HB

459

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☒ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 459 -- liability for release of hazardous substances

Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Douglas K. Mertz
Douglas K. Mertz
Assistant Attorney General

DKM/dlm
cc: Hon. Dennis Kelso
Commissioner, ADEC

03-C5LH

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will would assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner

FEB 24 '88 10:29 LEG. AFFAIRS - SOLDOTNA

TELECOPY COVER SHEET

KENAI PENINSULA INFORMATION OFFICE

(SOLDOTNA)

TO: HRES FOR: HB459 2/24 meeting PHONE: _____

FROM: C. Roser / Soldotna PHONE: 262-4232

ADDITIONAL INSTRUCTIONS: Please enter in meeting records

DATE/TIME SENT: 2/24 9:26 PLEASE ACKNOWLEDGE RECEIPT: _____

DISPOSAL OF ORIGINAL: _____ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 1 (NOT COUNTING COVER SHEET)

Arlene

Alaska State Legislature

Please enter into the record my testimony to the Resources and Judiciary committee name

committee on HB 459 bill/subject, dated 2-11-88.

I WOULD LIKE TO SEE H.B. 459 PASED. THE ONES THAT PUT THE HAZARDOUS SUBSTANCES IN THE GROUND SHOULD PAY FOR THE CLEAN UP, AND ALL OTHERS ~~FF~~ ~~FF~~ THAT ARE INVOLVED.

Signed: C. ROSER
Testifier

Representing (Optional)

P.O. Bx 172, SOLDOTNA
Address

262-4232
Phone No.

FEB 24 '08 11:01 LEG. AFFAIRS - SOLDOTNA

TELECOPY COVER SHEET

KENAI PENINSULA INFORMATION OFFICE

(SOLDOTNA)

TO: HRES FOR: HB459 PHONE: _____

FROM: Coral Allen - Soldotna PHONE: _____

ADDITIONAL INSTRUCTIONS: Please enter into record for HB 459 2/24 meeting

DATE/TIME SENT: 2/24 10:00 PLEASE ACKNOWLEDGE RECEIPT: ✓

DISPOSAL OF ORIGINAL: ✓ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 1 (NOT COUNTING COVER SHEET)

Arlene

Alaska State Legislature

Please enter into the record my testimony to the Resources and Statutory committee on HB 459 bill/subject, dated Feb 24, 1988.

Please pass HB459 which is a good start to prevent groundwater contamination. We on the Peninsula know from experience what happens from improper hazardous waste management. We have problems at Sterling, Poppy Lane, the Soldotna Garbage Dump. Monitoring wells at Soldotna Garbage Dump show Trichloroethane and Dichloroethylene.

Signed: [signature]
Testifier

[signature]
Representative

[illegible] Soldotna Alaska 99669
Address

[illegible]

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 17, 1988

The Honorable Sam Cotten
Attn: Ms. Lisa Weissler
P.O. Box V
Juneau, Alaska 99811

Dear Lisa:

Below and attached are the combined responses of the Divisions of Oil and Gas and Land and Water Management and Mining to your questions regarding bonding:

1. Process for bond approval - The decision whether to require a bond, and the amount, and type of bond are made on a case by case basis, though some standard amounts have been set by practice for some permits. The bond level is set at an amount that (a) is sufficient to detrimental activity; (2) approximates the costs of restitution and cleanup; (3) will require the bond guarantor to be concerned enough about the risk of indemnity to deny bonds to a questionable party and (4) is a sufficient risk to the guarantor to pressure the bonded party to remedy any breach.

2. Statutory and regulatory requirements - For surface activities, other than coal leases, there are no set amounts or categorical requirements for bonds as a condition of lease or permit. 11 AAC 96.060 authorizes the department to require a bond, but does not establish an absolute requirement or a set dollar value for required bonds.

3. There are no existing Hazardous Waste Facilities in Alaska. The injection wells on the slope are waste injection wells. Hazardous Waste is defined by EPA, and oil field waste does not fall into the hazardous category (it is exempted). The current bond for the injection wells is one million dollars. If any company were to apply for a hazardous waste site on state land, an appropriate bond would be applied. An added note...If a company loses a bond through revocation, it is the bonding company that pays and as such the company will no longer be bondable by any bonding agency as they will be considered a bad risk. If a

10-J9LH

company cannot be bonded, they will be effectively barred from doing business in the state in that they will not be able to acquire any contracts, hold any leases, or conduct any activity that requires bonding.

4. Penalties for unapproved activities on leases - The penalty for unapproved activity is lease revocation. In addition, other judicial remedies, such as money damages for breach of contract are available. Also bond forfeiture is a remedy (though the bond proceeds would go into the general fund). Leases have been terminated, but not in the case of North Slope surface leases. It is in the public interest to keep leases in effect to collect rent and to enforce clean up terms.

5. Childs situation - The Childs tract is being cleaned up, and the cleanup is nearly complete. However, the cleanup was paid for by ARCO, not by the lessee. Hazardous wastes were left on the leasehold and have been removed, except for contaminated gravel.

6. Prevention - More policing, more enforcement (including attorney support), a mechanism to capture bond proceeds so that they can be used to clean up the mess (rather than having to get a separate appropriation), such as a program receipts appropriation for bond proceeds.

Sincerely,

Lawrence Ostrovsky
Special Assistant

Attachment

MEMORANDUM State of Alaska

TO: Larry Ostrovsky
Special Assistant
Office of the Commissioner
Department of Natural Resources

DATE: February 17, 1988

FILE NO:

TELEPHONE NO: 465-2400

THRU:

SUBJECT: Bonds

FROM: Gerold Gallagher
Director
Division of Mining
Department of Natural Resources

In response to the February 5, 1988 inquiry regarding bonding requirement for state leases, I have collected the following information related to mining:

1. Approval of appropriate bonds: For coal and offshore lease bonds, the mimimun bond is $5.00 per acre or $5,000 whichever is greater. For coal mining under ASMCRA, bonds are an estimate of the full reclamation cost. These bonds range from 7 to 50 million dollars. Bonding for activities on state mining claims are handled on a case to case basis.

2. Are requirements in statute on regs:

Lease Performance Bonds -	AS 38.05.130
	11AAC 82.600
	11AAC 85.245
	11AAC 96.060
ASMCRA Bonds -	AS 27.21.16
	11AAC 90.201 - 213

3. Hazardous Waste:
Does not apply

4. Penalties: Failure to comply could result in termination of the lease. No leases have ever been terminated by mining. Under ASMCRA, penalties range up to $10,000 per day fines and cessation order can be issued.

t. g. Gottstein

4 March 1988

TO: Members of the House Resources Committee
RE: HB 459

Since your subcommittee hearing tomocrow will not be teleconferenced, I have elected this format to comment on this crucial piece of legislation.

The importance of strict liability for toxic substances as an incentive for safety cannot be overemphasized. Too often, in the area of toxics, we find ourselves in the position of "playing catch-up", having to spend literally millions of dollars on clean-up, which, in the end, may be only partially effective at reversing the devasting results of toxic disasters. With this legislation, you, as legislators, have the unique opportunity to make giant strides in the area of PREVENTION. Not only is this a more cost-effective approach to the management of hazardous substances, but it can spare the often irreversible damage to the public health, subsistence habitats, commercial fishing, and the environment in general which is frequently the result of mishandling toxics.

Following are my specific comments on the bill:

1) The bill makes reference several times to the responsibilities of the "owner," "operator", and "person having control over the hazardous substance. While these references are, indeed, necessary, there is one serious omission in these references to those who should bear the responsibility for a toxic disaster: the GENERATOR of the substance. Who better than the person who creates/generates the substance, to be responsible for any damage it might later cause? This would help to create an incentive to find other, less hazardous alternate methods/processes for dealing with hazardous substances. And who would be more familiar with a substance's hazardous properties and potential for damage than the person who generates it?

At a minimum, the bill should include some language about the responsibility of the GENERATOR to at least WARN others who may end up being responsible for a substance about the toxic nature of a hazardous substance, and its potential for damage.

2) In the section of the bill which relieves someone of strict liability, you, once again, have a golden opportunity to provide

a very simple incentive for safety [Sec. 46.03.822 (b)(2)]. Many times, some of the devastation caused by toxics could be minimized if an incident were merely reported in a more timely manner, but this isn't done for fear of liability. With this bill, you have a chance to reverse that.

If, on Page 2, Line 29, you were to add a letter (2) (C), to read:

(B)....;and

(C) upon discovery of the release or threatened release, immediately reported it to the Alaska Department of Environmental Conservation.

3) On Page 2, Line 18, the words "due care" should be strengthened, perhaps to "preventive care".

4) On Page 2, Line 20, the word "reasonable" should be changed to "necessary", to eliminate some of the ambiguity.

Thank you for this opportunity to comment on the bill. I will be watching its progress with interest.

Sincerely,

Terrie Gottstein

Terrie Gottstein

6201 West Tree Drive
Anchorage, Alaska 99516
(907) 258-4040

THEODORE PAUL HUNTER
ATTORNEY AND COUNSELOR AT LAW

PIONEER BUILDING, SUITE 612
600 FIRST AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE
(206) ~~682-9330~~ 628-0700

hr 1

January 25, 1988

Ms. Marilyn Heiman
c/o Representative Mike Davis
P.O. Box V
Juneau, Alaska 99811

Dear Marilyn:

Thank you for the copy of your legislative proposal on liability for hazardous waste cleanup costs. I have reviewed it quickly and have two comments:

1. The phrase on p. 1, lines 11 and 12 "to the extent not preempted by federal law" should be removed. Ordinarily, a phrase of this nature is no problem because it states a consitutional truth: state law is not effective if preempted by federal law. However, in the hazardous waste area this phrase could create a difficulty because so much of the law in the federal area is currently being developed by the courts. For example, the federal Superfund law does not expressly provide for strict, joint and several liability; federal courts determined that was the intent of Congress. If state actions must wait for federal court determinations of the meaning of law, a defendant in an action brought by the state could argue <u>possible</u> preemption of the state law by federal law and thus cloud the enforcement authority of the state. Deleting the phrase would remove doubts about state authority.

2. There is a need to define "release" and "substantial threat" of release. This may exist in other sections of Alaska law. Would those definitions also apply here? Is release broadly defined as in federal law (for example, "allowing to seep")? Does "substantial threat" mean to the public health (a broad community) or to human health (one person)? Since liability would hinge on these definitions it would be useful to attempt to address them legislatively rather than allow the courts to define if that can be done politically.

It was a pleasure "meeting" you on the phone. If I can assist you in any way on this issue, please don't hesitate to call.

Sincerely,

Ted Hunter

P.S. Look for my article on Hazwa in the March issue of the Northwest Environmental J.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 21, 1988

SUBJECT: Sectional analysis of CSHB 459( )
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein EHA
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459( ) expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the persor who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459( ) also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031

Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
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100 CUSHMAN ST.
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JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 459 -- liability for release of hazardous substances

Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Douglas K. Mertz
Douglas K. Mertz
Assistant Attorney General

DKM/dlm
cc: Hon. Dennis Kelso
Commissioner, ADEC

03-C5LH

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

KENAI PENINSULA BOROUGH
144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

POSITION PAPER
HB 459 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 459. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

As you are aware, the occurrence of hazardous waste problems on the Kenai Peninsula is rapidly increasing, as evidenced by the Governor's recent request for $955,000 in his supplemental appropriation bill.

In many of those cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In these instances, the state or local governments many times have to bear that cost and responsibility.

A specific example is the Sterling special waste site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned the the Kenai Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. After a number of years of operation, the contractor filed bankruptcy and abandoned the pit. The Kenai Peninsula Borough now bears total cost and responsibility for closure and clean-up of the site. It is uncertain exactly what has been disposed of in the pits, and now must be treated and closed as a hazardous waste site.

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: All members of the press
From: Rep. Mike Davis
Date: February 11, 1988

PRESS RELEASE

FOR IMMEDIATE RELEASE

Today, Rep. Mike Davis (Fairbanks) will introduce HB 459, legislation to strengthen the Alaska statutes and more clearly define the responsibility for hazardous substance releases.

"I'm introducing this bill to assure that producers of hazardous substances handle and dispose of substances properly. If producers are strictly liable it will encourage proper disposal of waste," said Mike Davis the bill's sponsor.

"Last spring the Department of Environmental Conservation discovered solid and hazardous waste on property leased from the state on the North Slope. The contractor had declared bankruptcy and the state had essentially no recourse for recovering the clean up costs of almost a half million dollars. HB 459 would tie the clean up responsibility to the producers of the waste."

In many instances the state and local communities end up paying the cost of clean up because the state statutes in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release.

Under existing law, if the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape liability.

HB 459 mirrors the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. The bill will allow the same laws to be used in state court as are used in federal court.

####

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: House Resources Committee

FROM: Rep. Mike Davis

RE: Strict liability for hazardous substance releases

DATE: February 24, 1988

Attached is a bill which would strengthen the Alaska statutes in regard to liablility and more clearly define the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.

Introduced: 2/11/88
Referred: Resources and Judiciary

devisees?

5-1465A

BY DAVIS, KOPONEN, NAVARRE, SWACKHAMMER, GOLL, SUND, DAVIDSON, ULMER AND BROWN

IN THE HOUSE

HOUSE BILL NO. 459

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) Notwithstanding any other provision of law, and to the extent not preempted by federal law, the following persons are strictly liable for damages to persons or property, public or private, including the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

SUND →

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

Sam

(4) a person who owned or controlled the hazardous substance and who, by contract, agreement, or otherwise, arranged for

2/24 - Mertz - resp'y w/ last owner, but 2nd transfer wd mean 1st owner. Wdn't hv. any more resp'y. (Marilyn has WA state law re fed/state ltig coverage) Sund wants haz's substances. - wd inc. paints etc.? - any state resp'y to help prov. sites for dry cleaning agents etc. - insurance problems/avail'y in AK. does it cover individuals buying creosote

Sund had a language problem on p. 2 That I missed cuz Marilyn was talking to me Drue - contract for contrctn, say pilings treatment. - Mertz didn't own or contract DNR lease terms. DEC needs to work on them - Jerry - Is. req's dev't plan - '74 handy req'ts wr. diff. - led to CD's. that.

Mertz - need to create incentives. Denney - the bill doesn't create new resp's, just clarifies where it lies -

Mertz - rmv. administrators on p. 1 -

another party or entity to transport, store, dispose of, or treat the hazardous substance, regardless of whether title to the hazardous substance was transferred to the other party or entity as part of the transaction; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this section, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean u the hazardous substance.

Sund - buying propty already holding wastes? - liability for subseq. disc's of wastes

(c) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

NEW SECTION. Sec. 4. STANDARD OF LIABILITY. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substance;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substance at the facility, or otherwise generated hazardous waste disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by the person, from which facility there is a release or a threatened release for which remedial action is required, unless the facility, at the time of disposal or treatment, could legally receive the substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that the facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs at or associated with the facility and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, may recover all costs and damages from persons liable for them.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise liable was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense applies only where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

Innocent landowner provision →

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This paragraph (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this paragraph (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this paragraph (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this paragraph (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous

substance at the facility;

(c) Any person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who assists the resident in the use of the substance; or (iii) a person who is employed or retained by the resident;

(d) Any person who, without negligence and in accordance with all federal and state laws, applies pesticides or fertilizers for any of the following purposes: (i) Producing any crops, farm animals, or any other farm product; (ii) growing Christmas trees; (iii) growing any nursery plant; or (iv) growing trees, including trees for the production of timber. This exemption also extends to any owner of land leased to such person and an applicator with whom such person enters into a contract for the application of the pesticides or fertilizers, so long as the application is without negligence and is in accordance with all federal and state laws. This exemption does not apply to aquaculture; or

(e) Any person with respect to the release or threatened release of used motor oil collected by the person for recycling, if the oil (i) is not mixed with any other hazardous substance; and (ii) is collected, stored, and maintained by the person in compliance with all federal and state laws and without negligence. Unless the person has reason to believe the contrary, it shall be presumed that used motor oil that has been removed from a vehicle by the owner and delivered to the person for recycling has not been mixed with any other hazardous substance.

(4) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss caused by a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

NEW SECTION. Sec. 5. PETROLEUM. (1) Petroleum, including crude oil or any fraction thereof, is covered only by the provisions of subsection (2) of this section and section 11(2) of this act, and by

DELIM ;
INBOX

SUBJECT: HRES;FS;HB459;2-24-88 SENT 02/24/88 10:26
FROM: LTCCFBX
FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: PERM

DATE ____FEBRUARY 24, 1988
SITE: ____FAIRBANKS
SPONSOR ____HOUSE RESOURCE
SUBJECT: ____HB 459 - HAZARDOUS SUBSTANCE CLEAN-UP
NO'CEATOR ____FAN

MORE...
DELIM ;
INBOX

SUBJECT: FS 2-20-88 SRES GUIDES SENT 02/20/88 14:40
FROM: LIOCMAT
FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3
....+....2....+....3....+....4....+....5....+....6....+....7....+....8.. ******

UNABLE: 4 001/34
OBSERVED: 2 001/35
TOTAL: 14 001/36
001/37
START END TIME 12 NOON - 2:[illegible] 001/38

DELIM ;
INBOX

SUBJECT: HRES, HB 459, 2/[illegible] SENT 02/24/88 10:51
FROM: LIOCANC
FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3
....+....2....+....3....+....4....+....5....+....6....+....7....+....8.. 001/01

*** FINAL TELECONFERENCE STATISTICS *** 001/02
001/03
001/04

DATE: FEBRUARY 24, [illegible]______________________ 001/05
SITE: ANCHORAGE______________________ 001/06
SPONSOR: HRESOURCES______________________ 001/07
SUBJECT: HB 459, HAZARDOUS SUBSTANCE CLEANUP______________ 001/08
LOCAL MODERATOR: LANA LOU TRUJILLO______________________ 001/09
001/10
** 001/11
001/12
TESTIFIED: 001/13
NAME/REPRESENTING OFFICE PHONE # 001/14
001/15
001/16
001/17
001/18

MORE...
DELIM ;
INBOX

SUBJECT: HRES, HB 459, 2/24 SENT 02/24/88 [illegible]
FROM: LIOCANC
FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3
....+....2....+....3....+....4....+....5....+....6....+....7....+....8.. 001/01
001/19
** 001/19
OBSERVED: 001/20
NAME/REPRESENTING OFFICE PHONE # 001/21
PATTI SAUNDERS, TRUSTEES FOR AK, 725 CHRISTENSON, #4 99501 001/22
274-4[illegible] 001/23
KRISTINE BENSON, AK CTR. FOR THE ENV'T., 700 H ST, #4 99501 001/24
274-3[illegible] 001/25
DAVID WIGGLESWORTH, AK HEALTH PROJECT, 431 W. 7TH 001/26
276-20[illegible] 001/27
** 001/28
001/29
TESTIFIED: ____0______ START TIME 8:40AM 001/30
OBSERVED: ____3______ END TIME 10:00AM 001/31
TOTAL: ____3______ 001/32
001/33
001/34

MORE...
DELIM ;
INBOX

SUBJECT: JT. HSS, [illegible] HEARING, [illegible] SENT 02/24/88 10:[illegible]
FROM: LIOCFAV
FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: PERM
....+....2....+....3....+....4....+....5....+....6....+....7....+....8.. 001/01
*** FINAL TELECONFERENCE STATISTICS *** 001/02

(9)

HOUSE COMMITTEE REPORT

Date referred: 2/11/88 FURTHER REFERRALS: Judiciary

DATE: 3-22-88

The Resources Committee has considered HB 459

"An Act relating to liability for releases of hazardous substances."

RECOMMENDS:

[X] replace with CS HB 459 (Res) [X] the same title
[ ] attached amendment(s) [ ] a new title

[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[X] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Sen Con
Adelheid Herrmann
C.M. Davidson
Mike Navarre

SIGNING OTHER RECOMMENDATIONS:

Lyman Hoffman Vol Ca

Sen Con
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 459
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to liability for releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Cotten

Agency Affected: DEC
BRU: Environmental Quality
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: [illegible] Phone: [illegible]
Division: [illegible] Date: [illegible]

Approved by Commissioner: [illegible] Date: [illegible]
Agency: DEC

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Page [illegible]

Original sponsors: Davis, Koponen,
Navarre, et al.

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 459 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.822 is repealed and reenacted to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) The following persons are strictly liable, jointly and severally, for damages to persons or property, public or private, including damage to the natural resources of the state and the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned the hazardous substance and who arranged for disposal or treatment of the substance by another party

or entity, or arranged with a transporter to transport the substance for disposal or treatment by another party or entity, at a facility or incineration vessel that contained the substance and that was owned or operated by the party or entity; and

(5) a person who transported or accepted the hazardous substance for transport to the facility, vessel, or site from which the release occurred or was threatened to occur, if the person selected the facility, vessel, or site.

(b) In an action to recover damages, a person otherwise liable is relieved from strict liability if the person proves by clear and convincing evidence

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) an intentional or negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act of the third party and against the consequences of the act; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an employee of a third party is in privity of contract with the person who is otherwise liable if the third party or employee and the person are parties to a land contract, deed, or other instrument transferring title or possession, unless the real property on which the facility in question is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person by a preponderance of the evidence establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes one or more of the following circumstances:

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a government entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person acquired the facility by inheritance or bequest.

(d) To establish that a person had no reason to know that the hazardous substance was disposed of, on, in, or at the facility, as provided in (c)(1) of this section, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection the court shall take into account any specialized knowledge or experience the person has; the relationship of the purchase price to the value of the property if uncontaminated;

commonly known or reasonably ascertainable information about the property; the obviousness of the presence or likely presence of contamination at the property; and the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility and who would otherwise be liable; however, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not affect the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility.

(g) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

* Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe

or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

The strongest ~~brew~~ Brood Brewed

McDonough also sent the CIRCULAR 1151

this language still prov's a "midnight-dumper sit'n" ... to Mertz – but elim's the remote/perpetual liability issue – absolve the seller but not ... or disposer of ... –

→ Gensler [illegible] – [illegible] – [illegible]

[illegible]

[illegible]

Mertz – [illegible]

[illegible]

Mertz explains [illegible]
Sind's designated employee [illegible] ... he's out of employment –
Mertz explains [illegible] ... on his 3/6/85 handout –
Navarre – "appropriate inquiry" – suppose you weren't able to ... you bought the prop'y a long time ago –

(3)

Judy Eckholm raised ex. of a person buying a home on a subdiv. made from an old homestead — unbuyed ... etc — wd be resp. for wastes [illegible] by the homeowner. — Meets — if any [illegible] wd be [illegible]

[illegible]

5-1465A

3/5/88
Metz

SUBSTITUTE LANGUAGE AT "A":

(4) a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and

NEW LANGUAGE AT "B":

(5)(1) The term "privity of contract" in (b)(1)(B) of this section includes, but is not limited to, being a party to land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii)

is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of subsection ~~107~~(b)(3)(A) and (B).

2(A) (B)

(2)(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3)(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

4(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, Plaintiff, vs. TESORO ALASKA PETROLEUM COMPANY, PETRO PRODUCTS, INC., and ROBERT E. SANDEN, individually, and d/b/a SANDEN FUEL COMPANY, Defendants.	Case No. 3AN-86-14457 Civil

TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Dated: January 27, 1988

Kenneth P. Eggers, P.C.

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Counsel for Defendant,
TESORO ALASKA PETROLEUM COMPANY

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, Plaintiff,	)	
vs.	)	Case No. 3AN-86-14457 Civil
TESORO ALASKA PETROLEUM COMPANY, PETRO PRODUCTS, INC., and ROBERT E. SANDEN, individually, and d/b/a SANDEN FUEL COMPANY, Defendants.	)	

TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The State seeks to impose liability on Tesoro for the acts or omissions of a party who is not Tesoro's agent, employee, or partner and with whom Tesoro has no contracts and virtually no dealings. Alaskan law does not permit this result. Whether cast as breach of statute, nuisance, negligence or strict liability, the State's claims fail because Tesoro has no connection with the alleged gasoline spill at Sanden's Peters Creek station.

Counts I-VI, IX, XI and XII of the Complaint allege Tesoro violated of the State Environmental Conservation Act and Oil Pollution Control Act. These statutes require that a party must own or control the gasoline immediately before its entry into the groundwater for liability to attach. It is undisputed -- indeed the State acknowledges in the Complaint (First Amended

Compl. ¶ 26) -- that Tesoro did not own or control the gasoline at Sanden's station immediately before its alleged entry into the groundwater. In addition:

- Tesoro has never sold any gasoline to Sanden or the Peters Creek station;
- Tesoro has no ownership interest in the Sanden station, the gasoline at that station or any of the underground storage tanks and lines in question;
- Tesoro has no contracts or agreements to sell gasoline or other products to Sanden or the Peters Creek station.

Thus, Tesoro cannot be liable under any of the statutory counts alleged in the State's Complaint. (See Section II infra.)

Counts VII, VIII, X, and XIII of the Complaint allege various claims of common law nuisance, trespass, strict liability and negligence. Each of these common law counts is premised on the notion that Tesoro was an agent or joint venturer with Sanden's Peters Creek Station and therefore can be liable for its acts and omissions. Yet, Sanden and Tesoro are separate, independent businesses with no contractual relationship and virtually no contacts. Nor has Tesoro, through any acts or omissions, created an apparent agency relationship or joint enterprise under Alaska law. Indeed, both Sanden and his independent distributor, Petro Products, agree that Tesoro has:

- No participation or control over the operation of Sanden's business or the Peters Creek station;
- No partnership, agency, or joint venture with Sanden or the Peters Creek station;

- No right to share in the profits or income from Sanden's business or the Peters Creek station;

- Never made or received any payments from Sanden or the Peters Creek station.

In fact, Tesoro's only contract in this case, a 1985 distributor agreement with Petro, Sanden's distributor, expressly disclaims any agency, partnership, joint venture, or other form of joint enterprise. Thus, Tesoro cannot be subject to common law liability under any theory of agency or joint enterprise. (See Section III infra.)

Finally, each of the State's common law counts is also deficient as a matter of law. Specifically, the strict liability claim fails because the storage of gasoline is not an ultra-hazardous activity and, even if it were, Tesoro has no ownership or control over the gasoline or the tanks and lines which stored it. Likewise, the State's common law claims for trespass, nuisance, and negligence fail because Tesoro did not own or possess the gasoline and has performed no intentional or negligent act with respect to it. Quite simply, Tesoro has done no more than sell gasoline to an independent distributor. If a wrongful act occurred at all, it took place two stages later in the chain of distribution at which time Tesoro neither owned the gasoline, nor had any contracts with the independent dealer that possessed it. Thus, Tesoro cannot be liable under any of the State's common law claims. (See Section IV infra.)

The language of the statutes involved, as well as Alaskan common law, preclude an action against Tesoro for an alleged leak at a station that it does not own or operate and over which it exercises no control. This result -- barring claims against a refiner when it has no connection with the injury involved -- is precisely what the Alaskan courts and legislature intended. It is not a harsh result. The State loses nothing. Sanden, who owned the station and tanks in question, and Petro, who delivered the product and owned it immediately before Sanden, are still parties in this case. If the State can prove its claims against those parties, it will be made whole.

UNDISPUTED FACTS

On December 4, 1986, the State filed an amended complaint against three defendants, Robert Sanden, d/b/a Sanden Fuel Co., Petro and Tesoro, alleging that gasoline from underground storage tanks or underground lines located at Sanden's service station had leaked into the soil, contaminating the Peters Creek aquifer. (Complaint at ¶¶ 23, 24). The following testimony of Robert Sanden, the owner of Sanden Fuel Company; George Petrovich, the owner of Petro Products; and Wade Rodgers, Tesoro's Marketing Manager in Alaska, catalogues the undisputed facts in support of Tesoro's motion.

1. The Peters Creek station alleged to be the source of the leak is owned entirely by Sanden. Tesoro has no ownership

interest in the station, the underground tanks and lines, or other equipment.

- Sanden Dep. at 113, 117;
- Petrovich Dep. at 11-12;
- Rodgers Dep. at 8.

2. Tesoro had no role in the design, construction, or financing of Sanden's station, or any of its storage tanks, lines, or other equipment. Tesoro does not have the duty to inspect, repair or modify the storage tanks, lines or other equipment at Sanden's Peters Creek station.

- Sanden Dep. at 116-117;
- Rodgers Dep. at 9.

3. Tesoro has never sold any gasoline to Sanden or the Peters Creek station. Tesoro has never held any security interest in, or lien on, the Peters Creek station or any gasoline sold to Sanden.

- Sanden Dep. at 113, 115-116, 310, 316;
- Petrovich Dep. at 11-13;
- Rodgers Dep. at 8-9.

4. Tesoro has never had any contractual relationships with Sanden.

- Sanden Dep. at 116-117;
- Rodgers Dep. at 9.

5. Tesoro and Sanden Fuel Company are discrete, independent businesses. Tesoro has never participated in, or had

any control over, the day-to-day operations of Sanden's business or the Peters Creek station.

- Sanden Dep. at 117-119;

- Rodgers Dep. at 9.

6. Sanden has posted two signs, on either side of the kiosk at the Peters Creek station, which state:

"This Station Is Independently
Owned And Operated"

These signs were placed at Sanden's station at Tesoro's request.

- Sanden Dep. at 117-119.

7. Sanden is not an agent, partner, or joint venturer with Tesoro. Tesoro and Sanden have never shared any profits or income from the Peters Creek station, nor does Tesoro have any right to share any of the profits or income from the Peters Creek station.

- Sanden Dep. at 112-113, 119;

- Rodgers Dep. at 13-14.

8. The gasoline alleged by the State to have leaked from Sanden's tanks was purchased by Sanden from Petro, an independent distributor that purchases petroleum products and resells them to service stations and other consumers.

- Complaint at ¶ 25-26;

- Petrovich Dep. at 13-14.

9. Tesoro's only relationship with Petro is governed by a July, 1985 Distributor Agreement. (A copy of this Agreement

is located at Appendix II, Tab A). Section 7(a) of this Agreement provides that:

> "Title to, risk of loss, and liability for all products delivered hereunder passes to Distributor [here Petro] at the time and place of delivery."

Delivery to Petro occurs at Tesoro's Anchorage terminal near the end of the Kenai Pipeline. Tesoro does not deliver any gasoline to Sanden.

- Petrovich Dep. at 12-13;
- Rodgers Dep. at 10-12

10. Section 3 of the Agreement gives Petro the right to select retail dealers as "Tesoro branded operations." Pursuant to this provision, Petro selected Sanden Fuel Company's Peters Creek station as a Tesoro branded operation. For any branded operation it selects, Petro has responsibility to ensure that such outlets are in compliance with all federal, state, and local laws, including all environmental laws and regulations.

- Agreement at ¶ 14;
- Rodgers Dep. at 12;
- Petrovich Dep. at 17-18.

11. Tesoro and Petro have specifically agreed, in Section 23 of the Agreement, that Petro is only a distributor of Tesoro products, not its agent, partner, or joint venturer. Specifically, that provision states:

> "This Agreement is intended to establish and authorize Distributor to be a branded distributor of Tesoro products. This Agreement is not intended and shall not be construed to

create any agency, partnership, joint venture or other form of joint enterprise, and it is understood that Distributor shall conduct its business at its own risk and expense and for its own account."

- Agreement at ¶ 23;

- Rodgers Dep. at 13-14;

- Petrovich Dep. at 10-11, 17-18.

ARGUMENT

I. Summary Judgment Is Appropriate In Groundwater Pollution Cases.

Under Rule 56(c) of the Alaska Rules of Civil Procedure, summary judgment is proper where the pleadings and supporting evidence show that there are no genuine issues of any material fact. See Williams v. City of Valdez, 603 P.2d 483, 489 (Alaska 1979); Alaska National Bank v. Linck, 559 P.2d 1049, 1051 (Alaska 1977). It is well settled that summary judgment in groundwater pollution cases is proper if the foregoing requirements are met. In State Department of Environmental Protection v. Exxon Corp., 151 N.J. Super. 464, 468, 376 A.2d 1339, 1342 (Super Ct. 1977), the Court granted defendant summary judgment where, as here, stipulated facts demonstrated that defendant's acts were in no way related to the alleged pollution. See also Rounds v. Hoelscher, 428 N.E.2d 1308, 1312 (Ind.App.3 1981) (summary judgment granted in groundwater pollution cases); Kopp v. Zawistoski, 118 Wis. 2d 820, 822, 346 N.W.2d 469, 471 (1984) (per curiam) (unpublished limited precedent opinion) (same);

Commw. Department of Environmental Resources v. Steward, 24 Pa. Commw. 493, 498, 357 A.2d 255, 258 (Commw. Ct. 1976) (same).

II. Neither The Environmental Conservation Act Nor The Oil Pollution Control Act Can Apply To Tesoro.

The State's Complaint contains nine counts that allege violations of Alaskan environmental statutes against all three defendants. They are:

Environmental Conservation Act (ECA) AS 46.03.010 et. seq. (1987)

Count I	Section 822	(Strict Liability)
Count II	Section 760(e)	(Reimbursement of State's Expenses)
Count III	Section 755(a)	(Failure to Report Pollution)
Count IV	Section 760(a)	(Civil Penalties for Pollution)
Count V	Section 780	(Restoration of Natural Resources)
Count VI	Section 800	(Statutory Nuisance)
Count XI	Section 765	(Injunctive Relief for Violation of Oil Pollution Control Act)
Count XII	Section 765	(Injunctive Relief for Violation of the Hazardous Substance Release Control Act)

Oil Pollution Control Act (OPCA) AS 46.04.010 et. seq. (1987)

Count IX	Section 10	(Civil Penalties for Discharge of Oil)

As detailed below, none of these statutory claims are applicable to defendant Tesoro.

A. Count I -- Strict Liability.

Section 822 of the ECA, as amended by Section 826(3) (1986), imposes strict liability on those parties that own or have control over a hazardous substance which enters the ground-water of the State:

> Section 822. Strict liability for the discharge of hazardous substances. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry.
> (AS 46.03.822) (emphasis added)

It is undisputed that Tesoro did not own the gasoline which allegedly leaked from Sanden's tank. (Undisputed Fact No. 3) Title to the product passed to Petro at the Anchorage terminal and then from Petro to Sanden when Petro delivered the gasoline into Sanden's tanks. (Undisputed Fact No. 9). Tesoro can therefore not be held liable under the ownership provision of Section 822.1/

1/ The legislative history of the 1986 amendments to the ECA reveals that, in determining liability under Section 822, the word "owning" is to be accorded the commonly understood meaning of holding title to the substance. The February 5, 1986 Senate Resources Committee staff report states that the 1986 amendment was meant to restore the original commonly understood meaning of the term "owner." In that regard, Alaskan Assistant Attorney General Thomas M. Jahnke testified in a May 7, 1985 letter to Representative Sund, Chairman of the House Resources Standing Committee, that,
(Footnote Continued)

"Having control over a hazardous substance" is defined in subsection 826(3) as "producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the water, surface, or subsurface land of the state . . . ." (AS 46.03.826(3)) (emphasis added) Tesoro did not produce, handle, store, transport, or refine the gasoline "immediately before" its entry upon the water or subsurface land of the State. Substantial time and numerous activities by other parties occurred between Tesoro's last contact with the gasoline and the alleged pollution. Specifically, Petro picks up the product at Tesoro's terminal and then drives to Peters Creek. It is then deposited in Sanden's tanks. Finally, there is no telling how long the product remained in Sanden's tanks before it allegedly leaked into the ground. That could be weeks or months.

Given this chain of events, it is obvious that Tesoro did not produce, handle, store, transport, or refine gasoline

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(Footnote Continued)
for the purposes of Section 822 liability, "owners" are those persons with title to the hazardous substance. (pg. 1) The letter goes on to state:

> The word "owner" has a clear definition in the common law and common usage. It is not necessary to define the term in the statute because the common law and common usage provide the definition applied in the Alaska Courts. AS 01.10.010; AS 01.10.040.

(A copy of this letter is located at Appendix II, Tab B).

"immediately before" its asserted entry upon the subsurface lands or waters of the State.2/ Consequently, under the plain language of Section 822, strict liability cannot attach to Tesoro.

B. Count II -- Statutory Penalty And Reimbursement For Cleanup Expenses.

Section 760(e) of the ECA imposes a duty to reimburse the State for all cleanup expenses on "a person who violates or causes or permits to be violated a provision of AS 46.03.740 . . . ." Section 740 in turn provides that "A person may not discharge, cause to be discharged, or permit the discharge of petroleum . . . or a residuary product of petroleum, into, or upon the waters"3/ of the State. (emphasis added) As this statutory language reveals, only if a party actually

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2/ The phrase "immediately before" has not been construed by any court with reference to the Alaska Environmental Conservation Act. However, other courts have accorded the phrase a common-sense definition. In Pearl River Valley Water Supply Dist. v. Wood, 252 Miss. 580, 172 So.2d 196, 205 (1965), the Court construed "immediately before," in a condemnation proceeding and held that the value of the land immediately before the taking was that value, without any interval of time. Id. at 207. See also C&R Transport, Inc. v. Campbell, Tex., 406 S.W.2d 191, 195 (Tex. 1966) ("immediately" means without any interval of time); People v. White, 15 Mich.App. 527, 166 N.W.2d 639-640 (Ct. App. 1969) (same).

3/ The State also seeks statutory penalties under Section 760(a), (AS 46.03.760(a)), which allows for the imposition of penalties against persons who permit or cause pollution of subsurface land or water as proscribed in Section 710. (AS 46.03.710)

discharges pollutants, or causes or permits such a discharge, can liability attach.

The State does not allege Tesoro discharged any pollutants in this case. Nor did Tesoro permit or cause the alleged leak at the Peters Creek station. Under Alaska law, "permission" requires knowledge and consent of the act. As the Court in Alaska Mines & Minerals, Inc. v. Alaska Industrial Board, 354 P.2d 376, 378 (Alaska 1960) stated:

> The word "permit" means "to allow the act***of, to authorize."

Id. at 378. (citations omitted)

Accord, McKee v. Travelers Ins. Co., 315 S.W.2d 852, 857 (Mo. App. 1958) ("'Permission' or 'to permit' implies knowledge and consent").4/ Tesoro did not have knowledge of or consent to the alleged leak or any action which could have caused the leaks. Tesoro had no role in the design, construction, or financing of the underground storage tanks and lines (Undisputed Fact No. 2) and had no duty to inspect, modify or repair such tanks and lines. (Id.)

4/ See Hostetler v. Ward, 704 P.2d 1193, 1200 (Wash. App. 1985), review denied, 41 Wash. App. 343 (1986) ("permit" in statute "requires an affirmative assent"); Hinkle v. Siltamaki, 361 P.2d 37, 41 (Wyo. 1961) ("permit" in statute "implies knowledge, consent, and wilfulness on the part of the owner, or such negligent conduct as is equivalent thereto").

Nor did Tesoro "cause" any violations of Sections 710 or 740. Alaska law applies the common sense notion of causality; namely, a "cause" is that action which was a "substantial factor in bringing about the harm." Ketchikan Gateway Borough v. Saling, 604 P.2d 590, 598 (Alaska 1979).5/ Similarly, the Court in United States v. Outboard Marine Corp., 549 F. Supp. 1032, 1035-36 (N.D. Ill. 1982) found that the defendant-supplier of polychlorinated biphenyls did not "cause" discharge under the Federal Refuse Act, noting the absence of "any case in the 80-year history of the Refuse Act in which one other than the actual discharger was held liable for causing or suffering the discharge." Tesoro's only conduct in this case was to sell petroleum products to Petro, at Tesoro's Anchorage Terminal. The cause, if any, of the alleged spill occurred two steps later in the distribution chain sometime after the gasoline was stored in

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5/ See Osborne v. Russell, 669 P.2d 550, 555-57 (Alaska 1983) (conduct may be the legal cause of harm "if the negligent act or omission 'was more likely than not a substantial factor in bringing about the injury,'") quoting Sharp v. Fairbanks North Star Borough, 569 P.2d 178, 181 (Alaska 1977) (proximate cause can only exist "if the negligent act 'was more likely than not, a substantial factor in bringing about the injury'"); State v. Fabritz, 348 A.2d 275, 280 (Md. 1975), cert. denied, 425 U.S. 942 (1976) (a cause is that action which "brings about an effect or that produces or calls forth a resultant action or state."); Cf. Artesian Water Co. v. Gov. of New Castle County, 659 F. Supp. 1269, 1283 (D. Del. 1987) (applying substantial factor test to determine causation in private cost recovery action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.).

the tanks of Sanden's Peters Creek station. Thus, Tesoro did not cause the alleged injury because it was not a "substantial factor" in producing the alleged discharge of petroleum products. Accord, State, Department of Environmental Protection v. Ventron Corp., 182 N.J. Super 210, 440 A.2d 455, 463 (Super. Ct. 1981) (owner's acts were not substantial factor in proximately causing toxic condition).6/ Since Tesoro has not "permitted" or "caused" a discharge of petroleum, it has not violated Section 740. Therefore, the State's claim for damages under Section 760 must be denied.

C. Count III -- Statutory Penalties For Failure To Report Leak.

Section 755(a) of the ECA provides that any person in charge of a facility must immediately report any discharge of pollutants to the Department of Environmental Conservation.

> Section 755(a). Discharge reporting.
> (a) A person in charge of a facility, operation or vessel, as soon as the person has knowledge of any discharge from the facility, operation or vessel in violation of AS 46.03.740 or 46.03.750 shall immediately notify the department of the discharge.

6/ Dean Prosser has noted that when "a court so uses 'substantial factor,' it imposes a prerequisite to legal responsibility that must be satisfied even in those cases where the 'but for' test is plainly satisfied." W. Keeton, C. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on Torts, § 41 at 268 (5th Ed. 1984); see also Gold, Causation in Toxic Torts: Burdens of Proof, Standards of Persuasion, and Statistical Evidence, 96 Yale L.J. 376, 389-92 (1986); Wright, Causation in Tort Law, 73 Calif. L. Rev. 1735, 1787-90 (1985) (and sources cited therein).

(AS 46.03.755(a)) (emphasis added)

It does not appear that any Court has construed Section 755 or applied the phrase "in charge of a facility." Similar language does, however, appear in Section 311 of the Federal Water Pollution Prevention and Control Act. 33 U.S.C. § 1321(b)(5). Federal courts interpreting the phrase "in charge of a facility" in that statute have limited liability to facility owners or operators. For example, in United States v. Mobil Oil Corp., 464 F.2d 1124 (5th Cir. 1972), the Court held that the phrase "any person in charge of a vessel or of an onshore facility" was limited to the owners and operators of that vessel or facility. The Court reasoned that only the owners or operators have the opportunity and capacity to make timely discovery of discharges and to report those discharges:

> The owner-operator of a vessel or a vacility [sic] has the capacity to make timely discovery of oil discharges. The owner-operator has power to direct the activities of persons who control the mechanisms causing the pollution. The owner-operator has the capacity to prevent and abate damage. Accordingly, the owner-operator of a facility governed by the WPCA, such as the Mobil facility here, must be regarded as a "person in charge" of the facility for the purposes of § 1161 [recodified at ¶ 1321(b)(5)].

Id. at 1127. (emphasis added)7/

7/ See United States v. Republic Steel Corp., 491 F.2d 315, 317 (6th Cir. 1974) (adopting holding of Mobil Oil decision that owners and operators are persons in charge of a facility);
(Footnote Continued)

Since Tesoro was not the owner or operator of the Peters Creek station or the underground tanks and lines in issue (Undisputed Fact No. 1), it does not have the capability to discover, report and abate the alleged discharge. Mobil Oil, 464 F.2d at 1127. Tesoro thus cannot be deemed to be "in charge of" Sanden's station and cannot be liable under Section 755(a) of the ECA.

D. Count IV -- Civil Penalties For Violation Of Alaskan Water Quality Standards.

In Count IV, the State requests civil penalties against defendants for violation of Alaska water quality standards for petroleum hydrocarbons.8/ (18 AAC 70.020) The State's request for civil penalties against Tesoro once again rests on the

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(Footnote Continued)
Apex Oil Co. v. United States, 530 F.2d 1291, 1293 (8th Cir. 1976), cert. denied, 429 U.S. 827 (U.S. 1976) ("We conclude *that an owner-operator is 'in charge' of his facility within the meaning of § 1161."); United States v. Mackin Const. Co., 388 F. Supp. 478, 481 (D. Mass. 1975) (holding that fuel oil seller was not liable as "person in charge of a vessel or of an onshore facility" since that phrase "clearly denotes possession and dominion"); United States v. Skil Corporation, 351 F. Supp. 295, 298-99 (N.D. Ill. 1972) (holding that phrase "person in charge" means "the person who was at the facility at the time and was in charge under the management provisions or of the handling of that part of the facility which related to the oil spillage"); State v. Bunker Hill Co., 635 F. Supp. 665, 672 (D. Idaho 1986) (adopting holding of Mobil Oil decision with reference to owners and operators in context of claim under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.).

8/ Section 760(a) of the ECA provides for the assessment of
(Footnote Continued)

strained interpretation that Tesoro conducted an operation that caused a violation of the water quality standard. It did not.

Tesoro does not own the Peters Creek station or hold any interest in Sanden's business or property. (Undisputed Facts Nos. 1 and 2). Tesoro does not have any control over the operation of Sanden's business or the Peters Creek station. (Undisputed Fact No. 5). Likewise, Tesoro had insufficient contact with the station or its operation to have "permitted or caused" the violation. (See discussion at pp. 12-15 supra.) Thus, the claim that Tesoro "conducted" an operation which caused a violation is without basis.

E. Count V -- Restoration Of Natural Resources.

Count V seeks damages to replenish injured and degraded groundwaters pursuant to Section 780 of the ECA. (AS 46.03.780) That provision establishes liability for restoration of natural resources where there has been a predicate violation of either the ECA, Oil Pollution Control Act, or the Hazardous Substances Release Control Act. The State does not specify any predicate violation of these acts. Rather, by incorporating the preceding paragraphs of the Complaint, it relies on Sections 760(a), (e), 755, 740, or 710 of the ECA for its predicate violation. Because

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(Footnote Continued)
civil penalties where a person violates, causes or permits to be violated a regulation or lawful order of the Department of Environmental Conservation. (AS 46.03.760(a))

Tesoro did not cause any violations of these statutes (as discussed in Sections II A-D, supra), Tesoro is exempt from liability under Section 780 of the ECA.

F. Count VI -- Statutory Nuisance.

Count VI seeks recovery under Section 800 of the ECA for statutory nuisance.9/ That provision states:

> Section 800. Water nuisances. (a) A person is guilty of creating or maintaining a nuisance if the person puts a dead animal carcass, or part of one, excrement, or a putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner befouls, pollutes, or impairs the quality of a spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes. (AS 46.03.800(a))

Tesoro has not done any of these things. All acts relating to the product in issue, e.g., the storage, handling, and delivery of gasoline were performed by Petro and Sanden. Indeed, Tesoro has no association with the gasoline once Petro assumes title and liability for it at the Anchorage Terminal. This lack of causation between any act of Tesoro and the groundwater in issue forecloses statutory liability under Section 800.

9/ Section 800(b) of ECA (AS 46.03.800(b)) provides that any person who refuses to abate the nuisance upon order of the Department of Environmental Conservation is liable for damages. The DEC, however, has never served Tesoro with any abatement order. For this reason alone, Tesoro cannot be liable for damages under Section 800.

G. Count XI -- Injunctive Relief For Violation Of The Oil Pollution Control Act.

In Count IX, the State seeks an injunction, pursuant to Section 765 of the ECA (AS 46.03.765), requiring defendants to cleanup all petroleum products allegedly spilled in violation of Section 20 of the Oil Pollution Control Act (AS 46.04.020) which states:

> Section 20. Removal of Oil Discharges. (a) A person causing or permitting the discharge of oil shall immediately contain and cleanup the discharge. (AS 46.04.020(a))

As with the similar language in the ECA, "cause" and "permit" are undefined in the Oil Pollution Control Act. Alaska law -- and common sense -- suggest however, that "permitted" requires knowledge of and consent to the act in question. (See discussion at pp. 12-15, supra).10/ Likewise, "caused" has been accorded a common sense meaning that refers to one act compelling a certain consequence. See Alvey v. Pioneer Oilfield Services, Inc., 648 P.2d 599, 600 (Alaska 1982) ("Proximate cause exists where the negligent act was, more likely than not, a substantial factor in bringing about the injury.")11/

10/ See Winterton v. Van Zandt, 351 S.W.2d 696, 700 (Mo. 1961) ("permission" means an act of permitting, formal consent, authorization, leave, license or liberty granted).

11/ See Challis Irrigation Co. v. State, 107 Idaho 338, 689 P.2d 230, 231 (Ct. App. 1984) (to constitute a cause a negligent act must be a "material element and a substantial factor"); Rudeck v. Wright, 709 P.2d 621, 625 (Mont. 1985) (in medical (Footnote Continued)

Tesoro did not cause or permit the discharge of oil as it did not own, operate, or have control over the Sanden station, or its lines and tanks. (Undisputed Facts No.1 and 2). Nor did Tesoro have any knowledge of the alleged discharge.

H. Count XII -- Injunctive Relief For Violation Of The Hazardous Substance Release Control Act.

In this Count, which also seeks injunctive relief under Section 765 of the ECA, the State seeks to require all defendants to begin cleanup procedures necessitated by their violations of the Hazardous Substance Release Control Act. Section 20 of this Act states in pertinent part:

> Section 20. Containment and cleanup of a released hazardous substance.
> (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release. (AS 46.09.020(a))

As discussed above, (see discussion at pp. 12-15, supra) Tesoro's only action -- transferring the product to Petro at its Anchorage terminal -- cannot be a "cause" of the alleged leak in issue. Indeed, two other parties, Petro and Sanden, controlled and held title to the products in question prior to the alleged leaks.

Moreover, the Hazardous Substance Release Act (HSRA) does not even apply to spills of "uncontaminated refined oil," or

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(Footnote Continued)
mismanagement case, substantial factor test is appropriate); Brennen v. City of Eugene, 285 Or. 401, 591 P.2d 719, 723 (1979) (substantial factor test adopted).

gasoline, which the State alleges occurred in this case. Section 900 (4)(B) of HSRA states plainly:

> "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil. (AS 46.09.900(4)(B))

Finally, the State's Complaint alleges that the alleged spill was discovered in April 1986, and the cleanup project began shortly thereafter. (Complaint at ¶¶ 6, 17-19). Yet, the Hazardous Substance Release Act was enacted two months later in June 1986. Even if the cleanup and reporting provisions of that statute could apply to gasoline or Tesoro's conduct, the State was on notice of the spill and began cleanup procedures prior to the statute's enactment. Given this timing, the HSRA is not applicable and cannot be enforced against Tesoro.

III. The State's Common Law Counts Fail Because Sanden Is Not An Agent Or Joint Venturer With Tesoro.

Counts VII, VIII, X, and XII of the State's Complaint allege claims of common law nuisance, trespass, strict liability, and negligence. Tesoro's liability under each of these counts is counts is premised on the notion that Sanden was Tesoro's agent or joint venturer and Tesoro therefore can be held liable for Sanden's acts or omissions in the operation of the Peters Creek station. (Complaint at ¶¶ 32-34) This premise is false. As detailed below, Tesoro and Sanden are discrete, independent businesses. They have no contractual relationship whatsoever and Tesoro has done nothing to create an apparent agency or joint enterprise as a basis for liability.

A. Sanden Is Not The Actual Agent Of Tesoro.

Alaska has adopted the Second Restatement standard for determining whether an agency exists between two separate entities. That provision states:

> Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

Green Construction Co. v. State Department of Revenue, 674 P.2d 260, 265 (Alaska 1983), citing, Restatement (Second) of Agency § 1(1)(1958).12/ Under Alaskan law, "the party who seeks to bind a principal with acts of a purported agent bears the burden of proving the fact of agency." Bruton, 513 P.2d at 1126 n.7, citing, State v. Neal & Sons, Inc., 489 P.2d 1016, 1019 (Alaska 1971).

The State cannot prove any agency between Sanden and Tesoro. At no time has Tesoro consented to having Sanden act on its behalf. Nor has Sanden ever assumed the responsibility of acting on behalf of Tesoro. There are no contracts or agreements between Sanden and Tesoro which set up such an agency; indeed, there are no contracts between Sanden and Tesoro at all.

12/ Accord, Bruton v. Automatic Welding & Supply Corporation, 513 P.2d 1122, 1126 (Alaska 1973) ("An agency relation exists only if there has been a manifestation of the principal to the agent that the agent may act on his account and consent by the agent so to act.")

Sanden's only connection with Tesoro is the use of signs and logo. Yet such common use of advertising and insignia cannot establish an agency relationship and numerous courts have so held. See, e.g., Manis v. Gulf Oil Corp., 124 Ga. App. 268, 185 S.E.2d 589, 590-91 (Ct. App. 1971) (station operator not agent of Gulf despite use of Gulf signs and uniforms); Greenberg v. Mobil Oil Corp., 318 F. Supp. 1025, 1028-29 (N.D. Tex. 1970) (display of Mobil signs and logo does not create agency with station dealer); Levine v. Standard Oil Co., In Ky, 249 Miss. 651, 163 So.2d 750, 751 (1964) (standard lessee-dealer not agent even though he leased station from Standard and used its signs and uniforms).13/

Nor can Tesoro's July, 1985 Distributor Agreement set up an agency with Sanden. That agreement is with Petro Products, Tesoro's distributor. All of Sanden's relations are likewise with Petro, not Tesoro. Moreover, that distribution agreement specifically disclaims any agency relationship between the contracting parties:

> [T]his Agreement is not intended and shall not be construed to create any agency, partnership, joint venture or other form of joint enterprise, and it is understood that Distributor shall conduct its business at its own risk and expense and for its own account.

13/ This is just a sampling. Over fifteen states and several federal courts have held that a service station dealer does not become a refiner's agent by means of, inter alia, common signs and logos. Each of these cases are identified and discussed by state, in Appendix I to this brief.

Agreement at ¶ 23. See Undisputed Fact No. 11.

Finally, central to any agency relationship is the principal's ability to control the operations and activities of the alleged agent. For example, in Green Construction, the Alaska Supreme Court rejected a claim of agency between pipeline contractors and Alyeska because the contractors did not establish "the degree or nature or control exercised by Alyeska over the labor, materials and equipment furnished by [contractors that] is sufficient to justify an agency relationship between them."14/ 647 P.2d at 266. Likewise, Tesoro had neither the right to control nor actual control over Sanden's Peters Creek station. It had no ownership in the station or its storage tanks and no right to share in the profits or revenue Sanden earned from his business. (Undisputed Facts Nos. 1, 5 and 7).

Tesoro's relationship with Sanden is thus even more attenuated than the contractors with Alyeska in Green. In Green, Alyeska dealt directly and continuously with the contractors and exercised control over the contractors' acquisition of materials and labor. 647 P.2d at 265. Tesoro had no such power over

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14/ In denying the claim of agency, the Green Court also noted that there was a lack of consent from the alleged principal and a contractual disclaimer between the parties. 674 P.2d at 265-266. Likewise, Tesoro has not, by act or omission, consented to an agency relationship with Sanden. In fact, Tesoro's only contract in issue, the July, 1985 Distributor Agreement, specifically disclaims any agency relationship in language almost identical to that cited by the Supreme Court in Green. Id. at 265.

Sanden. Similarly, the Alaska Supreme Court struck down a claim of agency between a parent and subsidiary in Bendix Corp. v. Adams, 610 P.2d 24 (Alaska 1980), even though the alleged agent's actions were funded by a loan from the alleged principal. Again, no loan exists between Tesoro and Sanden. (Undisputed Fact No. 7) Thus, the State's allegations of agency between Sanden and Tesoro cannot be sustained.

B. Sanden Was Not The Apparent Agent Of Tesoro.

In Alaska, Courts have adopted the Second Restatement as the rule for the creation of an apparent agency relationship among two separate entities. That standard provides:

> [A]pparent authority to do an act is created as to third persons by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

City of Delta Junction v. Mack Trucks, Inc., 670 P.2d 1128, 1130 (Alaska 1983), citing, Restatement (Second) of Agency, § 27. In applying this standard, Alaskan courts emphasize that it is the alleged principal's conduct -- not that of the alleged agent -- that controls the issue of apparent agency. As the Supreme Court of Alaska recently stressed in Jackson v. Power:

> [It] is the principal's conduct that gives rise to his liability and not the conduct of the alleged agent; "one dealing with an alleged agent must prove that the principal was responsible for the appearance of authority, by doing something or permitting the alleged agent to do something that led others, including the plaintiff, to believe

> that the agent had the authority he purported to have."

No. 3237, slip op. at 12 (October 16, 1987) (emphasis in original), citing, Delta Junction, 670 P.2d at 1130. In this case, unlike Jackson and Delta Junction, Tesoro has done nothing, by act or omission, which could lead third parties to believe Sanden had authority to act on its behalf. In fact, Tesoro's only actions confirmed that Sanden was an independent business, owned and operated without any support or assistance from Tesoro.

In Delta Junction, the Court allowed a claim of apparent authority where the local truck dealer was a licensed franchisee of the national Mack Truck chain. Unlike the truck dealer in Delta Junction, Sanden was not a licensed franchisee of Tesoro. Indeed, Tesoro had no contracts with Sanden whatsoever. Tesoro never sold or delivered one drop of gasoline to Sanden's Peters Creek station. Nor did Tesoro have any control or influence over the operation of the station or Sanden's business. Thus, the intimate franchise relationship between Mack truck and its licensed dealer does not exist here.15/

15/ Likewise, in Jackson v. Power, the Court denied summary judgment on a claim of apparent authority where the alleged agents (Emergency Room Doctors) worked in, and were an integral part of, the alleged principal's (Hospital) business. Here, Sanden does not work on Tesoro's property, nor does Tesoro own any equipment at Sanden's station. Sanden's relationship, unlike the doctors in Jackson, is with Petro, not Tesoro. Sanden is a branded dealer of, and
(Footnote Continued)

Tesoro's only conduct with Sanden reinforced that Sanden's station was independently owned and operated. Tesoro requested Sanden to place two signs on either side of the kiosk at his station which read:

> "This Station Is Independently Owned And Operated."

(Undisputed Fact No. 6) As the Delta Junction Court noted, such signs were absent from the local Mack dealer's franchise (670 P.2d at 1130-31), and remove any doubt as to Sanden's independence. Similarly, while the Delta Junction Court emphasized that the local Mack dealer had "Mack" featured prominently in its corporate name, Sanden's business name contains no reference to Tesoro; it is simply, "Sanden's Fuel Company." Again, unlike the local Mack dealer in City of Delta Junction, Sanden was not required to sell exclusively Tesoro products and in fact, carried numerous products from competing refiners. (Sanden Dep. 260, 261)16/

(Footnote Continued)
receives his product from, Petro, not Tesoro. Thus, the claim of agency identified in Jackson is drastically different from the two independent businesses at issue here.

16/ The Delta Junction Court's citation to Gizzi v. Texaco, Inc., 437 F.2d 308 (3d Cir. 1971), cert. denied, 404 U.S. 829 (U.S. 1971), highlights that it is the conduct of the alleged principal, not that of the agent, which controls the question of apparent agency. In Gizzi, the Court allowed the claim of apparent agency to go to the jury because Texaco had performed certain acts which placed the franchised dealer's apparent agency into question. Specifically, Texaco's regional headquarters were across the
(Footnote Continued)

Finally, a finding of apparent agency under Section 27 of the Restatement requires that any third party's reliance on an act of the alleged principal must be reasonable. Here, there is no allegation that State relied, or reasonably could have relied, on any act by Tesoro to create an apparent agency with Sanden. Rather, the State had actual knowledge that Sanden's Peters Creek station and its underground storage tanks were owned and operated solely by Sanden. On June 6, 1986, the Alaska Department of Natural Resources received the "Notification for Underground Storage Tank" forms from Sanden and placed the forms on file in its office. (A copy of these forms are located at Appendix II, Tab C). These forms make plain that Sanden -- not Tesoro -- is responsible for the underground storage tanks in question. The State can not now claim otherwise.

As with actual agency, the State's claim of apparent agency is reduced to the assertion that Sanden's use of Tesoro signs and logos is enough to create an agency relationship. No court in Alaska has addressed this legal question, but numerous decisions have held that, as a matter of law, an oil company's advertising, signs, and insignia alone does not constitute an

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(Footnote Continued)
street from the station in issue and Texaco owned certain equipment at the station. Most importantly, Texaco personnel knew of, and acquiesced in, the local dealer's foreign car repair operation which was the alleged cause of plaintiff's injury. Id. at 310. None of these conditions exist in this case.

agency relationship with a dealer where one does not otherwise exist.17/ For example, in Coe v. Esau, 377 P.2d 815, 817-19 (Okla. 1963), the court found no agency even though there was a dealer agreement between the station and the oil company, and the oil company leased the station to the dealer. The Court explicitly rejected the argument that the dealer's use of the oil company's signs could constitute an apparent agency:

> It is indeed a matter of common knowledge and practice that distinctive colors and trade mark signs are displayed at gasoline stations by independent dealers of petroleum product suppliers. These signs and emblems represent no more than notice to the motorist that a given company's products are being marketed at the station. [citations omitted]

17/ The law of sixteen different states which have addressed this precise issue is catalogued in Appendix I to this brief. In each of these cases, the Court rejected a claim of actual or apparent agency in situations where the oil company had substantially greater contact with the dealer than Tesoro has with Sanden. For example, several courts have found that a station operator with a franchise agreement who leases the premises from the oil company, and receives gasoline directly from the refiner and displays the oil company's signs and insignia, is not the apparent agent of the oil company. See, e.g., Apple v. Standard Oil, 301 F. Supp. 107, 109 (N.D. Cal. 1969) (lessee dealer was not agent of lessor oil company despite displaying signs, advertising, and credit cards); Drum v. Pure Oil Co., 184 So.2d 196, 198 (Fla. App. 1966) (lessee dealer not agent of oil company even though it displayed refiner's signs and executed a lease and mortgage with the refiner); Smith v. Cities Service Oil Co., 346 F.2d 349, 352 (7th Cir. 1965) (no agency between lessee dealer and oil company even though the dealer purchased its fuel from Cities Service and displayed its logo and signs) (applying Michigan law).

Id. at 818. Accord, Beckham v. Exxon Corp., 539 S.W.2d 217, 219-20 (Tex. Civ. App. 1976) (no apparent agency in spite of lease and dealer agreement between the dealer and Exxon where station displayed Exxon sign and logo); Arceneaux v. Texaco, Inc., 623 F.2d 924, 926-27 (5th Cir. 1980), cert. denied, 450 U.S. 928 (U.S. 1981) (court rejects claim of apparent agency despite station's use of Texaco's sign and insignia).

C. Sanden Was Not Engaged In Any Joint Enterprise With Tesoro.

In Nicholas v. Moore, 570 P.2d 174, 178 (Alaska 1977), the Alaska Supreme Court laid down the factors necessary to find a joint enterprise under Alaska law:

> (a) A contribution by the parties of money, property, effort, knowledge, skill, or other asset to a common undertaking;
>
> (b) A joint property interest in the subject matter of the venture;
>
> (c) A right of mutual control or management of the enterprise;
>
> (d) Expectation of profit, or the presence of 'adventure,' as it is sometimes called;
>
> (e) A right to participate in the profits;
>
> (f) Most usually, limitation of the objective to a single undertaking or ad hoc enterprise. (footnotes omitted)

See also Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, 1187, on reh'g, 563 P.2d 256 (Alaska 1977) (joint venture defined as an association of two or more persons to carry out a single

business enterprise for profit for which purposes they combine their property, money, effects, skill, and knowledge).

Here Tesoro has not contributed or combined its money, property, or other assets with Sanden to operate the Peters Creek station. (Undisputed Fact No. 7). As the testimony of Sanden, Petrovich, and Wade Rodgers, Tesoro's Marketing Manager, demonstrates, Tesoro has:

- Never pooled its money, property, or other assets with Sanden or Petro;
- Never shared in the profits or expected a share in the profits with Sanden or Petro; and
- Never owned or controlled the Peters Creek station, Sanden's business, or the gasoline in his underground tanks and lines.

(Undisputed Facts Nos. 5 and 7). Indeed, Tesoro ceased to have any property interest in the gasoline when Petro took possession of it at the Anchorage terminal. Perhaps most importantly, Tesoro had no duty to inspect, modify, or repair the underground storage tanks and lines owned by Sanden. (Undisputed Fact No. 2).

Quite simply, to hold that supplying a distributor with a product makes the supplier a joint venturer with every link in the chain of distribution would be an unprecedented and unwarranted extension of the law. In Wells v. Whitaker, 207 Va. 616, 151 S.E.2d 422, 431 (1966), the Virginia Supreme Court held that a dealer of ammonia nitrate could not be considered a joint venturer with the manufacturer since the two businesses did not

share property and profits. In so holding, the Court noted that applying joint enterprise concepts to such a relationship would stretch the concept to an absurd point:

> "Otherwise every person, firm or corporation who furnishes materials or supplies in connection with an enterprise might be termed joint venturers, whether or not they had any such intention."

Id. at 432.

The undisputed facts and controlling law establish that no genuine issue of material fact exists that could connect Tesoro with any act or omission that might have caused the contamination of the Peters Creek aquifer. Nor is Sanden the agent of, or joint venturer with, Tesoro. In the absence of any such relationship, Tesoro may not be held liable for the acts of others.

IV. The State's Common Law Counts Fail Because Tesoro Has Performed No Intentional Or Negligent Act In Connection With The Alleged Leak.

Counts VII, VIII, X and XIII allege common law claims of public nuisance, trespass, strict liability, and negligence. In addition to the lack of agency or joint venture status outlined above, each of these Counts fails because no conduct by Tesoro whether -- intentional or negligent -- has any connection with the alleged spill. Such predicate act is a necessary element to any common law liability.

A. Count X -- Strict Liability For Ultrahazardous Activity.

Count X seeks to hold Tesoro strictly liable for all damages incurred as a consequence of the leaking tanks and/or underground lines at the Peters Creek station. In Alaska, no court has yet addressed whether the storage of gasoline is an ultrahazardous or inherently dangerous activity that can support a finding of strict liability. Several other jurisdictions which have addressed this question have held, however, that the storage of gasoline is not an abnormally dangerous or ultrahazardous activity.18/ Furthermore, the Alaska Supreme Court in Martin v. Union Products, Inc., 543 P.2d 400, 405 (Alaska 1975), upheld application of a negligence standard where an oil company's transmission of heating oil into a 500-gallon tank allegedly caused a fire.

Equally important, even the doctrine of strict liability requires that the alleged tortfeasor have some connection

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18/ See, e.g., Hudson v. Peavey Oil Co., 269 Or.3, 566 P.2d 175, 178 (Or. 1977) (storage of gasoline by service station not abnormally dangerous); Bagley v. Controlled Environment Corporation, 503 A.2d 823, 826 (N.H. 1986) (same); Greene v. Spinning, 48 S.W.2d 51, 53 (Mo.App. 1931) (same); Hennigan v. Atlantic Refining Co., 282 F. Supp. 667, 680 (E.D. Pa. 1967), aff'd, 400 F.2d 857 (3d Cir. 1968), cert. denied, 395 U.S. 904 (1969) (same); Smillie v. Continental Oil Company, 127 F. Supp. 508, 510 (D. Colo. 1954) (same); Pryor v. Chambersburg Oil & Gas Co., 37 Pa. 521, 103 A.2d 425, 427-28 (1954) (same); Morrison v. Standard Oil Co. of New Jersey, 105 N.J.Eq. 104, 147 A. 161, 163 (Ct. Ch. 1929) (same); Sarno v. Gulf Refining Co., 99 N.J.L. 340, 124 A. 145, 146 (N.J. 1924) (same).

with the alleged ultrahazardous activity which resulted in damage. For Tesoro to be held strictly liable, it must have some connection with the storage of gasoline in the underground tanks and lines at the Peters Creek station. It had none. In a similar circumstance, the Court in State Department of Environmental Protection v. Exxon Corp., 151 N.J. Super 464, 376 A.2d 1339 (Super Ct. 1977) refused to impose strict liability for damages resulting from an oil discharge against the current owner of property (ICI, Inc.) when the evidence revealed that the former owner (Exxon) had caused or permitted the discharge. The Court held that the rationale for imposing strict liability could not extend to ICI, because it had no connection with the ultrahazardous activity:

> The rationale for imposing strict liability is clearly inapplicable to the present case. The rule of liability without fault has no appropriate application to ICI under the facts here because ICI did not bring the oil onto or into its property. It did not knowingly permit the oil to accumulate and did nothing to encourage or contribute to oil being stored up there.

Id. at 1344. Likewise, Tesoro is not now, nor was at the time of the alleged leak, engaged in the underground storage of petroleum at the Peters Creek station. If Sanden's tanks were indeed the source of the leak, Tesoro is not responsible for the discharge of gasoline onto and into the ground and aquifer. Tesoro should not

bear the burden of paying for the consequences of the activities of third parties.

B. Count VII -- Common Law Nuisance.

In order to impose liability on Tesoro for public nuisance, the State must demonstrate that some conduct by Tesoro was intentional or negligent. See Maier v. City of Ketchikan, 403 P.2d 34, 38 (Alaska 1965), rev'd on other grounds, Johnson v. City of Fairbanks, 583 P.2d 1818 (Alaska 1978), (claim based on public nuisance must at least show defendant's creation or maintenance of some physical condition); Snyder v. Kelter, 4 Alaska 447, 455-456 (1912) (nuisance claim must demonstrate defendant's maintenance of bawdyhouse). As Dean Prosser has stated:

> Today liability for nuisance may rest upon an intentional invasion of the plaintiff's interests, or a negligent one, or conduct which is abnormal and out of place in its surroundings, and so falls fairly within the principle of strict liability. With very rare exceptions there is no liability unless the case can be fitted into one of these familiar categories.

Prosser, Law of Torts, § 87 at 574 (4th Ed. 1971).

Tesoro committed no negligent or intentional acts with regard to the underground tanks or lines at Sanden's station. All acts or omissions were performed by others.

A person is not civilly liable for a nuisance caused or promoted by others, and such person is not bound to incur the expense to abate such a nuisance. United States v. Ira S. Bushey

& Sons, Inc., 363 F. Supp. 110, 119 (D.Vt.), cert. denied, 417 U.S. 976 (1974) (parent corporation liable for public nuisance associated with alter-ego subsidiaries' oil discharges only where parent controlled, managed, operated, and "in all ways" supervised the operations of its subsidiaries); State v. Cardon, 530 P.2d 1115, 1118 (Ariz. App. 1975), vacated on other grounds, 112 Ariz. 548, 544 P.2d 657 (1976) ("nuisance" is activity which emanates from "unreasonable, unwarranted or unlawful use by a person of his own property"); Monroe City v. Arnold, 22 Utah 2d 291, 452 P.2d 321, 322 (1969) (liability for public nuisance only where defendant, who conveyed property away, continued to operate and control property). Sanden's or Petro's acts are the proximate causes, if any, of the pollution, and hence it would be inconsistent with justice or propriety that Tesoro should be held to responsibility. See Rabin, Nuisance Law: Rethinking Fundamental Assumptions, 63 Va. L. Rev. 1299, 1319 (1977).

V. Count VIII -- Common Law Trespass And Conversion.

Count VIII seeks damages assertedly resulting from trespass upon and conversion of groundwaters. Under Alaskan law, trespass requires plaintiff to prove an invasion of possessory rights (or right to possession) the actual entry, and the damages resulting. Alaska Placer Co. v. Lee, 553 P.2d 54, 57 (Alaska 1976) (in case of intentional trespasser removing minerals from land of another, mineral owner may recover market value of converted minerals). Conversion is an exercise of dominion or

control over property which seriously interferes with the right of another to control it. See Weaver v. O'Meara Motor Co., 452 P.2d 87, 92 (Alaska 1969) (no conversion where defendant had right to repossess trucks under terms of retail installment contract). Tesoro has performed no intentional -- or accidental -- acts which in any way caused or permit a trespass in this case.

Moreover, trespass causes of action are founded on intentional acts which invade possessory rights. Andersen v. Edwards, 625 P.2d 282, 287 (Alaska 1981) (claimant has burden in showing defendant's share in causing harm); Phillips v. Sun Oil Co., 307 N.Y. 328, 121 N.E. 2d 249, 250-51 (1954) (no trespass where leakage of gasoline from tank not an intentional or volitional act of defendant).19/ As Dean Prosser has stated:

> The distinction to be made is between accidental and intentional entries. Accidental entries are often actionable when produced negligently or as a consequence of abnormally dangerous activities but not as trespasses.

19/ See also First City National Bank v. Japhet, 390 S.W. 2d 70, 74 (Tex. Civ. App. 1965) (no trespass where motorist suffered heart attack, veered onto land); Chartrand v. State of New York, 46 A.D.2d 942, 362 N.Y.S.2d 237, 239 (App. Div. 1974) (no trespass where defendant did not intend the act which produced the invasion, in this case, gas seepage from police station to plaintiff's restaurant); Murchison, Interstate Pollution: The Need for Federal Common Law, 6 Va. J. Nat. Res. L. 1, 6-7 (1986); Restatement (Second) of Torts § 8A (1965).

W. Keeton, C. Dobbs, R. Keeten & D. Owen, Prosser and Keeton on Torts, § 13 at 73 (5th Ed. 1984). Since the State does not contend that Tesoro has committed any intentional wrong, the State's trespass and conversion theories must fail.

VI. Count XIII -- Common Law Negligence.

To establish a claim of negligence against Tesoro, the State must demonstrate that:

(1) Tesoro had a duty of care to prevent the alleged negligent conduct;

(2) Tesoro performed an act or omission which breached that duty of care;

(3) Tesoro's breach of duty was the proximate cause of the injury allegedly suffered; and

(4) Tesoro's conduct caused damage to the plaintiff.

See Leigh v. Lundquist, 540 P.2d 492, 494 (Alaska 1975).

Under common law, a party has no obligation to control the actions of another, absent some special (e.g., parent-child) relationship between them. See Restatement (Second) of Torts § 315.1 (1965). Here, Tesoro has no relationship, contractual or otherwise, with Sanden by which the State can impose a duty to prevent Sanden's negligent conduct. Were the law otherwise, any business contact between two parties could create tort liability. See, e.g., Mid-Cal National Bank v. Federal Reserve Bank of San Francisco, 590 F.2d 761, 763 (9th Cir. 1979) ("one who merely fails to act to protect another is generally not liable for breaching a duty") (citing Restatement (Second) of Torts § 314

(1965); McKeithen v. S.S. Frosta, 441 F. Supp. 1213, 1216 (E.D. La. 1977) (Steamship Pilots Ass'n not liable for the allegedly negligent conduct of its members based on claims of negligent supervision and screening of members) (citing Restatement (Second) of Torts § 315.1 (1965)).

Likewise, the State's allegations that Tesoro negligently selected and supervised Sanden in the operation of the Peters Creek Station (Complaint at ¶ 39-42), rests on a fundamental misreading of the July, 1985 Distributor Agreement with Petro. Section 3 of that Agreement states that Petro, not Tesoro, selects all service station dealers, such as Sanden. Moreover, the Agreement states specifically that Petro will assure such dealers' compliance with all environmental laws and regulations. See July, 1985 Distributor Agreement, at ¶ 3(c). Thus, the State's allegation of negligent supervision and instruction falsely assumes that Tesoro was in some way involved with the selection or supervision of such dealers. It was not. See Undisputed Facts Nos. 2, 5 and 6.

Nor can liability be extended to Tesoro simply because it retained the right to approve Petro's selection of dealers and to inspect such operations. It is well established in Alaska that a party's reservation of its right to approve or inspect the operations of another does not create liability for the negligence of that third party. For example, in the construction context, an owner is not liable for the negligent acts of a contractor simply because the owner reserves the right to approve and

inspect the job site. As the Court in State v. Morris, 555 P.2d 1216, 1218 (Alaska 1976) held:

> It has been repeatedly held in our Courts that even though the owner reserves the right to exercise that degree of supervision and control to assure himself that the contract specifications are being met, yet he will not be held liable for the negligent methods of the contractor or subcontractor. Nor does the contracting owner incur a duty to the employees of an independent contractor merely by reserving the right to conduct safety inspections or to prescribe safety requirements. (citations omitted)

Cf. Restatement (Second) of Torts § 414 (1965) (Comment c) ("There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.") Accord, Molosco v. State, 644 P.2d 205, 211 (Alaska 1982) (same); Everette v. Alveska Pipeline Service Co., 614 P.2d 1341, 1347 (Alaska 1980) (same).

Equally fatal to the State's negligent claims, Tesoro did not proximately cause any release or discharge of petroleum products at Peters Creek. (see discussion of "cause" at pages 12-15 supra.) Any such substances were in the exclusive possession and control of Sanden at the Peters Creek station. As such, there is simply no nexus, causal or legal, between any conduct of Tesoro and the alleged leak at the Peters Creek station. See generally Alvey v. Pioneer Oilfield Services, 648 P.2d 599, 601 (Alaska 1982) (contractor's employee cannot recover for injuries absent a showing they were a proximate result of defendant's conduct). Because Tesoro has no duty to prevent the

negligent conduct of Sanden nor could any of its actions have proximately caused the alleged spill, the State's negligence claims must fail.

CONCLUSION

For the foregoing reasons, Tesoro requests entry of judgment in its favor and against the State on all counts of the State's complaint.

DATED this 27th day of January, 1988, at Anchorage, Alaska.

Respectfully submitted.

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for defendant Tesoro Alaska Petroleum Company, hereby certifies that a true and correct copy of the above and foregoing TESORO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT was mailed, postage prepaid and properly addressed to the following counsel of record this 27th day of January, 1988.

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APPENDIX I

In each of the cases below, there was found to be no actual or apparent agency, despite the existence of numerous contacts between the oil company and the dealer, including supply contracts, lease agreements, dealer contracts and franchise agreements. None of these contracts and dealings are present between Tesoro and Sanden.

ALABAMA Union Oil Co. v. Crane, 288 Ala. 173, 258 So.2d 882, 887-89 (1972)

In Union Oil, a service station customer sued the station operator and the supplying oil company for injuries sustained when customer was struck by a car being driven by the operator. The Alabama Supreme Court reversed and remanded the trial court decision against the oil company, finding no evidence of apparent authority or agency by estoppel in view of the customer's lack of reliance. The fact that the oil company leased the premises to the operator did not create an agency relationship.

ARKANSAS Arkansas Fuel Oil Co. v. Scaletta, 200 Ark. 645, 140 S.W.2d 684, 689 (Ark. 1940)

In Arkansas Fuel Oil Co., a passerby sued both the station operator and the owner-oil company for injuries sustained in an automobile collision with service station attendant. The Arkansas Supreme Court found no agency or master-servant relation between the oil company and the station operator notwithstanding that the oil company owned the station, issued credit cards and executed a comprehensive dealer contract with its lessee.

CALIFORNIA Apple v. Standard Oil, 307 F. Supp. 107, 111-115 (N.D. Cal. 1969) (interpreting California law)

In Apple, a service station customer sued both the station operator and the oil company for injuries sustained on the premises. The Court held there was no agency, either actual or ostensible, between the station operator and the oil company, despite the display of the oil company's signs, the execution of a lease agreement, and the issuance of credit cards.

DELAWARE White v. Gulf Oil Corp., 406 A.2d 48, 52-53 (Del. Sup. Ct. 1979)

In White, a service station attendant sued both the station operator and the oil company for injuries sustained on the premises. The Delaware Supreme Court held there was no agency or master-servant relation between oil company and station operator even though the oil company leased the premises to the operator, and equipped the premises with underground gasoline storage tanks, pumps, signs and other equipment necessary for the operation of a Gulf station.

FLORIDA Drum v. Pure Oil Co., 184 So.2d 196, 198 (Fla. App. 1966)

In Drum, a service station customer sued both the station operator and the oil company for injuries sustained from a slip-and-fall incident on the premises. The Florida District Court of Appeal held there was no actual or apparent agency between station operator and oil company, despite the execution of a lease and mortgage agreement and the display of oil company signs.

Cawthon v. Phillips Petroleum Co., 124 So.2d 517, 520 (Fla. App. 1960)

In Cawthon, the service station customer sued both station operator and oil company for injuries sustained as a result of improper brake repairs. The Florida District Court of Appeal held there was no actual or apparent agency between station operator and oil company, despite the display of oil company's signs at the station. The Court found that the relation between the oil company and station operator was that of seller and purchaser.

GEORGIA Manis v. Gulf Oil Corp., 124 Ga. App. 638, 185 S.E.2d 589, 590-91 (Ct. App. 1971)

In Manis, a service station customer counterclaimed against the oil company for negligence of the station operator in its truck repairs. The Georgia Court of Appeals held there was no actual or apparent agency between oil company and station operator, despite the execution of a sales agreement and operator's use of oil company signs and uniforms.

ILLINOIS Crittendon v. State Oil Co., 78 Ill.App.2d 112, 222 N.E.2d 563, 565-66 (Ct. App. 1966)

In Crittendon, a service station customer sued the oil company-supplier for automobile damages resulting from an inadequate brake repair job. The Illinois Appeals Court found no actual or apparent agency between the station operator and the oil company-supplier despite the display of oil company's signs and the execution of a dealer agreement.

MARYLAND B.P. Oil Corp. v. Mabe, 279 Md. 632, 370 A.2d 554, 557-63 (1977)

In B.P. Oil Corp., a service station customer sued for injuries sustained in a grease fire on the premises. The Maryland Court of Appeals held there was no actual or apparent agency between station operator and lessor-oil company despite the execution of a dealer agreement and the display of oil company insignia on pumps, signs, trucks and uniforms.

MISSISSIPPI Levine v. Standard Oil Co., In Ky., 249 Miss. 651, 163 So.2d 750, 751 (1964)

In Levine, a service station customer sued the oil company for injuries sustained on the premises. The Mississippi Supreme Court held there was no actual or apparent agency between the operator and the oil company notwithstanding the execution of a lease agreement and display of oil company's insignia on station signs and uniforms.

MONTANA Elkins v. Husky Oil Co., 153 Mont. 159, 455 P.2d 329, 331-33 (1969)

In Elkins, an administratrix sued the oil company to recover for wrongful death. The Montana Supreme Court held there was no actual or apparent agency between the station operator and oil company despite the execution of an equipment lease agreement and truck rental agreement between the parties, and the oil company's ownership of certain equipment at the station.

NEW MEXICO Shaver v. Bell, 74 N.M. 700, 397 P.2d 723, 726-28 (1964)

In Shaver, a service station customer sued the station operator and the oil company for injuries sustained in a slip-and-fall incident on the premises. The New Mexico Supreme Court held there was no actual or apparent agency between the operator and the oil company despite the operator's use of the oil company's credit card, the existence of a lease and the display of oil company's sign and colors.

OKLAHOMA Cities Service Oil Co. v. Kindt, 200 Okla. 64, 190 P.2d 1007, 1012 (1948)

In Cities Service Oil Co., a service station customer sued the station operator and the oil company for injuries sustained in a slip-and-fall incident. The Oklahoma Supreme Court held there was no agency or master-servant relation between the operator and the oil company despite the oil company's processing of credit card charges, and a lease of station equipment to the operator.

Coe v. Esau, 377 P.2d 815, 817-19 (Okla. 1963)

In Coe, a service station customer sued the station operator and the oil company for damages sustained in the improper repair of an automobile. The Oklahoma Supreme Court held there was no agency or master-servant relation between the operator and the oil company, despite the existence of a dealer agreement, a lease, and the dealer's practice of honoring the credit cards of oil company.

PENNSYLVANIA Green v. Independent Oil Co., 414 Pa. 477, 201 A.2d 207, 211 (1964)

In Green, personal representatives of two service station customers sued the station operator and the oil company for trespass. The Pennsylvania Supreme Court held there was no agency or master-servant relation between the operator and the oil company despite the execution of a lease and a dealer agreement.

SOUTH DAKOTA Westre v. De Buhr, 82 S.D. 276, 144 N.W.2d 734, 735-36 (1966)

In Westre, a service station customer sued the station operator and the oil company for injuries sustained on the premises. The South Dakota Supreme Court held there was no actual or apparent agency between the operator and the oil company despite a lease and a sales agreement between dealer and owner, and notwithstanding the dealer's practice of honoring the oil company's credit cards.

TEXAS Beckham v. Exxon Corp., 539 S.W.2d 217, 219-20 (Tex. Civ. App. 1976)

In Beckham, a passerby sued the service station's oil company for injuries sustained in an automobile collision adjacent to the premises. The Texas Court of Civil Appeals held there was no agency or master-servant relation between the station dealer and the oil company despite the execution of a lease and sales/dealership agreement between them and notwithstanding the dealer instruction manual and periodic inspections of station.

McGee v. Phillips Petroleum Co., 373 S.W.2d 773, 777 (Tex. Civ. App. 1963), writ of error refused (1964).

In McGee, a driver sued the oil company for injuries sustained in an automobile collision with oil company's jobber. The Texas Court of Civil Appeals found no agency or subagency between oil company and jobber, despite the execution of a jobber's sales contract between the parties, and the use of oil company's name on jobber's truck.

Greenberg v. Mobil Oil Corp., 318 F. Supp. 1025, 1028-29 (N. D. Tex 1970)

In Greenberg, a service station customer sued the station operator and the oil company for injuries sustained in a shooting incident on the premises. The Court held there was no actual or apparent agency between the operator and the oil company notwithstanding the execution of a lease agreement and supply contract, and the display of oil company signs.

UTAH Foster v. Steed, 19 Utah 2d 435, 432 P.2d 60, 63 (1967)

In Foster, a service station customer sued the station operator and the oil company for injuries sustained on the premises. The Utah Supreme Court held there was no agency or master-servant relation between the parties despite the execution of a lease contract and dealer's agreement between the operator and the oil company.

FIFTH CIRCUIT Arceneaux v. Texaco, Inc., 623 F.2d 924, 926-27 (5th Cir. 1980)

In Arceneaux, service station customers sued the oil company for injuries sustained on the premises. The Fifth Circuit, interpreting Louisiana law, held there was no apparent agency or master-servant relation between the oil company and the operator, despite the operator's apparent use of oil company signs and insignia.

Miller v. Sinclair Refining Co., 268 F.2d 114, 117-18 (5th Cir. 1959)

In Miller, a service station customer sued the oil company for injuries sustained on the premises. The Fifth Circuit, interpreting Florida law, held there was no actual or apparent agency between oil company and the station operator despite the (1) oil company's financing of station construction, (2) oil company's ownership of underground storage tanks, etc., (3) dealer-operator's practice of honoring oil company credit cards and (4) a lease between them.

SEVENTH CIRCUIT Smith v. Cities Service Oil Co., 346 F.2d 349, 352 (7th Cir. 1965)

In Smith, a service station customer sued the oil company for injuries sustained on the premises. The Seventh Circuit, interpreting Michigan law, held there was no agency relation between the oil company and the station operator, despite the existence of a station lease between them, and the operator's purchase of petroleum and other products from oil company.

(7)

retroactivity

WRAP UP -

U.S. EPA SUPERFUND PROGRAM

°° C E R C L I S °°

LIST-H: SITE/EVENT LISTING

INVENTORY

REPORT OPTIONS: EXTERNAL REPORT
LEVEL: STATE AK
SELECTION:
SEQUENCE: STATE, SITE NAME
EVENTS: ALL

EPA_ID_NO.	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST.	NFA. FLAG	OPROLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980978902	ALASKA AUTO CARRIERS		NFA	00	DSI		04/11/85	STATE(FUND)
	1600 SHIP AV				PAI	09/30/87	09/30/87	STATE(FUND)
	ANCHORAGE	AK 99501						
	020 ANCHORAGE							
AK0004904215	ALASKA BATTERY ENTERPRISES			00	DSI		06/01/80	EPA (FUND)
	157 OLD RICHARDSON HWY				PAI	09/07/84	09/28/84	STATE(FUND)
	FAIRBANKS	AK 99701			HRI		07/16/87	EPA (FUND)
	090 FAIRBANKS NORTH STAR							
AKD037995404	ALASKA ELECTROPLATING & BUMPER REPAIR			00	DSI		07/01/80	EPA (FUND)
	828 E 15TH AVE				PAI	09/07/84	09/24/84	STATE(FUND)
	ANCHORAGE	AK 99504						
	020 ANCHORAGE							
AKD038526620	ALASKA GOLD			00	DSI		08/01/81	EPA (FUND)
	DRY CR - 1.5 MI N OF NOME				PAI	09/07/84	09/28/84	STATE(FUND)
	NOME	AK 99762			SII	09/24/86	09/24/86	EPA (FUND)
	100 NOME							
AK0007246497	ALASKA HUSKY BATTERY INC.			00	DSI		06/01/80	EPA (FUND)
	4540 MOUNTAIN VIEW DR				PAI	09/07/84	09/01/84	STATE(FUND)
	ANCHORAGE	AK 99502			SII	12/01/84	02/01/85	STATE(FUND)
	020 ANCHORAGE							
AKD981767262	ALASKA JUNEAU DUMP			00	DSI		03/01/87	EPA (FUND)
	THANE ROAD, MILE 1							
	JUNEAU	AK 99801						
	110 JUNEAU							
AK0061673430	ALASKA POLLUTION CONTROL			00	DSI		10/01/80	EPA (FUND)
	11620 OLD SEWARD HWY				PAI	09/07/84	09/18/84	STATE(FUND)
	ANCHORAGE	AK 99510						
	020 ANCHORAGE							
AK0009252481	ALASKA PULP CORP			00	DSI		06/01/80	EPA (FUND)
	SAWMILL CR RD				PAI	08/21/84	08/27/84	EPA (FUND)
	SITKA	AK 99835			SII	08/21/84	09/27/84	EPA (FUND)
	220 SITKA							

EPA_ID_NO	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST	NFA FLAG	OPRBLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980983241	ALASKA RAILROAD - ANCHORAGE YARD OCEAN DOCK RD, E SIDE ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI PAI SII	 09/07/84 12/16/85	06/01/80 09/27/84 12/30/85	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980983183	ALASKA RAILROAD - FAIRBANKS YARD PHILLIPS FLD RD & THURMON RD FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99201	NFA	00	DSI PAI SII	 01/02/85 01/29/86	06/01/80 03/05/85 06/16/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981770076	ALASKA STATE OF, DUTCH HARBOR AIRFIELD DUTCH HARBOR AIRFIELD DUTCH HARBOR 010 ALEUTIAN ISLANDS	AK 99692		00	DSI		02/06/87	EPA (FUND)
AKD981769847	ALASKA-DNR BIG LAKE BIG LAKE BIG LAKE 170 MATANUSKA SUSITNA	AK 99687		00	DSI		02/06/87	EPA (FUND)
AKD981770019	ALASKA, ST OF - YAKUTAT ARPT YAKUTAT ARPT YAKUTAT 231 SKAGWAY-YAKUTAT-ANGOON	AK 99689		00	DSI		02/08/87	EPA (FUND)
AKD981769961	ALASKA, ST OF-SUMMIT AIR NAV SITE CANTWELL, 5 MI SOUTH SUMMIT 290 YUKON-KOYUKUK	AK 99729		00	DSI		02/06/87	EPA (FUND)
AKD981769722	ALASKA,ST OF TANANA AIRFIELD TANANA ARPT TANANA 290 YUKON-KOYUKUK	AK 99777		00	DSI		02/06/87	EPA (FUND)
AKD981769904	ALASKA,ST OF,DOT-PF GULKANA AIR NAV SITE GULKANA ARPT GULKANA 261 VALDEZ-CORDOVA	AK 99586		00	DSI		02/06/87	EPA (FUND)

EPA ID NO.	SITE NAME / STREET / CITY / COUNTY CODE AND NAME	STATE / CONG DIST	NFA FLAG	OPRULE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD076664986	ANCHORAGE COMMUNITY COLLEGE 2533 PROVIDENCE DRIVE ANCHORAGE 020 ANCHORAGE	AK 99508	NFA	00	DSI PAI	 12/10/87	03/28/86 12/22/87	OTHER EPA (FUND)
AKD021317506	ANDY'S AUTO WRECKING 30TH AVE AND LATHROP FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK 99701	NFA	00	DSI PAI	 09/30/87	08/05/86 09/30/87	OTHER STATE(FUND)
AKD980495519	ARCO PRUDHOE BAY SITE NORTH SLOPE PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DSI PAI	 01/02/85	06/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD991281262	ARCO SAND DUNES LANDFILL - STAGING AREA TEEN RISE SEC 26 PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DSI PAI SII	 01/02/85 08/27/86	07/01/81 02/21/85 09/12/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980901930	ARNESS PROPERTY KENAI SPUR RD, MI 29 NORTH KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	 11/30/87	09/19/85 12/30/87	STATE(FUND)
AKD980724702	BELLS FLATS & RUSSIAN CR SUBDIVISIONS WOMAN'S BAY COMMUNITY KODIAK 150 KODIAK	AK 99615		00	DSI PAI	 09/07/84	01/01/83 09/28/84	EPA (FUND) STATE(FUND)
AKD980975932	BENDLE'S ROAD OILING FACILITY NUNBERRY RD - END OF RD CHUGIAK 020 ANCHORAGE	AK 99567		00	DSI PAI	 09/14/87	04/01/84 09/19/87	EPA (FUND) EPA (FUND)
AKD981761927	BETTLES AIRPORT 2000 FT SW OF AIRPORT BETTLES 290 YUKON-KOYUKUK	AK 99726	NFA	00	DSI PAI	 10/23/87	09/05/85 11/12/87	OTHER EPA (FUND)

EPA_ID_NO	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE ZIP / CONG_DIST	NFA_ FLAG	OPRABLE UNIT	EVENT_TYPE	ACTUAL START _DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980665095	BIG HURRAH GOLD MINE 7 MI NE OF CY, 2 MI E OF RIVER SOLOMON 130 NOME	AK 99790		00	DS1 PA1 SI1	 09/07/84 06/16/86	10/01/80 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981761984	CAPE SIMPSON DEW STATION BARROW AK, 50 MI SE OF BARROW 185 NORTH SLOPE BOROUGH	AK 99723		00	DS1		08/29/85	OTHER
AKD981765712	CATHEDRAL BLUFF ACS REPEATER MILEPOST 102 AK HWY FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK 99701		00	DS1		09/08/85	OTHER
AKD009266149	CHEVRON USA ALASKA REF KENAI SPUR RD, MI 22 1/2 KENAI 122 KENAI PENINSULA	AK 99611		00	DS1 PA1	 01/02/85	07/01/79 02/13/85	EPA (FUND) STATE(FUND)
AKD980980273	COASTAL DRILLING 3533 B-A SPUR HWY SOLDOTNA 122 KENAI PENINSULA	AK 99669		00	DS1 PA1	 09/30/87	07/28/86 09/30/87	OTHER STATE(FUND)
AKD020244943	COMMERCIAL PRINTING COMPANY 200 N CUSHMAN ST FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701	NFA	00	DS1 PA1	 09/07/84	06/01/80 09/17/84	EPA (FUND) STATE(FUND)
AKD084611219	CROWLEY ENVIRONMENTAL SERV 111 W ROY RD ANCHORAGE 020 ANCHORAGE	AK 99503		00	DS1 PA1	 01/02/85	09/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD980986955	DERA-KODIAK TRACKING STATION CAPE CHINIAK RD, END OF KODIAK 150 KODIAK ISLAND	AK 99615		00	DS1		07/18/86	OTHER

EPA_ID_NO.	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST.	NFA. FLAG	UNRULE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980986770	OPRA-LITTLE NAVY CAPE CHINIAK KODIAK 150 KODIAK ISLAND	AK 99615		00	DS1		07/18/86	OTHER
AKD980495535	DIESEL FUEL DUMP ENTIRE CITY - UNDER GROUND KOTZEBUE 140 KOBUK	AK 99752		00	DS1 PA1 SI1 SI2	 01/02/85 11/01/80 11/01/80	10/01/80 02/06/85 11/01/80 11/01/80	EPA (FUND) STATE(FUND) EPA (FUND) STATE(FUND)
AKD049983273	EARTH MOVERS OF FAIRBANKS 925 AURORA ST FAIRBANKS 090 FAIRBANKS	AK 99701		00	DS1 PA1	 09/07/84	06/01/80 09/28/84	EPA (FUND) STATE(FUND)
AKD981766314	ELEMENTARY SCHOOL BUILDING SITE SEC 21,22,26,27 NEAR GEORGESON SITKA 220 SITKA	AK 99835		00	DS1		03/18/87	OTHER
AK8690590072	FAA-LAKE MINCHUMINA ARPT RAMP AT LK MINCHUMINA ARPT LAKE MINCHUMINA 290 YUKON-KUYUKUK	AK 99757		00	DS1 PA1	 01/05/87	08/02/85 01/05/87	STATE(FUND) EPA (FUND)
AKD980495541	FAIRBANKS CITY DUMP LOWER 2ND AV FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1	 09/07/84	06/01/80 09/27/84	EPA (FUND) STATE(FUND)
AKD010196277	FAIRBANKS DAILY NEWS MINER 200 N CUSHMAN FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701	NFA	00	DS1 PA1	 09/07/84	06/01/80 09/17/84	EPA (FUND) STATE(FUND)
AKD980495600	FAIRBANKS MUNICIPAL UTIL SYST 2ND AV FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1 SI1	 09/07/84 06/16/86	09/01/80 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)

EPA ID NO	SITE NAME / STREET / CITY / COUNTY CODE AND NAME	STATE ZIP / CONG DIST	NFA FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK0045771235	FAIRBANKS NORTH STAR BOROUGH SLF 5 CUSHMAN ST EXTENSN FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99707		00	DS1 PA1 SI1	 09/07/84 09/01/80	08/01/80 09/25/84 09/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK0004477464	FAIRBANKS SAND & GRAVEL INC RICHARDSON HWY, MI 25 FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701		00	DS1 PA1 SI1	 09/07/84 06/01/80	06/01/80 09/28/84 06/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK0980664882	FIN CREEK FUEL DUMP 12N R1?E SEC 9 JUNIPER CR 185 NORTH SLOPE	AK 99700		00	DS1 PA1 SI1	 02/04/81 07/01/81	01/01/81 02/04/81 07/01/81	EPA (FUND) EPA (FUND) EPA (FUND)
AK0980639751	FORT YUKON CITY DUMP FORT YUKON FORT YUKON 290 YUKON KOYUKUK	AK 99740		00	DS1 PA1	 01/02/85	06/01/81 02/06/85	EPA (FUND) STATE(FUND)
AK0007276619	FRONTIER TANNING KLATT RD & JOHNS RD ANCHORAGE 020 ANCHORAGE	AK 99502		00	DS1 PA1 SI1	 09/07/84 09/24/86	07/01/80 09/26/84 09/24/86	EPA (FUND) STATE(FUND) EPA (FUND)
AK0980665046	INTERNATIONAL AIRPORT ROAD LDFL W INTL ARPT RD & MINNESOTA RD ANCHORAGE 020 ANCHORAGE	AK 99502		00	DS1 PA1 SI1	 09/07/84 07/01/80	06/01/80 09/28/84 07/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AK[illegible]340	IRON SUBDIVISION OLD DUMP SITE RIDGEWAY AREA SOLDOTNA 122 KENAI PENINSULA	AK 99611		00	DS1 PA1	 09/17/87	06/16/86 09/18/87	OTHER EPA (FUND)
AK0981[illegible]270	JUALAPA TUNNEL BASIN RD & CUPE PARK JUNEAU 110 JUNEAU	AK 99801		00	DS1		04/15/87	OTHER

EPA_ID_NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA. FLAG	UPROLE NUM	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD980495568	JUNEAU LDFL GLACIER HWY, MI 5.5 JUNEAU 110 JUNEAU	AK 99801		00	DSI PAI	09/07/84	06/01/80 09/27/84	EPA (FUND) STATE(FUND)
AKD980664924	KENAI LDFL REDOUBT AV KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	01/02/85	08/01/80 02/06/85	EPA (FUND) STATE(FUND)
AKD980664966	KENAI, CY OF, OLD CITY DUMP KENAI SPUR RD KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAS SII	01/02/85 08/01/80	11/01/79 02/14/85 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981767023	KLAWOCK TRAILOR COURT KLAWOCK-HOLLIS ROAD KLAWOCK 201 PRINCE WALLS KETCHIKAN	AK 99925		00	DSI		01/21/87	OTHER
AKD009243718	LIQUID AIR INC 6510 ARCTIC SPUR ROAD ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI PAI SII	01/02/85 08/01/80	06/01/80 02/06/85 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981762289	LUNG ISLAND KODIAK ISL., 8 MI E OF KODIAK 150 KODIAK ISLAND	AK 99615		00	DSI PAI	06/30/87	08/01/85 06/30/87	OTHER EPA (FUND)
AKD981762347	LOT 1, U.SS 1334 AK TRACT C, U.SS 2367 GRAVINA ISLAND 130 KETCHIKAN GATEWAY	AK 99901	NFA	00	DSI PAI	09/30/87	05/12/86 09/30/87	OTHER STATE(FUND)
AKD009252230	LOUISIANA PACIFIC - KETCHIKAN DIV N TONGASS HWY, MI 7.5 KETCHIKAN 130 KETCHIKAN	AK 99901		00	DSI PAI SII	08/21/84 08/21/84	06/01/80 09/27/84 09/27/84	EPA (FUND) EPA (FUND) EPA (FUND)

EPA_ID_NO.	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE	ZIP / CONG_DIST.	NFA. FLAG	OPABLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980664901	M & M ENTERPRISES WYOMING DR ANCHORAGE 020 ANCHORAGE	AK	99503		00	DS1 PA1	09/07/84	07/01/80 09/28/84	EPA (FUND) STATE(FUND)
AKD980664791	MANNING PT BARREL DUMP T9N R34E SEC 21 BARTER ISLAND 185 NORTH SLOPE	AK	99790		00	DS1 PA1	08/21/84	07/01/81 09/27/84	EPA (FUND) EPA (FUND)
AKD981766009	MARENCO INC. KLATT RD & TURNAGAIN ST INT ANCHORAGE 020 ANCHORAGE	AK	99502	NFA	00	DS1 PA1	12/24/86	01/17/86 01/23/87	EPA (FUND) EPA (FUND)
AKD981767080	MCCALL PROPERTY BETHANY AND FRONTAGE FAIRBANKS 090 NORTH STAR BOROUGH	AK	99701		00	DS1		10/28/86	STATE(FUND)
AKD980930150	MCPEAK SALVAGE YARD BADGER AND OLD RICHARDSON WAY FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK	99701		00	DS1 PA1	09/30/87	08/05/86 09/30/87	STATE(FUND) STATE(FUND)
AKD980495584	MERRILL FIELD SANITARY LDFL 15TH & DEBARR RD. ANCHORAGE 020 ANCHORAGE	AK	99502		00	DS1 PA1 SI1	08/21/84 08/21/84	07/01/80 01/02/85 01/02/85	EPA (FUND) EPA (FUND) EPA (FUND)
AKD103386744	MILLER SALVAGE 1485 30TH ST FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK	99701	NFA	00	DS1 PA1	09/30/87	08/05/86 09/30/87	STATE(FUND) STATE(FUND)
AKD980495592	MUKLUK DUMP PRUDHOE BAY MUKLUK 185 NORTH SLOPE	AK	99740		00	DS1 PA1 SI1	01/02/85 07/01/81	04/01/80 02/13/85 07/01/81	EPA (FUND) STATE(FUND) EPA (FUND)

EPA ID NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD063374227	NUKLUK FREIGHT LINES PRUDHOE BAY NUKLUK 185 NORTH SLOPE	AK 99740		00	DS1 PA1	01/02/85	09/01/80 02/14/85	EPA (FUND) STATE(FUND)
AKD981767140	NANKU ORE FACILITY NANKU HARBOR SKAGWAY 231 SKAGWAY-YAKUTAT-ANGOON	AK 99840		00	DS1		03/01/87	EPA (FUND)
AKD980664692	NOME BARREL DUMP LEE'S CAMP-NOME SOLOMON RD NOME 180 NOME	AK 99762		00	DS1 PA1 SI1	09/07/84 06/16/86	06/01/81 09/28/84 08/15/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980722540	NOME, CY OF, DUMP 3 MI N OF NOME NOME 180 NOME	AK 99762	NFA	00	DS1 PA1 SI1	09/07/84 06/16/86	08/01/81 09/28/84 09/19/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD000850701	NORTH POLE REFINING .25 RICHARDSON HWY NORTH POLE 090 FAIRBANKS NORTH STAR	AK 99705		00	DS1 PA1 SI1	09/07/84 08/01/80	11/01/79 09/28/84 08/01/80	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981762164	NORTH RIVER WHITE ALICE SITE 8 MI E OF UNALAKLEET UNALAKLEET 180 NOME	AK 99684		00	DS1		09/09/85	OTHER
AKD980664734	NORTH SLOPE BOROUGH LDFL T11N R14E SEC27 PRUDHOE BAY 185 NORTH SLOPE	AK 99740		00	DS1 PA1	01/02/85	07/01/81 02/14/85	EPA (FUND) STATE(FUND)
AKD981762107	NORTHWAY ACS RADIO RELAY TOK JUNCTION, 50 MI E OF NORTHWAY 240 SOUTHEAST FAIRBANKS	AK 99764		00	DS1		09/09/85	EPA (FUND)

EPA ID NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST	NPL FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD980979215	OHLSON MTN TOP OF OHLSON MTN NOME 290 YUKON-KOYUKUK	AK 99602		00	DSI PAI	09/14/87	02/01/85 09/19/87	EPA (FUND) EPA (FUND)
AKD980664635	OLD CREOSOTE PLANT WHITTIER WHITTIER 261 VALDEZ-CORDOVA	AK 99693		00	DSI PAI SII	01/02/85 09/30/86	04/01/81 02/06/85 09/30/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD980639272	PACIFIC AIRMOTIVE CORP. McKRILL FIELD ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI PAI	09/07/84	06/01/81 09/28/84	EPA (FUND) STATE(FUND)
AKD980975106	PERSERVERANCE MILL BASIN ROAD, END OF JUNEAU 110 JUNEAU	AK 99801		00	DSI PAI	12/26/84	05/01/84 01/18/85	EPA (FUND) STATE(FUND)
AKD069559276	PRESCOTT EQUIPMENT COMPANY 467 W. CHIPPERFIELD, POB 658 ANCHORAGE 020 ANCHORAGE	AK 99510		00	DSI PAI	11/25/87	03/13/85 12/08/87	EPA (FUND) EPA (FUND)
AKD980495618	RED DEVIL MINE WASTE PONDS KUSKOKWIM RIVER BETHEL 050 BETHEL	AK 99502		00	DSI PAI	01/02/85	07/01/79 02/14/85	EPA (FUND) STATE(FUND)
AKD097246789	RED SAMM CONSTRUCTION 2961 RIVERSIDE DR JUNEAU 110 JUNEAU	AK 99801	NPA	00	DSI PAI	12/29/87	05/16/85 12/30/87	STATE(FUND) STATE(FUND)
AKD018542969	ROGERS & DAUER INC 1301 E 64TH AV ANCHORAGE 020 ANCHORAGE	AK 99510		00	DSI PAI	09/07/84	08/01/80 09/28/84	EPA (FUND) STATE(FUND)

EPA_ID_NO	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE ZIP / CONG_DIST	NFA_ FLAG	OPERABLE UNIT	EVENT_TYPE	ACTUAL START _DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AKD980665152	SAGWON AIRSTRIP DUMP T15N R14E SEC 11 SAGWON 185 NORTH SLOPE	AK 99723		00	DSI PAI SII	01/02/85 09/30/86	01/01/81 02/15/85 09/30/86	EPA (FUND) STATE(FUND) EPA (FUND)
AKD981766256	SITKA, CITY OF, LDFL SEC 28 NEAR KASHEVAROFF SITKA 220 SITKA	AK 99835		00	DSI		03/18/87	OTHER
AKD980976203	SOLDOTNA LANDFILL STERLING HWY, MI 98.5 SOLDOTNA 122 KENAI PENNINSULA	AK 99669		00	DSI PAI	01/14/86	08/24/84 09/11/86	EPA (FUND) EPA (FUND)
AKD980664676	SOUTH BARTER ISLAND BARREL DUMP TWN, R33 - SEC 25 BARTER ISLAND 185 NORTH SLOPE	AK 99790		00	DSI PAI	08/21/84	07/01/81 09/27/84	EPA (FUND) EPA (FUND)
AKD981765094	ST. LAWRENCE ISLAND ST. LAWRENCE ISLAND GAMBELL 180 NOME	AK 99743		00	DSI PAI	08/29/86	07/05/85 12/24/86	EPA (FUND) EPA (FUND)
AKD981770084	ST. LAWRENCE ISLAND-CARGO BEACH SITE CARGO BEACH NORTH EAST CAPE 180 NOME	AK 99742		00	DSI PAI	08/29/86	08/01/85 12/24/86	EPA (FUND) EPA (FUND)
AKD980774787	STANDARD STEEL & METALS 2400 RAILROAD AV ANCHORAGE 020 ANCHORAGE	AK 99501		00	DSI		10/28/85	STATE(FUND)
AKD981767127	STEADMAN FIELD LOT 19 BLOCK 65 NOME 180 NOME	AK 99762		00	DSI		10/27/86	OTHER

EPA ID NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA FLAG	OPRBLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AKD980722177	STERLING SPECIAL WASTE DISPOSAL SITE 1.5 MI NE OF STERLING HWY STERLING 122 KENAI PENINSULA	AK 99672	NFA	00	DSI PAI SIT	01/05/87	11/01/79 11/01/79 09/30/87	EPA (FUND) OTHER EPA (FUND)
AKD048679682	TESORO ALASKA PETROLEUM CO KENAI SPUR RD, MI 22 KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	01/02/85	06/01/81 02/21/85	EPA (FUND) STATE(FUND)
AKD981767320	THANE MINE DUMP THANE ROAD JUNEAU 110 JUNEAU	AK 99801		00	DSI PAI	10/26/87	06/19/84 11/12/87	EPA (FUND) EPA (FUND)
AKD045330651	THE LETTER SHOP 157 STEESE HIGHWAY FAIRBANKS 090 FAIRBANKS NORTH STAR	AK 99701	NFA	00	DSI PAI	09/01/84	09/01/80 09/17/84	EPA (FUND) STATE(FUND)
AKD981767387	TREADWELL MINES GASTINEAU CHANNEL, NE SIDE DOUGLAS 110 JUNEAU	AK 99801		00	DSI		03/01/87	STATE(FUND)
AKD980988216	U.S. SMELTING, PULPING & MINING ADJACENT TO ILLINOIS ST. FAIRBANKS 090 FAIRBANKS NORTHSTAR	AK 99701		00	DSI PAI	09/30/87	08/05/86 09/30/87	STATE(FUND) STATE(FUND)
AKD980980791	UNION OIL GRAVEL PIT GRAVEL PIT RD, N OF W PUPPY LN SOLDOTNA 122 KENAI PENNINSULA	AK 99611	NFA	00	DSI PAI	09/30/87	11/01/84 09/30/87	OTHER STATE(FUND)
AKD092876390	UNION OIL OF CA - KENAI PLANT KENAI SPUR ROAD, MI 22 NORTH KENAI 122 KENAI PENINSULA	AK 99611		00	DSI PAI	01/02/85	11/01/79 02/21/85	EPA (FUND) STATE(FUND)

EPA_ID_NO...	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE	ZIP CONG_DIST...	NFA. FLAG_	OPRBLE UNIT	EVENT_TYPE	ACTUAL START _DATE_____	ACTUAL COMPL DATE____	CURRENT EVENT_LEAD_
AKD048679567	UNIVERSITY OF ALASKA TANANA DR FAIRBANKS 090 FAIRBANKS NORTH STAR	AK	99701		00	DS1 PA1	01/02/85	06/01/80 02/21/85	EPA (FUND) STATE(FUND)
AK8570020615	USAF - ANIAK AFB LOFL HEAD SHANK KUSKOKWIM RIV/SLOUGH ANIAK 050 BETHEL	AK	99557		00	DS1		06/01/81	EPA (FUND)
AK4570020619	USAF - BEAR CREEK AFS LOFL YUKON RIVER ON N SHORE TANANA 290 YUKON-KOYUKUK	AK	99777		00	DS1		05/27/81	EPA (FUND)
AK9570020622	USAF - BETHEL AFS LOFL AIRPORT - W END OF MAIN ROAD BETHEL 050 BETHEL	AK	99559		00	DS1		06/01/81	EPA (FUND)
AK8570020623	USAF - BIG MOUNTAIN AFS LOFL S SHORE ILIAMNA/S SIDE BIG MTN BIG MOUNTAIN AFS 070 DILLINGHAM	AK	99501		00	DS1		06/01/81	EPA (FUND)
AK6572720620	USAF - CAMPION AFS LOFL YUKON AVE - 6 MI E OF CITY GALENA 90 YUKON-KOYUKUK	AK	99741		00	DS1		06/01/81	EPA (FUND)
AK1572720631	USAF - CAPE LISBURNE AFS LOFL 40 MI NE OF PT HOPE CAPE LISBURNE AFS 105 NORTH SLOPE	AK	99766		00	DS1		06/01/81	EPA (FUND)
AK0572720632	USAF - CAPE NEWENHAM AFS LOFL KUSKOKWIM BAY CAPE NEWENHAM AFS 050 BETHEL	AK	99651		00	DS1		06/01/81	EPA (FUND)

EPA_ID_NO	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST	NFA FLAG	OPROLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AK9572720633	USAF - CAPE ROMANZOF AFS LOFL 20 MI N OF HOOPER BAY HOOPER BAY 270 WADE HAMPTON	AK 99604		00	DSI		06/01/81	EPA (FUND)
AK5570020634	USAF - CAPE SARICHEF AFS LOFL UNIMAK ISLAND, W COAST UNIMAK 010 ALEUTIAN IS	AK 99685		00	DSI		06/01/81	EPA (FUND)
AK1570020635	USAF - CLEAR AFS LOFL HWY 3 & NENANA RD ANDERSON 290 YUKON-KOYUKUK	AK 99704		00	DSI PAI		05/01/81 10/01/81	EPA (FUND) OTHER
AK5570020610	USAF - DEWLINE SITE BAR-MAIN BARTER ISL., 1/2 MI E OF NE SHR KAKTOVIK 185 NORTH SLOPE	AK 99747	NFA	00	DSI PAI SII	09/15/87 07/01/81	07/01/81 09/15/87 07/01/81	EPA (FUND) EPA (FUND) EPA (FUND)
AK9570020697	USAF - DEWLINE SITE LIZ-2 KASEGALIK LAGOON-CHUKCHI SEA POINT LAY 185 NORTH SLOPE	AK 99766	NFA	00	DSI PAI	09/15/87	06/01/81 09/15/87	EPA (FUND) EPA (FUND)
AK6570020716	USAF - DEWLINE SITE LIZ-3 KUK RIVER & CHUKCHI SEA WAINWRIGHT 185 NORTH SLOPE	AK 99782	NFA	00	DSI PAI	09/15/87	06/01/81 09/15/87	EPA (FUND) EPA (FUND)
AK3570020677	USAF - DEWLINE SITE POW-1 PITT POINT, E OF SMITH BAY LONLEY 185 NORTH SLOPE	AK 99999	NFA	00	DSI PAI	09/15/87	06/01/81 09/15/87	EPA (FUND) EPA (FUND)
AK5570020691	USAF - DEWLINE SITE POW-2 SIMPSON LAGOON-BEAUFORT BAY ULIKTOK 185 NORTH SLOPE	AK 99599		00	DSI PAI	09/15/87	06/01/81 09/15/87	EPA (FUND) EPA (FUND)

EPA_ID_NO	SITE NAME / STREET / CITY / COUNTY_CODE_AND_NAME	STATE	ZIP / CONG_DIST	NPL FLAG	OPABLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AK2570028652	USAF - DEWLINE SITE POW-3 E OF FLAXMAN ISLAND BULLEN POINT 185 NORTH SLOPE	AK	99723		00	DSI PAI SII	 09/15/87 07/01/81	01/01/81 09/15/87 07/01/81	EPA (FUND) EPA (FUND) EPA (FUND)
AK1570028695	USAF - DEWLINE STA POW-MAIN LIKN N SALT LAGOON & IKIKPUK POINT BARROW 185 NORTH SLOPE	AK	99723	NFA	00	DSI PAI	 09/15/87	06/01/81 09/15/87	EPA (FUND) EPA (FUND)
AK3570028644	USAF - DRIFTWOOD BAY AFS LDFL N COAST UNALASKA ISLAND DRIFTWOOD BAY 010 ALEUTIAN IS	AK	99553		00	DSI		06/01/81	EPA (FUND)
AK2570028645	USAF - DUNCAN CANAL LDFL 12 MI SW OF CY PETERSBURG 200 WRANGELL-PETERSBURG	AK	99833		00	DSI		06/01/81	EPA (FUND)
AK1570028646	USAF - EIELSON AFB LDFL HWY 2 - 16 MI SE OF FAIRBANKS FAIRBANKS 090 FAIRBANKS NORTH STAR	AK	99702		00	DSI		06/01/81	EPA (FUND)
AK0570028647	USAF - ELMENDORF AFB N BOUNDRY OF CITY LIMITS ANCHORAGE 020 ANCHORAGE	AK	99506		00	DSI PAI		03/01/81 03/01/81	EPA (FUND) OTHER
AK3572720654	USAF - FORT YUKON AFS LDFL N OF YUKON SLOUGH FORT YUKON 290 YUKON-KOYUKUK	AK	99740		00	DSI		06/01/81	EPA (FUND)
AK9570028655	USAF - GALENA AIRPORT LDFL MO OF TRACTOR CK,1 MI W OF CY GALENA 290 YUKON-KOYUKUK	AK	99741		00	DSI		06/01/81	EPA (FUND)

EPA ID NO.	SITE NAME / STREET / CITY / COUNTY CODE AND NAME	STATE	ZIP	CONG. DIST.	NPL	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK5570028659	USAF - GRANITE MOUNTAIN AFS 14 MI NW OF CY HAYCOCK 180 NOME	AK	99762		LOFL	00	DS1		06/01/81	EPA (FUND)
AK3572728662	USAF - INDIAN MOUNTAIN AFS NW SOURCE OF INDIAN RIVER BETTLES 290 YUKON-KOYUKUK	AK	99720		LOFL	00	DS1		06/01/81	EPA (FUND)
AK8570028664	USAF - KALAKAKET CREEK S SHORE OF KALA CREEK GALENA 290 YUKON-KOYUKUK	AK	99741			00	DS1		06/01/81	EPA (FUND)
AK3570028669	USAF - KING SALMON AIRPORT 15 MI E OF BRISTOL BAY KING SALMON 060 BRISTOL BAY	AK	99613		LOFL	00	DS1		06/01/81	EPA (FUND)
AK4570028684	USAF - NIKOLSKI AFS W COAST OF UMNAK IS NIKOLSKI 010 ALEUTIAN ISLAND	AK	99638		LOFL	00	DS1		06/01/81	EPA (FUND)
AK3570028685	USAF - NORTH RIVER AFS MOUTH OF NORTH RIVER UNALAKLEET 180 NOME	AK	99684		LOFL	00	DS1		06/01/81	EPA (FUND)
AK8570028690	USAF - PORT HEIDEN AFS NW SHORE OF HEIDEN BAY PORT HEIDEN 070 DILLINGHAM	AK	99549		LOFL	00	DS1		06/01/81	EPA (FUND)
AK7570028699	USAF - PORT MOLLER AFS ALASKA PENINSULA PORT MOLLER 010 ALEUTIAN ISLAND	AK	99695		LOFL	00	DS1		06/01/81	EPA (FUND)

EPA_ID_NUM	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST	NPL	OPROLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AK9570028705	USAF - SHEMYA AFB SHEMYA IS, S SHORE SHEMYA 010 ALEUTIAN ISLAND	AK 99736		00	DS1		05/15/85	OTHER
AK8572728709	USAF - SPARRENVOHN AFS HOOK CREEK-19 MI SW OF CY LIME VILLAGE 050 BETHEL	AK 99557		00	DS1		06/01/81	EPA (FUND)
AK4572728711	USAF - TATALINA AFS LOFL 9 MI SW OF CITY ON ROAD MCGRATH 290 YUKON KOYUKUK	AK 99627		00	DS1		06/01/81	EPA (FUND)
AK3572728712	USAF - TIN CITY AFS LOFL 1 MI NE OF CY TIN CITY AFS 180 NOME	AK 99703		00	DS1		06/01/81	EPA (FUND)
AK4170024323	USAF - WHITE ALICE ANTENNA SITE - ADAK ADAK IS ADAK 010 ALEUTIAN ISLAND	AK 99579		00	DS1		06/01/81	EPA (FUND)
AK7572728742	USAF - WHITE ALICE SITE - KOTZEBUE NW CORNER OF BALDWIN PENINSULA KOTZEBUE 140 KOBUK	AK 99752		00	DS1		08/01/81	EPA (FUND)
AK7570028616	USAF - WHITE ALICE SITE - NOME ANVIL MT 6.5 MI N OF NOME NOME 180 NOME	AK 99762		00	DS1		08/01/81	EPA (FUND)
AK4570090099	USAF-GRANT POINT DEWLINE RADAR SITE 10.3 MI NW OF COLD BAY COLD BAY 010 ALEUTIAN ISLANDS	AK 99571		00	DS1		09/08/86	STATE(FUND)

EPA ID NO.	SITE NAME STREET CITY COUNTY CODE AND NAME	STATE ZIP CONG DIST.	NFA. FLAG	OPROLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK7210022342	USARMY GERSTLE RIVER TEST SITE T13S R14E SEC 9,15,16 FORT GREELY 240 SOUTHEAST FAIRBANKS	AK 98733		00	DS1 PA1	06/30/87	02/01/80 06/30/87	EPA (FUND) EPA (FUND)
AK5210070002	USARMY WHITTIER OIL STORAGE TANK 3/4 MI N OF TOWN WHITTIER 261 VALDEZ-CORDOVA	AK 99693		00	DS1		06/01/81	EPA (FUND)
AK2210090115	USARMY-COE FORT GREELY AIRPORT BIG DELTA DELTA JUNCTION 240 SOUTHEAST FAIRBANKS	AK 99732		00	DS1		02/06/87	EPA (FUND)
AK6210022426	USARMY-FORT WAINWRIGHT RICHARDSON HWY, SE OF CY FORT WAINWRIGHT 090 FAIRBANKS NORTH STAR	AK 99703		00	DS1		08/20/87	EPA (FUND)
AK5690361139	USCG - POINT SPENCER USCG DUMP SITE PORT CLARENCE-60 MI NW OF CY NOME 190 NOME	AK 99762		00	DS1		06/01/81	EPA (FUND)
AK9690333742	USCG - SUPPORT CENTER USCG SUPPORT CENTER KODIAK 150 KODIAK	AK 99619		00	DS1		06/01/81	EPA (FUND)
AK5122390128	USDA-FS COUGHLAN ISLAND COUGHLAN ISLAND AUKE BAY 110 JUNEAU	AK 99821		00	DS1		02/06/87	EPA (FUND)
AK0122390131	USDA-FS HINCHINBROOK ISLAND RANGE SITE POINT LENTINCK (STRAWBERRY POI HINCHINBROOK ISLAND 231 SKAGWAY-YAKUTAT-ANGOON	AK 99574		00	DS1		02/06/87	EPA (FUND)

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AK8122390125	USDA-FS MIDDLETON ISLAND MIDDLETON ISLAND MIDDLETON ISLAND 261 VALDEZ-CORDOVA	AK	99999			00	DS1		02/06/87	EPA (FUND)
AK2140990126	USDOI-BIA ANNETTE ISLAND AIRPORT ANNETTE AIRPORT ANNETTE 201 PRINCE-WALLS-KETCHIKAN	AK	99926			00	DS1		02/06/87	EPA (FUND)
AK2140990118	USDOI-BIA MOSES POINT MOSES POINT MOSES POINT 180 NOME	AK	99767			00	DS1		02/06/87	EPA (FUND)
AK5141157698	USDOI-BLM ANIAK AIRPORT ANIAK AIRPORT ANIAK 050 BETHEL	AK	99557			00	DS1		02/06/87	EPA (FUND)
AK5141190129	USDOI-BLM BIORKA ISLAND FACILITY BIORKA ISLAND BIORKA ISLAND 220 SITKA	AK	99835			00	DS1		02/06/87	EPA (FUND)
AK5141190103	USDOI-BLM CAPE SABINE DEW LINE SITE POINT HOPE, 65 MI SE POINT HOPE 185 NORTH SLOPE	AK	99766			00	DS1 PA1	03/12/87	08/14/85 03/12/87	OTHER EPA (FUND)
AK0141190116	USDOI-BLM CAPE YAKATAGA AIRFIELD CAPE YAKATAGA CAPE YAKATAGA 261 VALDEZ-CORDOVA	AK	99560			00	DS1		02/06/87	EPA (FUND)
AK2141190122	USDOI-BLM DILLINGHAM ARPT DILLINGHAM DILLINGHAM 070 DILLINGHAM	AK	99576			00	DS1		02/06/87	EPA (FUND)

EPA_ID_NO	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST	NFA FLAG	OPROLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AK0141190124	USDOI-BLM FAREWELL - AIR NAVIGATION SITE FAREWELL LAKE FAREWELL 290 YUKON-KOYUKUK	AK 99629		00	DS1		08/06/87	EPA (FUND)
AK4141190138	USDOI-BLM FIRE ISLAND HOUSING AREA FAA HOUSING AREA FIRE ISLAND 020 ANCHORAGE	AK 99506		00	DS1		02/06/87	EPA (FUND)
AK4141157699	USDOI-BLM FORT YUKON AIRPORT FORT YUKON AIRPORT FORT YUKON 290 YUKON-KOYUKUK	AK 99740		00	DS1		02/06/87	EPA (FUND)
AK9141190083	USDOI-BLM FORT YUKON WHITE ALICE SITE E. OF TOWN FORT YUKON 290 YUKON-KOYUKUK	AK 99740		00	DS1		09/02/85	OTHER
AK5141190137	USDOI-BLM GALENA AIRBASE GALENA AIRPORT GALENA 290 YUKON-KOYUKUK	AK 99741		00	DS1		02/06/82	EPA (FUND)
AK7141190127	USDOI-BLM GUSTAVUS ARPT GUSTAVUS GUSTAVUS 231 SKAGWAY-YAKUTAT	AK 99826		00	DS1		02/06/87	EPA (FUND)
AK2141190130	USDOI-BLM HAINES AIR NAVIGATION SITE HAINES-FAA ROAD HAINES 100 HAINES	AK 99027		00	DS1		02/06/82	EPA (FUND)
AK4141190104	USDOI-BLM ICY CAPE DEW LINE SITE WAINWRIGHT, 50 MI NE WAINWRIGHT 105 NORTH SLOPE	AK 99782		00	DS1 PA1	03/12/87	05/14/8 03/12/87	EPA (FUND) EPA (FUND)

EPA ID Num	Site Name / Street / City / County Code and Name	State	ZIP / Cong Dist	NPL Elig	Operable Unit	Event Type	Actual Start Date	Actual Compl Date	Current Event Lead
AK0141190132	USDOI-BLM ILIAMNA SITE ILIAMNA ILIAMNA 070 DILLINGHAM	AK	99606		00	DSI		02/06/87	EPA (FUND)
AK0141190082	USDOI-BLM KOGRU RIVER DEWLINE SITE N SIDE OF HARRISON BAY BARROW & PRUDHOE BAY 185 NORTH SLOPE	AK	99723		00	DSI		09/01/85	OTHER
AK6141190136	USDOI-BLM KOTZEBUE AIRPORT KOTZEBUE AIRPORT KOTZEBUE 140 KOBUK	AK	99752		00	DSI		02/06/87	EPA (FUND)
AK5141190087	USDOI-BLM LORAN STATION ON SITKINIK SITKINAK ISLAND SITKINAK ISLAND 150 KODIAK ISLAND	AK	99615		00	DSI		12/23/85	OTHER
AK4141190120	USDOI-BLM NENANA FIELD SITE NENANA AIRPORT NENANA 290 YUKON-KOYUKUK	AK	99760		00	DSI		02/06/87	EPA (FUND)
AK7141190119	USDOI-BLM NORTH NENANA VORTAC SITE NENANA NENANA 290 YUKON-KOYUKUK	AK	99760		00	DSI		02/06/87	EPA (FUND)
AK8141190100	USDOI-BLM PEARD BAY DEWLINE SITE BARROW, 50 MI SW BARROW 185 NORTH SLOPE	AK	99723		00	DSI PAI	03/12/87	08/14/85 03/12/87	OTHER EPA (FUND)
AK3141190121	USDOI-BL UNTILLA AIR NAVAGATION SITE PUNTILLA LAKE PUNTILLA LAKE 170 MATANUSKA SUSITNA	AK			00	DSI		02/06/87	EPA (FUND)

EPA_ID_NO...	SITE NAME STREET CITY COUNTY_CODE_AND_NAME	STATE ZIP CONG_DIST...	NFA. FLAG	OPABLE UNIT	EVENT_TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT_LEAD
AK9141190133	USDOI-BLM SKWENTNA AIRFIELD SKWENTNA AIRFIELD SKWENTNA 270 MATANUSKA SUSITNA	AK 99667		00	DS1		02/06/87	EPA (FUND)
AK9141190085	USDOI-BLM TANACROSS AIRFIELD TANACROSS AIRFIELD TANACROSS 240 SOUTHEAST FAIRBANKS	AK 99776		00	DS1		09/09/85	OTHER
AK9141190117	USDOI-BLM UNALAKEET AIRPORT UNALAKEET UNALAKEET 180 NOME	AK 99684		00	DS1		02/06/87	EPA (FUND)
AK7141190135	USDOI-BLM WOODY ISLAND NAV SITE WOODY ISLAND KODIAK 150 KODIAK ISLAND	AK 99615		00	DS1		02/06/87	EPA (FUND)
AK1141190123	USDOI-BLM-HOMER AIRPORT HOMER HOMER 122 KENAI PENINSULA	AK 99603		00	DS1		02/06/87	EPA (FUND)
AK8141190134	USDOI-BLM-TALKEETNA AIRPORT TALKEETNA AIRPORT TALKEETNA 170 TALKEETNA	AK 99676		00	DS1		02/06/87	EPA (FUND)
AK3143690102	USDOI-FWS BROWNLOW POINT DEWLINE SITE BARROW, 265 MI SE BARROW 195 NORTH SLOPE	AK 99723		00	DS1 PA1	03/12/87	07/23/85 03/12/87	OTHER EPA (FUND)
AK4143690101	USDOI-FWS DEMARCATION POINT DEW LINE BARROW, 300 MI SE BARROW 185 NORTH SLOPE	AK 99723		00	DS1 PA1	03/12/87	07/23/85 03/12/87	OTHER EPA (FUND)

EPA ID NO.	SITE NAME / STREET / CITY / COUNTY CODE AND NAME / CONG DIST.	STATE	ZIP	NFA. FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK7143690140	USDOI-FWS NORTHWAY AIRSTRIP DUMP T14N R10E S25 NORTHWAY 240 SOUTHEAST FAIRBANKS	AK	99764		00	DS1		06/15/86	STATE(FUND)
AK9143620114	USDOI-FWS SWANSON RIVER OIL FIELD KENAI NAT WILDLIFE REFUGE KENAI 122 KENAI PENINSULA	AK	99611		00	DS1		01/10/85	EPA (FUND)
AK3141790086	USDOI-NPS MALASPINA DRILLING MUD SITE WRANGELL-ST ELIAS NATIONAL PK GLENNALLEN 261 VALDEZ-CORDOVA	AK	99588		00	DS1 PA1	01/05/87	11/12/85 01/05/87	OTHER EPA (FUND)
AK5141790084	USDOI-NPS NAGLATUK HILL CAPE KRUSENSTERN NAT. MONUMENT KOTZEBUE 140 KOBUK	AK	99752		00	DS1		08/31/85	OTHER
AK0141790113	USDOI-NPS YUKON-CHARLEY RIVERS NAT PARK T5N, R21E, SEC 3 & 4 EAGLE 240 SOUTHEAST FAIRBANKS	AK	99738		00	DS1		05/13/87	EPA (FUND)
AK1690390025	USDOT-CG KODIAK SAN LOFL USCG SUPPORT CENTER KODIAK 150 KODIAK ISLAND	AK	99619		00	DS1		06/08/81	EPA (FUND)
AK7690590057	USDOT-FAA FIRE IS AIRCRAFT WARNING STA T12N R9W S7,8 ANCHORAGE 020 ANCHORAGE	AK	99506		00	DS1 PA1	11/07/86	11/26/85 12/24/86	OTHER EPA (FUND)
AK0690590088	USDOT-FAA NORTHWAY STAGING FIELD NORTHWAY VILLAGE NORTHWAY VILLAGE 240 SOUTHEAST FAIRBANKS	AK	99764		00	DS1		09/11/85	OTHER

LEVEL: STATE AK
SELECTION:
SEQUENCE: STATE, SITE NAME
EVENTS: ALL

U.S. EPA SUPERFUND PROGRAM

CERCLIS

LIST-H: SITE/EVENT LISTING

RUN DATE: 02/01/88
RUN TIME: 10:50:47
VERSION: 1

EPA ID NO.	SITE NAME / STREET / CITY / COUNTY CODE AND NAME / STATE / ZIP / CONG DIST	NFA FLAG	OPABLE UNIT	EVENT TYPE	ACTUAL START DATE	ACTUAL COMPL DATE	CURRENT EVENT LEAD
AK6690502459	USDOT-FAA UMIAT AIRSTRIP STAGING AREA N BANK COLVILLE RIVER UMIAT AK 99723 185 NORTH SLOPE		00	DSI SII	07/01/81	07/01/80 07/01/81	EPA (FUND) EPA (FUND)
AK2170027245	USNAVY - NAVAL ARCTIC RESEARCH LAB MAIN ST, 4 MI N OF CY BARROW AK 99723 185 NORTH SLOPE		00	DSI		06/26/81	EPA (FUND)
AK7170099099	USNAVY-ADAK NAVAL AIR STATION 51 52N 176 36W ADAK AK 99791 010 ALEUTIAN ISLANDS		00	DSI		10/18/79	OTHER
AKD083354209	WHITE PASS & YUKON RAILROAD MAIN ST SKAGWAY AK 99840 291 SKAGWAY-YAKUTAT-ANGOON		00	DSI PAI	01/02/85	06/17/80 02/21/85	EPA (FUND) STATE(FUND)

20 years of drilling

Prudhoe Bay — An environmental gem or lurking problem?

By PATTI EPLER
Daily News reporter

First of two parts

PRUDHOE BAY — The midnight sun is hazy red above a silvery skyline that stretches forever across the horizon. In the softening light, Prudhoe Bay is at peace.

Towering oil rigs are still at work, pumping black crude from deep within the earth. From a distance, they seem in harmony with the greens and browns of an arctic summer.

Suddenly, the vista is twisted by fire — flames shoot from huge pipes as natural gas, pressurized by the ages, escapes skyward, burning. The flares slowly subside, leaving clouds of black smoke to hang in the cool June air until, finally, a fog creeps in and hides the changing scene.

Nearly two decades after North America's largest oil field began production, Prudhoe Bay is still somewhat of an environmental puzzle. Is it possible to extract one resource from within the earth while leaving an equally valuable one mostly intact on its surface?

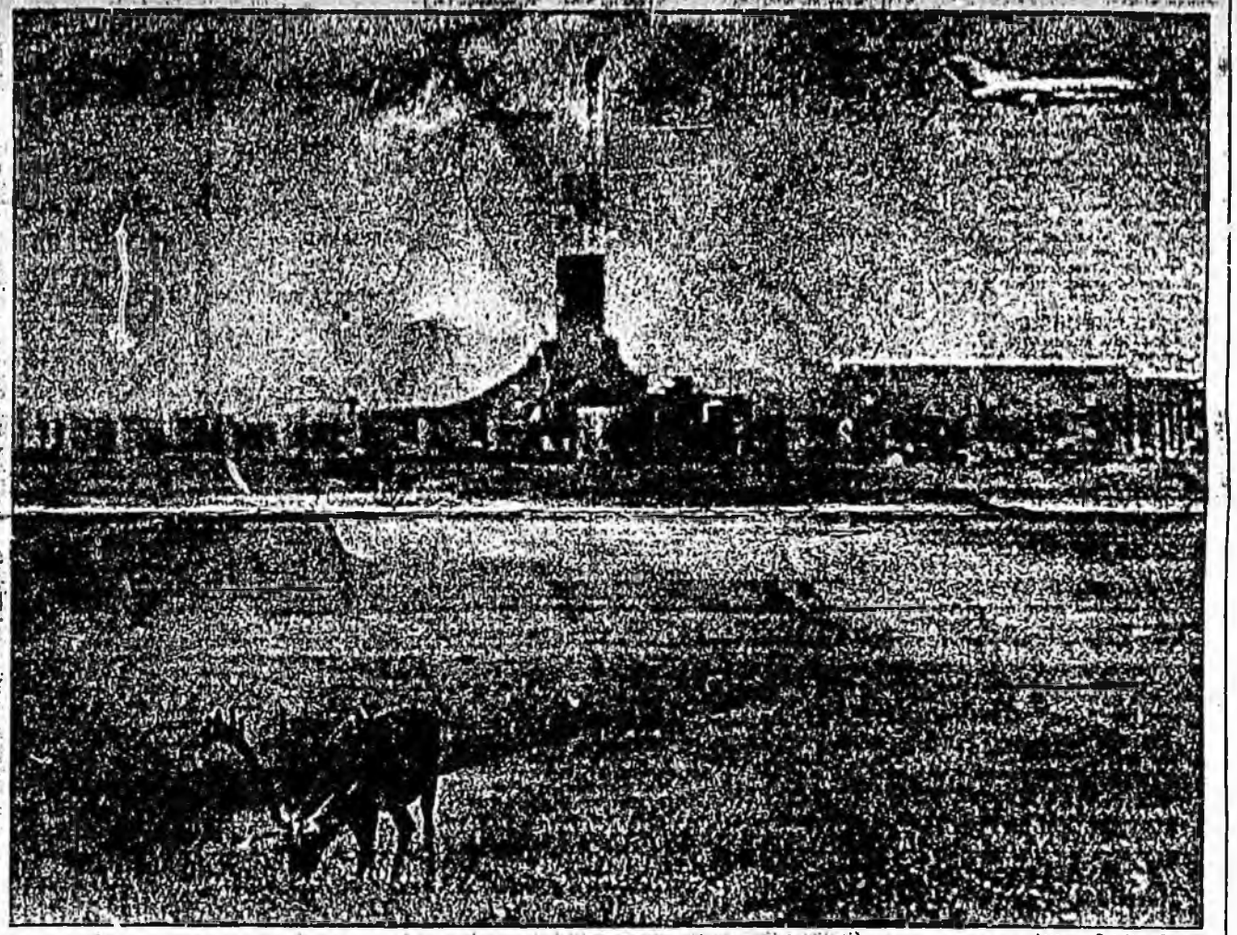
The question is being asked with more urgency these days, as congress wrestles with whether to allow oil development in a part of Alaska still relatively untouched — the coastal plain of the Arctic National Wildlife Refuge.

Some say the North Slope fields are environmental marvels, direct evidence that oil production leaves little lasting mark on the arctic ecosystem.

Environmental groups, who believe any intrusion on ANWR is unacceptable, say that's not true. "Contrary to oil industry claims," says a new report by the pro-environment Alaska Coalition, "pollution problems plague the oil and gas development that has taken place in Alaska's arctic region."

Who's right? A week of touring North Slope oil fields, numerous interviews and the review of dozens of technical reports indicate that the answer, predictably, lies somewhere between.

See Page A-8, PRUDHOE



Anchorage Daily News/Eric Hill

One question being asked now is what effect further arctic development will have on the caribou herds and other arctic wildlife.

Deadhorse gives industry black eye

By PATTI EPLER
Daily News reporter

DEADHORSE — The state will likely pay tens of thousands of dollars to clean up leaking drums of oily waste abandoned on a gravel pad here, state environmental officials say.

Several weeks ago, the Alaska Department of Environmental Conservation discovered more than 500 drums of petroleum liquids on a pad leased to Child's Equipment Services, a company that had filed for protection from creditors in U.S. Bankruptcy Court.

Since then, DEC has found several more dump sites in this haphazard community on the edge of the Prudhoe Bay oil fields. The public burden is likely to grow as an economic slump in Alaska's oil patch squeezes service companies off the Slope, their messes conveniently left behind.

Deadhorse is giving the oil industry an environmental black eye, and at a most inopportune time. Oil companies are struggling to convince Congress to allow development in the Arctic National Wildlife Refuge east of here. But environmentalists have found much anti-development ammunition in the mess that is Deadhorse.

The Child's pad is a prime example. It appears that the barrels, as well as tons of

See Page A-8, DEADHORSE

and would need legislative approval before it could be earmarked for cleanup of the Child's pad.

So, it looks like the state of Alaska will foot the bill. Cormack estimated it will cost $20,000 initially, just to [illegible]

In the end, the major oil companies th originally owned the barrels of waste spe more than $1 [illegible]

PRUDHOE: After 20 years of drilling, area remains environmental puzzle

Continued from Page A-1

"I'd be hesitant to say one way or the other," said Brad Fristoe, an environmental engineer who heads the Alaska Department of Environmental Conservation's North Slope office. "There are things up there that have been impacted that are going to take a long time to recover. But (the area) still produces a lot of the things that it used to and still supports caribou populations and waterfowl populations. The long-term effects haven't really been determined."

Upcoming congressional hearings will focus on the environmental consequences of developing ANWR's coastal plain, about 100 miles east of Prudhoe Bay. The oil industry's record in the Arctic promises to be central to the debate. Pro-development interests wave pictures of caribou frolicking in front of oil rigs, while conservationists display photos of huge pits of oily black waste on fire.

No one knows yet what effect the development of Prudhoe Bay will have 50 or 100 years from now. Prudhoe Bay began in the late 1960s, without the benefit of today's knowledge of the Arctic and before most of the country's environmental laws were in force. Government watchdog agencies began regular field inspections only four years ago; before that, they monitored development from offices in Anchorage, Fairbanks and Seattle.

It's obvious that development has improved with new technology and greater experience by industry and environmental regulators. It's also clear that increasing oversight by state and federal agencies has brought about more sound environmental practices. Lawsuits by conservation groups also have forced government agencies to enforce previously ignored environmental rules.

Regulatory officials say they now have a good understanding of problems at North Slope fields. They say they have learned many things that will help guide environmentally sound development at ANWR.

For the most part, state and federal officials believe that oil development in Alaska's Arctic can proceed with minimal environmental harm — as long as there are tough controls, careful planning and enough money for regulatory agencies to do their jobs.

Chief among the concerns is the way oil companies dispose of hundreds of millions of gallons of oily waste. Officials also question whether the air is being polluted by the massive turbines that run production facilities, and what effect expanding oil field development is having on fish and wildlife.

OILY WASTES

By far the most serious environmental problem identified by watchdog agencies involves hundreds of huge pits that hold hundreds of millions of gallons of toxic waste produced during the drilling of oil wells. Some of the pits, especially those built in the early years of Prudhoe Bay, are thousands of feet long.

The pits sometimes leak, allowing poisonous heavy metals and hydrocarbons to seep onto the tundra. In addition, oil companies can legally discharge millions of gallons of water from the pits onto roads or the tundra directly — if the water meets standards set out in state permits.

State and federal officials worry that enough pollutants could accumulate in the tundra to kill plants and destroy important waterfowl habitat or work their way into the food chain.

The structures are called reserve pits. Mostly they contain drilling muds and cuttings. Muds are basically clay mixed with chemicals. They are used to control pressure in wells, preventing blowouts and making drilling easier. Cuttings are chips of rock.

But sometimes the pits also contain crude oil, water produced along with the crude, rig wastewater and contaminated snow.

Tests of the pits show a wide range contaminants, including arsenic, cadmiu chromium, lead, benzene, toluene, napth ene and paraformaldehyde. While these c be highly toxic in large concentrations, en ronmental officials say the biggest probl is salt, which is present in high levels a kills plants.

The contents of many pits have accident ly leaked through the gravel walls or spill over the top in summer as accumulated sn melts. In 1985, the contents of one pit pour through a breach in a dike into a nearby la used for drinking water.

Steve Taylor, head of the environmen division of Standard Alaska Production C acknowledges that reserve pit constructi has not been adequate to prevent leaking. said new state regulations requiring stric control over the pits will force North Slo operators to improve or close many pi Standard is looking for ways to ins impermeable liners into the walls of the pi

Oil companies are allowed to reduce t contents of the pits in several ways. Son used muds are pumped back into nearl wells through "annular injection," a proce by which muds are pumped into the part the well that doesn't carry oil. In 1986, mo

See Page A-9, PRUDHO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DEC investigator Rich Cormack takes photos of dumped construction debris at a pad leased by Child's Equipment Services, a company that has filed for protection under bankruptcy laws.

DEADHORSE: Prudhoe Bay staging area gives the oil industry black eye

Continued from Page A-1

scrap metal, old wood, tires and other junk, came from a variety of sources. DEC talked to a number of companies that had once used the pad, but no one would accept responsibility, said Rich Cormack, a DEC field officer on the North Slope.

When officials contacted Child's, which had leased the gravel pad from the state, they found the company in Bankruptcy Court and unable to pay for the cleanup, he said.

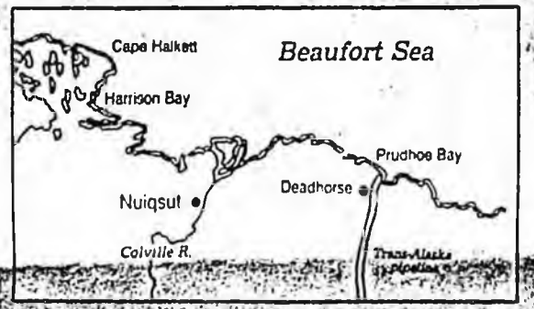
The state has a $25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brossia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has not cashed a single leaseholder's bond to pay for a problem.

Even if the money were claimed, Brossia said, it would go to the state's general fund and would need legislative approval before it could be earmarked for cleanup of the Child's pad.

So, it looks like the state of Alaska will foot the bill. Cormack estimated it will cost $20,000 initially, just to stop the leaking and do the first phase of cleanup. DEC already has put containment booms around the site and shoveled out an area of the pad to slow runoff onto the tundra.

Deadhorse is a more difficult environmental problem than the oil fields themselves. The major oil companies, which operate the fields, keep a tight rein on contractors working in them, but Deadhorse is a patchwork of gravel pads leased in the mid-1970s by the state.

Individual leaseholders hauled in gravel — much of it purchased from the state — and built their own pads along a road that runs from the airport to the oil fields. The pads are three to 60 acres, with troughs between



them. Various lease stipulations and restrictions are aimed at keeping the pads clean and orderly, Brossia said.

DNR and other regulatory agencies conduct annual inspections to make sure companies comply with the rules. This year, mindful of the economic slump, DNR is stepping up inspections and trying to work with companies that might otherwise walk away, Brossia said.

"About three out of four pads are disgusting for one reason or another," Cormack said.

On a day in early June, just around the corner from the Child's pad, water drained from large mounds of oily snow on a pad leased by Kodiak Oil Field Haulers. The water flowed down one trough and toward the Saganavirktok River.

It happens year after year, said Brad Fristoe, who heads DEC's North Slope office, because the company cleans its oily trucks outside and just pushes the contaminated snow to one side. The company should have an indoor shop so the oily waste could be contained, drummed up and sent to a waste facility, he said.

But all that involves considerable expense, Fristoe said, so the oil flows to the tundra again and again.

Jim Taylor, president of Kodiak Oil Field Haulers, declined to discuss the waste problem, except to say it has been resolved.

DEC hasn't taken legal action against the company, Fristoe said, because it costs too much money and manpower to prosecute such cases.

"The department's philosophy is to work with the companies rather than take them to court," Fristoe said.

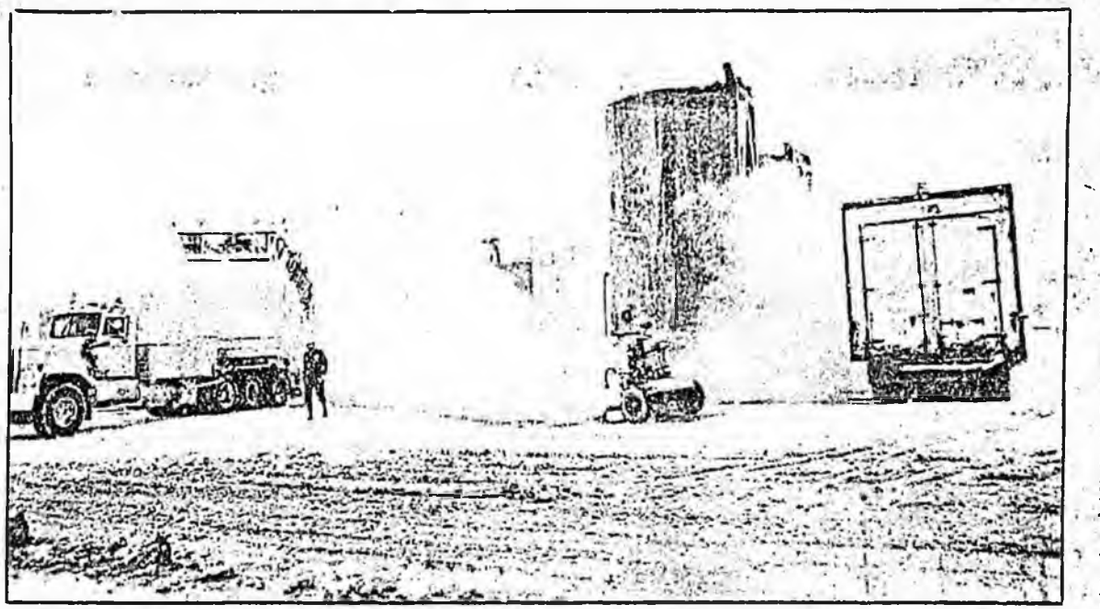
For example, he said, several years ago DEC spent 300 man-hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendants were convicted on criminal charges and ordered to perform community service, rather than to pay fines or go to jail.

In the end, the major oil companies that originally owned the barrels of waste spent more than $1 million to complete the cleanup the salvage company had been paid to perform.

DEC and oil industry officials agree that a Deadhorse-type staging center must not be allowed to happen again, especially in an area like ANWR.

About six years ago, when ARCO Alaska Inc. developed its Kuparuk River field to the west of Prudhoe Bay, the service area was designed much differently. Called the Kuparuk Industrial Center, it has a single large gravel pad, with a central housing facility shared by all companies. Service companies lease shop space from the borough.

"Everybody is evolving and learning as we go along," said Ben Odom, senior vice president of operations for ARCO. "Each time we do it better. You won't see another Deadhorse the next place we go."



At ARCO drilling site #6, a large vessel is steam cleaned while waste water runs off the pad.

regular field inspections only four years ago; before that, they monitored development

massive turbines that run production facilities, and what effect expanding oil field development is having on fish and wildlife.

drilling easier. Cuttings are chips of rock. But sometimes the pits also contain crude oil, water produced along with the crude, or

wells through annular injection," a process by which muds are pumped into the part of the well that doesn't carry oil. In 1986, more

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 9, 1988

MEMORANDUM

TO: Representative Mike Davis

ATTN: Marilyn Heiman

FROM: Heidi Borson-Paine
Legislative Analyst

RE: Other States' Liability Statutes for Hazardous Substance Releases
Research Request 88.191

You requested this agency to determine how many states have strict liability or joint and several liability statutes for hazardous substance releases. As we agreed in a recent conversation, this memorandum provides the information we have collected to date concerning strict liability statutes for hazardous substance releases. A follow-up memorandum will provide copies of other states' strict liability and joint and several liability statutes for hazardous substance releases.

Strict liability in tort and criminal law can be defined as "liability without regard to fault." Under a strict liability standard, the plaintiff is not required to prove negligence on the part of the defendant but must prove that the injury was proximately caused by the defendant. According to Black's Law Dictionary, proximate cause is defined as the "primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened." Defenses against strict liability are usually limited to: 1) foreseeability, 2) acts of God, 3) governmental immunity, 4) governmental privilege, and 5) the assumption of risks.

Strict liability principles have been developed in response to situations in tort law where persons or legal entities engage in activities that have inherent risks of injury to the public. The rationale behind the development of the tort law of strict liability is that it discourages dangerous activities while not completely prohibiting any social benefit they may produce.[1]

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[1]Office of Waste Programs Enforcement, "Current Status of State Liability Standards for Superfund Response Action Contractors," December 1987, United States Environmental Protection Agency, Washington, D.C., p. 2.

According to a July 1987 survey conducted by the Office of Waste Programs Enforcement of the Environmental Protection Agency (EPA), **24 states have hazardous waste management statutes that may hold generators, transporters, and disposers of hazardous waste strictly liable.** The 24 states are: Alaska, California, Connecticut, Florida, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, and Wisconsin.

In addition, states without strict liability statutes for hazardous waste releases may apply the strict liability standard through common law. Under common law, strict liability may be imposed for injury resulting from activities that fall under the following three categories: 1) dangerous instrumentality principle; 2)inherently dangerous operations or ultra-hazardous operations principle; or 3) strict product liability principle.

Under the dangerous instrumentality principle, an owner or occupier of land who possesses, maintains, or stores a dangerous instrumentality, such as gasoline, toxic chemicals, and explosives, on their premises is strictly liable for injuries caused by its presence. The ultra-hazardous operations principle imposes strict liability for any injury or property damage that results from operations conducted by the owner or occupier which are unreasonably dangerous to others in the proximity of their property. These operations could include oil well drilling, mining, blasting, or the production of dangerous chemicals.[2]

Under the strict product liability principle, strict liability is imposed on a vendor who sells any defective product that is unreasonably dangerous to users or consumers, or their property. In product liability cases, the strict liability standard applies even if the vendor has exercised all possible care in the preparation and sale of the product. The plaintiff must simply prove the product was in fact defective and that damages resulted.

* * *

I hope this memorandum meets your immediate needs. You will receive a follow-up memorandum containing copies of state strict liability statutes and joint and several liability statutes within two weeks.

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[2]Ibid., p. 3.

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition
1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.
1987 - Except for economic damages.

DELAWARE

No changes

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ OREGON

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

TEXAS

1987 - In order to be held jointly liable, a defendant's percentage of responsibly must reach certain thresholds:

1. In negligence and malpractice cases:
   a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
   b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendants must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

UTAH

1986 - Total abolition.

VERMONT

1981 - Abolished the doctrine in favor of several liability. Vt. Stat. Ann. Tit. 12, Sec. 1036.

VIRGINIA

Contributory no changes

WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

WEST VIRGINIA

1980 - Abolition except in cases were defendants are more than 25 % at fault.

WISCONSIN

No changes

WYOMING

1986 - Total abolition

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

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✓FLORIDA

1986 - Abolished except for:

1. cases less than $25,000 worth of total damages
2. intentional torts
3. fault free plaintiffs
4. land sale practices
5. pollution control cases
6. security transactions
7. anti-trust
8. RICO Act cases

GEORGIA

1987 - Abolished, however, a jury may specify particular damages and award a jury verdict severally.

✓HAWAII

1986 - Abolished in non-economic damages cases except for:

1. a defendant is more than 25 % at fault
2. intentional torts
3. environmental pollution
4. toxic cases
5. aircraft accidents
6. strict liability cases
7. product liability cases
8. motor vehicle accidents

✓IDAHO

1987 - Abolished except for:

1. intentional torts
2. hazardous wastes

✓ILLINOIS

1986 - Abolished except for:

1. defendants more than 25 % at fault
2. medical expenses
3. medical malpractice cases
4. environmental cases

INDIANA

1984 - Total abolition

IOWA

1984 - Limited the doctrine so it would not apply to defendants found to bear less than 50 percent of total fault assigned to all parties, leaving them liable for their several amount. Iowa 1984 Act, Secs. 668.1-668.3, 619.17.