

HB

459

5-1465L ✓
Hein
5/7/88

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

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 459 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability for releases of hazard-
7 ous substances."

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

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 AS 46.03.822 is repealed and reenacted to read:

10 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
11 SUBSTANCES. (a) The following persons are strictly liable for dam-
12 ages to persons or property, public or private, including damage to
13 the natural resources of the state and the costs of response, contain-
14 ment, removal, or remedial action incurred by the state or a municipi-
15 pality, resulting from a release of a hazardous substance or, with
16 respect to response costs, the substantial threat of a release of a
17 hazardous substance:

18 (1) the owner and the person having control over the hazar-
19 dous substance at the time of the release or threatened release;

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

25 (3) a person who owned the hazardous substance and who
26 arranged for disposal or treatment of the substance by another party
27 or entity, or arranged with a transporter to transport the substance
28 for disposal or treatment by another party or entity, at a facility or
29 incineration vessel that contained the substance and that was owned or

1 operated by the party or entity; and

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

6 (b) In an action to recover damages, a person otherwise liable
7 is relieved from strict liability if the person proves by a preponder-
8 ance of the evidence

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

11 (A) an act of war;

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

15 (i) exercised due care with respect to the haz-
16 ardous substance; and

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

20 (C) an act of God; and

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

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

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

27 (c) For purposes of (b)(1)(B) of this section, a third party or
28 an employee of a third party is in privity of contract with the person
29 who is otherwise liable if the third party or employee and the person

1 are parties to a land contract, deed, or other instrument transferring
2 title or possession, unless the real property on which the facility in
3 question is located was acquired by the person after the disposal or
4 placement of the hazardous substance on, in, or at the facility, and
5 the person by a preponderance of the evidence establishes that the
6 person has satisfied the requirements of (b)(1)(B) of this section and
7 establishes one or more of the following circumstances:

8 (1) at the time the person acquired the facility the person
9 did not know and had no rational basis for knowing that a hazardous
10 substance that is the subject of the release or threatened release was
11 disposed of on, in, or at the facility;

12 (2) the person is a government entity that acquired the
13 facility by escheat, or through another involuntary transfer or acqui-
14 sition, or through the exercise of eminent domain authority by pur-
15 chase or condemnation;

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

18 (d) To establish that a person had no reason to know that the
19 hazardous substance was disposed of, on, in, or at the facility, as
20 provided in (c)(1) of this section, the person must have undertaken,
21 at the time of acquisition, appropriate inquiries into the previous
22 ownership and uses of the property consistent with good commercial or
23 customary practice in an effort to minimize liability.

24 (e) This section does not diminish the liability of a person who
25 previously owned or operated a facility and who would otherwise be
26 liable; however, if the person obtained actual knowledge of the re-
27 lease or threatened release of a hazardous substance at the facility
28 and subsequently transferred ownership to another without disclosing
29 that knowledge, the person is liable under (a)(2) of this section, and

1 a defense under (b)(1)(B) of this section is not available to the
2 person.

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

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

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

18 (8) "facility" includes a

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

24 (B) site or area at which a hazardous substance has
25 been deposited, stored, disposed of, placed, or otherwise locat-
26 ed.

Sec. 46.03.828. Definitions. In AS 46.03.822 — 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "having control over a hazardous substance" means 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, and specifically includes bailees and carriers of a hazardous substance;

(4) "hazardous substance" means

(A) an element or compound which, when it enters in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; or

(B) oil;

(5) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(6) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(7) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska. (§ 1 ch 122 SLA 1972; am § 22 ch 7 SLA 1986)

Revisor's notes. — Reorganized in "owning or" at the beginning of the para- 1986 to alphabetize the defined terms. graph and made minor punctuation
Effect of amendments. — The 1986 changes.
 amendment in paragraph (3) deleted

Sec. 46.03.828. Other rights of action not affected. The provisions of AS 46.03.822 — 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury. (§ 1 ch 122 SLA 1972)

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

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Anchorage Daily News file 110

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

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

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"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 effects 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 oil 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 WASTE

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, etc. wastewater and contaminated snow.

Tests of the pits show a wide range of contaminants, including arsenic, cadmium, chromium, lead, benzene, toluene, naphthalene and paraformaldehyde. While these can be highly toxic in large concentrations, environmental officials say the biggest problem is salt, which is present in high levels and kills plants.

The contents of many pits have accidentally leaked through the gravel walls or spilled over the top in summer as accumulated snow melts. In 1983, the contents of one pit poured through a breach in a dike into a nearby lake used for drinking water.

Steve Taylor, head of the environmental division of Standard Alaska Production Co., acknowledges that reserve pit construction has not been adequate to prevent leaking. He said new state regulations requiring stricter control over the pits will force North Slope operators to improve or close many pits. Standard is looking for ways to insert impermeable liners into the walls of the pits.

Oil companies are allowed to reduce the contents of the pits in several ways. Some muds are pumped back into nearby 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

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Richmond Daily News Photo

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

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wrap 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.

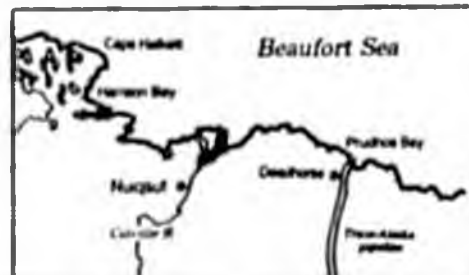
The state has a \$25,000 certificate of deposit posted by Child's when the company leased the tract, but Jerry Brosia of the state Department of Natural Resources said it is rare for the state to actually draw against such bonds. In fact, he said, in the five years he has been with DNR, the state has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

Even if the money were claimed, Brosia 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, Brosia 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, Brosia 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 Saganavirhatok 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.

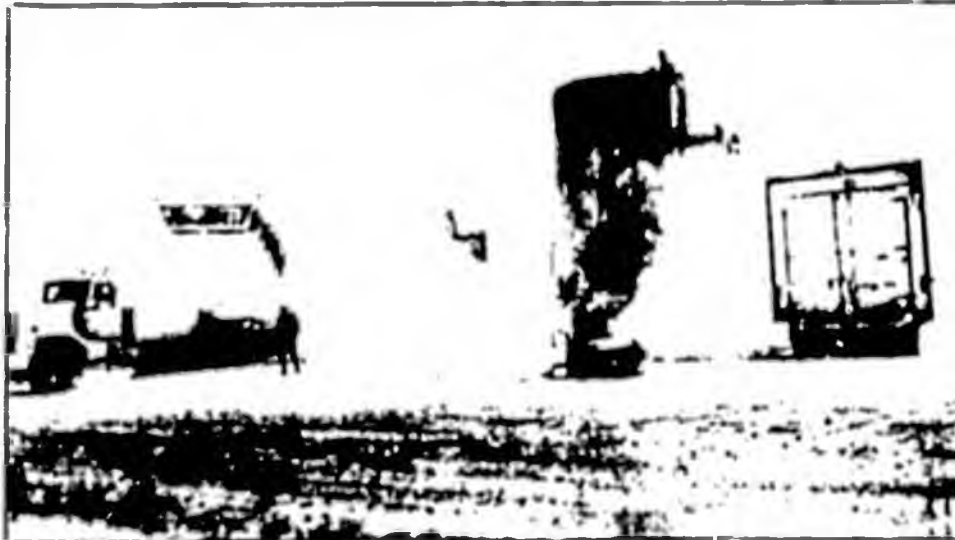
For example, he said, several years ago DEC spent 300 man hours putting together a case against a North Slope salvage company that had dumped 15,000 drums on the tundra just off one of the pads. The case took years to move through the courts. The defendants were convicted on criminal charges and ordered 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 ANWR 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 hauling facility shared by all companies. Service companies lease shop space from the borough.

"Everybody is evolving and learning as we go along," said Ben Olin, vice president of operations for ANWR. "The time we do it better. You want to see Deadhorse the next place we go."



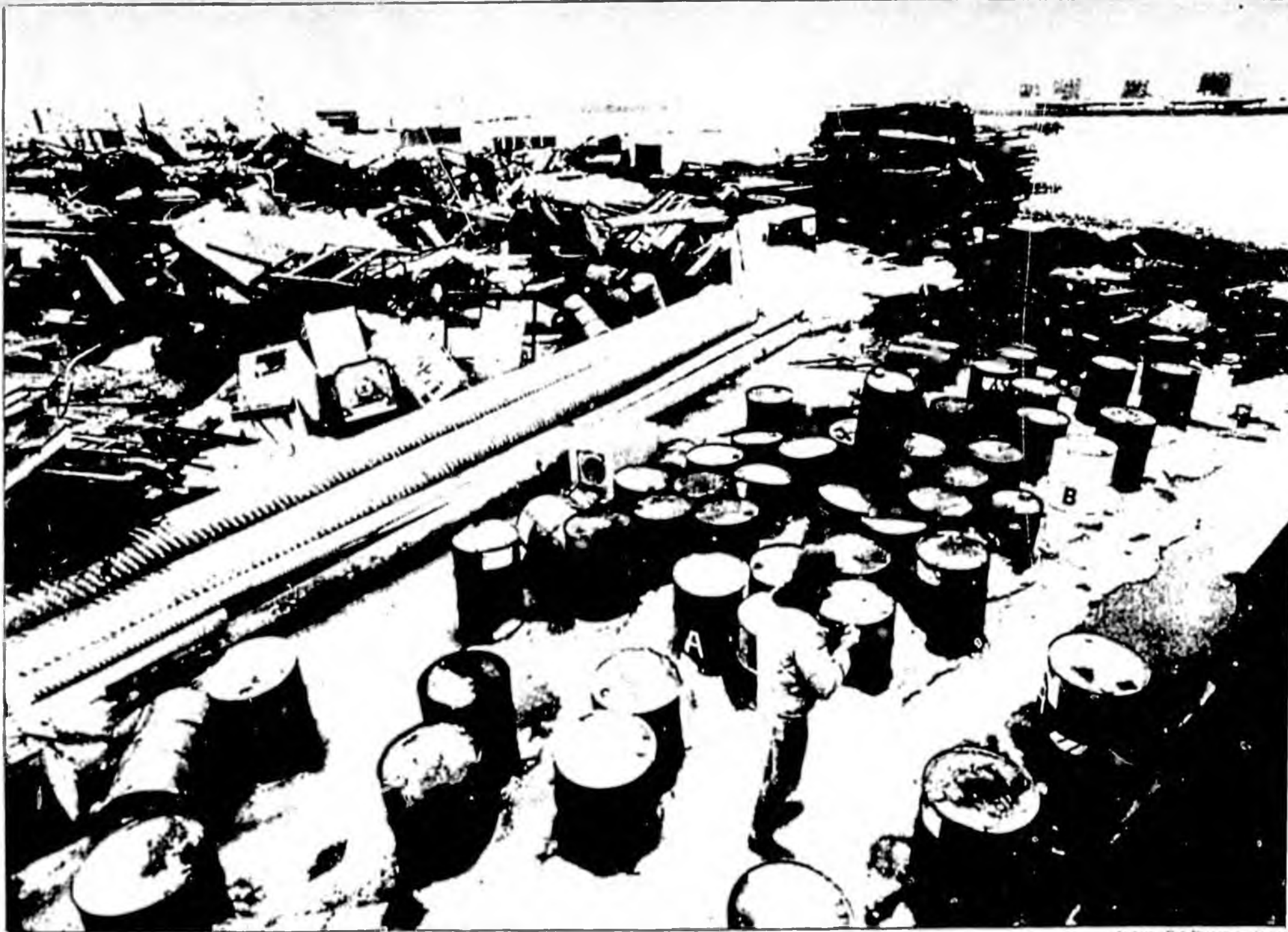
At ARCO drilling site #8, a large vessel is steam cleaned while waste water runs off the pad.

before that, they monitored development

development is having on fish and wildlife.

wastewater and contaminated snow.

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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

DUE FOR A CLEANING IN DEADHORSE



Anchorage Daily News file photo by Rich Cormack

Rich Cormack of the Department of Environmental Conservation takes photos of barrels of oily waste at a gravel pad.

Oil companies prepare for visitors

By PATTI EPLER
Daily News reporter

Deadhorse, the eclectic operations base for North Slope oil-field service companies, is getting a "long overdue" house-cleaning this week.

The belated spring cleaning is being spurred in part, oil industry officials admit, because dozens of congressmen and other VIPs will soon be dropping by.

The congressional delegations will begin arriving late next week on fact-

finding missions to help them decide whether the coastal plain of the Arctic National Wildlife Refuge, a hundred miles to the east, should be opened to oil development.

Today is a free day at the dump, compliments of the North Slope Borough. And officials were expecting record-breaking crowds, thanks to strong suggestions from Alaska's two largest oil producers that companies who want to continue doing business with them take advantage of the borough's generosity.

The special offer is just one part of an overall effort to spruce up the Slope. The oil industry wants to prove to Congress that it can operate arctic oil fields in an environmentally sound fashion.

The community of Deadhorse is actually a collection of gravel pads that in 20 years has spread out along a road leading from the airport to the Prudhoe Bay oil field. Piles of scrap metal, rusted equipment and other debris —

See Back Page, DEADHORSE

DEADHORSE: Cleaning up the pads before company arrives

Continued from Page A-1

even leaking drums of oily waste — have collected in various locations around the community, making Deadhorse an easy target for environmentalists who hope to convince Congress that oil development will devastate the pristine ANWR coastal plain.

But Standard Alaska Production Co. and ARCO Alaska Inc., the two largest North Slope operators, recently turned up the heat on Deadhorse contractors who depend on them for competitive oil patch jobs.

And the two companies themselves are paying thousands of dollars to clean up areas of the community that no one else will take responsibility for.

Doug Webb, Standard's vice president of operations, said Thursday ARCO and Standard sent letters to about 60 contractors strongly urging them to take advantage of the free dump day and clean up their operations.

"We are absolutely delighted because we are getting excellent response from almost all of them," said Webb.

Normally, the borough charges \$25 a cubic yard for

waste material that can't be burned and must be buried in the landfill, said John Davis, the borough manager for the Deadhorse area.

But the borough wanted "to help provide a service for everybody on the Slope to clean up areas that have been ignored in prior years."

On Thursday, Davis said, many companies were already hard at work, cleaning out their shops and stacking scrap metal and other debris to be hauled away. Some companies have offered to haul other people's trash for free, too, he said.

"Everybody is pleased with (the cleanup program)," he said. "Everybody is working real well together."

Davis said this year is the first all-out cleanup effort, although individual companies have undertaken their own house-cleanings in the past.

"I think it was just something that was long overdue," he said.

ARCO and Standard, who in the past have been tapped to clean up messes left behind by their contractors, are stepping in again.

ARCO this week hauled off about 75 dumpster-loads —

about 1,000 cubic yards — of scrap metal and other debris that had been neglected for more than 10 years. The discarded materials had been left in an area near an old landfill, the Mukluk dump, that had closed down in 1976, said Larry Dietrich of the Alaska Department of Environmental Conservation.

The landfill had been used "by virtually everybody on the Slope" for many years, Dietrich said, and it was never clear who was responsible for the adjacent mess.

The material was left on unleased state land in the flood plain of the Sagavanirktok River. The state eventually had the debris condemned — to resolve liability questions — and became the legal owner, he said.

ARCO agreed to clean up the eyesore; and recently spent about \$15,000 to have the debris hauled the five miles to the borough landfill under the free disposal offer, said ARCO spokeswoman Susan Andrews.

Davis said the borough program saved ARCO about \$25,000 in dump fees.

"We did it in the spirit of general cleanup cooperation and to set a good example,"

Andrews said Thursday, adding: "It would seem to me a good time to do it. It seems like when you're having company that's the time to clean up."

ARCO and Standard also are negotiating with the state to take over the cleanup of another Deadhorse site where the state recently discovered more than 500 abandoned drums of oily waste. The illegal dump site is on a pad leased to Child's Equipment Services, a company that has filed for protection from creditors under bankruptcy laws.

State environmental officials have said many people have dumped trash there, making it virtually impossible to force any one company to clean it up.

Some of the drums are leaking petroleum products onto the surrounding tundra. DEC has tried to contain as much of the oily waste as possible, and had planned to seek bids to clean up the pad. DEC has estimated the first phase of the cleanup will cost at least \$20,000.

But Webb said ARCO and Standard are discussing doing the cleanup themselves, if the question of liability can be resolved.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P O Box 7, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
907 465-1991

March 9, 1988

MEMORANDUM

TO: Representative Mike Davis

ATTN: Marilyn Heiman

FROM: Heidi Borson-Paine ^{HBP}
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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¹Office 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.

Representative Davis
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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.

²Ibid., p. 3.

TELECONFERENCE PARTICIPATION

SPONSOR _____

DATE/TIME _____

SUBJECT _____

LIO'S
(moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ()	Stephanie Kessler Air Ctr for the Environment		PETERSBURG * ()	
BARROW * ()			SITKA ()	
BETHEL ()			SOLDOTNA ()	
DELTA JUNCTION * ()			VALDEZ * ()	
DILLINGHAM * ()			LTC'S	
			HOMER	
FAIRBANKS ()			WRANGELL	
			OFFNETS	
GLENNALLEN * ()			OFF1 Cordova (Community Liaison)	
			OFF2 Dillingham USA	
JUNEAU ()			OFF3	
			OFF4	
KETCHIKAN ()			OFF5	
			OFF6	
KODIAK ()				
KOTZEBUE ()				
MAT-SU ()				
NOME ()				

VTS'S ON BACK

* SESSION ONLY

VTS'S	U	T	O	TOTAL		U	T	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP - COPPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLANA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				

*
* DELIVER TO: LUCAS *
*
* ORIGINAL *
* SENT: 04/27/88 TIME: 16:04 *
* FROM: LUCAS *
* SUBJECT: 2ND; S.L.C.; SR 513, HQ 459; 4-27 *
* PRINT DATE: 04/27/88 TIME: 16:04 *
*

**** ANCHORAGE PARTICIPANT LIST ****

THE FOLLOWING PEOPLE ARE STANDING
BY TO PARTICIPATE IN TODAY'S - TELECONFERENCE:

TO TESTIFY:

1. STEPHANIE KESSLER/ALASKA CENTER FOR THE ENVIRONMENT
2. ADRIENNE ANDERSON/NATIONAL CAMPAIGN AGAINST TOXIC HAZARDS
- 3.
- 4.

TO OBSERVE:

- 1.
- 2.

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
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REVENUE	0	0	0	0	0	0
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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: Amy D. Kyle
Division: Commissioner's Office

Phone: 465-2600
Date: 2/23/88

Approved by Commissioner: [Signature]
Agency: DEC

Date: 2/23/88

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

A M E N D M E N T

Offered in the SENATE

By Kelly

TO: CSHB 459 (Resources)

Page 4, after line 26:

Insert a new bill section to read:

"* Sec. 2. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.823. CIVIL LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) Notwithstanding other provisions of law, and to the extent not in conflict with federal law, a response action contractor may not be held civilly liable for injuries, costs, damages, or expenses resulting from a release or threatened release of a hazardous substance, except in proportion to the fault of the contractor.

(b) The limitation on liability under (a) of this section does not affect the liability of a person who would otherwise be considered a responsible party under applicable law.

(c) In this section, "response action contractor" means a person, or an employee or subcontractor of a person, who enters into a contract to mitigate or clean up a hazardous substance release."

Renumber following bill section accordingly.

4. LIMITATION OF LIABILITY

SUMMARY AND EXPLANATION

Firms that provide planning and cleanup services at hazardous waste sites (response action contractors or RACs) are often subject to unreasonable and unquantifiable risks in connection with their response action activities. Factors contributing to this liability include the potential imposition of strict, joint and several liability on RACs, current legal trends expanding the rights of individuals to sue for toxic torts, the escalation of toxic tort judgments and the unknown size of the risks at hazardous waste sites. Because of the risks associated with the work, and because many insurance companies are unwilling to provide insurance, the pool of highly qualified and financially responsible RACs who are willing to perform work in the state has been limited.

This Act, entitled "Contractor Limitation of Liability Act" will encourage RACs to use their talents to help cleanup hazardous waste sites in the state by limiting the liability of the RAC with respect to damages resulting from a release or threatened release. This limitation of liability is justified because RACs should not be exposed to unlimited liability for a hazardous waste site when they had no role in and did not benefit from the placement of the waste at the site. By encouraging RACs to perform their services in the state, the law will enable the state to continue its vital role in leading the cleanup of these sites to the highest standard possible.

CONTRACTOR LIMITATION OF LIABILITY ACT

Section 1: Definitions

purposes of this Act:

Response Action Contract. The term "response action contract" means any written contract or agreement to provide any removal action, remedial action or any evaluation, planning, engineering (including surveying and mapping), design, construction, equipment or any ancillary service in connection with the mitigation or cleanup of a hazardous substance or pollutant or contaminant from a facility.

(b) Response Action Contractor. The term "response action contractor" means any person, including the employee or subcontractor of the person, who enters into a response action contract in connection with the mitigation or cleanup of a hazardous substance or pollutant or contaminant from a facility and is carrying out such a contract. This term does not include any person who would otherwise be considered a responsible party under applicable law.

Section 2: Limitation of Liability

No response action contractor shall be liable for any damages, expenses or other liability which results from a release or a threatened release of a hazardous substance or pollutant or contaminant if the release or threatened releases arises out of response action activities, in an amount greater than one million dollars to any person, or three million dollars to all persons for a single occurrence. The limitation of liability of this section shall not:

(a) affect any right of indemnification which such response action contractor has, or may acquire by contract; or

(b) apply to conduct by the response action contractor that was grossly negligent or which constituted intentional misconduct.

Section 3: Effective Date and Applicability

This Act shall take effect immediately and shall apply to:

(a) Response action contracts entered into prior to the effective date of this Act and not completed on the effective date of this Act; and

(b) Response action contracts entered into after the effective date of this Act.

SECTION-BY-SECTION ANALYSIS

Section 1

The term "response action contract" includes any contract for the provisions of services, such as removal or remedial actions, evaluation, planning, engineering (including surveying and mapping), design, construction, equipment or other services, in connection with the mitigation or cleanup of a release or threatened release of a hazardous substance, pollutant or contaminant.

The term "response action contractor" applies to both the prime contractor and the subcontractor performing services pursuant to a response action contract. While the definition of the term "response action contractor" is intentionally broad, this Act does not affect a person's underlying liability. Therefore, this definition explicitly provides that the term does not include any person who would otherwise be considered a responsible party under applicable law.

Section 2

This section places a limit on the liability of response action contractors for damages, expenses or other liability resulting from the release of a hazardous substance or pollutant or contaminant. This limitation of liability is justified for several reasons. First, it will encourage RACs to agree to perform their services in the state without the fear of being exposed to unreasonable liability. Second, it makes clear the difference in liability between the RAC, who is the firm performing a useful public service in helping to clean up the state hazardous waste sites, and the person responsible for creating the hazardous site. The person responsible for the hazardous waste will remain liable for all

damages caused by the release or threatened release.

The enactment of this law will not leave persons injured by a release without recourse. While the RAC will only be liable for a certain amount of the total injury, the persons ultimately responsible for the hazardous waste site will be liable for all amounts in excess of the limitation. The limitation of liability only applies to injuries caused by a release or threatened release arising out of response action activities. It does not apply if the RAC has been grossly negligent or engaged in intentional misconduct.

Finally, this section makes clear that the liability limitation does not affect any right of indemnification the RAC may have against any party.

Section 3

The final section of the Act states that the Act becomes effective immediately. It also provides that the limitation of liability established in Section 2 applies to all future response action contracts as well as the existing, ongoing response action contracts.



Alaska State Legislature

Representative Mike Davis

District 19

PO. Box V
Juneau, Alaska 99811
(907) 456-4930 4941

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

MEMORANDUM

TO: All House Members

FROM: Rep. Mike Davis *Mike Davis*

RE: HB 459, Liability for hazardous substance releases

DATE: April 11, 1988

Attached is a packet describing HB 459 which will be up on the House Floor this week. The bill is fairly complicated and I wanted to give you an opportunity to review the bill before it comes up on the floor.

HB 459 strengthens the Alaska statutes in regard to liability and more clearly defines 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.

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 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 J. Kelso, Commissioner





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 Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

CS HB 459 (Res) Strict Liability for Hazardous Substance Release

This 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 past operators, generators, and transporters of the waste to escape responsibility. In these cases, and in the case of abandoned sites, the state or local community would then bear the cost of cleanup. The intent of this bill is to more directly connect the responsible parties to the cost of cleanup of a release. In doing so, the bill's greatest benefit is to act as an incentive to properly handle or dispose of hazardous substances.

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.

The Resources Committee substitute added language that clarified that the bill relates to hazardous wastes, not products. It was strengthened by adding joint and several liability, as does federal law. It also added defenses for previous property owners.

The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and laws necessary for preventative solutions.

Issue paper prepared by Kristine Benson 4/11/88

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • SITKA GROUP SIERRA CLUB
 KENAI GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
 DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAA BAY CONSERVATION SOCIETY
 KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE
 SIERRA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL
 FISH HANDLERS AND HAZARDOUS

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 140
PUBLISH DATE: 2/23/88

FISCAL NOTE

REQUEST:

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

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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Amy D. Kyle
Division: Commissioner's Office

Phone: 465-2600
Date: 2/23/88

Approved by Commissioner: [Signature]
Agency: DEC

Date: 2/23/88

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

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

February 23, 1988

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

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

RE: HB 459 -- liability for
release of hazardous sub-
stances


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
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Keiso
Commissioner, ADEC

Hon. Mike Davis

February 23, 1988
Page 2

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 463 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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 person 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

Representative Mike Davis
Page 2
March 21, 1988

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).

Representative Mike Davis
Page 3
March 21, 1988

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

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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1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
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P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 28, 1988

Honorable Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB459 (Res), relating to liability for releases
of hazardous substances

Dear Senator Kelly:

On behalf of the Department of Environmental Conservation, I would like to comment on the possibly erroneous impression of the effects of HB 459 left by Mr. Ray Plummer after his testimony on the bill yesterday. We would have given you these comments at the time except that the hearing was continued until tomorrow due to the lateness of the hour.

Mr. Plummer stated that HB 459 was not needed due to the existing strict liability provision in AS 46.03.822. The problem is not with the existing strict liability provision, but with the fact that current law lacks detailed provisions on what persons are liable in what situations. Under the existing statute, those details are left almost totally to the courts to construct, rather than being provided by the legislature. We are left in a state of legal uncertainty as to many points, which must be resolved case-by-case in the courts unless the legislature makes the policy decisions through a detailed bill like HB 459.

Mr. Plummer also stated that the bill would change existing law by making liability joint and several. In fact, joint and several liability is the law now under the federal Comprehensive Environmental Response, Compensation, and Liability Act, and has been the law in Alaska until recent changes in the tort laws. HB 459 would merely bring Alaska's law into uniformity with federal laws, so that both state and federal courts would apply the same rules for assessing liability.

Hon. Tim Kelly, Chairman
Senate Labor & Commerce Committee

April 28, 1988
Page 2

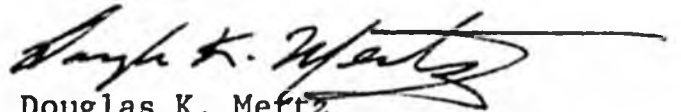
Finally, as to Mr. Plummer's assertion that a seller of a hazardous substance in the normal course of business could be liable for a release by the buyer, he is simply in error. Unless the seller is disposing of a waste product, it would not bear continued responsibility for misuse of the product by the buyer. None of the categories of potentially liable persons in the bill would fit the situation you described in your hypothetical. Once again, those categories of liable persons are drawn largely from the federal law and are already applicable in the federal courts here.

Thank you for the opportunity to make these views known.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Douglas K. Meitz
Assistant Attorney General

DKM/dlm

Representative Dick Shultz

Alaska State House of Representatives

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4940

Home: P.O. Box 487 • Tok, Alaska 99780



Member
House Resources Committee

M E M O R A N D U M

TO: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee

FROM: Representative Dick Shultz *DS*

DATE: April 15, 1988

RE: House Bill 459

House Bill 459 "relating to liability for release of hazardous substances" was referred to your committee today. It has a further referral to the Judiciary committee.

I would appreciate it if you would hold this bill until I receive additional information from the Department of Environmental Conservation addressing some concerns that I had. Specifically, there are many questions concerning land fills that have not been answered.

When I receive the information from the Department, I will share it with you and then you can do as you wish with the bill.

Consideration of this request would be most appreciated.
Thank you.

DS/spp