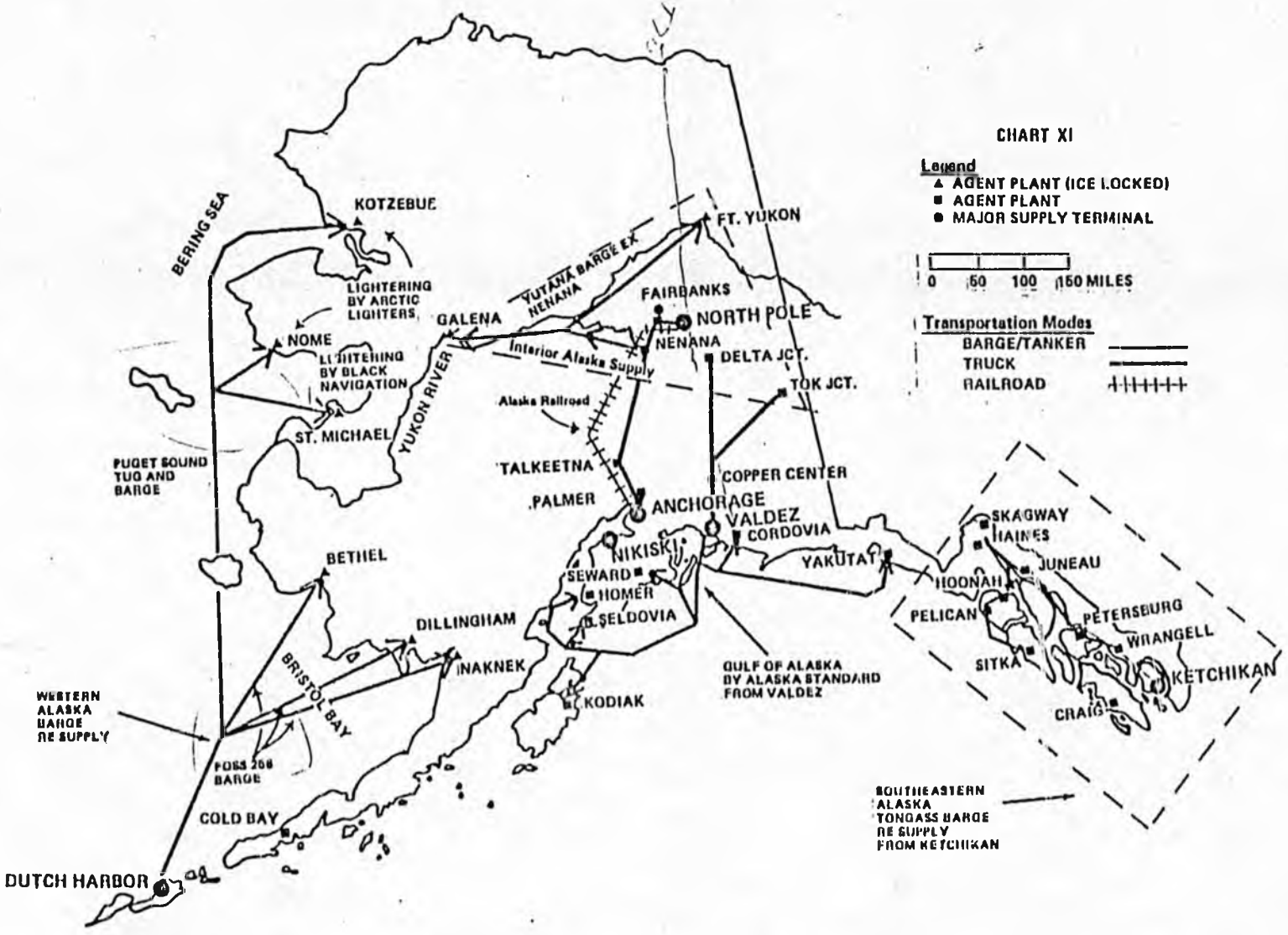
HB

509

Alaska Secondary Distribution



FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 509
Title: "An Act relating to aviation fuel refiners;..."
Sponsor: Repr. Hurlbert
Requestor: House Labor & Commerce
Date of Request: 3/28/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues)
Phone: 465-3672
Division: Administrative Services Division
Date: 3-28-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues, for)
Date: 3-28-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 509

March 28, 1984

This bill amends Alaska's Code of Civil Procedure by exempting aviation fuel refiners from liability in a civil action for injuries resulting from the use of contaminated or impure fuel unless the fuel refiner intentionally, recklessly, or through gross negligence, causes or contributes to an injury. This exemption from liability would also not apply when an aviation fuel refiner transfers aviation fuel directly into the fuel tanks of an aircraft. This bill also amends Title 45, Trade and Commerce, to provide that an aviation fuel refiner may not refuse to sell aviation fuel solely because the purchaser provides drums of 50 gallons or more into which the aviation fuel is to be delivered.

Enactment of this bill will probably not have any direct fiscal impact on the Department of Law because it deals with private sector liability matters rather than the legal operations of state government. State funds could be significantly impacted, however, in a more indirect manner.

If, for instance, a major aircraft disaster occurred at a state operated airport, the state could be one of several parties with potential liability. When another party is shielded from liability, as is provided for in this bill, that portion of the liability that is shielded is not extinguished but, rather, it is transferred to the remaining liable parties. In this event, the total potential liability would be shouldered by the remaining parties, including the state, but excluding the aviation fuel refiner, even though contaminated or impure fuel might be a contributing cause. Because there are so many uncertainties involved in assessing potential liability, the cost of such an eventuality cannot be estimated. Consequently, no fiscal impact has been shown in this analysis.

MEMO

FEBRUARY 28, 1984

TO: JOHN

FROM: KEN

RE: HB 509

DUE TO ADDITIONAL CHANGES IN THE LANGUAGE OF HB 509 "RELATING TO AVIATION FUEL SUPPLIERS", THE COMMITTEE SUBSTITUTE IS STILL IN THE DRAFTING STAGE. HB 509 HAD BEEN PLACED ON TODAY'S CALENDAR. IT WILL BE RE-SCHEDULED SOON.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 12, 1984

TO: Representative John Cowdery
ATTN: Merrill Sikorski

FROM: Nancy Pease *Nancy Pease*
Legislative Analyst

RE: Product Liability Laws for Aviation Gasoline
Research Request 83-249

Merrill Sikorski of your office requested information regarding product liability for aviation gasoline in other states. He expressed a special interest in legislation that would limit the liability of suppliers and distributers of aviation gasoline.

I contacted Chevron USA, the Office of Air Worthiness Standards of the Federal Aviation Administration (FAA), the Aircraft Owners and Pilots Lobbying Association, and the aeronautics and consumer protection agencies in Alaska and five other sta es. It appears that no states have laws which limit product liability for aviation gasoline. However, several of the agencies I contacted mentioned other issues regarding the quality control of aviation fuel which may be of interest to you.

According to Thomas Horess, manager of the Propulsion Branch of the FAA's Office of Air Worthiness Standards, the FAA has seen no need to federally regulate aviation gasoline in the past. However, since August of 1982, the FAA has authorized the use of high octane automobile fuel in 12 or more models of general aviation engines and airplanes. As a result, concern has increased in several states over liability for auto fuel used in aviation. Automobile fuel normally is not subject to the strict quality controls that assure the purity of aviation gasoline. The FAA stipulates that automobile gas used in aircraft be handled according to the American Society of Testing and Materials (ASTM) standards for aviation gasoline. However, Mr. Horess said that the gasoline industry has difficulty controlling product quality at the gas station distribution level, a problem that has raised concern about product liability for the fuel suppliers.

Pat Chapman, a researcher fo. the Aircraft Owners and Pilots Lobbying Association, also mentioned the issue of product liability for automobile fuel used in aviation. Mr. Chapman noted that the fuel manufacturers are increasingly concerned over major settlements and awards in product liability lawsuits, but he could find no legislation addressing the issue in other states.

Jim Day of Chevron's public affairs office in Anchorage reported that he was not aware of any efforts to legislate limits to liability for aviation fuel. However, Mr. Day mentioned that Chevron had refused to supply some remote fueling sites in Alaska in instances where facilities were inadequate to assure against fuel contamination. According to Mr. Day, general aviation in Alaska involves unique fuel liability situations which are not likely to have arisen in other states.

Mr. Sikorski indicated that he thought Ohio might have a law limiting the product liability of aviation fuel, but I could find no such law in the Ohio Revised Code or through talking with numerous Ohio state agencies. I contacted aeronautics and consumer protection agencies in four other states with similar negative results.

While no states have limited the liability for fuel products, approximately 15 states have adopted ASTM quality standards for the production and handling of petroleum products, and a few states have developed fuel inspection programs.[1] Otherwise, states have little involvement in regulating fuel quality.

I am still trying to contact the Product Liability Defense Bar, an association of attorneys based in Washington D.C. If they can provide any further information on this issue, I will certainly pass it on to you. However, it appears that no states have passed legislation to limit product liability for aviation gasoline.

If we can assist you further on this or other issues, please feel free to contact us.

NP

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[1] Brad Parker, investigator for the Alaska Consumer Protection Agency, telephone conversation, December 20, 1983.

MEMORANDUM

RE: HB 509 - Aviation Fuel Liability

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than in any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken to the vast majority of Alaskan locations.

1. Marketing Aviation Fuels in Alaska.

In order to fuel the ever growing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse locations across the state. However, because of the increasing exposure to liability from the sale of aviation products, many companies have removed themselves from the Alaskan market. Due to the relatively low volume, and geographically diverse, aviation fuel market in Alaska, the increased exposure to liability has resulted in a declining incentive to market aviation fuel in the state.

This is particularly true with aviation gasolines, as opposed to jet fuels. For the most part, jet fuels are used in commercial aviation where the volume sales are high, and the geographical distribution is not as great. Aviation gasoline constitutes a relatively minor portion of the total market for aviation fuels. On the other hand, because of its low volume, the relative multitude of individual sales, and the geographical diversity of the ultimate customers, aviation gasolines account for the greatest exposure to liability in the aviation fuel market.

For example, in 1981, Chevron U.S.A. Inc., the largest marketer of aviation fuels in the state of Alaska, sold a total of 375 million gallons of aviation fuel in the state. Of that total, jet fuel sales accounted for 360 million gallons. Only 15 million gallons of aviation gasoline were sold. As stated before, although aviation gasolines account for only 4% of Chevron's annual aviation fuel sales, these sales provide by far the greatest exposure to liability.

2. Aviation Fuel Refiners - Unprecedented Exposure to Liability.

Aviation fuel refiners are at an unfair disadvantage with respect to the sale of their products as opposed to the sale of other products by other companies. The exposure to liability is much greater than with almost any other product because of the serious consequences of any aviation accident.

The court's development of the strict liability theory for defective products has created a legal situation wherein the refiner is virtually guilty until he proves himself innocent.

Because most refiners are large companies, the Deep Pocket Theory invites plaintiffs' attorneys to join them in actions even were liability is unlikely. Refiners may at times find it more economical to settle a case than spend thousands in defense, even when they believe there is no liability.

Even where the refiner is successful in defending such cases, the court's award of costs and attorneys' fees rarely represents even one-half of the actual expenditures. This, of course, does not even consider the in-house costs of the refiner in investigative and administrative endeavors related to the litigation. In addition, where the court makes a cost award for attorneys' fees and costs incurred in defending such an action, collection of the award is never guaranteed and often is not possible.

Examples of the effect of this increased exposure to liability are not difficult to find in Alaska. In 1980, Texaco quietly withdrew from the aviation fuel market because of the potential liability it faced. This removal prompted a letter from Governor Hammond to Chevron U.S.A. Inc., asking that Chevron do everything possible to remain in the aviation fuel market, and inquiring as to whether there might be any assistance the State of Alaska could render in that regard.

Union Oil Company withdrew from the aviation fuel market in Southeast Alaska sometime ago for the same reason. Others may do the same thing in Southcentral Alaska as a result of the Spernak Airways incident.

In that case, a plane carrying four people crashed on take-off at Merrill Field in Anchorage. It was determined that the cause of the crash was water in the gas lines of the airplane. According to the investigator for the National Transportation Safety Board (NTSB), the source of the water which contaminated the plane's fuel lines was the storage tanks kept by Spernak Airways at Merrill Field. Spernak Airways maintained a $500,000 general liability policy, and has settled the case for the policy limits. However, in spite of the NTSB's findings that the source of the water was the Spernak storage tanks, Union Oil was sued for damages in the amount of $5,000.000.

3. The Use of Barrels in the Distribution of Aviation Fuels.

In an attempt to reduce its exposure to liability, Chevron has declined to place aviation fuel in used barrels for distribution to the popular aviation market. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance this state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron will not sell aviation fuel in a barrel.

In this regard, it should be noted that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There in thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Typical supply routes of aviation fuel in rural Alaska include the following:

A) Direct purchase by the consumer from a Chevron-owned bulk plant - such as the bulk plants located at Kotzebue, Nome and Bethel.

B) Purchase by a Chevron aviation fuel dealer from a Chevron-owned bulk plant and sale by the Chevron aviation fuel dealer to the consumer.

C) Purchase by anyone acting as a "middleman" from a Chevron-owned bulk plant or a Chevron aviation fuel dealer and sale by the middleman to the consumer or to another middleman - such an ultimate sale by the middleman would be of unbranded product.

Chevron has learned that some of its dealers and some "middlemen" who buy aviation fuel from Chevron have (while not be under any obligation to do so) adopted Chevron's policy of declining to deliver aviation fuel in used drums supplied by the customer.

A recent example may help to illustrate the complex supply routes and the impact on rural residents.

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

4. Alternate Marketing Options

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.

5. House Bill No. 509

House Bill 509 as originally introduced protects only aviation fuel refiners from unreasonable assertions of liability. As indicated above, numerous and probably the majority of sales of aviation fuel in Alaska are made by independent businesses that are not owned or controlled by Chevron. Perhaps consideration should be given to:

a) expending the protection of the bill to include within its protection all sellers of aviation fuel to the ultimate consumers, and

b) restricting the bill's applicability to sales of less than a given amount, such as 10,000 gallons.

GOVERNOR

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W.m. Cro

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1981

Mr. James Howard
Chevron International
P.O. Box 1580
Anchorage, AK 99510

Dear Mr. Howard:

As you know, due to a revised product procurement policy and its attendant transportation changes, one supplier of aviation gasoline has significantly cut back its sales of this product in Alaska. I have been made aware that this action has caused problems for some aircraft operators in various parts of the state. As you also know, avgas plays a large, more vital role in the life and commerce of Alaska than in any of the smaller states, or perhaps the world. Therefore, supply disruption here has an impact on more people than just the directly concerned parties.

I am aware that you have already provided assistance to some aircraft operators experiencing supply problems. Your efforts to date are appreciated. I can only ask that you continue to do whatever else you can to assist those other operators who are still without an avgas supplier.

Please contact the Division of Energy and Power Development if you have questions or if the State of Alaska can assist you in this matter.

Sincerely,

Jay S. Hammond
Governor

cc: Jessie Dodson
Clarissa Quinlan

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

'ILLIAM J. TOBIN
Associate Editor
d General Manager

FRED DICKEY
Executive Editor

y fuel linked to air crash

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ater and rust con-
he fuel system of
at Merrill Field has
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in October 1979.
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clined to specify the terms.

Bud's Aircraft is no longer a part of the suit, and Cessna Aircraft has been added as a defendant. Camp ot said the partial settlement with Spernak "does not affect or waive any rights with Cessna or Union"

The suit charges that an employee of Diamond Shamrock Chemical necessary to detect the presence water in and that Spernak Airways pr the tank on Oct. 6, 1979.

Cessna Aircraft, the suit says, was "grossly negligent," and showed "wanton disregard for proper design, manufacture, warning and instruction for use" of the fuel system on the model 207 aircraft.

The suit also says the plane crashed as "a direct and proximate result" of Cessna's "defective design, manufacture, warning and instructions for use" of the craft's fuel and related systems.

Damages in excess of $5 million" are being sought, according to the suit.

George Spernak, owner of Spernak Airways, said he hadn't seen the transportation board's report and declined comment on it. When a portion of report was read to him Monday, Spernak said, "We've been here since 1955 and we haven't heard those reports."

Spernak Airways has two underground fuel tanks which are supplied by Union Oil, Spernak said, adding "they are checked for water by Union Oil each time and we watch their procedures."

Spernak said the same fuel tanks

(See FUEL, page A-3)

Fuel . . .

(Continued from page A-1)

are being used now that were used at the time of the crash.

Each air taxi operator is responsible for maintaining its storage tanks. No local, state or federal regulations currently are in effect to govern fuel storage or tank maintenance.

Merrill Field Manager Joe Fouts said the municipality, which operates the field, leases land to the various air taxi services for their operations. He said about 20 leaseholders have their own underground fuel tanks.

Joe Swanson, head of the state's division of weights and measures, said a bill had been pending in the legislature to give his agency jurisdictionover fuel tank maintenance.

"But the bill didn't go anywhere," Swanson said.

The federal board said it recognized the pilot is responsible for making sure that an airplane has uncontaminated fuel.

Pilots normally check for water or particles during preflight inspection, the report said, and contamination can be detected because water or particles settle to the bottom of the tank.

"However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank," the report said. "This creates the opportunity for contaminated fuel to go undetected."

The report goes on to list several other instances which may prevent immediate detection of contaminated fuel and concludes, th while the pilot, "although respons ble, is presented with situations which water detection is difficult."

The board recommended that th Federal Aviation Administratic adopt three specific regulatio which would:

running out of gas

by Patti Epler
Times Writer

Two Merrill Field businessmen say they will either have to close their doors or raise their prices because Texaco Inc. as decided to cut back its sale of aviation gas in Alaska.

Gene Bender of Piper Sales Alaska and Ken Triplett of Alyeska Air Service say they have nowhere to turn for wholesale gas. The men said neither of the two other suppliers of aviation gas in Alaska, Chevron USA Inc. and Union Oil Co. of California, are accepting new customers.

The other companies are not taking new customers until they see what happens to two bills before the state Legislature that would limit the liability of oil companies in the sale of gas.

Bender and Triplett are the only two cut off by Texaco in Anchorage. The third and largest Texaco retailer, Air Associates at Anchorage International Airport, will still have fuel, a Texaco spokesman said.

The spokesman said Texaco has not done much business in Alaska in the past and has decided to cut back on the aviation gas business here because it's just not worth their trouble.

Piper Sales, Alyeska Air Service and Air Associates are the only Texaco retailers in Anchorage.

In three weeks, said Bender, "I'll have to close my doors. It's either that or get some awful powerful rubber bands and some big apes to wind them up."

Bender said his business consists of aircraft sales and service, rental of planes and student instruction.

Additionally, he said, more than

(See AIRCRAFT, page A-3)

(Continued from page A-1)

600 pilots per month gas at his pumps.

Now, he says, he's not selling any fuel to anybody. What he has left in his storage tanks he must keep for his own aircraft.

Triplett, who runs a charter business, said he also has cut off his 15 regular customers in order to protect his own supply.

He will be forced to buy gas from competitors at the going, public rate. That, he said, will force him to raise his charter prices between $5 and $10 per hour, a factor he believes will unfairly price him out of the market.

"It's an unfair advantage," he said. "I've got too much invested here to go out of business. I'll just have to make ends meet."

Triplett said Chevron and Union are not taking new customers because they don't want to add to their liabilities. He is hoping the two bills limiting oil companies' liability will pass this year.

The problem now, he said, is that state law makes the oil companies responsible for their fuel even after they have sold it to someone else.

The bills would stop the liability of the oil companies once they have sold their gas to a retailer and the retailer puts it in his own tanks, Triplett said.

"But," he said, "even if those are passed, there's no guarantee they'll take Alyeska Air Service as a customer."

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

from Linda Deegan

ISSUED: February 6, 1981

Forwarded to:

Mr. Charles E. Weitboner
Acting Administrator
Federal Aviation Administration
Washington, D.C. 20591

SAFETY RECOMMENDATION(S)

A-81-9 through -11

On October 8, 1979, a Cessna 207A, N6424H, crashed into a hangar at Merrill Field, Anchorage, Alaska, moments after lift-off from runway 33. All four occupants were killed, and the postcrash fire destroyed the hangar.

Investigation of the accident revealed that: the fuel system showed evidence of extensive water and rust contamination; the underground fuel tank at Merrill Field where the aircraft was last fueled contained a large quantity of water and rust; the underground fuel tank's filtration system was heavily contaminated; and an incorrect fuel system dispensing filter, intended for use with diesel fuel, had been installed.

In 1978, the National Transportation Safety Board investigated 17 general aviation accidents involving fuel contamination "exclusive" of water as a cause or factor, and 66 general aviation accidents involving water "in" the fuel as a cause or factor. In March 1980, the Safety Board's Anchorage field office mailed a questionnaire to all known commercial/air taxi operators in the State of Alaska. Of the operators who replied, 4 percent did not know what type of filtration assemblies and filters they used, 4 percent performed no inspections to determine when the dispensing filters should be changed, 30 percent inspected the dispensing filter daily, and 20 percent inspected the dispensing filter "at least yearly." The remaining operators inspected at intervals ranging from "once every 3 days" to "once every 3 years."

The Safety Board recognizes that the pilot is responsible for assuring that a general aviation aircraft has uncontaminated fuel. Pilots of general aviation aircraft procedurally drain a small amount of fuel from the tanks and the fuel strainer and check for the presence of water and particulate matter. If a partially filled tank cools, condensation results and settles to the bottom of the tank. This is detectable using normal preflight procedures.

However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank. This creates the opportunity for contaminated fuel to go undetected. Also, the uncontaminated fuel in the lines and fittings must first be drained to detect the water-contaminated fuel. On some aircraft, more than a quart of fuel must be drained before any water appears. Most tiedown areas where preflights checks are performed belong to flight schools or fixed-base operators, most of whom do not encourage pilots to drain a quart of fuel on the asphalt because aircraft fuel tends to dissolve this particular surface. The pilot then, although responsible, is presented with situations in which water detection is difficult.

While the Board believes that pilots must conduct an adequate preflight check, we are concerned that this is not a total solution to the problem of fuel contamination. In addition to the current pilot responsibility, the Board believes that other measures should be taken to insure against contamination. For example, fuel dispensing systems could be required to be equipped with filter/separator units which respond to the presence of free water by shutting down.

The Board is aware that 14 CFR 139 prescribes rules governing the certification of land airports serving air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board. Part 139.51 states that ". . . the applicant for an airport certificate must show that it (or its tenant), as the fueling agent, has a sufficient number of trained personnel and procedures for safely storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport (other than articles and materials that are, or are intended to be, aircraft cargo). . . ." This is the only rule that addresses the subject of storing and dispensing aviation fuel, and in addition, applies solely to air carrier airports. In the Board's opinion, 14 CFR 139 is inadequate even for those airports it covers because it does not address fuel contamination. Our accident statistics do not indicate that fuel contamination has been a problem to air carrier aircraft. However, informal communication with the FAA indicates that control of contamination is considered during airport certification via a rather broad interpretation of 14 CFR 139.51. The Board believes that the problem of fuel contamination should be specifically addressed for both air carrier and general aviation airports. In our judgment, fuel contamination should be specifically addressed for all segments of aviation rather than only that segment in which there is an apparent current problem. It has been generally accepted that standards for air carrier operations must be as stringent as they are for general aviation. We believe that the regulations should reflect this consistency.

Therefore, the National Transportation Safety Board recommends that the Federal Aviation Administration:

Expand 14 CFR 139 to include minimum specifications and design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispensing systems at airports certificated under 14 CFR 139. (Class II, Priority Action) (A-81-9)

Take necessary action to establish minimum specifications and design criteria for aviation fuel storage and dispensing systems at public-use airports not certified under 14 CFR 139. In addition to the equipment itself, such criteria should address their installation, operation, maintenance, and inspection. (Class II, Priority Action) (A-81-10)

When specifications and criteria are established for aviation fuel storage and dispensing systems at public-use airports are not certified under 14 CFR 139, establish and implement procedures to verify compliance. (Class II, Priority Action) (A-81-11)

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members, concurred in these recommendations.

By: James B. King
Chairman

TESTIMONY OF GEORGE DAY
OF CHEVRON U.S.A. INC. BEFORE
THE OUSE LABOR AND COMMERCE COMMITTEE
CONCERNING HOUSE BILL 509
FEBRUARY 2, 1984

Good Morning. My name is George Day, I am the Public Affairs Manager for Chevron U.S.A. Inc. in Anchorage. Chevron markets a complete line of petroleum products throughout Alaska and is the largest marketer of aviation fuels in the state. In 1983, Chevron sold a total of 160 million gallons of aviation fuel in Alaska. Jet fuel sales accounted for 147 million gallons, and only 13 million gallons of aviation gas were sold. For this reason, Chevron is vitally interested in the passage of HB 509.

Chevron has developed an extensive distribution system for supplying aviation fuels throughout the State of Alaska. Chevron recognizes that its primary responsibility is to deliver uncontaminated fuel to the next person in the distribution chain. Quality control is an ongoing process that requires constant supervision and the expenditure of much time and money. Nevertheless, inspection of the fuels for contaminants and for water is relatively easy. In order to demonstrate this, we have brought samples of jet fuel, Avgas 80, and Avgas 100.

[Demonstrate inspection process]

A description of our distribution process to the urban areas and to the bush areas of Alaska should help the committee members of understanding the liability problems faced by an aviation fuel refiner.

[Describe Anchorage process]

[Describe Bethel process]

The development of the theory of strict liability in products liability cases has greatly expanded the liability exposure of an aviation fuel refiner to fuel liability. As you may know, the plaintiff in a strict liability lawsuit need only demonstrate that he was sold a "defective product" by the defendant which caused damage to the plaintiff. The plaintiff is not required to demonstrate that the defendant's conduct in manufacturing or maintaining the product was negligent.

The essential distinction between aviation fuel and other products for which strict liability is imposed is that most other products such as automobiles or furniture or even airplanes are static in their quality once they have been manufactured. Generally speaking, barring unforeseen events, other products remain in the same form as they were immediately after their manufacture. However, the quality of aviation fuel is always subject to incremental change depending on the quality of the handling thereof.

At each stage of the distribution process, contamination is a distinct possibility that must carefully be guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty, and/or contaminated depending on the quality of the storage and the method of handling. Once a

refiner has placed aviation fuel in the storage tanks of another person not under the refiner's control, we believe that it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

Nevertheless, because most refiners are large companies, plaintiffs' attorneys tend to join them in actions even where liability may be unlikely. Refiners may at times find it more economical to settle the case than spend thousands in defense, even when they believe there is no liability. In response to this increased exposure to liability, companies have quietly withdrawn from the aviation fuel market in Alaska. Texaco did so in 1980, and Union Oil Company has pulled out of the aviation fuel market in Southeast Alaska.

Barrels pose a particular dilemma for the refiner. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance the state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron does not sell aviation fuel in a barrel.

It is important to realize that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on

the top of the barrel near the bunghole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Obviously, used barrels pose additional problems beyond subsequent contamination. No dealer has the facilities to complete an accurate inspection of barrels prior to refilling them. For these reasons, Chevron declines to refill used barrels with aviation fuel.

These problems combine to create strong incentive to discontinue the present marketing system in the state. For example, in the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers who meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant after Chevron has certified that the carrying vehicles are appropriate for the transport of aviation fuels.

It is imperative that the State of Alaska take immediate steps to provide a fair economic climate that would allow the continued distribution of aviation fuels to all areas of the state.

The sole purpose of HB 509 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable exposure to liability. This will go a long way toward assuring adequate supplies to remote geographical locations and to individual customers.

The means selected to achieve this objective are carefully tailored to meet the needs that have been stated. Under HB 509, refiners are still subject to liability when they place fuel directly into aircraft. This is as it should be, since the refiners have total control of the quality of the product up to final delivery.

Except for gross negligence, recklessness or intentional conduct, the refiner is not liable where the fuel is delivered other than directly into an aircraft. The important point to note here is that once title and possession have passed from a refiner, the refiner no longer has control over the integrity of the fuel and should not be held liable therefor.

Aviation fuel refiners will not dismantle quality control programs merely because of the passage of this legislation. It should be again emphasized that refiners are still fully exposed to liability where they fuel airplanes directly. Thus, the dismantling of the quality control program which results in the delivery of contaminated fuel into an aircraft by a refiner would still fully expose the refiner to liability.

Furthermore, even where the deliveries are not made directly into an aircraft, quality control programs will remain. The dismantling of a quality control program, and the use thereafter of little or no care in the manufacture of aviation fuel, may be held to be "gross negligence" under the bill. Thus, the refiners' liability would be maintained in such situations.

HB 509 re-establishes the balance that has often been lost in the development of products liability law. Each entity in the distribution chain must take responsibility for its actions in handling aviation fuel, and must be held responsible for failure to do so properly. Aviation fuel refiners must continue to ensure quality control during the manufacture and distribution of the product. Wholesalers and retailers must also take adequate steps to ensure the continued integrity of the product during their part of the distribution chain. Finally, airlines and private pilots must continue to handle fuel in a safe manner and test for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of the aviation fuel be assured. It is for precisely these reasons that Chevron urges the adoption of HB 509.

LABOR & COMMERCE COMMITTEE OBSERVER/WITNESS SIGN-UP SHEET

DATE: 2/2/84 SPONSOR: REPRESENTATIVES HURLBERT, FRITZ & COWDERY

PLEASE PRINT

SUBJECT(S): HB 509 AN ACT RELATING TO AVIATION FUEL

PLEASE PRINT

NAME/TITLE	REPRESENTING	ADDRESS	PHONE	OBSERVER	WITNESS	FOR	AGAINST
George Dorn	Chevron USA	[illegible]	[illegible]		✓		
Bob Batchelder	Chevron USA	[illegible]	336-6500		✓		
LARRY VAVRA	UNION OIL	[illegible]			✓		
MERRILL SIKORSKI							

*FOR THE RECORD-PLEASE FILL IN ALL ABOVE INFORMATION--USE TWO LINES IF NECESSARY