

The Honorable Hugh L. Cox, III
Commissioner
Department of Military
and Veterans Affairs

November 14, 1991

663-92-0229

465-3600

Use of OHSRRF funds
to purchase emergency
communications system;
AS 46.08.010

Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion as to whether use of money from the Oil and Hazardous Substance Release Response Fund (OHSRRF) to purchase a state-of-the-art emergency communications system is legally consistent with the purpose of the OHSRRF as set out in AS 46.08.010 and 46.08.040. Of particular concern is whether the purchase of the system is a prohibited expense under AS 46.08.010(c) (prohibiting use of the fund for "capital improvements," as defined in AS 46.08.900(1)).

In brief, it is our opinion that the purchase of an emergency communications system is consistent with the purposes of the OHSRRF as set out in AS 46.08.040 and does not constitute an expenditure from the fund for a capital improvement.

FACTS AND LEGAL ANALYSIS

The Department of Environmental Conservation (DEC) was appropriated a total of \$45,880,500 from the OHSRRF for fiscal year 1992. See Sec. 20(b), Ch 73, SLA 1991. Within this appropriation, the legislature allocated \$2,911,400 for expenditures for the oil and hazardous substance response office, response depots, and response corps. 1/ Id. Through a reimbursable services agreement, the Department of Environmental Conservation transferred \$2,000,000 of the above allocation to the Department of Military

1/ The legislature's specific allocation of money to the response office and depots satisfies the requirement of AS 46.08.040(c) that money from the fund may not be used unless money is available from an appropriation made specifically for that purpose.

and Veterans Affairs, division of emergency services (DES), for support of DES's response mission. 1/

Under AS 46.08.120, DES is responsible for maintaining emergency response depots. Additionally, DES is required to equip and staff the depots in a manner that ensures prompt response when containment and cleanup actions are necessary. AS 46.08.120. A determination as to what equipment is necessary to ensure a prompt response is to be made by DES in accordance with DEC's plan. Id.

Under AS 46.08.040(a)(3), money from the OHSRRF may be used to "[p]lay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division." In this matter, the commissioner of the Department of Environmental Conservation approved of the proposed expenditure, having provided \$2 million from the \$2.9 allocation to DES to support response activities; and DEC formally approved the specific purchase of the emergency communication system on September 10, 1991. In sum, it is our opinion that the expenditure of money from the OHSRRF is consistent with the statutes and with the appropriation.

With respect to the issue of whether the emergency communications system constitutes a "capital improvement" under AS 46.08.900(1), it is our opinion that it does not. AS 46.08.900(1) reads:

"capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall.

(Emphasis added.)

2/ In addition to this money, the federal government has agreed to provide matching funds for the purchase of the emergency communications system.

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Applying the above definition, an emergency communications system does not constitute "renovation, repair of, and improvement" to a building. Nor does the system constitute an improvement to "real property." The system is more properly categorized as equipment of the response depot and will be considered part of the inventory of the depot.

Due to time constraints, we are unable to provide you with a more detailed analysis at this time.

If you need additional advice on this matter, please call us.

MLO:ck

cc: Ervin Martin, ADES