

ALASKA STATE LEGISLATURE  
**SENATE RESOURCES COMMITTEE**

January 17, 2001  
3:40 p.m.

**MEMBERS PRESENT**

Senator John Torgerson, Chair  
Senator Drue Pearce, Vice Chair  
Senator Rick Halford  
Senator Pete Kelly  
Senator Kim Elton  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Robin Taylor

**COMMITTEE CALENDAR**

SENATE BILL NO. 16

"An Act regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of 'response action' that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; and authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 16 - No previous action to record.

**WITNESS REGISTER**

Mr. Larry Dietrick, Director  
Division of Spill Prevention and Response  
Department of Environmental Conservation  
410 Willoughby Ave., Suite 105  
Juneau AK 99801

**POSITION STATEMENT:** Supported SB 16.

Mr. Brian Rogers  
Info Insights Task Force  
751 Old Richardson Hwy., Suite 235  
Fairbanks AK 99701  
**POSITION STATEMENT:** Supported SB 16.

Mr. Breck Tostevin  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Commented on SB 16.

Mr. Jerry Rusher  
HC33 Box 2866  
Wasilla AK 99687  
**POSITION STATEMENT:** Commented on SB 16.

Mr. Joseph LeBeau  
Alaska Center for the Environment  
642 S. Alaska  
Palmer AK 99645  
**POSITION STATEMENT:** Commented on SB 16.

Phyllis Johnson, General Counsel  
Alaska Railroad Corporation (ARRC)  
P.O. Box 107500  
Anchorage AK 99510  
**POSITION STATEMENT:** Supported SB 16.

Paul Fuhs, Technical Advisor on Marine Issues  
No address provided  
**POSITION STATEMENT:** Commented on SB 16.

**ACTION NARRATIVE**

**TAPE 01-01, SIDE A**  
Number 001  
#SB16

**SB 16-OIL DISCH PREVENTION: NONTANK VESSELS/RR**

**CHAIRMAN JOHN TORGERSON** called the Senate Resources Committee meeting to order at 3:40 p.m. and announced SB 16 to be up for consideration.

SENATOR PEARCE said she was a member of the steering committee for the Task Force on Motorized Oil Transport (TFMOT) and the prime sponsor of SB 273 last year. She gave a heart-felt thank you to all the other steering committee members who came together for many

long hours and worked together to find consensus solutions to problems for the state's safety net for marine transportation.

MR. LARRY DIETRICK, Director, Division of Spill Prevention and Response, said he was addressing them on behalf of Commissioner Brown, Chair of the TFMOT. He said the goal of SB 16 is simple: "to protect Alaska's renewable resources and keep Alaska's waters the cleanest and most pristine in the world by including large seagoing marine nontank vessels and the Alaska Railroad and Alaska Safety Net for Oil Spill Prevention and Response."

The TFMOT was commissioned "to work out the details of how to implement oil spill contingency plans (c-plans) and achieve the response planning standard in a way that was acceptable to those who would be affected." Although the requirement for financial responsibility was made effective last year, Mr. Dietrick said, the requirement to have an oil spill c-plan to meet the response planning standard was not and the legislature commissioned the Task Force through SB 273 and SCR 1 to determine how to implement the standards and provide opportunities for streamlining them. Those standards were set out in SB 273 as the "containment and control of 15 percent of the maximum oil capacity of a nontank vessel or train within 48 hours and cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment."

Nontank vessels were defined as self-propelled vessels over 400 gross tons, not including tank vessels, oil barges, or public vessels.

MR. DIETRICK said SCR 1 created 23 member task force to ensure diversity of viewpoints and adequate representation of all groups to be regulated. Many more people who were not appointed representatives attended the work group sessions and formal task force meetings. There were 11 meetings over a five-month period. Three work groups were created to address specific areas of concern.

He said that the recommendations of the Task Force are practical and include implementation measures that use a market-based economy approach to keep costs down. They are based on Alaska's existing oil spill response infrastructure and provide maximum flexibility for meeting the requirements. Private sector initiatives have already been fostered that significantly increase the resources that will be brought to bear on a spill. "Alliances between ship agents, stevedoring companies, and spill response cooperatives are now being explored to meet response needs and a new marine exchange covering the entire state of Alaska is being created." The Task

Force unanimously agreed to support 31 separate recommendations and recommended that they be adopted without amendment since the legal nuances and details have all been agreed to. He said that the Task Force recommendations are in the interests of all Alaskans and will help protect Alaska's natural resources and make the state's spill response the best in the world.

Number 729

MR. BRIAN ROGERS, Principal and CRO of Info Insights and a Task Force member, said the process of negotiated rule making worked very well in this case. The legislation is straightforward, but the total process is somewhat complex and is designed to address very different kinds of businesses that are operating in Alaskan waters, ranging from cruise ships on a fixed predictable course to spot charter vessels that may announce their arrival only five days in advance to the Alaska Railroad.

He pointed out that the objectives of the Task Force (on page 8 of the report) are:

- that this process be realistic - capable of being implemented within available technology and expertise in a reasonable time frame;
- that it's effective - providing real protection to the environment at the level required by law;
- that it is economically feasible - it can be implemented without imposing unreasonable cost increases on the vessel owners, operators, or on their customers; and
- that it's flexible - providing for improvements and changes in methods and requirements to reflect changes in technology, vessel volumes, tank car trade, expertise, and other parameters.

Number 858

MR. ROGERS said that one group dealt with the response planning standard, another with contingency planning, one with prevention and one with the Alaska Railroad.

The response planning standard in the report calls for vessels to have boom three times their length and the ability to deploy it. Cleanup in the shortest time possible means there needs to be a skimmer appropriate to the type of oil in the area or able to be

deployed to that area within 24 hours.

There are several different options available under contingency planning. The market approach, that Mr. Dietrick referred to, attempts to address the different needs of different industrial groups. Everyone has to file and show proof of financial responsibility. Every vessel needs to say whom the qualified individual is that can make decisions that bind the company. Each vessel will need a response action plan detailing notification procedures if there is a problem, have a contract with a primary response action contractor, and a contract with an incident management team, and comply with federal and international rules. In lieu of these contracts, vessel owners can show they can respond themselves with equivalent resources or some combination of contracts and equivalent resources.

"In addition, to accommodate the different fleets, there is the option for fleet plans where a group of vessels can band together to meet the requirements and the development of generic c-plans - basically a plan that is ready to be activated on the signature of a vessel owner." This was designed for spot charter, Mr. Rogers said, in case someone comes in to pick up a load and will be there in five days and doesn't have time to write a plan. The vessel agents will develop generic plans that will be ready to be activated in advance.

MR. ROGERS said that prevention is much more of a challenge. Due to federal and international preemption, there is not much the State of Alaska can do. The prevention measures that are called for in the report are voluntary, but there is a good credit program to give credit to those vessels that are able to come up with prevention measures.

The basic recommendation for the Alaska Railroad is that they undergo c-plan review in the same fashion as other facilities. The Railroad has assured the Task Force that they will be in a position to respond within the time line that is laid out in the report.

Number 1032

MR. ROGERS explained the Task Force went through all the recommendations to figure out which ones needed legislation, which ones needed regulatory change, and which ones required changes in processes. The legislation is designed for three things primarily:

- to activate the c-plan process;
- to enable the adoption of the regulations as recommended by

the Task Force; and

- to limit liability for certain participants in the process (the folks who are arranging for a response and the ones who are involved in the incident management teams).

He summarized that this legislation uses a market-based approach that provides opportunities for alternative compliance and is phased. A rough time-line might be 12 months to adopt the entire regulatory adoption process for legislation that passes this May. That would put regulations in effect by June 2002. Vessel owners would then have six months to prepare their c-plans. At that point, January 2003, they would have to have the boom and ability to deploy it for containment. The cleanup equipment, particularly the high-priced nonpersistent fuel skimmer would have to be in place would happen by the summer of 2004. He said they are not asking the nontank vessels to move faster than the tank vessels did.

Number 1185

MR. ROGERS gave a sectional analysis of the bill.

- Sections 1-3 amend AS 46.03.825, the section that limits the civil liability of oil response action contractors. The amendment adds statutory references to the new plans for nontank vessels, and basically provides the same limitation to the response action contractors working on nontank vessels that the response action contractors on tank vessels currently have.
- Section 4 adds two kinds of services to the response action that are critical in the nontank vessel arena - incident management team and response plan facilitator services. The response plan facilitator is the person who puts together the generic plan that has everything ready to go for a vessel that's about to enter Alaska. The indication was that no one would be willing to perform that function if they might get some of the liability if there actually were a spill. SB 16 extends the same immunity existing today to those response plan facilitators and to those who manage the incident.
- Section 5 amends what the legislature passed last year on proof of financial responsibility for nontank vessels. It changes the wording of the applicability section from "a person may not cause or permit the operation of a nontank vessel" without the financial responsibility to "a person may not operate a nontank vessel." This wording was recommended by the Task Force so that it's exactly the same wording

applicable to tank vessels. People know what that means since it's been out there for a while.

- Section 6 extends the existing innocent passage exemptions to the requirement for nontank vessel c-plans. A vessel is in innocent passage if it's not intending to call at an Alaskan port-of-call, and is transiting state waters under the Convention on the Territorial Sea and Contiguous Zone. MR. ROGERS said that the state is prevented from exercising state jurisdiction over those vessels. This section makes it clear that the program only extends to vessels that are entering the waters of the state generally within three miles.
- Section 7 adds the new provisions that require oil discharge prevention and c-plans for nontank vessels and railroad cars that are transporting oil. This is the implementation of last year's legislation in AS 46.04.055(c).
  - o (f) requires approved c-plans for nontank vessels six months after the effective date of the regulations adopted by DEC. Included in those regulations will be conditional approval of the new c-plans. In other words, if a c-plan is filed on time, it is contingently approved by DEC. That way the department can receive all of them at once, but will be able to stagger the review and renewal process. He explained that all vessels come in the first year, but because it's a three-year renewal cycle, they will be spaced out over that time.
  - o (g) sets forth the content requirement for the new nontank vessel c-plans: vessel specific information, a response plan, and a prevention plan certification stating that the nontank vessel for which c-plan approval is made complies with federal and international organization requirements. The response plan consists of initial notification procedures in the event of a release or threatened release, a certification that the applicant is a member of or has a contract with an oil spill organization that is an oil spill primary response action contractor with a response plan approved by the department that meets response planning standards for the maximum oil capacity of the vessel. Finally, a certification requires that the applicant has contracted with a contractor to provide incident management team services in the event of a release or threatened release.
  - o (h) is the alternative section that says if you don't want to hire a contractor and show evidence that you can do it yourself or you have equivalent equipment, personnel, and resources to meet the requirement, you can show this alternative compliance.
  - o (i) applies the existing c-plan provisions of AS 46.04.030 to nontank vessels, to nontank vessel c-plans,

and to a person who applies for and holds an approved nontank vessel c-plan.

- o (j)&(k) apply to railroad tank cars that transport oil and require c-plans to meet the response planning standard that was adopted. These sections require an approved plan six months after the effective date of the regulations (January 2003). Section (k) applies the c-plan provisions to railroad tank cars, railroad tank car c-plans, and a person applying for or holding an approved nontank railroad tank car contingency plan.
  - o (l) directs DEC to adopt the regulations to implement this legislation.
- Section 8 creates a new section that authorizes DEC, in order to assure compliance with the chapter relating to oil pollution control to "at reasonable times in a safe manner enter and examine nontank vessels, trains, railroad tracks, and associated facilities for verification purposes."
  - Section 9 requires the lieutenant governor to certify or revise the statutes regarding the effective dates of the implementing regulations.
  - Section 10 is the immediate effective date of the bill.

Number 1579

CHAIRMAN TORGERSON asked in (j) and (k) if it was his intent to put these regulations on railroad cars that may be on skids that are towed around.

MR. ROGERS replied that he understands that the bill applies to railroad cars, which would not be something on skids, but the Department of Law might have a different answer.

CHAIRMAN TORGERSON asked why DEC would want to inspect railroad tracks.

MR. ROGERS answered that the railroad explained to the Task Force that the dynamic of what causes a spill is the interaction of the cars, the tracks, and the speed. The condition of the tracks affects the likelihood of a derailment. Mr. Rogers assumed that since that is part of the vessel in this case, the legislation includes the tracks as part of that whole environment that leads to a spill.

CHAIRMAN TORGERSON said he just wondered about the expertise within DEC to go and inspect railroad tracks.

Number 1672

SENATOR ELTON applauded Senator Pearce whose efforts started the process that led to this. He asked if a petroprocessor from Seattle who transits False Pass to access the Bering Sea and then leaves the Bering Sea and goes directly back to Seattle would fall under the provisions of innocent passage.

MR. ROGERS replied that he wasn't an expert on the subject, but if the vessel is otherwise not going to be entering state waters, if it's going to be at least three miles off-shore, except for the transit of Unimak Pass, that vessel would be in innocent passage and would not be covered by this legislation. However, if the vessel would call at Dutch Harbor for any purpose, it then is subject to it, because it is entering state waters.

SENATOR ELTON asked if there was any discussion by the Task Force on the possible implications this may have for seafood ports. Is there any anticipation that some vessels, in order to not have to comply with this, would no longer be calling at Alaska ports for provisions, fuel, and off-loading product.

MR. ROGERS answered there was discussion about vessels responding to this by staying further off-shore than they had been which is in itself a prevention measure. However, he didn't think there was any testimony or discussion from vessel owners who thought they would change and not call at Dutch Harbor that currently call there now. There was some talk of vessels that are currently operating within three miles, in Norton Sound for instance, that could avoid the cost of compliance in that sub region by staying further offshore. They can save costs and the state has the reduced likelihood of an oil spill by their staying further offshore.

Number 1793

SENATOR LINCOLN asked if there was public comment made during the process.

MR. ROGERS answered that there was an amazing opportunity for public dialogue during the process. They insured that all documents went on the website within 72 hours of the meeting. Transcripts took a little longer, but they were also on the website.

SENATOR LINCOLN asked if the recommendations of the public members were incorporated into the overall plan. She asked him to highlight some of the major ones that were left out.

MR. ROGERS replied that as a facilitator, he tries to "move away from who owns what idea." He couldn't tell her who came up with most of the recommendations.

SENATOR LINCOLN asked him how compliance will work.

MR. ROGERS replied that they didn't get into the mechanics within the department, but the Division of Spill Prevention and Response was part of the process and compliance clearly falls within that group's requirements.

SENATOR PEARCE noted that although there were no members from the Coast Guard in the audience, they had been with the Task Force all through the process and had been very helpful.

MR. BRECK TOSTEVIN, Department of Law, announced that he would answer questions and elaborated that the last legislature enacted a definition of "railroad tank car" in AS 46.04.900(28) as being "rolling stock used to transport oil in bulk as cargo by rail," so there is the concept that the tank car has to be on rail. He also explained that "innocent passage" is an international law concept which allows a foreign vessel to travel through another country's waters as long as the vessel is transiting through. It can stop, but it has to be expeditious in moving through the country's waters. It can't engage in activities such as fishing and can't call on ports. SB 273 extended the international innocent passage concept to all vessels, both U.S. and foreign, that aren't fishing or transferring fuel, etc.

SENATOR ELTON asked if innocent passage covers a vessel that leaves the Port of Seattle, transits through the Aleutians to the Bering Sea to catch and process fish and then returns to the same port, or whether innocent passage only cover vessels that are going from port A to port B.

MR. TOSTEVIN answered that you can't call on a port in Alaska. Leaving a port outside Alaska and transiting through waters in Alaska to get to a port outside Alaska is considered innocent passage. A vessel can't anchor or call on a port.

CHAIRMAN TORGERSON asked if the Coast Guard would enforce this.

MR. TOSTEVIN answered his understanding is that DEC and the Coast Guard have a memorandum of understanding in which they share information and cooperate with each other.

MR. JERRY RUSHER, Wasilla resident, said he was concerned with the 180-day time frame for applications on page 15.

CHAIRMAN TORGERSON explained that this section meant the law would go into effect 180 days after the adoption of the regulations.

MR. RUSHER said he was interested in the time frame out to 2003.

CHAIRMAN TORGERSON explained Mr. Rogers' testimony on the time frame.

MR. JOSEPH LEBEAU, Alaska Center for the Environment (ACE), thanked all the members of the industrial community who attended the Task Force meetings.

**TAPE 01-01, SIDE B**

MR. LEBEAU commented that a 15 percent response-planning standard is not enough.

MS. PHYLLIS JOHNSON, Alaska Railroad Corporation (ARRC), supported SB 16. She thought there were several items in the bill that have the potential for conflict in the federal/state relationship. She said ARRC is okay with the timeline, but "the feds are a little touchy about jurisdictional disputes." A couple of federal laws require common carriers to accept a cargo that is exempted. Another place for potential conflict is the right to enter and examine the railroad properties - track and other facilities. The Federal Railroad Administration, which is charged with trying to ensure the safety in rail operations, has a lot of rules and regulations about when you can walk on a railroad track without certain kinds of protection. She thought language, such as "consistent with FRA safety standards" could be added in regulation.

Number 2216

SENATOR PEARCE asked if jet A is a hazardous material under the Hazardous Materials Transportation Act (HMTA).

MS. JOHNSON responded that petroleum and petroleum products are hazardous materials within the definition in the HMTA. Not all products are included under other acts.

SENATOR PEARCE asked how the state was able to regulate the Transalaska Pipeline System (TAPS) under our spill laws.

MS. JOHNSON said she would look into getting the answer for her.

SENATOR PEARCE said she didn't see how this is different from TAPS.

Number 2150

MR. PAUL FUHS, technical advisor to the Task Force on marine issues, clarified that to get the cost savings, the Task Force relied a lot on affidavits. People swear that they have a spill response contractor and there are pretty severe criminal penalties for falsifying an affidavit. A company would also lose it's c-plan until the problem was fixed.

He noted that military vessels are not included in this bill, unless they are involved in commerce. Alaska's marine highway system is covered by it, but the Coast Guard and military vessels are not.

MR. FUHS also noted that there is a letter of intent that covers implementation details that might not be covered in regulation.

SENATOR ELTON asked if there was anything in the legislation that contravenes any information in the packet.

MR. FUHS replied that the legislation was considered by the group and was recommended as part of the packet.

CHAIRMAN TORGERSON said they would hold the bill until the fiscal note came in and adjourned the meeting at 4:38 p.m.

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