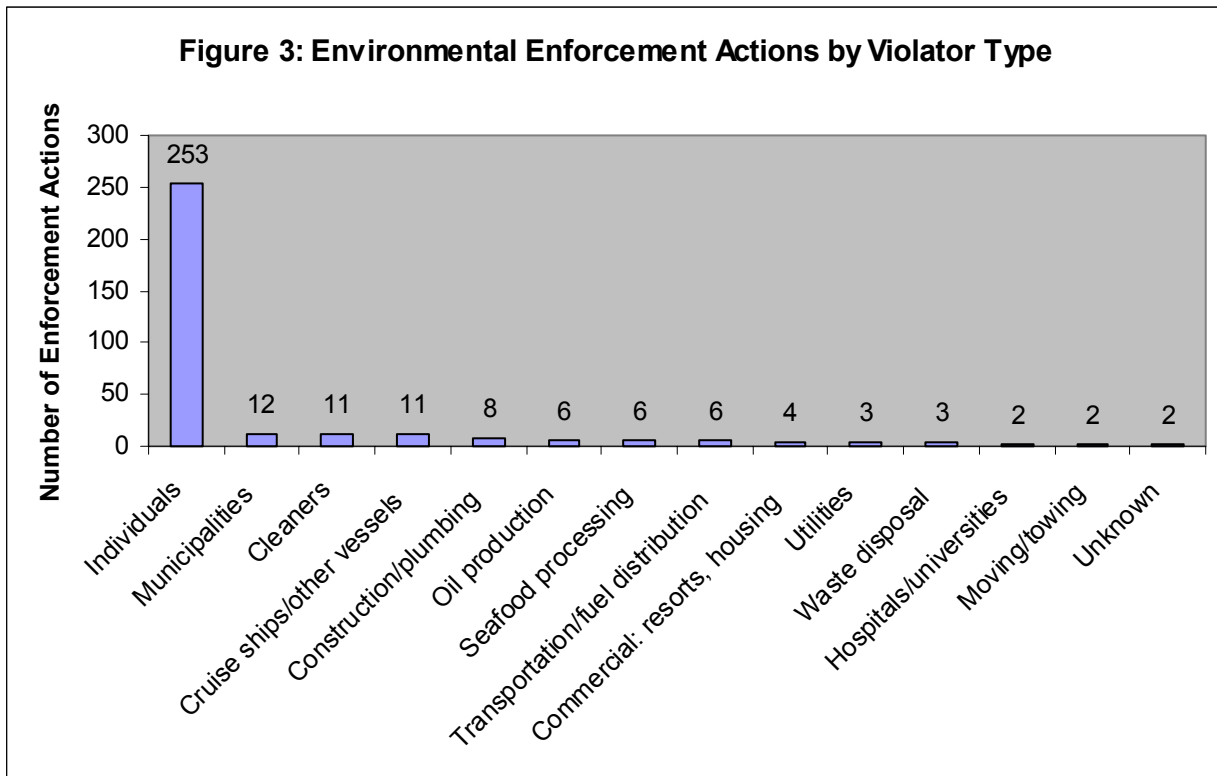
FINDINGS:

- Enforcement of car and truck air emissions requirements (or I/M) represents 64% of all environmental enforcement actions.²
- Nearly 9 of every 10 state environmental enforcement actions are air-related. Pollution of water and land rarely is addressed.
- ADEC’s focus on air enforcement results in 81% of the total enforcement actions and 100% of the criminal actions during this period taking place in Fairbanks and Anchorage, as shown in Figure 2:



² Both the Municipality of Anchorage and the Fairbanks North Star Borough have difficulty meeting the federal standard for carbon monoxide when vehicles’ internal combustion engines do not operate efficiently enough, which primarily occurs during cold conditions. Non-attainment of federal Clean Air Act air quality standards can result in loss of federal dollars, especially for highway funds. It’s likely that there’s a strong emphasis on I/M enforcement in Alaska to avoid loss of federal funds; other types of pollution in Alaska do not have similar financial consequences.

Figure 3 is a graphic representation of the 329 enforcement actions by violator type:

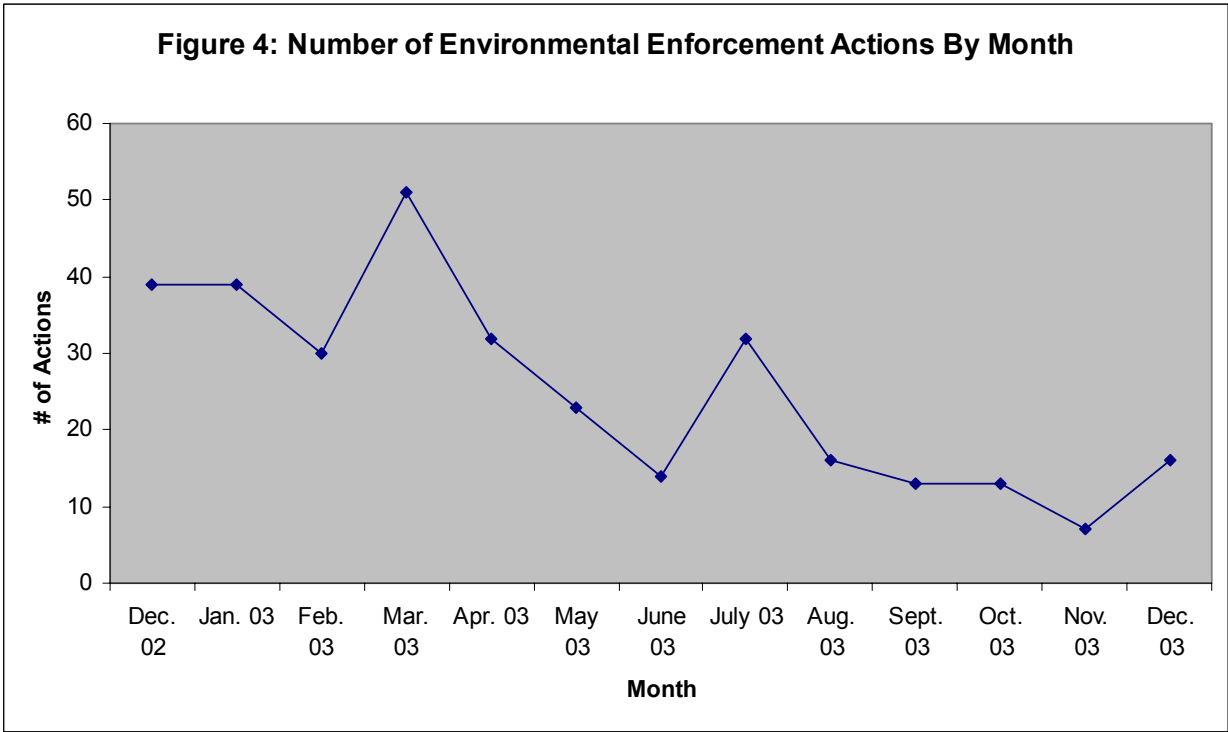


FINDINGS:

- 77% of state environmental enforcement actions were against individuals. Enforcement actions against the state’s biggest industries, i.e., oil production and related activities, tourism (including cruise ships), fishing/seafood processing, logging, and mining,³ represent only 7% of all actions.
- 0% of the enforcement actions involved the logging and mining industries.

³ See http://www.dced.state.ak.us/oed/student_info/learn/economy.htm.

Figure 4 shows the number of the environmental enforcement actions by month (see Appendix A for source data):



FINDINGS:

- The number of state environmental enforcement actions has been in a general decline since December 2002 when Governor Murkowski took office, with the most dramatic decline occurring since March 2003.

**III. ANALYSIS OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION SPILL REPORT
DATA FROM DECEMBER 1, 2002-JANUARY 15, 2004**

Number of reported oil and hazardous substance spills, corrected for duplicates: 2,356 liquid spills⁴
Total quantity spilled: 353,002 gallons

FINDINGS:

- Average spill size is 150 gallons; median spill size is 4 gallons.
- 13% of reported liquid spills are greater than 50 gallons.
- While there have been 5.7 reported oil and hazardous substance spills per day during the covered period, there have been only 5 penalties for discharges (all for oil).

Table 2 lists information on the ten largest quantity spills during this period.

Table 2: Top 10 Reported Liquid Spills from 12/1/02 – 1/15/04

Date	Facility Name/Location	Substance Type	Amount (gal)	Responsible Party	Cause	Facility Type
11/24/03	Red Dog Mine Bldg 2030, Kotzebue	Hazardous Substance	158,398	Red Dog Mine (Cominco)	Equipment Failure	Mining
6/11/03	Fort Knox Gold Mine, Steese Hghwy.	Process Water	24,092	Fairbanks Gold Company, Inc.	Equipment Failure	Mining
12/18/02	B.P. Price Pad, W. North Slope	Drilling Muds	12,118	ConocoPhillips Alaska	Rollover/Capsize	Oil Prod.
6/2/03	Fort Knox Gold Mine, Steese Hghwy.	Process Water	10,500	Fairbanks Gold Company, Inc.	Human Error	Mining
4/13/03	1H Pad, Kuparuk	Produced Water	10,000	ConocoPhillips Alaska	Equipment Failure	Oil Prod.
5/27/03	Flowline between GC1 and Q Pad, W. Prudhoe	Crude Oil	6,000	BP Exploration (Alaska), Inc.	Corrosion	Oil Prod.
4/14/03	CPF 3, Kuparuk	Process Water: Seawater	5,670	ConocoPhillips Alaska	Corrosion	Oil Prod.
12/12/03	Experimental Tree Farm, Petersville	Hazardous Substance	5,000	Upper Susitna Soil and Water Cons. Dist.	Intentional Release	Log Proc.
12/1/03	Summer Cabin, Willow	Diesel	5,000	Valley Fuel	Human Error	Other
12/6/03	CFP, Milne Point	Produced Water	4,831	BP Exploration (Alaska), Inc.	Equipment Failure	Oil Prod.

⁴ See Appendix B for data from individual spill reports. 2,388 total liquid *and solid* spills, corrected for duplicates.

Note that for one of these spills – the BP spill on May 27, 2003 – ADEC Commissioner Ernesta Ballard requested that U.S. EPA investigate the delayed reporting of that spill to the state,⁵ but there has been no ADEC enforcement action related to the environmental impacts of the spill which occurred at a caribou crossing on the tundra. Moreover, after meeting with BP following submission of her letter to U.S. EPA, Commissioner Ballard later “notified Ms[.] Pascal that the allegations in her letter were no longer a concern.”⁶

FINDINGS:

- The top 10 spills during this period – including 3 from mining operations and 5 from oil production – did not result in any ADEC enforcement actions following the spills.

Analysis of the spill reporting database reveals some additional concerns ADEC needs to address. First, there appears to be inconsistent spill reporting by facilities in the same industry sector. For example, Williams service station operators throughout the state reported numerous small spills, while other service station operators such as Shell did not (it’s unlikely that Shell stations had zero small spills). Second, the database contains several instances of repeated (i.e., greater than approximately once each month) spill reports from individual facilities. Cook Inlet Keeper believes that facilities with repeated spill reports deserve on-site investigations and enforcement actions if such spills are likely to continue. Table 3 shows examples of facilities with repeated spill reports.

Table 3: Examples of Facilities with Spill Reports More than Approximately Once Each Month

Facility	Repeated Spill Report Details
Danger Bay Ben Thomas Logging Camp, Afognak Island	32 reported spills of 1 - 11 gallons, mostly of hydraulic oil
Fort Knox Gold Mine, Steese Highway	64 reported spills of 1 - >24,000 gallons (total of 48,973 gallons) of contaminated process water, hydraulic oil, diesel, etc.
Gathering Centers 1 and 2, West Prudhoe Bay	13 reported spills of 2 - >1,600 gallons (total of 2,618 gallons) of contaminated “produced water,” ⁷ ethylene glycol, crude, etc.
Red Dog Mine, Kotzebue City	131 reported spills of 1 - >158,000 gallons (total of 161,487 gallons) of contaminated process water, zinc slurry, etc.
Safeway Fuel, Juneau	114 reported spills of 1 - 6 gallons, mostly of gasoline. Some spills are from the facility, some are from vessels, and some are from vehicles.

FINDINGS:

- There appears to be inconsistent spill reporting among companies with similar operations.
- There appears to be numerous instances of multiple reports from single facilities that have not resulted in penalties from ADEC.

⁵ December 18, 2003 letter from ADEC Commissioner Ernesta Ballard to Jeanne A. Pascal of the U.S. EPA Suspension and Debarment Division, Seattle, WA.

⁶ “EPA probes BP over handling of oil spills,” Sheila McNulty, Financial Times, March 30, 2004.

⁷ “Produced water” is any water that comes to the surface during oil and gas production, including water containing oil from the geologic formation, injection water, and drilling additives. Produced water, which generally is briny, typically contains pollutants such as oil and grease, acids, ammonia, benzene, naphthalene, metals (e.g., chromium, copper, lead, zinc), and sometimes radionuclides, following its separation from crude oil and natural gas.

IV. RECOMMENDATIONS BASED ON THE ENFORCEMENT AND SPILL REPORT DATA FINDINGS

Based on these data and findings, Cook Inlet Keeper makes the following recommendations to ADEC and the state Attorney General's office to improve enforcement, especially as a tool to prevent spills:

- *Increase criminal fines from <0.2% of civil penalties to 10%.* Criminal fines are an important means to prevent violations of pollution laws and regulations.
- *More balanced environmental enforcement is needed.* Air enforcement, which should include criminal enforcement outside of Fairbanks and Anchorage, should be no more than 50% of the state's enforcement actions. Water and oil pollution enforcement, particularly for spills, should be substantially increased from their current levels of approximately 5% each.
- *Penalize those with the greatest potential for pollution.* To prevent future releases of high volumes of pollutants, the state should prioritize environmental enforcement actions against industry over actions against individuals since industry has the greatest potential to pollute.
- *Increase the number of environmental enforcement actions.* State environmental enforcement actions have been in a general decline since March 2003.
- *Penalize high spill quantities.* In addition to enforcement actions under the federal Clean Water Act, under AS 46.03.758-760 and depending on the size, type (i.e., unrefined or refined oil/byproduct or hazardous substance), and whether or not state requirements have been violated, the state can collect spill penalties and damage restoration costs.
- *Ensure uniform reporting of releases through enforcement actions.* Address non-reporting or inaccurate reporting by comparing data from similar types of facilities (e.g., gas stations, cruise ships) and by analyzing data trends for inconsistencies. When data reporting problems are found, pursue enforcement actions against violators to create a level playing field and to ensure the integrity of ADEC's pollution databases.
- *Penalize repeated reports of releases from the same facility.* Penalizing repeated releases (e.g., those occurring more than once every 1-3 months), even if small, can prevent additional pollution.

Other recommendations resulting from Cook Inlet Keeper's analysis of environmental enforcement and spill report data from December 1, 2002 – January 15, 2004:

- *Make needed spill report database improvements.* For example, two of the 10 biggest spills during the period analyzed identify the hazardous substances released only as "other."
- *Disseminate enforcement data to the public in a database format.* Analysts from the public, whether they are from the media, academia, or non-profit organizations, can assist the government in setting appropriate priorities for enforcement, and the government should facilitate them doing so through dissemination of data in a user-friendly, database format.
- *Ensure that all ADEC enforcement actions are contained in the enforcement database.* As ADEC's *Enforcement Manual* states, "All complaints and enforcement actions should be logged into CATS."⁸

⁸ *Enforcement Manual, Fifth Edition*, Alaska Department of Environmental Conservation (October 2002), p. 3-3.

V. CONCLUSION

Based on its analysis of civil and criminal enforcement data during the Murkowski Administration, Cook Inlet Keeper is not confident that “enforcement will be the predictable consequence of failure to comply” (as stated by ADEC Commissioner Ballard on February 11, 2004). There has been little enforcement of water and oil discharge violations, minimal civil and no criminal enforcement actions against industry for discharges (though most of the civil penalties which have been levied against industry were significant), and the number of environmental enforcement actions appears to be declining monthly. Furthermore, there is a disproportionate emphasis on pursuing enforcement actions against individuals (i.e., vehicle emissions violations) and not against larger corporate polluters with greater capacities to harm Alaska’s air, water, and land. Without an effective enforcement program, the state of Alaska cannot truthfully claim to have a world-class system of environmental protection.