

SB

557

1. Addition of the "fourth factor".

Sec. 46.03.758 - Civil Penalties for Discharges of Oil.

Subsection (d) should be amended to read, in part:

"(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. In order to provide a meaningful incentive for the safe handling of oil, as referred to in paragraph (a) (2), the schedule shall also vary according to the past operating records of the persons liable for the discharge, as far as such operating records reflect the frequency and severity of previous spills for which such persons were liable. The schedule shall also..."

3/31/78  
March 30, 1978

ALASKA LEGISLATION - 1978  
S.B. 557  
CIL SPILL PENALTIES

*not adopted*

This bill, which amends H.B. 137, Chapter 129 of the 1977 Session, should be further amended as follows:

1. Section 46.03.758(a)(2) is amended to read:

"the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and however, it is not the intent of this section to impose a civil penalty for discharge of oil where there is no demonstrable damage to the environment; and"

This amendment is the most important of the four. It deletes the reference to unquantifiable damage, a thoroughly illogical concept which no one has ever been able to explain, and it adds language to require a demonstration that environmental damage has occurred before penalties under this law can be imposed.

The existing law, which does not require evidence of environmental damage before imposing penalties, must be considered punitive. Yet, subsection (a)(3) states this should not be the case.\* Thus, this amendment would render the penalty remedial rather than punitive.

2. Section 46.03.758(b)(1) is amended to read:

"Subject to subsection (a)(2) and to ~~{3}~~ (2) of this subsection, the penalties for the following categories of receiving environments may not exceed"

Making the penalties subject to subsection (a)(2) is a precaution to ensure that penalties will not be imposed unless it is demonstrated that environmental damage occurred.

\*46.03.758 (a)(3) "in order to provide an incentive which is effective, but not punitive."

The change from (3) to (2) is a technical change. There is no (3) in subsection (b).

3. Section 46.03.758(d) is amended to read:

"The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. And, the schedule shall take into account seasonal changes. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or less sensitive receiving environments."

This is consistent with past arguments that seasonality is an important factor in determining potential environmental damage. Also, it reinforces our first amendment. "Less" is added before "sensitive" in the interest of good construction.

4. Section 46.03.758(g) is amended to read:

"Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, ~~the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply.~~ Only when no such mitigating circumstances exist shall the schedule of full penalties apply."

The language deleted describes the body of scientific knowledge pertaining to oil spills as "very limited." This is simply not true. The scientific community, academicians, government, and industry have produced volumes of data on the fate and effects of oil spills (an abbreviated bibliography is attached), and their work is continuing. Therefore, the deleted sentence cannot be justified.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS

FACTORS

HIGHLY TOXIC

1.00

HIGH DEGRADABILITY

.25

HIGH DISBURSIBILITY

.15

1.40/3 = .466

FRESHWATER CRITICAL = \$10.00/GAL.

COMPUTATION :

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = \$23,300

WITH GROSS NEGLIGENCE

\$23,000 @ 5 = 116,5000

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:

FACTOR

HIGHLY TOXIC

1.00

HIGH DEGRADABILITY

.25

HIGH DISBURSABILITY

.15

1.40/3 = .466

MARINE CRITICAL = \$ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = \$2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

# Alaska Trucking Association, Inc.

## TESTIMONY CONCERNING

3443 Minnesota Drive  
Anchorage, Alaska 99503  
(907) 276-1149

### CIVIL PENALTIES FOR DISCHARGE OF OIL

FOR THE RECORD, I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS MADE UP OF SOME 600 MEMBER FIRMS WHO EMPLOY 17,000 EMPLOYEES DELIVERING VIRTUALLY ALL OF YOUR FOOD, HOUSEHOLD NECESSITIES, AND FUEL.

WE ARE VERY CONCERNED WITH THE ENTIRE SUBJECT OF OIL SPILLS. VERY FEW OF MY MEMBERS ARE PURE CARRIERS IN THE SENSE THAT A YELLOW FREIGHT OR CONSOLIDATED FREIGHTWAY EXISTS IN THE LOWER 48. ALMOST ALL OF MY MEMBER CARRIERS ARE INVOLVED IN A VARIETY OF TYPES OF AUTHORITIES. FOR EXAMPLE, MY TYPICAL MEMBER WILL HAVE AUTHORITY TO MOVE GENERAL COMMODITIES, HOUSEHOLD GOODS, AND FUEL. A LARGER NUMBER OF RELATIVELY SMALL CARRIERS ARE INVOLVED IN FUEL DELIVERIES THAN IS THE CASE IN THE TYPICAL LOWER 48 AREA.

THE HANDLING OF FUEL BY TRUCK IS AN ABSOLUTE NECESSITY TO THE SURVIVAL OF MOST OF THE COMMUNITIES AND CITIES IN ALASKA. WITHOUT THE REQUISITE TANK TRUCKER DELIVERING YOUR HOME HEATING OIL, MANY OF MY MEMBERS AND YOUR CONSTITUENTS COULD NOT SURVIVE.

THE SUBJECT OF THIS HEARING IS SB 557, CONCERNING MANDATORY OIL SPILL PENALTIES. IN THE LAST HALF SESSION, THE LEGISLATURE PASSED HB 137 WHICH, WHILE APPARENTLY BASED ON GOOD INTENTION, WAS BAD



LAW. THE APPARENT INTENT WAS TWO FOLD - (1) TO PROVIDE AN INCENTIVE TO ENSURE SAFER HANDLING OF LARGE QUANTITIES OF OIL AND (2) TO PLACE DOLLARS INTO THE GENERAL FUND TO OFFSET ENVIRONMENTAL REPAIR COSTS, FOR DAMAGE RESULTING FROM LARGE SCALE OIL SPILLS. UNFORTUNATELY, WHAT HAS HAPPENED AS A RESULT OF THE PASSAGE OF AS 46.03.758 IS THAT THE SMALL OIL CARRIER IS PLACED IN A POSITION IN WHICH HE CAN BE SERVED WITH AN ARBITRARY FINE FOR AN OIL SPILL, REGARDLESS OF ACTUAL ENVIRONMENTAL DAMAGE. THAT FINE CAN BE VERY SIGNIFICANT AND, IN FACT, PROBABLY WOULD PUT A LARGE MAJORITY OF MY MEMBERS OUT OF BUSINESS IF THE FULL PENALTIES WERE TO BE ENFORCED IN A RELATIVELY SMALL SPILL.

ATTACHED ARE WORK SHEETS FOR POTENTIAL OIL SPILLS IN TWO TYPICAL CASES OF TRUCK ACCIDENTS.

SB 557 WAS PROPOSED TO ELIMINATE THE SMALL OIL SPILL FROM PENALTIES AGAINST WHICH THE OPERATOR CANNOT EVEN BE INSURED. THERE IS A COMPANION BILL (HB 912) PRESENTLY BEING PROCESSED THROUGH THE HOUSE WHICH PROPOSES ESSENTIALLY THE SAME SOLUTION TO THE CIVIL PENALTY PROBLEM AS SB 557. IT IS OUR RECOMMENDATION THAT THE TWO BILLS BE COMBINED. WE THINK THAT THE RATIONALE AND THE GALLONAGE FIGURE SUPPLIED BY HB 912 WOULD PROVIDE THE PROTECTION NECESSARY TO CARRY OUT THE INTENT OF THE ORIGINAL LEGISLATION. OUR TANK TRUCKER NOW RUNNING THE HIGHWAYS CARRY A MAXIMUM LOAD OF ABOUT 11,500 GALLONS



OF PETROLEUM PRODUCTS. SINCE THE TREND HAS BEEN TOWARD LARGER EQUIPMENT WE SUGGESTED THAT A FACTOR OF 12,500 GALLONS BE USED TO EFFECT THE LOWER LIMIT OF CIVIL PENALTIES. THIS WOULD PROVIDE PROTECTION NECESSARY FOR THE NEXT SEVERAL YEARS. IN EARLIER HEARINGS OF HB 912 THE 12,500 GALLON FIGURE WAS REDUCED TO 12,000. THAT IS FINE BY US. IT HAS ESSENTIALLY THE SAME AFFECT AS THE 12,500 FIGURE.

THE ATA SUGGESTS AS AN AMENDMENT THAT THE TEXT OF HB 912 BE ADOPTED AS SB 557. THIS WILL HAVE THE AFFECT OF ESTABLISHING THE LIMITATION NECESSARY TO PROTECT THE SMALL FUEL CARRIER AND ALSO PROVIDING A MUCH BETTER STATEMENT OF LEGISLATIVE INTENT THAN IS IN SB 557. IT WILL ALSO HAVE THE AFFECT OF MAKING PASSAGE OF THIS LEGISLATION MUCH EASIER.

ON BEHALF OF MY ASSOCIATION, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO BE HEARD.

WORK SHEET  
FOR  
AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

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