

HEB

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HOUSE COMMITTEE REPORT File

(11)

Date Referred: April 20, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/30/90

The FINANCE Committee considered:

HB 565

HOUSE BILL NO. 565

OIL & OTHER ENVIRONMENTAL LAWS/PENALTIES

"An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS HB 565 (FIN) [] the same title
- [] have attached amendment(s)
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations [] a new title
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note F
- [] zero with analysis ...

- [] fiscal note(s) _____
- 2 [] zero fiscal note(s) DEC 2/22/90 HB 2/22/90
- [] zero fn/analysis _____

SIGNING DO PASS:

[Signature] Swackhamm
[Signature] Brown
[Signature] Koponen
[Signature] Wynn

SIGNING:

(Check approp. column)

Do Not
PASS No Rec Amend

<u>[Signature]</u> Hoffman	✓		
<u>[Signature]</u> Larson	X		
<u>[Signature]</u> Phillips	✓		
<u>[Signature]</u> Riegus			✓
<u>[Signature]</u> Barnes	X		

[Signature] Larson
 CO Chairman's signature Hoffman

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 565 No. 1
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the strengthening
of DEC's civil penalty and damage provisions.
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environ Conservation
BRU: Environ. Quality
Components: Environ. Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
This bill revises the schedule of penalties for the discharge of oil.

Prepared by: David Bruce
Division: Environmental Quality

Phone: 465-2630
Date: 2/12/90

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/19/90

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

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to
strengthening civil penalty...
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Fish and Game
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	0					

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

No FY 90 Impact.

Prepared by: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: Donald W. Wiley Date: 2 27 90
Agency: Fish and Game

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

Adopted

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 565 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalty, damages, costs,
7 and attorney fee provisions concerning the discharge
8 of oil and other environmental violations."

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

10 * Section 1. AS 46.03.758(a) is amended to read:

11 (a) The legislature finds that

12 (1) recent information discloses that the discharge of oil
13 may cause significant short and long-term damage to the state's en-
14 vironment; even [. EVEN] minute quantities of oil released to the
15 environment may cause high mortalities among larval and juvenile forms
16 of important commercial species, may affect salmon migration patterns,
17 and may otherwise degrade and diminish the renewable resources of the
18 state;

19 (2) the exact nature and extent of oil pollution can be
20 neither documented with certainty nor precisely quantified on a spill-
21 by-spill basis; however, in light of the magnitude of harm that
22 [WHICH] may be caused by oil discharges, and the vital importance of
23 commercial, sport and subsistence fishing, tourism, and Alaska's
24 natural abundance and beauty to the economic future of the state and
25 its quality of life, it is the judgment of the legislature that sub-
26 stantial civil penalties should be imposed for the discharge of oil in
27 order to provide a meaningful incentive for the safe handling of oil
28 and to ensure [INSURE] that the public does not bear substantial
29 losses from oil pollution for which, because of its subtle, long-term

1 or unquantifiable nature, compensation would not otherwise be re-
2 ceived; and

3 (3) the handling of oil in large quantities is a hazardous
4 undertaking that [WHICH] poses a significant threat to the economy and
5 environment of the state, that [WHICH] can be substantially reduced
6 only by the taking of rigorous safety precautions involving consider-
7 able expense; conversely, persons handling oil in smaller amounts
8 might pose a correspondingly lower risk to the economy and environment
9 of the state, and might be [ARE] capable of safe oil handling prac-
10 tices at correspondingly lower costs [; IN ORDER TO PROVIDE AN INCEN-
11 TIVE WHICH IS EFFECTIVE, BUT NOT PUNITIVE, IT IS NECESSARY AND APPRO-
12 PRIATE THAT THE ASSESSMENT OF CIVIL PENALTIES FOR DISCHARGES OF SMALL
13 QUANTITIES OF OIL BE LEFT FOR CASE-BY-CASE JUDICIAL DETERMINATION,
14 WHILE INSURING, THROUGH THE PENALTY PROVISIONS OF THIS SECTION, THAT
15 THE HANDLING OF OIL IN LARGE QUANTITIES OCCURS IN A MANNER WHICH WILL
16 NOT IMPAIR THE RENEWABLE RESOURCES OF THE STATE].

17 * Sec. 2. AS 46.03.758(b) is repealed and reenacted to read:

18 (b) In order to promote the safe handling of oil, the department
19 shall adopt regulations that establish a schedule of penalties for
20 discharges of oil into the receiving environments described in (1) -
21 (3) of this subsection. Subject to AS 46.08.761 and (m) of this
22 section, the penalties may not exceed

23 (1) \$12.50 per gallon of oil that enters an anadromous
24 stream or other freshwater environment with significant aquatic re-
25 sources;

26 (2) \$8.00 per gallon of oil that enters an estuarine,
27 intertidal, or confined saltwater environment;

28 (3) \$6.00 per gallon of oil that enters an unconfined salt-
29 water environment, public land, or a freshwater environment without

1 significant aquatic resources.

2 * Sec. 3. AS 46.03.758(d) is amended to read:

3 (d) The schedule must [SHALL] vary according to the toxicity,
4 degradability, and dispersal characteristics of the oil. The schedule
5 must [SHALL] also vary according to the sensitivity and productivity
6 of the receiving environment. Variations under this subsection may be
7 by subcategories of receiving environments, specific receiving en-
8 vironments, or both. The maximum penalties established in (b) of this
9 section must [SHALL] apply to discharges in the most sensitive and
10 productive of receiving environments within each category of receiving
11 environment, and the penalty must [SHALL] decrease for less productive
12 or sensitive receiving environments. If oil is discharged into mul-
13 multiple receiving environments, the penalty must be based upon the
14 schedule penalty value applicable to the most sensitive and productive
15 receiving environment unless the defendant proves how much oil entered
16 each receiving environment by clear and convincing evidence.

17 * Sec. 4. AS 46.03.758(e) is amended to read:

18 (e) If a discharge of oil in excess of 500 [18,000] gallons not
19 permitted under applicable state and federal law occurs within the
20 territorial jurisdiction of the state, or into or upon the adjacent
21 outer continental shelf of the state, the following persons, in addi-
22 tion to the person causing or permitting the discharge, are jointly
23 and severally liable to the state, in a civil action, for the full
24 amount of penalties established under this section and in the regu-
25 lations adopted under this section:

26 (1) if the discharge occurs from a [ANY] commercial or
27 industrial facility other than a vessel or offshore platform, the
28 owner, lessee or permittee, and operator of the facility;

29 (2) if the discharge occurs from a vessel,

1 (A) the owner and operator of the vessel; and

2 (B) the owner of the oil carried as cargo on the
3 vessel at the time the vessel was loaded, if the loading occurred
4 within the territorial jurisdiction of the state, or at a deep-
5 water port or other offshore storage facility adjacent to the
6 state; however, if the owner of the oil temporarily transfers
7 ownership of the oil to another person, and the transfer has the
8 purpose or effect of evading the vicarious liability imposed by
9 this section, the transferor will be considered the owner of the
10 oil for the purposes of this subsection; and

11 (3) if the discharge occurs from an offshore platform, the
12 lessee or permittee of the tract or acreage upon which the platform is
13 situated, and the operator of the platform.

14 * Sec. 5. AS 46.03.758(f) is repealed and reenacted to read:

15 (f) For purposes of assessing a penalty under (b) of this sec-
16 tion, in determining how many gallons of oil have been discharged, the
17 court shall deduct the number of discharged gallons of oil that the
18 defendant proves by clear and convincing evidence were removed by the
19 defendant from the environment within 365 days after the discharge as
20 a result of a cleanup operation undertaken in conformity with appli-
21 cable state and federal law, except that if the oil was discharged
22 onto a surface freshwater or saltwater environment or onto the surface
23 of public land, the court shall deduct the number of discharged gal-
24 lons of oil that the defendant proves by clear and convincing evidence
25 were removed by the defendant from the environment within the first 36
26 hours after the discharge as a result of a cleanup operation under-
27 taken in conformity with applicable state and federal law. The dis-
28 persal of oil through burning, the use of chemical agents, biological
29 additives, sinking agents, or other means is not considered removal

1 for purposes of this subsection.

2 * Sec. 6. AS 46.03.758(i) is repealed and reenacted to read:

3 (i) The imposition of a civil penalty under this section does
4 not limit or otherwise affect the authority of the department to
5 enforce a provision of this chapter, AS 46.04, or AS 46.09, or to
6 recover damages, restoration expenses, investigation costs, court
7 costs, and attorney fees. A person who pays a civil penalty imposed
8 under this section is entitled to set off the penalty amount paid
9 against a civil penalty awarded by a court against the person for the
10 same discharge under AS 46.03.760(a).

11 * Sec. 7. AS 46.03.758 is amended by adding a new subsection to read:

12 (m) The penalty that would otherwise be assessed under (b) of
13 this section shall be multiplied by a factor of five if a court deter-
14 mines that

15 (1) the discharge was caused by the gross negligence or
16 intentional act of the discharger;

17 (2) the discharger did not take reasonable measures to
18 contain and cleanup the discharged oil; or

19 (3) the defendant did not respond in accordance with an
20 approved oil discharge contingency plan.

21 * Sec. 8. AS 46.03.759(a) is amended to read:

22 (a) A person who is found to be liable under any other state law
23 for an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GAL-
24 LONS] is, in addition to liability for any other penalties or for
25 damages or the cost of containment and cleanup, liable to the state in
26 a civil action for a civil penalty, up to a maximum of \$500,000,000,
27 subject to adjustment under AS 46.03.761, in the amount of

28 (1) \$8 per gallon of crude oil discharged for the first
29 420,000 gallons discharged, subject to adjustment under AS 46.03.761;

1 and

2 (2) \$12.50 per gallon of crude oil discharged for amounts
3 discharged in excess of 420,000 gallons, subject to adjustment under
4 AS 46.03.761.

5 * Sec. 9. AS 46.03.759(c) is amended to read:

6 (c) Subject to the [\$500,000,000] maximum set under (a) of this
7 section the court shall assess five [FOUR] times the penalty amounts
8 set out in (a) of this section if the court finds

9 (1) the discharge was caused by the gross negligence or
10 intentional act of the defendant;

11 (2) the defendant did not take reasonable measures to
12 contain and clean up the discharged oil; or

13 (3) the defendant did not respond in accordance with an
14 approved oil discharge contingency plan.

15 * Sec. 10. AS 46.03.759(d) is repealed and reenacted to read:

16 (d) The imposition of a civil penalty under this section does
17 not affect the authority of the department to enforce a provision of
18 this chapter, AS 46.04, or AS 46.09, or to recover damages, restora-
19 tion expenses, investigation costs, court costs, and attorney fees. A
20 person who pays a civil penalty imposed under this section is entitled
21 to set off the penalty amount paid against a civil penalty awarded by
22 a court against the person for the same discharge under AS 46.03.-
23 760(a).

24 * Sec. 11. AS 46.03.760(a) is repealed and reenacted to read:

25 (a) A person who violates or causes or permits to be violated a
26 provision of this chapter, AS 46.04, AS 46.09, or a regulation, order
27 of the department, permit, approval, or certificate issued under this
28 chapter, AS 46.04, or AS 46.09, is liable to the state in a civil
29 action for a sum to be assessed by the court of not less than \$2,500

1 nor more than \$100,000 a day for each violation, subject to adjustment
2 under AS 46.03.761. Each violation is a separate and distinct of-
3 fense, and where a violation continues from day to day each day con-
4 stitutes a separate violation. The amount assessed by the court under
5 this subsection must reflect, as applicable,

6 (1) reasonable compensation for adverse environmental
7 effects of the violation;

8 (2) reasonable costs incurred by the state in the detec-
9 tion, investigation, and attempted correction of the violation;

10 (3) the economic savings realized by the person in not
11 complying with the requirement for which the violation is charged;

12 (4) the prior history of violations committed by the per-
13 son;

14 (5) the need for an enhanced civil penalty to deter future
15 violations;

16 (6) the extent and seriousness of the violation;

17 (7) the person's attainment of compliance, within the
18 shortest feasible time, with the requirement for which the violation
19 is shown;

20 (8) the person's ability to pay; and

21 (9) other factors that the court determines are in the
22 interest of justice.

23 * Sec. 12. AS 46.03.760(e) is amended to read:

24 (e) In addition to liability under (a) [- (d)] of this section,
25 a person who violates or causes or permits to be violated a provision
26 of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
27 brought under AS 46.03.822, for the full amount of actual damages
28 caused to the state by the violation, including direct and indirect
29 costs associated with the abatement, containment and [OR] removal of

1 the pollutant, restoration of the environment to its former state, and
2 all incidental administrative costs.

3 * Sec. 13. AS 46.03 is amended by adding a new section to read:

4 Sec. 46.03.761. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
5 amounts in AS 46.03.758, 46.03.759, and 46.03.760 and in the regula-
6 tions adopted under AS 46.03.758 change, as provided in this section,
7 according to and to the extent of changes in the Consumer Price Index
8 for all urban consumers for the Anchorage metropolitan area compiled
9 by the Bureau of Labor Statistics, United States Department of Labor
10 (the index). The index for January of the year in which this section
11 becomes effective is the reference base index.

12 (b) The dollar amounts change on October 1 of each third year
13 according to the percentage change between the index for January of
14 that year and the most recent index used to determine whether to
15 change the dollar amounts. After calculation of the new amounts, the
16 resulting amounts shall be rounded to the nearest cent.

17 (c) If the index is revised, the percentage of change is cal-
18 culated on the basis of the revised index. If a revision of the index
19 changes the reference base index, a revised reference base index is
20 determined by multiplying the reference base index applicable by the
21 rebasing factor furnished by the United States Bureau of Labor Statis-
22 tics. If the index is superseded, the index referred to in this sec-
23 tion is the one represented by the Bureau of Labor Statistics as
24 reflecting most accurately changes in the purchasing power of the
25 dollar for Alaskan consumers.

26 (d) The department shall adopt a regulation

27 (1) announcing, on or before June 30 of each third year,
28 the changes in dollar amounts required by (b) of this section;

29 (2) amending, on or before June 30 of each third year, the

1 regulations adopted under AS 46.03.758(b) to reflect the changes in
2 dollar amounts required by (b) of this section; and

3 (3) announcing, promptly after the changes occur, changes
4 in the index required by (c) of this section, including, if applica-
5 ble, the numerical equivalent of the reference base index under a
6 revised reference base index and the designation or title of any index
7 superseding the index.

8 (e) The department shall also provide notification of a change
9 in dollar amounts required under (b) of this section to the clerks of
10 court in each judicial district of the state.

11 * Sec. 14. AS 46.04.040(e) is amended to read:

12 (e) Financial responsibility may be demonstrated by self-insur-
13 ance, insurance, surety, or guarantee, under terms the department may
14 prescribe. An action brought under AS 46.03.758, 46.03.760(e)
15 [46.03.760(a) OR (e)], 46.03.822, or AS 46.04.030(g) or to collect
16 penalties imposed under AS 46.03.759 may be brought in a state court
17 directly against the insurer or another person providing evidence of
18 financial responsibility. The applicant, and an insurer, surety, or
19 guarantor shall appoint an agent for service of process in the state.
20 An insurer must either be authorized by the Department of Commerce and
21 Economic Development to sell insurance in the state or be an unau-
22 thorized insurer listed by the Department of Commerce and Economic
23 Development as not disapproved for use in the state.

24 * Sec. 15. AS 46.04.040(i) is amended to read:

25 (i) Financial responsibility under this section extends to a
26 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
27 under AS 46.03.758, 46.03.759, [46.03.760(a)], or AS 46.04.030(g).

28 * Sec. 16. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c),
29 and 46.03.760(f) are repealed.

PENALTY COMPARISONS - HB 565

RECEIVING ENVIRONMENT	EXISTING LAW	RESOURCES VERSION	JUDICIARY VERSION
NON- CRUDE			
Anadromous stream or or other freshwater environment	\$10/gal	\$12.50/gal	\$50/gal
Sensitive or confined saltwater	\$2.50/gal	\$8/gal	\$25/gal
Unconfined saltwater, public land, or freshwater w/o significant aquatic resources	\$1/gal	\$6/gal	\$10/gal
CRUDE			
Anadromous stream or or other freshwater environment	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$50/gal
Sensitive or confined saltwater	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$25/gal
Unconfined saltwater, public land, or freshwater w/o significant aquatic resources	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$8/gal 1st 420,000 gals \$12.50/gal over 420,000 gals	\$10/gal

4/28/90
HB 565



Coastal Resource Service Area

P.O. Box 3110, Dillingham, Alaska 99570

(907) 842-2886-842-2087

April 26, 1990

House Finance, Senate Finance, and Senate Judiciary Committees

Dear Chairperson:

The Bristol Bay CRSA is writing to urge your support and quick passage of the oil spill legislation - House Bills 409, 565, 567 and 578.

Our region is very concerned that industry opposition to these bills not mar the fact they are based on recommendations formulated by the Oil Spill Commission. The Commission was specifically created by the legislature to examine the causes of the spill and to recommend changes in public policy to prevent future spills and pollution problems.

Moreover, the oil spill legislation would institute the safeguards called for by the majority of Alaskans at the many public hearings held on this issue.

We respectfully ask that you support all four oil spill bills and pass them out of committee without further delay.

Thank you for your consideration of this letter.

Sincerely,

Alice Ruby
Chairperson
Bristol Bay CRSA

cc: Senator Zharoff
Representative Jacko

COMMENTS ON SB 502, SB 503, AND SB 504
GOVERNOR COWPER'S OIL & GAS LEGISLATIVE PACKAGE
AND SB 468
PRESENTED TO THE SENATE SPECIAL COMMITTEE ON OIL & GAS

MARCH 5, 1990

MICHAEL S. O'MEARA

P.O. BOX 1125, HOMER, ALASKA 99603

SB 502 CIVIL PENALTIES AND DAMAGE PROVISIONS

Page 2, Sec. 2, Lines 24 & 25

The wording "penalties...may not exceed" should be changed to read, "penalties...shall be set at"
At the very least, if a maximum penalty is to be stated, the a minimum penalty should be stated as well. As written, application of penalties in discretionary.

Page 4, Sec. 3, Line 1

I am pleased to see that the language exempting spills of 18,000 gallons or less has been stricken. Penalties should apply to all spills regardless of size.

Page 7, Sec. 8, Lines 20-25

This seems to relate to the same statutes as HB 409. It might be to incorporate language from that bill here -- especially with respect to administrative penalties.



Alaska State Legislature

Senator Zharoff &
~~Local Senator~~ & the
House Resources
~~Committee~~

Please enter into the record my testimony to the House Resources Committee
committee name

committee on See below, dated 9 March 90
bill/subject

SUGGEST:

HOUSE BILL NO. 565 - SECTION 1, AS 46.03.758(a)(2)(1),
(c) \$50.00 per gallon of oil that enters an unconfined salt-
water environment . . . <Pg 3, 1>

Thank you for your time.

Signed: William Pieth
Testifier

myself
Representing (Optional)

1516 clmailov PO Box 1398 KODIAK, AK
Address 99615

486-2504 HOME / 486-6760 WORK
Phone No.

BP EXPLORATION (ALASKA), INC.
Testimony Before the House Resources Committee
March 9, 1990

HB 565

House Bill 565 increases the penalties on all oil spills. BP Exploration doesn't handle any refined productions in Alaska, so a good portion of this bill doesn't apply directly to us. BP does believe, however, that these types of penalties would be very damaging to many smaller businesses in Alaska who do distribute refined oil products.

Imposition of the required penalties on crude oil and refined product spills of any size (by deleting the 18,000 gallon minimum) will discourage additional development of marginal oil reserves, result in increased paperwork and discourage the reporting of all spills as we now do.

(X)

**TESTIMONY BEFORE THE ALASKA HOUSE
RESOURCES COMMITTEE**

HB 565, HB 566 & HB 567

**WALTER B. PARKER, CHAIRMAN
ALASKA OIL SPILL COMMISSION**

8 MARCH 1990

HB 565

The Commission did not address penalty amounts. The general thrust of the legislation is not directly addressed in any of our recommendations since our emphasis was on system improvement and not on penalties incurred for system violation.

Section 5 (F)

The elimination of all presently utilized means, other than mechanical recovery, could have an inhibiting effect on using best available technology in contingency plans. In particular, we would like to see the use of gelling agents promoted.

Section 6 (B)

Same comment as above.

LEGISLATIVE PROPOSAL

FRANK BAUER
4009 BARTLETT STREET
HOMER, ALASKA 99603

235-5154

OCTOBER 13, 1989

Corporations would probably be more cautious about their operating procedures if they knew that they would be seriously penalized in the event of a major spill or serious violation of environmental regulations.

In theory the Governor has the authority to stop the flow of oil through the pipeline. The prospect of facing such a penalty would likely command the attention of any potential offending producer.

In reality the Federal Government would be unlikely to allow this to happen. But perhaps a way could be found to deny access to the pipeline on a selective basis, without interrupting the actual flow of oil.

- develop a regulation that sets the percentage of oil each producer can pump into the line
- in the event of a catastrophic spill or major violation provide for automatic reduction of the offending company's allocation
- increase the allocations of other producers to maintain the flow of oil through the line
- the degree and term of the reduction would be scaled to the magnitude of the offense (these would be great enough to effectively penalize but not destroy the offending company)
- application of the penalty could be imposed for incidents occurring at any point from production source to point of delivery

COMMENTS ON SB 502, SB 503, AND SB 504
GOVERNOR COWPER'S OIL & GAS LEGISLATIVE PACKAGE
AND SB 468
PRESENTED TO THE SENATE SPECIAL COMMITTEE ON OIL & GAS

MARCH 5, 1990

MICHAEL S. O'MEARA

P.O. BOX 1125, HOMER, ALASKA 99603

I was very pleased to see the Governor's oil and gas legislative package introduced. It is disappointing, however, that prior to introduction he chose to present the bills to industry alone for critique. This bodes ill for the greater public oversight and participation recommended by the Alaska Oil Spill Commission. Happily, you have taken a step in the right direction by scheduling these teleconferences at a time convenient for the working public. Let me commend you and thank you for the opportunity to express my views.

In a recent presentation to the Homer Chamber of Commerce, Exxon's Don Carpenter explained that it was company policy to comply with the "letter of the law", not the "spirit of the law." High officials from British Petroleum and other corporations have reflected the same commitment on a number of occasions.

If nothing else does, this should bring home the need to reform that body of law governing oil industry operations in Alaska. Some of the legislative reforms which I feel should be enacted are touched upon in the Governor's bills.

1. Increase, broaden, and clarify civil and criminal penalties for parties responsible for chronic and catastrophic spills of petroleum and other hazardous substances.
2. Require effective, coordinated response planning for both industry and government.
3. Require full financial responsibility for operators of oil & gas facilities and vessels.
4. Strengthen and clarify the authority of regulatory agencies to inspect oil & gas facilities and vessels.
5. Improve the ability of regulatory agencies to assure compliance with health, safety, and environmental regulations and lease or permit stipulations.
6. Provide adequate funding for more effective spill prevention and response capabilities.

To the extent that these bills would help realize these reforms, I support them. In reading over them it became obvious that in a number of ways they fall short of doing so, and of course, there are important areas of concern beyond their scope which must be addressed as well. For now I will confine my comments to suggestions regarding the reforms enumerated.

There are a number of important omissions in the Governor's package. At least twelve of the Alaska Oil Spill Commission's recommendations have not been addressed -- as follows:

- 1) Seven day tank farm capacity (PG. 18)
- 2) Establish a harbor administration office (PG. 23)
- 3) Establish state (PG. 21) and Regional advisory councils (PG. 29) and they should represent local governments (PG. 29)
- 4) Licensing of all transportation safety personnel (PG. 24)
- 5) Compensation for persons impacted by oil spill who are not protected by unemployment insurance (PG. 44)
- 6) Regional and State oversight council (PG. 21)
- 7) Government space at Alyeska or other major terminals (PG. 24)
- 8) Task force on the environmental safety of pipeline (PG. 27)
- 9) Interstate compact (PG. 25)
- 10) Provision for citizen lawsuits (PG. 23)
- 11) Quick response (PG. 44)
- 12) Plans to cover worst-case scenarios (PG. 52)

-- page 4, O'MEARA --

Another important area that has not been considered in the present bills is the matter of criminal penalties. The State House has done so with HB 315 and HB 316, and it is my hope that the Senate will be supportive of this issue.

A major flaw in the liability legislation passed last spring was the exemption of refined products. As far as I can tell, the Governor's bills do not correct this error. It seems vital to me that all spill related law include both crude oil and refined product.

Now to specific bills (2/21/90 -- go00510s, go00520s, go00530s)

SB 502 CIVIL PENALTIES AND DAMAGE PROVISIONS

Page 2, Sec. 2, Lines 24 & 25

The wording "penalties...may not exceed" should be changed to read, "penalties...shall be set at"
At the very least, if a maximum penalty is to be stated, then a minimum penalty should be stated as well. As written, application of penalties is discretionary.

Page 4, Sec. 3, Line 1

I am pleased to see that the language exempting spills of 18,000 gallons or less has been stricken. Penalties should apply to all spills regardless of size.

Page 7, Sec. 8, Lines 20-25

This seems to relate to the same statutes as HB 409. It might be to incorporate language from that bill here -- especially with respect to administrative penalties.

-- page 5, O'MEARA --

**SB 503 AUTHORIZING USE OF HAZARDOUS SUBSTANCE RELEASE RESPONSE
FUND/ROLE OF ADES/ESTABLISHING EMERGENCY RESPONSE
COMMISSION**

The first thing that this bill should do is increase the size of the response fund to a minimum of \$1 billion.

This bill should incorporate language from HB 421, broadening the uses for the fund to cover many of the costs associated with prevention and response preparedness.

Page 1, Sec. 2, Lines 22-25

This language should be clarified to assure that the fund can be used only for prevention of and response to oil and hazardous substance disasters.

Page 2, Sec. 5, Lines 18, 19, 22, & 23

It is unclear exactly what the role and authority of the Alaska Division of Emergency Services is with respect to the A.D.E.C. and other agencies. This needs to be made clear.

Page 2, Sec. 6, Lines 26-28 and on...

Again, this is all very unclear. We need to have a clear understanding of the relative authority, responsibility, and working structure involving:

1. The Alaska Div. of Emergency Services
2. The Alaska State Emergency Response Commission
3. The A.D.E.C. Oil Spill Response Office, its response corps and depots
4. THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

We need to know who is in charge. A single administrative presence with clear authority to direct all response activity is vital. Experience shows that we cannot do this by a committee of peers.

Page 3, Sec. 6, Lines 16-21 and Page 5, Sec. 6, Lines 8-11

Do the "emergency planning districts" correspond to the areas covered by the "regional contingency plans"? Will the commission take over direction of contingency plan and response office development started by A.D.E.C.? This is very confusing and we really need to get it worked out before we have to deal with another emergency.

-- page 6, O'MEARA --

**HB 504 CONTINGENCY PLAN REQUIREMENTS/FINANCIAL RESPONSIBILITY/
INSPECTION AUTHORITY**

Page 1, Sec. 1, Lines 13, 20, and 23

The bill requires a contingency plan for operation of oil terminals, oil platforms, and tank vessels or barges. I would suggest that it should also require such a plan for operation of refineries, pipelines, and onshore facilities.

Page 2, Sec. 1, Lines 11-16

There should a provision for public as well as agency oversight of contingency plan approval or modification. Citizen oversight and advisory councils as suggested on pages 21 and 29 of the Alaska Oil Spill Commission's executive summary could fulfill that role.

Page 2, Sec. 1, Line 22 and Page 3, Line 3

Requiring response to a spill in the "shortest possible time" is a fine idea, but I think we need to have some clarification as to what that means. It would be helpful if we could tie it down a bit more.

Page 5, Sec. 2, Lines 20 & 21

Given the great costs associated with oil spills, it would seem that demonstration of financial responsibility greater than \$500 million is called for. I would suggest raising the minimum to \$1 billion for tank vessels and barges.

Page 6, Sec. 2, Lines 15-17

There are only two ways to be sure of actual financial responsibility -- through bona fide insurance or by posting bond. These should be the only acceptable proofs of financial responsibility. I suggest all other so-called proofs be deleted from this bill.

Page 8, Sec. 4, Line 9

Clarification of rights of access for regulating agencies is very important and I am pleased to see this language. It does seem related to language in HB 409, and I would suggest adding the more comprehensive provisions from that bill here. I would also repeat my previous suggestion that provisions of this bill apply to refineries, pipelines, and all onshore facilities as well as those already cited in the bill.

PLEASE -- NO LIMITS ON "REALISTIC MAXIMUM OIL DISCHARGE"
OIL IS OIL! WE MUST BE PROTECTED NO MATTER WHO IS

-- page 7, O'MEARA --

That concludes my remarks on these bills for now. Thank you again for your effort in bringing them before the public. I would appreciate being kept apprised of further work on these bills as well as introduction of other legislation dealing with oil and gas reform.

P.S. — I JUST GOT A COPY OF THIS BILL, SOOOO...

DUTIES OF —
 SB 408 DEPT. OF MILITARY AND VETERANS AFFAIRS
 DEPT. OF ENVIRONMENTAL CONSERVATION
 IN RELATION TO OIL, ETC.

IT APPEARS THAT THIS BILL IS AN ATTEMPT TO ORGANIZE A VERY CONFUSING SITUATION
 PAGE 1, SECTION 1, LINES 13-17 I AM IN FAVOR OF THAT.

THIS IS CONFUSING. IT SAYS THAT ~~DANA~~
 ADES SHALL ESTABLISH THE OIL AND HAZARDOUS
 RESPONSE OFFICE — LAST YEAR SB 264 WAS
 PASSED CHARGING ADEC TO DO THAT. SB 503
 SEEMS TO CHARGE ADEC TO DO THAT ALSO THROUGH
 FORMATION OF THE ALASKA STATE EMERGENCY RESPONSE
 COMMISSION. WHO IS IT? WHO IS IN CHARGE. SEE
 MY COMMENTS ON SB 503.

PAGE 2, SECTION 3, LINES 11-17

IT SEEMS HERE THAT THE DIVISION OF
 EMERGENCY SERVICES IS THE LEAD AGENCY. IS THAT
 CORRECT? WHO IS THE ADMINISTRATOR WITH
 ULTIMATE AUTHORITY TO DIRECT COORDINATED SPILL RESPONSE?

PAGE 3, SECTION 5, LINES 21 AND 26-29

- GOOD THAT PLANS WILL BE SUBMITTED FOR PUBLIC REVIEW.
- GOOD THAT UNANNOUNCED DRILLS WILL BE REQUIRED

PAGE 4, SECTION 7, LINES 10-27

- GOOD THAT YOU WISH TO EXPAND USE OF FUND
 THIS IS SIMILAR TO LANGUAGE IN SB 503 AND
 HB 421 — THESE BILLS SHOULD BE COMBINED.
 SEE MY COMMENTS ON SB 503.

I WOULD SUGGEST THAT THE FUND MIGHT ALSO
 BE USED TO FUND A STAFF OF DEDICATED MONITORING

MAR 26 '98 13:39 LEG. AFFAIRS - HOMER

4AND
PAGE 5, SECTION, 8

Page 8, ²0: means

THIS SEEMS TO FINE TUNE PROVISIONS IN LAST YEAR'S
SB 264. IS THAT TRUE?

BP EXPLORATION (ALASKA), INC.
Testimony Before the House Resources Committee
March 9, 1990

Good afternoon, my name is John Ringstad. I am representing BP Exploration (Alaska). Thank you for giving BP the opportunity to comment on House Bills 565, 566 and 567. While most of BP's comments will be directed towards this legislation, it is important to understand that oil spill legislation combined with other state and federal actions, will implement Alaska's total oil spill response program. To accurately judge any piece of legislation, the entire program must be viewed as a whole. Therefore, my comments also address the general subject of laws affecting oil spill response.

HB 565

House Bill 565 increases the penalties on all oil spills. BP Exploration doesn't handle any refined productions in Alaska, so a good portion of this bill doesn't apply directly to us. BP does believe, however, that these types of penalties would be very damaging to many smaller businesses in Alaska who do distribute refined oil products.

Imposition of the required penalties on crude oil and refined product spills of any size (by deleting the 18,000 gallon minimum) will discourage additional development of marginal oil reserves, result in increased paperwork and discourage the reporting of all spills as we now do.

HB 566

Portions of House 566 attempt to implement recommendations made by the Alaska Oil Spill Commission. BP supports the Oil Spill Commission's recommendation that the Division of Emergency Services be given primary responsibility to respond to an oil spill. The Division of Emergency Services, as part of the Department of Military and Veteran's Affairs, uses a military command structure and has experience in dealing with complicated logistics and supply problems. This type of experience and operational command is exactly what is needed in an oil spill response. Experience plus a clear and effective chain of command will promote prompt decisions and a rapid response to a spill.

While the Department of Environmental Conservation has scientific and technical expertise, it is not as well equipped as the Division of Emergency Services to deal with the logistics of responding to a spill. Consequently their services should be used to provide the Division of Emergency Services with scientific and technical direction, in coordination with the applicable facility, regional or state oil spill plan as ultimately developed by the DEC. As the Oil Spill Commission recommended, the Division of Emergency Services should be the lead State Agency for oil spill response.

House Bill 567

House Bill 567 seeks to strengthen oil spill contingency requirements, increase financial responsibility requirements, and give the Department of Environmental Conservation the authority to inspect

the structural integrity of tank vessels and oil barges. Viewed in the abstract, these goals are reasonable. However, when the bill is examined section by section, it becomes increasingly apparent that these new provisions are unreasonable as well as impractical.

1. Delays in Reviewing Oil Spill Contingency Plans. In the past, the DEC has not been able to review or approve oil spill contingency plans in a timely manner. For example, since January 1988, BP has had its Prudhoe Bay and Endicott oil spill contingency plans pending before the DEC. If HB 567 was enacted tomorrow, both fields would be required to cease operations because the spill contingency plans had not been approved. While the extensive administrative discretion incorporated in HB 567 might permit waivers to be granted by the DEC, essentially HB 567 relinquishes all decisions about the operation of oil terminal facilities and tanker vessels or oil barges to the DEC. BP believes that the DEC is not the appropriate agency to exercise such discretion. Further, any legislation which links continued operation of a facility with approval of the oil spill contingency plan should also contain provisions which force approval of submitted plans within a definite time, and which outlines the contents of an acceptable plan.

2. The Cleanup Standard. Subsection (f) of Section .030 requires the permittee to maintain "in its area of operation . . . sufficient oil discharge containment, storage, transfer, and

removal equipment, manpower and resources to rapidly contain a realistic maximum oil discharge and remove that discharge within the shortest possible time." A maximum oil discharge is further defined as the DEC's estimate of the maximum and most damaging oil discharge that could occur during the life of a facility. The magnitude of oil produced from North Slope fields and the immense volume of oil transported through TAPS make literal application of this provision impossible. Even though significant changes have occurred in cleanup capability at the Valdez terminal, the concept of maintaining equipment and manpower equal to what was required during the Exxon Valdez disaster across the entire North Slope and along the entire length of the pipeline is simply unworkable.

3. Financial Responsibility. While it is desirable to require proof of financial responsibility for operators of facilities subject to this legislation, the increase in limits and the use of ambiguous language in the legislation combine to make it difficult, if not impossible, to implement the provisions of the bill. For example, the legislation requires that the limits be on a "per incident" basis but the meaning of this phrase is not defined in the bill. The Committee should also be aware that the continued operation of the facilities covered by the legislation is conditioned upon obtaining proof of financial responsibility. Consequently, the feasibility of insurance should be understood before a provision of this nature is adopted.

4. Inspection of Tanker Vessels and Oil Barges. The U.S. Coast Guard currently inspect tanker vessels and oil barges; this legislation would establish a second regulatory regime requiring inspection by the DEC, an agency with no previous experience in this area. Inspection of tanker vessels and oil barges is a specialized, complicated and sometimes dangerous process requiring entry into the compartments where oil is stored. The legislation provides no guidelines for the methods or frequency of inspections to be provided by DEC. Further, there is no evidence of appropriate fiscal or manpower resources within DEC to implement such a program. Rather than renewed testing of the limits of Alaska's jurisdiction in this area, a more constructive approach would be to require close cooperation between the Coast Guard and the DEC concerning the approval of tanker vessels.

In closing, BP hopes that this committee view the entire oil spill legislative and regulatory program before enacting specific pieces of legislation. BP will continue to help and assist in this process.

STATEMENT OF
MIKE WILLIAMS
Vice President for Environmental Planning & Control
Alyeska Pipeline Service Company
to the
Senate Oil and Gas Committee
on
March 1, 1990

Thank you for inviting Alyeska Pipeline Service Company to describe the Tanker Spill Prevention and Response Plan for Prince William Sound. My name is Mike Williams. I am Vice President for Environmental Planning and Control at Alyeska. Shortly after the EXXON VALDEZ spill, I was transferred by my employer, British Petroleum, to lead the team that developed and implemented Alyeska's new Tanker Spill Prevention and Response Plan that I will describe during my testimony.

My career with BP began in 1958 as an apprentice on board tankers. Ultimately, I earned an unlimited master's license. During the construction of the pipeline, I was assigned to the Marine Department of Sohio.

Alyeska wishes to cooperate with the Legislature in its evaluation and, where appropriate, enactment of the Oil Spill Commission recommendations. We urge, in the process of consideration of any new legislation related to oil spills, that you include comprehensive analysis of federal and state laws. That analysis will be essential to effective, fair and responsible legislation. For the most part, we at Alyeska believe that existing laws provide an adequate framework for prevention and management of oil spills.

Alyeska's goal is to determine and meet reasonable expectations for prevention efforts and response capability in Prince William Sound. We feel compelled to remind you that even as Alyeska achieves that goal, you still must resolve difficult issues such as the appropriate role for state government in Prince William Sound spill response and the appropriate blend of federal, state and private efforts in the rest of Alaska. During the next year, enactment and implementation of comprehensive federal legislation will establish major new components of a national prevention and response system. Also, the State's planning and response capability mandated last year will be developed during 1990. All involved should strive through coordination and cooperation to achieve maximum benefit from the private and public funds expended.

The Alaska Oil Spill Commission has made several recommendations that are addressed by bills before this Committee. My testimony will describe the prevention and response planning under way at the Valdez Marine Terminal and in Prince William Sound. I will also briefly comment on SB 503 and SB 504. Alaska should encourage prevention and response capabilities that are compatible with other state and federal efforts, are based on achievable, economically realistic standards, and are unambiguous and easily understood by all parties. We at Alyeska are prepared to work with the State to meet those guidelines.

The Oil Spill Commission's report provides an appropriate starting point for your policy deliberations. Like the Coast Guard

and the General Accounting Office, the Commission concluded that it is impossible, given existing technology, to remove all of a catastrophic spill. In a study for the General Accounting Office, ECO, which also provided technical support for the Oil Spill Commission, concluded that if all of the recovery equipment and manpower assembled in Prince William Sound by August last year had been immediately available to respond to the spill, only 35% to 45% of the oil would have been recovered. Few people urge that thousands of people and hundreds of skimmers should be positioned in Prince William Sound, Cook Inlet, southeast and western Alaska to respond if another catastrophic spill occurs.

Instead, most agree with the Oil Spill Commission's recommendation, that in light of the limited ability to recover spilled oil, our first priority should be prevention.

Prevention is the only way to protect the oceans and coastlines from oil spills. Once it reaches the water, spilled oil is extremely difficult to contain and collect, even under ideal conditions. And the conditions under which oil is spilled are seldom ideal.

General Accounting Office data suggest no more than 10-15 percent of oil lost in a major spill is ever recovered.

AOSC Executive Summary, p. 11

As initial responder on behalf of tankers in Prince William Sound, Alyeska has developed a Tanker Spill Prevention and Response Plan that is being reviewed by the state and federal agencies and the public, in a series of 19 public hearings. Prevention of spills from tankers is the first priority in the

plan. A comprehensive risk assessment for Prince William Sound, by a contractor to Alyeska, identified the risks that should be addressed by prevention strategies. Independently of Alyeska's risk assessment and planning work, the Commission's technical experts assessed the risks of spills in Prince William Sound and recommended appropriate prevention strategies.

As shown in the following table, Alyeska has implemented ECO's prevention strategies that are directly applicable to Alyeska.

Before describing the tanker plan for Prince William Sound, I would like to make a few additional comments on the Commission's report.

While reviewing legislation based on the Commission's recommendations, you must independently evaluate the direct and indirect costs to the state. During earlier testimony, Commissioners estimated that implementation of all of its prevention recommendations for Prince William Sound would cost six cents per barrel. Alyeska's prevention and response costs already exceed that level. Not counting administrative and capital costs, we are now spending around \$44,000,000 per year, which equals over seven cents per barrel at an average throughput of 1.9 million barrels per day. That cost per barrel will rise with inflation and declining throughput. Many believe that other areas cannot support the level of protection now in place for Prince William Sound. Obviously, important public policy issues are involved as the Legislature establishes standards for industry and makes appropria-

tions for oil spill programs. We hope that before creating new programs, you determine whether existing ones, with adequate funding, can be molded to meet new demands.

Alyeska agrees with the Commission's conclusion that regulation of industry should meet the expectations of Alaska citizens. In our opinion, the best way to achieve this goal is through a constructive professional relationship between industry and its regulators. We agree with Commissioner Parker's testimony last night that liability is not an effective enforcement tool. To establish and maintain a constructive relationship between the state and industry, regulations must be rational, scientifically based, and predictable. It is critical that agencies - especially the DEC - are adequately funded. Without adequate funding, the DEC is unable to develop and implement clear and concise regulations. Without adequate funding, the agency cannot employ enough qualified employees to interpret and enforce these regulations across all walks of industry. Without good, clear, concise and scientifically accurate regulations, it is difficult -if not impossible - for industry to operate free of controversy with an agency. With funding, both sides benefit.

On the subject of our relationship with the DEC, Alyeska desires to establish a constructive relationship consistent with the need for safety and our prerogative to make daily operational decisions. The Commission has expressed concern about DEC access to the Valdez Marine Terminal. During discussions in November 1989 with DEC personnel in Valdez, we renewed our commitment to provide

**TABLE VI-2. COSTS ASSOCIATED WITH
PRINCE WILLIAM SOUND MARINE TRANSPORTATION SYSTEM
MODIFICATIONS ***

<u>SYSTEM MODIFICATION</u>	<u>ALYESKA PREVENTION EFFORTS</u>
GROUP I	GROUP I
1. Mandatory Drug and Alcohol Testing	1. Alcohol testing for Masters and Crew
2. Emergency and High-risk Navigation Area Training	2. Endorse Navigation Committee
3. Port Closure System	3. Endorse Navigation Committee
4. Two Person Watchstanding Requirement	4. Vessel prerogative
5. Improved Loading/Unloading Procedures	5. All vessels boomed at Terminal; booms monitored
6. Local Spill Prevention Involvement	6. Regional Citizens Advisory Committee; Area and Community Response Centers
7. Spill Response Equipment Coordination	7. Incident Command System; predesignated call out, including contracts with fishermen
..	
GROUP II	GROUP II
1. Vessel Monitoring System	1. Support mandatory Vessel Traffic System
2. Traffic Separation Lanes with One-Way Traffic	2. Vessels to stay in lane; reduce speed if encounter ice. One way traffice in Valdez Narrows
3. Designated Anchorage Areas	3. In Spill Prevention and Response Plan
4. Emergency Response Pollution Control Vessels	4. Five ERV's in Valdez. Two vessels escort laden tankers
5. Improved Loading/Unloading Design	5. Will review when full response available
GROUP III	GROUP III
1. Improved Tanker Design	1. Issues for tankers

* Reproduced based on Table VI-2, ECO Report to Alaska Oil Spill Commission

rapid, escorted access to the DEC in Valdez that would not delay or impede legitimate regulatory processes. Recently, I have discussed access with DEC officials and believe we will agree that DEC employees will be allowed to proceed immediately, without escort, to vessels or to an office on the terminal provided by Alyeska. Escorts to other areas from the DEC office on the terminal will be provided within 10 minutes of the request. In turn, we believe that local and state government agents should conduct an exit interview after inspecting a facility and should, as a matter of course, provide written documents generated as a result of a site visit. We anticipate receiving this cooperation from the DEC in the future.

Alyeska also agrees with the Commission recommendation that the company employ an executive whose principal responsibility is to achieve compliance with environmental regulations. That is my job which Alyeska's new President, Jim Hermiller, created last fall. Alyeska has created a new division, which I head, employing approximately 50 people with an additional 100 people employed under contract as crews on the Emergency Response Vessels and as spill response workers. For the past nine months, I have focused much of my energy on directing the development of a new spill prevention and response plan for Prince William Sound. I am also responsible for environmental compliance company-wide and will provide internal review of contingency planning and preparedness and response to spills.

I would like to summarize the prevention and response systems that I mentioned earlier. State and federal law places liability and clean up responsibility for an oil discharge on the spiller - in this case a tanker owner/operator. As operator of the pipeline, Alyeska has no direct affiliation with tanker owners and operators. However, to centralize prevention and initial response efforts on behalf of those tankers, Alyeska has developed the Prince William Sound plan. Once approved, the Tanker Spill Prevention and Response Plan developed by Alyeska will be incorporated into tanker contingency plans that must be approved by the DEC for each vessel in the TAPS trade. Alyeska will contract with the vessels to provide this service. Those contracts and the vessel plans will prescribe an orderly transition of spill response management from Alyeska to the vessel in the event of a large spill. An overview of the plan is submitted for your reference. One copy of the three volume plan is provided to the Committee.

Alyeska agrees with the Commission that recovery of all the oil from a catastrophic spill is impossible and, therefore, prevention is the first priority. Programs to prevent tanker accidents in Prince William Sound include:

1. Tanker crew members returning from shore leave are tested for alcohol if their conduct or breath odors indicate consumption.
2. Tanker masters are given a breathalyzer test within one hour prior to sailing.

3. Drug testing will be implemented once federal regulations are in place.
4. Alyeska installed new communications sites in Prince William Sound in order to maintain radio contact with tankers in the Sound.
5. Each laden tanker is escorted in Prince William Sound by two vessels that have the capability to tow a fully loaded tanker. This system proved its effectiveness when the vessel Atigun Pass lost power in the vicinity of Bligh Reef and was taken under tow by its escorts.
6. Alyeska supports Coast Guard operation of an appropriate Vessel Traffic System in Prince William Sound.
7. Through its escort system, Alyeska has obtained tanker agreement to abide by traffic rules in Prince William Sound, including a 10 knot speed limit, no deviation from traffic lanes, and a decrease in speed when ice is encountered.
8. Alyeska will not provide escort services if the weather in the Sound would appear to create unacceptable safety hazards for personnel on the ERV. Through this approach, Alyeska is in effect saying tankers will not sail in bad weather. We are building an experience base to determine the safe operating conditions. Presently, if bad weather

develops during the transit of the Sound, the Coast Guard and the masters decide how to proceed.

9. We are working with the Coast Guard to develop rules governing tanker operations in the port area during adverse weather conditions.

Prevention strategies must be backed up by appropriate oil spill response strategies. Alyeska's strategies are based on the assumptions that oil will spread rapidly once it is on water, and that weathering and changing environmental factors make recovery more difficult as time passes. If a spill occurs, our initial strategy will be to control the oil as close to the source as practical. Then we will endeavor to remove the oil quickly, prior to weathering or loss of control due to weather or sea conditions.

To enable these two fundamental strategies, booming and skimming equipment is kept in proximity to laden tankers traveling through the Sound. Under the tanker plan, response capability includes:

1. Rapid response with booms and sea skimmers from at least one of the escort vessels.
2. Additional large scale skimming and lightering capability from vessels anchored in Prince William Sound midway along the tanker route.
3. Additional ocean skimming equipment and response material in Valdez.

4. Pre-positioned equipment and pre-trained spill responders in communities and hatcheries.
5. Larger stockpiles of dispersants and Alaska-based application equipment.
6. Larger stockpiles of fire boom and igniters for in situ burning.

Alyeska's response to a tanker spill will utilize the Incident Command System (ICS), recommended to us by Prince William Sound communities and wholeheartedly endorsed by the Oil Spill Commission. This ICS will be tailored to facilitate coordination between industry and government response efforts and to structure transition of response management from Alyeska to the spiller. Alyeska held its first major desk top drill of the Incident Command System in Valdez the last week of January 1990. Alyeska, shippers and government personnel, along with representatives of potentially impacted communities participated in, and critiqued, the drill. It may be of interest for you to know that BP used the ICS system developed by Alyeska in its successful response to the Huntington Beach spill.

It is essential to note that despite our desire and commitment to prevent an oil spill, or to clean up as much oil as possible after a spill, there can be no guarantee that all accidents will be prevented or all spilled oil recovered. Nonetheless, we believe the prevention and response systems now in place are second to none.

Alyeska is funding and working with an independent citizens advisory committee that represents a cross-section of the concerned communities, to evaluate these new measures and assist our training and diligence. Our goal for Alyeska is to meet our responsibility to the people of Alaska while operating the pipeline efficiently. We are receptive to your suggestions, on behalf of your constituents.

I would like to conclude with a few general comments on SB 503 and SB 504.

SB 503. At the urging of Prince William Sound communities, and with the support of the Commission, Alyeska has developed an Incident Command System to organize its response to tanker spills. The system will be used to manage industry response internally, coordinate it with federal and state response to a spill and establish the capability for rapid, military style decision making. However the state allocates response capability, state responders should be at least as well trained as their industry and federal counterparts and should be prepared to make decisions as rapidly as necessary. This may require making decisions based on limited information or based on tradeoffs that seem appropriate at the time. State and regional plans should be designed to effectively integrate the state response with other efforts. Industry should be encouraged to participate in all of the state's response planning and on commissions that oversee the government effort.

SB 504. Alyeska's primary concern with this bill is what response capability will be required. Last night, Walt Parker, Chairman of the Oil Spill Commission, reiterated that complete removal of a catastrophic spill is an unachievable goal with existing technology. As a result, you must establish a policy that will create achievable standards applicable throughout Alaska. Alaska law should encourage and nurture prevention. After prevention, we would suggest that on hand response capability focus on the most likely spills. In addition, in Prince William Sound, we are preparing for another catastrophic event of 250,000 barrels. Because of numerous variables, neither Alyeska nor the tankers can guarantee removal of all the oil spilled. With the civil and criminal penalties in place, no responsible business would guarantee recovery of a large spill. If legislation requires unattainable performance guarantees, our operation would end and the state would be presented with the difficult goal of meeting its energy needs when businesses are not capable of providing guarantees for movement of refined and crude petroleum.

Rather than seeking unachievable guarantees for worst case spills, the state should require transporters to have realistic crisis management plans that detail equipment and manpower mobilization for response in the event of a worst case spill. Rather than requiring a replication of these large scale mobilization plans for each facility and vessel covered by this legislation, the state's master plan should provide a system to be utilized by all in the state. This could be achieved by a coopera-

tive planning effort between transporters and the state. The final crisis management plan could be incorporated into each individual plan.

After we hear more about this legislation from the administration, we would appreciate the opportunity to comment further on specific issues that are of concern.

Thank you for the opportunity to testify this evening.



Laurie Ferguson Craig

TESTIMONY

FOR THE SENATE OIL AND GAS SUBCOMMITTEE

March 5, 1990

Thank you for the opportunity to testify. This piece of art was my initial reaction to the oil spill. Completed only a week after the spill, the ugly black hands were still just reaching out for the innocent creatures that would later fill mountains of plastic bags on the beach.

This graphic has joined with other poignant images of Prince William Sound to carry the message that oil and water are a deadly mix. To date, 500 posters, 45,000 postcards and numerous reproductions of this illustration have been seen all over the world. The Alaska Conservation Foundation has used it to raise funds to clean up and rehabilitate the Sound.

I realize that it takes more than ink and outrage to correct the circumstances that led to the wreck of the Exxon Valdez. In pursuit of information, I read the Oil Spill Commission's Executive Summary, a very readable document filled with common sense recommendations. The last sentence of the introduction compelled me to

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follow the legal trail of the report:

"Future vigilance rests in the hands of state and federal leaders, industry and public agency officials, terminal operators, tanker officers and crew, technical advisors, and, perhaps most important of all, citizens exercising a watchdog presence and role."

It was that invitation which prompted me to attend the first Commission hearing before the legislature in January, and to continue to pursue this process as a source of information and a hope for prevention of another environmental disaster.

Some of the testimony offered by the experts alarmed me: the age and condition of the tanker fleet; the Coast Guard's greater concern on a national level about crack cocaine than cracked hulls; the statistical probability of minimizing the effects of a spill like the Exxon Valdez by the requirement of double hulls; and the gross negligence which resulted from complacency.

But the one area that impacted me most strongly was the testimony of Professor Zygmunt Flater whose research team pointed out the amazing weakness of Alaska's legal authority to regulate and protect its own resources. One pivotal lawsuit brought the state to its knees and continues to be an axe waiting to fall again. Many of the preventative measures called for in the commission's report were all in place as part of the original program in the late 1970's, but lack of diligence and dollars dissolved them in the wake of the Chevron, et. al. vs. Hammond case.

Once again legislation is on the table to restore our legal ability to prevent oil-related disasters, respond when they occur, and ensure

The recovery of the natural environment.

In light of the responsibility incumbent upon you, I'd like to share the words of another artist, playwright and president of Czechoslovakia, Vaclav Havel, who delivered them recently to a joint session of the U.S. Congress:

" We are still incapable of understanding that the only genuine backbone of all our actions, if they are to be moral, is responsibility. Responsibility to something higher than my family, my country, my company, my success - responsibility to the order of being where all our actions are indelibly recorded and where and only where they will be properly judged."

I urge you to act decisively and with strength and courage on the legislation before you. Statistics indicate that another major oil spill is a matter not of "if", but "when". Perhaps with these measures in place, I won't have to draw another picture like this for a long, long time.

Thank you.



Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No.1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenomena specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

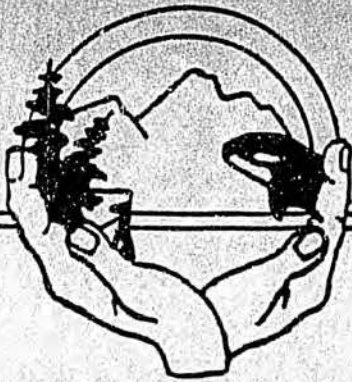
inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.



Oil Reform Alliance



Governor Steve Cowper
Office of the Governor
Third Floor, State Capitol
Juneau, AK 99811

March 13, 1990

The Oil Reform Alliance is a grassroots coalition among commercial fishermen, environmentalists, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) strongly supports the intention of the Governor's oil bill packet (HB565/SB502, HB566/SB503, and HB567/SB504). In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

During hearings on this package in Senate Oil & Gas and House Resources, we noticed areas in which arguments for the Administration's position, as presented by DEC, were particularly weak. To augment the passage of this package, both in spirit and in letter, we would like to point out these weak areas so that the DEC could perhaps be better prepared to argue the Administration's position.

HB567/SB504

* Sec. 1

POINT: DEC authority to require and revoke contingency plans.

COUNTER: DEC is currently bottleneck in review process. (BP testified that Prudhoe Bay and Endicott oil spill contingency plans held up by DEC for nearly 2 yrs.)

Currently there are over 50 operations without required contingency plans. How does the Dept. plan to address this? By reorganizing? By shifting priorities? By contracting? Present a plan to show how DEC will handle the job created for them in this bill.

POINT: Requiring response to "realistic" maximum oil discharge.

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COUNTER: DEC needs better arguments for requiring redundancy of equipment. Point out that industry is "redundant" in other areas of the world and we expect same redundancy (safety) measures in this state. Use specific examples: DEC sent personnel (Dan Lawn) over to Europe to report on exactly this topic and has the information available!

* Sec. 2

POINT: Proof of financial responsibility increases.
COUNTER: Small operators claim that this will put them out of business. Show that insurance cooperatives are possible. Use examples. What are comparable requirements in other states?

* Sec. 3

POINT: Increasing coverage of bill by reducing exemption from 10,000 to 5,000 barrels of oil.
COUNTER: Provide list of facilities that would be included with this change. Offer proof that these facilities should no longer be exempted; i.e., do any of these have a past history of noncompliance?

* Sec. 4

POINT: DEC inspections of tankers.
COUNTER: Real prevention starts with improved tankers: offer arguments that federal inspection program is weak (high percentage of structural failures in fleet carrying North Slope crude; no certified inspectors). DEC does not have expertise to inspect tankers so offer a plan. How does DEC expect to do this? Fund contractors to do job in California or wherever Alaskan tankers unload oil? How would DEC inspections interface with the Coast Guard inspections? What happens if inspections disagree? Does DEC plan to ban structurally unsound tankers from Alaskan trade? Use as example "Rogue's Gallery" from terminal in Sullom Voe, Scotland: is DEC planning something similar?

Enclosed is ORA testimony in House Resources (3/9/90). Please notice that we support additional changes which we believe will further strengthen the original intent of this package. The ORA has assembled documentation to support most of our arguments which we would be more than happy to provide if your staff are interested.

Local phone: 586-2820

Respectfully,

Dr. Riki Ott

Dr. Riki Ott
President



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M E M O R A N D U M

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Ray Gillespie

DATE: March 21, 1990

SUBJECT: HB 565 and HB 567 - Civil Penalty and Financial
Responsibility for Non-Crude Oil Distributors

MAR 21 1990

I represent Petro Marine, Delta Western and Crowley Maritime, which are relatively small distributors of refined products, such as marine fuel and petroleum products, rather than crude oil. This memo contains thoughts and comments on the legislation as it may affect owners and operators of distribution facilities in Alaska:

- I. Appendix G to the Alaska Oil Spill Commission Report is entitled "The Role of Insurance for the Preparedness and Response to Oil Spills: Liability and Compensation Issues". This report should be carefully reviewed by the Committee and its recommendations seriously examined prior to action on HB 565 and 567. Neither the Alaska Oil Spill Commission report nor Appendix G recommends any specific changes to Alaska liability or penalty laws with respect to non-crude oil distributors.

On the contrary, Appendix G recommends that the Commission and the State Legislature review the analysis of the civil penalty scheme, oil spill liability and compensation thesis, written by W.J. Graham in 1989. This thesis was done at the University of Washington, Institute of Marine Studies and is entitled "Oil Spill Liability and Compensation: A Review of and Evaluation of Alaska's Civil Penalty Scheme." A copy of this paper has been provided to Committee staff.

- II. Other Observations and comments on Appendix G:

March 21, 1990
Page Two

- A. The report references the U.S. Government Accounting Office, 1987 report, which states that the insurance industry has maintained that the basic concerns of underwriting, risk the process of identifying and evaluating risks and setting the premiums to be charged cannot be satisfied when assessing a pollution risk, making them sometimes uninsurable.
 - B. It suggests that insurance requirements of this nature have historically been addressed through national programs, such as the National Flood Insurance Program, the Flood Disaster Protection Act, the Federal Emergency Management Act and Earthquake Insurance Programs.
 - C. The House Resources Committee may wish to examine the pertinent provisions of Federal legislation to ensure that HB 567 is coordinated with pending Federal legislation, which may also contain liability provisions according to the report.
 - D. It may be advisable for the Resources Committee to hear from the author of Appendix G, Mr. Clancy Phillipsborn of Boulder, Colorado.
- III. With specific reference to HB 565 and 567, Delta Western, Petro Marine and Crowley Maritime offer the following general comments:
- A. Tank facilities owned and operated by these entities are located in the following communities: Unalaska, Nome, Kotzebue, Seward, Dutch Harbor, Kodiak, Nikiski, Anchorage and Juneau. With the exception of one small Anchorage lube plant and a small facility in Juneau, each of these facilities would be subject to the \$50 million financial responsibility requirement of HB 567.
 - B. Earlier testimony before the House Resources Committee by insurance representatives from Lloyds of London and an Anchorage marine insurance broker indicate that \$50 million is not available for many small companies operating these size facilities.

The testimony indicated that \$10 million might be available, depending upon the particular owner and operator, the size and age of the tanks and the type and nature of mitigation and prevention practices and policies in place at the specific location.

- C. The term "realistic maximum oil discharge" as the standard for demonstrating contingency spill plan cleanup capability needs further refinement. The tank farms referenced above range from a single tank to up to 18 tanks. Must these operators be prepared to cleanup a spill that presupposes full loss of the entire capacity of all the tanks, such as resulting from a catastrophic earthquake? If so, what manpower and equipment will be required and are the costs realistic for small operators of tank farms?
- D. It is apparent that some kind of transition mechanism should be in place while the new contingency plans are written and approved and the necessary manpower and equipment put on site after the effective date of the legislation and before final approval of the plans.
- E. With respect to tanks vessels or barges in excess of 300 gross tons, HB 567 would require \$20 million of coverage. This requirement does not necessarily reflect the risk of harm posed by tank vessels or barges nor does it necessarily reflect insurance which may be available in the market place. Much of the refined petroleum products sold in the state are transported by independent barge owners under charter to the distributors, such as Petro Marine, Crowley and Delta Western.
- F. There are several other issues that should be addressed by the committee such as:
 - 1. Must operators with multiple farms meet the financial responsibility requirement for each facility or will blanket coverage meet the requirements of HB 567?
 - 2. Will small operators be able to fairly compete with large operators if both must meet the same financial responsibility requirements?

March 21, 1990
Page Four

3. Will it be necessary to insure against the civil penalties contained in HB 565 in addition to the financial responsibility requirements of HB 567? See Section 2(j) of HB 567 which indicates that both types of coverage or responsibility must be demonstrated prior to contingency plan approval. If this is true, then the financial responsibility requirements are placed further out of reach for small operators.
4. For tank vessels and barges does the financial responsibility refer to each vessel or is blanket coverage sufficient?

We believe the Committee should seriously consider deleting non-crude from the bills at this time, to allow further examination of the serious and complicated issues surrounding small operators.

Thank you for the opportunity to address these bills. The companies I represent are willing and anxious to work further with the Committee on these bills. We suggest that sufficient time and study be devoted to HB 565 and 567 so that the small operators and distributors of refined products can serve the Alaskan consumer in a safe and efficient manner at reasonable prices.

TESTIMONY BEFORE THE ALASKA HOUSE RESOURCES COMMITTEE

ON HOUSE BILL 565 MARCH 13, 1990

BY GENE BURDEN FOR TESORO ALASKA PETROLEUM COMPANY

There are three points in the proposed bill that I ask be closely considered as the Committee evaluates this bill.

First is in Section 2 (proposed AS 46.03.758 (b)) which substantially redefines fees for discharge to "environments without significant aquatic resources" from the current level of \$1.00 per gallon to a level of up to \$50 per gallon. This proposal places the abiotic receiving environments in the same penalty description as those environments with significant aquatic resources. We support a continued separation between the two in regards to the statutory penalty descriptions applicable to each.

Second is in Section 3 (proposed AS 46.03.758(d)) which deals with situations where a spill affects more than one type of receiving environment. The proposal provides for spiller liability at the rate for the most critical environment affected for the entire discharge unless the Spiller can demonstrate by "clear and convincing evidence" the quantities entering each environment. This language not only shifts the burden of proof from the State to the Spiller but also abandons the preponderance of evidence standard in favor of the stricter clear and convincing evidence standard. There is question as to whether this higher

standard can ever be met when the quantities can typically only be identified by engineering projections and opinions.

Third is in Section 5 (proposed AS 46.03.75c(f)) which would eliminate the current credit for recovery of spills that occurs after the first 36 hours following the spill. This will have the effect of virtually eliminating the credit for land based spills since they frequently will take more time to characterize, obtain engineering assistance and ADEC approvals for recovery techniques. We support continuation of the credit arrangement and believe it offers a spiller additional incentives to maximize the total recovery possible from a site. The financial implications from any spill can be very complicated; however it appears good policy to retain the offset provisions in current law as additional positive incentive for maximum recoveries.