

**HB**

**567**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: February 22, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 3/30/90

The RESOURCES Committee considered:

HB 567

HOUSE BILL NO. 567

OIL SPILL CONTINGENCY PLANS/REQUIREMENTS

"An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with CS HB 567 (RES)  the same title
- a new title  a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_ 2  fiscal note(s) 2/22/90 ADF+G, DEC
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_
- zero with analysis \_\_\_\_\_  zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_  
  
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SIGNING:  
(Check approp. column)

	Do Not PASS	No Rec	Amend
			<input checked="" type="checkbox"/>

\_\_\_\_\_  
 Chairman's Signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Department of Fish and Ga  
 Title: An act strengthening DEC's BRU: Habitat Division  
contingency plan and inspection requirements  
 Sponsor: Governor Rudi W. Mark Components: Habitat  
 Requestor: Governor

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>156.5</b>					
<b>CAPITAL</b>	<b>0</b>					
<b>REVENUE</b>	<b>0</b>					

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	156.5					
FEDERAL FUNDS	0					
OTHER	0					
<b>TOTAL</b>	<b>156.5</b>					

**POSITIONS:**

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

**ANALYSIS : (Attach a separate page if necessary) (Explanation Attached)**

FY 90 Impact: Personal Services 51.9  
 (3/24-6/30/90 Travel 2.0  
 Contractual 4.0  
 Supplies 1.0  
 Equipment 7.0  
**TOTAL 65.9**

Prepared by Frank Rue Phone: 465-4105  
 Division: Habitat Date: 2/14/90

Approved by Commissioner: [Signature] Date: 2/14/90  
 Agency: ADF&G

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

## Continuation of fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. The state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Continuation of Explanation

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: HB 567 No. 2  
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Environ Conservation  
Title: An Act relating to the strengthening  
of the DEC's oil contingency plan BRU: Environ Quality  
Sponsor: Rules Committee Components: Environ Quality  
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	489.8	489.8	489.8	489.8	489.8	489.8
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	376.0	376.0	376.0	376.0	376.0	376.0
SUPPLIES	9.5	9.5	9.5	9.5	9.5	9.5
EQUIPMENT	47.5	47.5	47.5	47.5	47.5	47.5
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	952.8	952.8	952.8	952.8	952.8	952.8

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	952.8	952.8	952.8	952.8	952.8	952.8
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	952.8	952.8	952.8	952.8	952.8	952.8

POSITIONS:

FULL-TIME	9.0	9.0	9.0	9.0	9.0	9.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)  
Impact on FY 90 depends upon effective date.

Prepared by: Dan Easton  
Division: Environmental Quality

Phone: 465-2640  
Date: 2/16/90

Approved by Commissioner: [Signature]  
Agency: Environmental Conservation

Date: 2/19/90

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

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 2, line 1, after "discharge":

Insert "prevention and"

Page 2, line 2, after "state":

Insert ", including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state"

3,000,000.00

400,000.00  
2,000,000.00

AMENDMENT TO HB 567

APRIL 11, 1990

Sec. 8. AS 46.04.040 (c) is amended to read:

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [,] or [,AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility under this subsection may not be less than

(1) \$300, per incident, for each barrel transported or \$20,000,000, whichever is greater, subject to a maximum of \$500,000,000, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel transported or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil or other hazardous substance in an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION ...]

PROPOSED AMENDMENT FOR H.B. 567

APRIL 11, 1990

SEC. 10. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department or other security approved by the department, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760 (a) or (e), 46.03.822, or AS 46.03.030(g) [or to collect penalties imposed under AS 46.03.759] may be brought [in a state court] directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [or] guarantor, or other person providing security approved by the department shall, if otherwise doing business in the state, appoint an agent for service of process in the state. An insurer must either be:

(1) authorized by the Department of Commerce and Economic Development to sell insurance in the state [or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.];  
or

(2) an established insurer of pollution risk, or a club or association of insureds covering pollution risk, satisfactory to the department.

ANALYSIS OF AMENDMENTS  
 HB 567  
 DATED APRIL 11, 1990

1. The first amendment is to Sec. 8 and changes the level of financial responsibility for crude oil vessels to an amount that corresponds with the size of cargo transported based on a \$300 per barrel rate with a minimum coverage of \$20 Million and a cap at \$500 Million. This is consistent with the methodology currently recommended for non-crude oil transporters and recognizes the wide variance in crude oil tanker cargoes in Alaska. The actual affect on financial responsibility levels is illustrated in the following vessels which for these purposes are presumed to be fully loaded:

EXAMPLES OF FINANCIAL RESPONSIBILITY AT TOTAL  
 VESSEL CAPACITY

Vessel	Size (MDWT)	Capacity [98%] 7.2 bbl/ton	Financial Responsibility Required
Northern Lion	265	1,869,840	\$560,952,000 [\$500,000,000]
Brooklyn	225	1,587,600	\$476,280,000
Chevron Oregon	150	1,058,400	\$317,520,000
Cove Liberty	69	486,864	\$146,059,200
Nordic Sun	20	141,120	\$ 42,336,000
Note: Actual cargoes often are less than maximum rated capacities.			

The second change to this section is to change the basis of financial responsibility from vessel size to cargo for noncrude as well as crude.

2. The second amendment is to Sec. 10. AS 46.04.040(e) which is amended to address the problems of acquiring insurance coverage under the proposed higher levels of financial responsibility. The changes are intended to make proof of coverage through a protection and indemnity club of insurers (often referred to as "P & I Clubs"). There are several provisions of current law (AS 46.04.040(e)) that prevent P & I Clubs from being accepted as insurers:

1. The required "direct action" against the insurer;
2. The requirement that the direct action may be brought in Alaska "state court";
3. The requirement that the insurer be authorized by the Division of Insurance to sell insurance in Alaska, or be listed by that Division as an authorized insurer "not disapproved for use"; and
4. The requirement that the insurer appoint an agent of service of process in the state.

This proposed amendment deletes three of the 4 provisions listed above and retain the "direct action" requirement.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 4, lines 1 - 2:

Delete "of the best available technology by the applicant"

Insert "by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed [OF THE BEST AVAILABLE TECHNOLOGY BY THE APPLICANT]"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, lines 20 - 21:

Delete "a reasonable opportunity"

Insert "no more than 15 days"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 22:

Delete "An applicant for a"

Insert "The holder of an approved"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 23:

Delete "maintain in its area of operation"

Insert "have access to"

Page 5, line 24:

Delete "in its area of operation"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 8, lines 18 - 19:

Delete "or other hazardous substance"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 14, after line 6: ✓

Insert a new bill section to read:

"\* Sec. 19. AS 46.04.900(15) is amended to read:

(15) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;"

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 7, line 24, after "\$50,000,000":

Insert "For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility"

## SB 504/HB 567

### Facility Contingency Plans Strengthened

- o Strengthens DEC's authority to require and enforce oil discharge contingency plans.
- o Requires that plans be implemented.
- o Clarifies authority to approve, modify or revoke.
- o Requires response capability to remove a realistic maximum oil discharge within the shortest possible time.
- o Provides opportunity for other agencies to comment on contingency plans.
- o Authorizes DEC to revoke contingency plans if not implemented.

### Financial Responsibility Requirements Strengthened

- o Strengthens financial responsibility requirements.
- o Establishes a 50,000,000 financial responsibility limit for crude oil terminal facilities.
- o Establishes a 1,000,000 financial responsibility for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels.
- o Establishes a 50,000,000 financial responsibility for non-crude terminal facilities with a storage capacity of more than 10,000 barrels.
- o Establishes 50,000,000 financial responsibility for offshore exploration and product facilities.
- o Establishes 50,000,000 financial responsibility for crude oil tank vessels and barges.
- o Establishes a 20,000,000 financial responsibility requirement for > 300 gross ton tank vessels and barges carrying non-crude oil. (300 gross tons = 224,400 gallons = 5342 bbls)
- o Establishes a 1,000,000 financial responsibility requirement for < 300 gross ton tank vessels and barges carrying non-crude.

### **Extend the Requirement for Contingency Plans**

- o Lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

### **Inspection Authority Strengthened**

- o Authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.
- o Authorizes DEC to examine structural integrity of tank vessels and oil barges.

### **Spill Scenario**

- o Defines "realistic maximum oil discharge" and requires facility plans to address this.

**SENATE BILL 504/HOUSE BILL 567**  
**Oil Contingency Plan Requirements**  
**Financial Responsibility Requirements**  
**Vessel Inspection**  
2/21/90 Version

This bill has three major components:

- 1) It strengthens the Department of Environmental Conservation's (DEC's) authority to require and enforce oil discharge contingency plans.
- 2) It strengthens the financial responsibility requirements for shippers of oil and hazardous substances.
- 3) Authorizes DEC to inspect facilities related to the production and shipping of oil, as well as examine the structural integrity of tank vessels and oil barges.

**OIL CONTINGENCY PLAN REQUIREMENTS**

- \* Establishes an explicit standard for facility oil spill contingency plans to include a response capability for response to a realistic maximum discharge within the shortest possible time.
- \* Requires that contingency plans be properly implemented and gives DEC authority to revoke the plan if not properly implemented.
- \* Provides the Department of Fish & Game and the Department of Natural Resources an opportunity to comment on contingency plans.
- \* Requires contingency plans for facilities with a storage capacity of 5,000 barrels or more.

**FINANCIAL RESPONSIBILITY REQUIREMENTS**

- \* Requires proof of financial responsibility in the following amounts:

Crude oil terminal facilities	\$ 50 million
Non-crude oil terminal facilities	
5,000 - 10,000 barrel storage capacity	\$ 1 million
Non-crude oil terminal facilities	
10,000+ barrel storage capacity	\$ 50 million
Offshore exploration and production facilities	\$ 50 million
Onshore exploration and production facilities	Not addressed
Crude oil tank vessels and barges	\$500 million
Non-crude oil tank vessels and barges	
Larger than 300 gross tons	\$ 20 million
Non-crude oil tank vessels and barges	
Smaller than 300 gross tons	\$ 1 million
- \* Ensures that shippers and handlers of oil and hazardous substances have the financial capability of dealing with the damages from a major spill.

**VESSEL INSPECTION**

- \* Provides the state with the authority to inspect tankers to ensure their structural integrity.
- \* Asserts affirmatively that the state may inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.

## SB 503/HB 566

### Use of Response Fund During Declared Disaster Emergency

- o Authorizes Governor to use money from response fund for declared disaster emergencies.

### Expand Role of Division of Emergency Services (DES) during Declared Disaster Emergency

- o Clarifies DEC emergency order authority and distinguishes it from DES's authority to respond to declared disaster emergencies.
- o Returns duties of DES during catastrophic oil discharges from DEC during declared disaster emergencies.

### State Emergency Response Commission

- o Establishes the Alaska State Emergency Response Commission.

## SB 502/HB 565

### Strengthen Civil Penalties

- o Modify legislative findings in non-crude oil damages and penalty provisions to make consistent.
- o Increase maximum per gallon civil penalties for non-crude oil discharges into various receiving environments.
- o Provides that spiller establish the amount of oil which entered each receiving environment.
- o Removes penalty exemption for non-crude oil discharges less than 18,000 gallons.
- o Allows spiller to deduct the number of gallons of non-crude oil recovered within 36 hours of the spill.
- o Allows that civil penalties may be offset without affecting ability to recover damages, restoration or other costs.
- o Removes penalty exemption for crude oil discharges of less than 18,000 gallons.
- o Changes the multiplier for negligence to five
- o Revises and streamlines civil penalties and damages statute.
- o Raises civil penalties for 500 to 2,500 per day for each violation.
- o Expands states authority to recover attorney fees.
- o Removes mitigation defense and makes other changes to Section 11.

### Amends Rule 82. Alaska Rule of Civil Procedure

- o Rule 82 amended by Section 10.

For the Record

R Foster 24 MAR 90

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Notes: CSHB 567

1. Commercial insurance only covers insured for 3rd party liability, not for cost of clean up on insured's own property.
  2. Testimony from various representatives of the electric co-op or fuel carriers have expressed doubts about even the availability of necessary coverage.
  3. Letter presented by Mr. Ray Gillespie (lobbyist for Petro Marine, Crowley and Delta Western), indicated the state would not be able to apply statutes requiring coverage when such coverage is unavailable in the marketplace. This issue needs to be addressed, if not now, certainly before final passage.
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Specific amendments or points to be read into the record:

1. Although Section 13 EXEMPTIONS relieves the 72 hour clean up requirements of Section 4 (page 5, line 16-18), facilities greater than 10,000 barrels (420,000 gallons) are not excluded. From my experience in rural Alaska, this mandate to clean up the maximum oil discharge possible, is unrealistic. There are limited resources to draw from and little suggestion as to where a community or firm is to obtain assistance. This is all very new to the industry and I feel relief is in order for non-crude facilities. Paragraph "j", page 5, lines 8-12 list necessary arrangements that must be on stand by at any given time. This is far beyond the capacity of communities like Nome or Naknek or Kotzebue. I would suggest we limit this immediate response to crude oil terminals, not applying to non-crude facilities. The contingency plans that are approved by the department can address the response appropriate for the non-crude operation.
2. Section 20, page 14, SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. This survey is required to be completed by January 31, 1991. From past experience with state government, and from the condition of rural community tank farms, let alone the sheer number of facilities, there is no way this will get done. The department has grown so fast and the issues so complex, they will need far more time to adequately address the

requirement and provide a meaningful report to the legislature.

3. SECTION 20, page 14, SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. This section directs the department to survey and inspect all storage facilities between 5,000 and 10,000 barrels (210,000 - 420,000 gallons) in the state but I don't see a fiscal note attached to fund this survey project. I can only imagine there are some 200-300 such facilities all across the state. This could be a significant financial burden and heavily impacts this bill.

4. Finally, reference the letter from Mr. Dave Hutchens letter to Rep. Davidson, regarding the insurance issue, SECTION 5, page 6, line 13. This increase from current law, \$10.00 per barrel, to \$35.00 per barrel, as proposed in this bill, has serious financial consequences for small rural utilities and I would request the committee reconsider the \$25.00 per barrel, as Mr. Hutchens suggests.

## DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Barges in Alaska trade

## CROWLEY MARITIME CORPORATION

BARGE NAME:	OFFICIAL #:	GRT:	CAPACITY:
B&R 5	284930	247	4019 BBL.
" 80-1	261941	109	1667
" 80-2	271650	121	1904
" 80-3	271651	121	1904
120-1	622202	318	4128
120-2	627820	318	4128
548	502911	320	5300
160-1	517535	530	9402
160-4	525850	569	8608
BC 151	507673	629	10000
BC 152	507674	629	10000
BC 154	508468	629	10000
210	524569	1256	6010
211	524570	1256	6010
212	524571	1256	6010
213	524572	1256	6010
218	524577	1256	6010
251	518644	2637	33800
255	520633	2971	49508
312-3	292360	3157	6905
ARCTIC CHALLENGER	574046	4717	51000
PAC 570	503135	5057	57878
CORDOVA	522842	5051	6370
NIKISKI	517734	5051	6370
KETCHIKAN	526660	5051	6370
PALMER	516339	5051	36568
KODIAK	229125	5051	10562
JUNEAU	524833	5145	6370
101	513536	5498	103968
102	528789	7970	154608
450-2	570955	8123	136882
450-3	571894	5123	148242
450-4	573167	8123	149726
450-6	531167	8987	148502
450-7	633295	8987	148238
450-8	631688	8123	148238
450-9	636557	8134	148238
450-11	647827	8923	148502
250-10			
UT-10			

## FOSS MARITIME

FOSS 255

525880

2637

39114

FOSS 256	525881	2637	37505
FOSS 248-P1	625262	2060	33354
FOSS 248-P2	630656	2060	35000
FOSS TONGASS	515337	744	11394
SEA "76"	519398	830	12654
TESORO ENERGIZER	646688	4757	75510
PHOENIX 121	651632	3218	48000
HANALEA		1840	27315

## YUTANA DARGE LINDO, INC.

O.B. 2	650872	207	3291
O.B. 3	009449	473	7150
O.B. 4	002718	473	7150
O.B. 5	295687	495	7600
O.B. 6	532598	485	7600
O.B. STEWART	008755	265	2000
FRANK TURNER #1	273812	105	1274
POLARIS #6	175265	62	714
RIVERWAYS #7	274076	129	1476
RIVERWAYS #8	293716	319	4376
RIVERWAYS #9	287766	319	4394
RIVERWAYS #10	176106	454	7123
RIVERWAYS #11	271235	353	5000

## NORTHLAND SERVICES, INC.

ZPC 401		1739	30000
KVICHAK TRADER		2227	39000

## UNITED MARINE TUG AND BARGE, INC.

MLC 281	590980		
MLC 282	596502		
MLC 283	639882		
MLC 330	645770		
MLC 331	646673		
MLC 332	648909		
MLC 333	653764		
MLC 340-1	657024	5214	74100
MLC 344	647179	5214	74100

## ALASKA MARINE CHARTERS, INC.

INVESTIGATOR	638965	1730	16031
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Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, civil penalties for discharges of crude  
10 oil, and inspection authority of the Department of  
11 Environmental Conservation; authorizing certain  
12 additional uses of the oil and hazardous substance  
13 release response fund; authorizing the Department of  
14 Environmental Conservation and municipalities to  
15 enter into agreements pertaining to vessel traffic  
16 control and monitoring systems; and providing for an  
17 effective date."

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

19 \* <sup>NEW Sec.</sup> Section 1. AS 29.35.020 is amended by adding a new subsection to  
20 read:

21 (d) A municipality may enter into agreements with the United  
22 States Coast Guard, the United States Environmental Protection Agency,  
23 and other persons relating to development and enforcement of vessel  
24 traffic control and monitoring systems for oil barges and tank vessels  
25 carrying oil operating in or near the waters of the state.

26 \* Sec. 2. AS 46.03.759(c) is amended to read:

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

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

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

5 (3) the defendant did not act or respond in accordance with  
6 an approved oil discharge prevention and contingency plan.

7 \* Sec. 3. AS 46.04.020(e) is amended to read:

8 (e) The department shall enter into negotiations for memoranda  
9 of understanding or cooperative agreements with the United States  
10 Coast Guard, the United States Environmental Protection Agency, and  
11 other persons in order to

12 (1) facilitate coordinated and effective oil prevention and  
13 discharge response in the state, including agreements relating to  
14 development and enforcement of vessel traffic control and monitoring  
15 systems for tank vessels and oil barges operating in or near the  
16 waters of the state;

17 (2) provide for cooperative review of oil discharge preven-  
18 tion and contingency plans submitted to the department under AS 46.-  
19 04.030;

20 (3) provide for cooperative inspections of oil terminal  
21 facilities by the department and the United States Coast Guard or  
22 United States Environmental Protection Agency; and

23 (4) provide for cooperative oil discharge notification  
24 procedures.

25 \* Sec. 4. AS 46.04.030 is amended to read:

26 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

27 (a) A person may not cause or permit the operation of an oil terminal  
28 facility in the state unless an oil discharge prevention and contin-  
29 gency plan for the facility has been approved by the department and

1 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
2 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
3 PLAN FOR THE PURPOSES OF THIS SECTION].

4 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
5 the operation of an [OFFSHORE] exploration or production facility in  
6 the state unless an oil discharge prevention and contingency plan for  
7 the facility has been approved by the department and has been properly  
8 implemented.

9 (c) A person may not operate a tank vessel or an oil barge  
10 within the waters of the state, or cause or permit the transfer of oil  
11 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
12 an oil barge, unless an oil discharge prevention and contingency plan  
13 for the tank vessel or oil barge has been approved by the department  
14 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER  
15 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
16 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
17 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
18 HAD BEEN APPROVED BY THE DEPARTMENT].

19 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
20 least every three years.

21 (e) The department may attach reasonable terms and conditions to  
22 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
23 that the department [WHICH IT] determines are necessary to ensure  
24 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
25 has access to sufficient resources to protect environmentally sensi-  
26 tive areas and to contain, clean up, and mitigate potential oil dis-  
27 charges at or from the facility or vessel as provided in (j) of this  
28 section, and to ensure that the applicant properly implements the  
29 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL

1 DISCHARGE] contingency plan must provide for the use of the best  
2 available technology by the applicant. The department may require an  
3 applicant or holder of an approved contingency plan to take steps  
4 necessary to demonstrate its ability to carry out the contingency  
5 plan, including

- 6 (1) periodic training;
- 7 (2) response team exercises; and
- 8 (3) verifying access to inventories of available equipment,  
9 supplies, and personnel.

10 (f) The department, after notice and opportunity for hearing,  
11 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
12 the department [IT] determines that a change has occurred in the  
13 operation of a facility [, MARINA] or vessel necessitating an amended  
14 or supplemented plan, or the operator's discharge experience demon-  
15 strates a necessity for modification. The department, after notice  
16 and opportunity for hearing, may revoke its approval of a [AN OIL  
17 DISCHARGE] contingency plan if the department [IT] determines that

- 18 (1) approval was obtained by fraud or misrepresentation;
- 19 (2) the operator does not have access to the quality or  
20 quantity of resources identified in the plan; [OR]
- 21 (3) a term or condition of approval or modification has  
22 been violated; or
- 23 (4) the plan is not been properly implemented.

24 (g) Failure of a holder of an approved or modified [OIL DIS-  
25 CHARGE] contingency plan to properly implement the plan, or to have  
26 access to the quality or quantity of resources identified in the plan  
27 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
28 required under (j) of this section in the event of a spill. [WITHIN  
29 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for

1 purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other  
2 applicable law. If the holder of an approved or modified [OIL DIS-  
3 CHARGE] contingency plan fails to respond to and conduct cleanup  
4 operations of an unpermitted discharge of crude oil with the quality  
5 and quantity of resources identified in the plan and in a manner  
6 required under the plan, the holder is strictly liable, jointly and  
7 severally, for the civil penalty assessed under AS 46.03.758, 46.03.-  
8 759, or 46.03.760 against any other person for that discharge.

9 \* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

10 (h) The department is the only state agency that has the power  
11 to approve, modify, or revoke a contingency plan for the purposes of  
12 this section. The department shall exercise its power under this  
13 section in a timely manner. Except for prosecutions under AS 46.03.-  
14 790(b), it is not a defense to an action brought for a violation of  
15 (a) - (c) of this section that the person charged believed that a  
16 current contingency plan had been approved by the department.

17 (i) Before the department approves or modifies a contingency  
18 plan under this section, the department shall provide a copy of the  
19 contingency plan to the Department of Fish and Game and to the Depart-  
20 ment of Natural Resources and shall provide those departments a rea-  
21 sonable opportunity to review and comment on the plan.

22 (j) An applicant for contingency plan required under this  
23 section shall maintain in its area of operation, singly or in conjunc-  
24 tion with other operators in its area of operation, sufficient oil  
25 discharge containment, storage, transfer, and removal equipment,  
26 personnel, and resources to rapidly contain a

27 (1) realistic maximum oil discharge and to remove that  
28 discharge within 72 hours if the contingency plan is for an explora-  
29 tion or production facility;

1 (2) discharge in an amount equal to the capacity of the  
2 largest oil storage tank at the facility and to remove that discharge  
3 within 72 hours if the contingency plan is for an oil terminal facil-  
4 ity; if the department determines that the oil terminal facility is  
5 located in an area of high risk because of natural or manmade condi-  
6 tions outside of the facility, the department may increase the volume  
7 requirement under this paragraph so that the contingency plan must be  
8 designed for response to a discharge that is greater in amount than  
9 the capacity of the largest oil storage tank at the facility;

10 (3) discharge of oil in an amount equal to the maximum  
11 capacity of the vessel or barge and to remove that discharge within 72  
12 hours if the contingency plan is for a tank vessel or oil barge.

13 (k) In this section

14 (1) "contingency plan" means an oil discharge prevention  
15 and contingency plan required under this section;

16 (2) "properly implement" means, with respect to a contin-  
17 gency plan, to

18 (A) establish and carry out procedures identified in  
19 the plan as being the responsibility of the holder of the plan;

20 (B) have access to and have on hand the quantity and  
21 quality of equipment, personnel, and other resources identified  
22 as being accessible or on hand in the plan;

23 (C) fulfill the assurances espoused in the plan in the  
24 manner described in the plan;

25 (D) comply with terms and conditions attached to the  
26 plan by the department under the authority of (e) of this sec-  
27 tion; and

28 (E) successfully demonstrate the ability to carry out  
29 the plan when required by the department under (e) of this

1 section;

2 (3) "realistic maximum oil discharge" means the maximum and  
3 most damaging oil discharge that the department estimates could occur  
4 during the lifetime of the vessel or facility based on the size,  
5 location, and capacity of the vessel or facility; on the department's  
6 knowledge and experience with the vessel or facility or with similar  
7 vessels or facilities; and on the department's analysis of possible  
8 mishaps at the vessel or facility or at similar vessels or facilities.

9 \* Sec. 6. AS 46.04.040(a) is amended to read:

10 (a) A person may not cause or permit the operation of an oil  
11 terminal facility in the state unless the person has furnished to the  
12 department, and the department has approved, proof of financial abil-  
13 ity to respond in damages. Proof of financial responsibility for a  
14 crude oil terminal may not be less than \$50,000,000 per incident.  
15 Proof of financial responsibility for a noncrude oil terminal may not  
16 be less than \$25 per barrel of total noncrude oil storage capacity at  
17 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
18 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
19 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
20 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever  
21 is greater, subject to a maximum of \$50,000,000.

22 \* Sec. 7. AS 46.04.040(b) is amended to read:

23 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
24 operation of an [OFFSHORE] exploration or production facility in the  
25 state unless the person has furnished to the department, and the  
26 department has approved, proof of financial ability to respond in  
27 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
28 responsibility for an offshore exploration or production facility may  
29 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of

1 financial responsibility for an onshore exploration or production  
2 facility may not be less than \$20,000,000 per incident.

3 \* Sec. 8. AS 46.04.040(c) is amended to read:

4 (c) A person may not operate a tank vessel or an oil barge  
5 within the waters of the state, or cause or permit the transfer of oil  
6 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]  
7 an oil barge, unless the person operating the tank vessel or oil barge  
8 has furnished to the department, and the department has approved,  
9 proof of financial ability to respond in damages. Proof of financial  
10 responsibility under this subsection may not be less than

11 (1) \$500,000,000 per incident for a tank vessel or barge  
12 carrying crude oil;

13 (2) \$100 per barrel of storage capacity or \$1,000,000,  
14 whichever is greater, subject to a maximum of \$35,000,000, for a tank  
15 vessel or barge carrying noncrude oil or other hazardous substance in  
16 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL  
17 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-  
18 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

19 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-  
20 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE  
21 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204  
22 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

23 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY  
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS  
25 GREATER;

26 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY  
27 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
28 GREATER].

29 \* Sec. 9. AS 46.04.040(d) is amended to read:

1 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
2 defense to an action brought for violation of (a) - (c) [(c)] of this  
3 section that the person charged believed in good faith that proof of  
4 financial ability to respond in damages had been furnished to, and  
5 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
6 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

7 \* Sec. 10. AS 46.04.040(e) is amended to read:

8 (e) Financial responsibility may be demonstrated by self-insur-  
9 ance, insurance, surety, [OR] guarantee, or other security approved by  
10 the department, under terms the department may prescribe. An action  
11 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
12 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
13 759] may be brought in a state court directly against the insurer or  
14 another person providing evidence of financial responsibility. The  
15 applicant, and an insurer, surety, [OR] guarantor, or other person  
16 providing security approved by the department shall appoint an agent  
17 for service of process in the state. An insurer must either be au-  
18 thorized by the Department of Commerce and Economic Development to  
19 sell insurance in the state or be an unauthorized insurer listed by  
20 the Department of Commerce and Economic Development as not disapproved  
21 for use in the state.

22 \* Sec. 11. AS 46.04.040(f) is amended to read:

23 (f) Acceptance of proof of financial responsibility expires  
24 (1) one year from its issuance for self-insurance;  
25 (2) on the effective date of a change in the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department; or  
28 (3) on the expiration or cancellation of the surety bond,  
29 guarantee, [OR] insurance agreement, or other security approved by the

1        department.

2        \* Sec. 12. AS 46.04.040(g) is amended to read:

3            (g) The person whose proof of financial responsibility is ac-  
4        cepted by the department under this section shall notify the depart-  
5        ment at least 30 days before the effective date of a change, expira-  
6        tion or cancellation in the surety bond, guarantee, [OR] insurance  
7        agreement, or other security approved by the department. Application  
8        for renewal of acceptance of proof of financial responsibility under  
9        this section must be filed at least 30 days before the date of ex-  
10       expiration.

11       \* Sec. 13. AS 46.04 is amended by adding a new section to read:

12            Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
13        amounts in AS 46.04.040 change, as provided in this section, according  
14        to and to the extent of changes in the Consumer Price Index for all  
15        urban consumers for the Anchorage metropolitan area compiled by the  
16        Bureau of Labor Statistics, United States Department of Labor (the  
17        index). The index for January of the year in which this section  
18        becomes effective is the reference base index.

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

24            (c) If the index is revised, the percentage of change is cal-  
25        culated on the basis of the revised index. If a revision of the index  
26        changes the reference base index, a revised reference base index is  
27        determined by multiplying the reference base index applicable by the  
28        rebasing factor furnished by the United States Bureau of Labor Statis-  
29        tics. If the index is superseded, the index referred to in this

1 section is the one represented by the Bureau of Labor Statistics as  
2 reflecting most accurately changes in the purchasing power of the  
3 dollar for Alaskan consumers.

4 (d) The department shall adopt a regulation announcing

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

7 (2) promptly after the changes occur, changes in the index  
8 required by (c) of this section, including, if applicable, the numer-  
9 ical equivalent of the reference base index under a revised reference  
10 base index and the designation or title of any index superseding the  
11 index.

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

15 \* Sec. 14. AS 46.04.050 is amended to read:

16 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE  
17 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE  
18 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and  
19 46.04.060 do not apply to an oil terminal facility that has an effec-  
20 tive storage capacity of less than 5,000 [10,000] barrels of crude oil  
21 or less than 10,000 barrels of noncrude oil.

22 \* Sec. 15. AS 46.04.060 is amended to read:

23 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
24 access or inspection conferred upon the department by law or other-  
25 wise, the department may at reasonable times enter and inspect oil  
26 [OIL] terminal facilities, [OFFSHORE] exploration and production  
27 facilities, tank vessels, and oil barges within the territorial juris-  
28 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
29 PARTMENT] to

1           (1) ensure compliance with the provisions of this chapter;  
2           or

3           (2) examine the structural integrity of tank vessels, oil  
4           barges, oil terminal facilities, oil exploration and production facil-  
5           ities, pipelines, and other facilities related to the exploration,  
6           production, storage, and transportation of oil.

7 \* Sec. 16. AS 46.04.200 is amended to read:

8           Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
9           prepare and annually review and revise a statewide master oil and  
10           hazardous substance discharge [AND] prevention and contingency plan.

11           (b) The state master plan prepared under this section must

12                   (1) take into consideration the elements of an oil dis-  
13           charge prevention and contingency plan approved or submitted for  
14           approval under AS 46.04.030;

15                   (2) clarify and specify the respective responsibilities of  
16           each of the following in the assessment, containment, and cleanup of a  
17           catastrophic oil discharge or of a significant discharge of a hazard-  
18           ous substance into the environment of the state:

19                           (A) agencies of the state;

20                           (B) municipalities of the state;

21                           (C) appropriate federal agencies;

22                           (D) operators of facilities;

23                           (E) private parties whose land and other property may  
24           be affected by the oil or hazardous substance discharge; and

25                           (F) other parties identified by the commissioner as  
26           having an interest in or the resources to assist in the contain-  
27           ment and cleanup of an oil or hazardous substance discharge;

28                   (3) specify the respective responsibilities of parties  
29           identified in (2) of this subsection in an emergency response; and

1 (4) identify actions necessary to reduce the likelihood of  
2 catastrophic oil discharges and significant discharges of hazardous  
3 substances.

4 (c) In preparing and annually reviewing the state master plan,  
5 the commissioner shall

6 (1) consult with municipal and community officials, and  
7 with representatives of affected regional organizations;

8 (2) submit the draft plan to the public for review and  
9 comment;

10 (3) submit to the legislature for review, not later than  
11 the 10th day following the convening of each regular session, the plan  
12 and any annual revision of the plan; and

13 (4) require or schedule unannounced oil spill drills to  
14 test the sufficiency of an oil discharge prevention and contingency  
15 plan approved under AS 46.04.030 or of the cleanup plans of a party  
16 identified under (b)(2) of this section.

17 \* Sec. 17. AS 46.04.210(a) is amended to read:

18 (a) For any region of the state, the boundaries of which are  
19 determined by the commissioner by regulation, in which the department  
20 is required to review and approve an oil discharge prevention and  
21 contingency plan submitted by a person under AS 46.04.030, the depart-  
22 ment shall prepare and annually review and revise a regional master  
23 oil and hazardous substance discharge [AND] prevention and contingency  
24 plan.

25 \* Sec. 18. AS 46.04.900(8) is amended to read:

26 (8) "[OFFSHORE] exploration or production facility" means a  
27 platform, vessel, or other facility used to explore for or produce  
28 hydrocarbons in the waters of the state or on land in the state; the  
29 term does not include vessels used for stratigraphic drilling or other

1 operations that [WHICH] are not authorized or intended to drill to a  
2 producing formation;

3 \* Sec. 19. AS 46.08.040 is amended to read:

4 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
5 money from the fund to

6 (1) investigate and evaluate the release or threatened  
7 release of oil or a hazardous substance, and contain, clean up, and  
8 take other necessary action, such as monitoring and assessing, to  
9 address a release or threatened release of oil or a hazardous sub-  
10 stance that poses an imminent and substantial threat to the public  
11 health or welfare, or to the environment;

12 (2) pay all costs incurred

13 (A) to establish and maintain the oil and hazardous  
14 substance response office and for the expenses of the oil and  
15 hazardous substance response corps and the oil and hazardous  
16 substance response depots established by that office;

17 (B) to review oil discharge prevention and contingency  
18 plans submitted under AS 46.04.030;

19 (C) to conduct training, response exercises, inspec-  
20 tions, and tests, in order to verify equipment inventories and  
21 ability to prevent and respond to oil and hazardous substance  
22 release emergencies, and to undertake other activities intended  
23 to verify or establish the preparedness of the state, a munic-  
24 ipality, or a party required by AS 46.04.030 to have an approved  
25 contingency plan to act in accordance with that plan; and

26 (D) to verify or establish proof of financial respon-  
27 sibility required by AS 46.04.040;

28 (3) provide matching funds for participation in federal oil  
29 discharge cleanup activities and under 42 U.S.C. 9601 - 9657

1 (Comprehensive Environmental Response, Compensation, and Liability Act  
2 of 1980); [AND]

3 (4) recover the costs to the state or to a municipality of  
4 a containment and cleanup resulting from the release or the threatened  
5 release of oil or a hazardous substance; [.]

6 (5) prepare, review, and revise

7 (A) the state's master oil and hazardous substance  
8 discharge [AND] prevention and contingency plan required by  
9 AS 46.04.200; and

10 (B) a regional master oil and hazardous substance  
11 discharge [AND] prevention and contingency plan required by  
12 AS 46.04.210; and

13 (6) restore the environment by addressing the effects of an  
14 oil or hazardous substance release.

15 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
16 January 31, 1992, the Department of Environmental Conservation shall sur-  
17 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
18 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
19 in order to determine for each facility

20 (1) its actual storage capacity;

21 (2) the type of noncrude oil products stored;

22 (3) its age, design, construction, and general condition;

23 (4) the design and construction standards applicable or rele-

24 vant;

25 (5) the presence or absence of containment structures and equip-

26 ment;

27 (6) its ability to respond to a release or threatened release;

28 (7) the environmental sensitivity of the surrounding area and

29 the potential risk to the environment if a release occurs;

1 (8) the presence or absence of surface and subsurface pipelines  
2 and storage tanks; and

3 (9) other appropriate information.

4 (b) By January 31, 1992, the Department of Environmental Conservation  
5 shall report to the legislature the results of the survey required under  
6 (a) of this section and its written recommendations concerning discharge  
7 prevention and contingency requirements or design review requirements that  
8 should be enacted for noncrude oil terminal facilities with storage capac-  
9 ities of less than 10,000 barrels.

10 (c) Upon completion of the survey required under (a) of this section,  
11 the Department of Environmental Conservation may

12 (1) notify each facility of the results of the facility's in-  
13 spection; and

14 (2) provide each facility with recommendations and technical  
15 assistance concerning identified deficiencies.

16 (d) The Department of Environmental Conservation may conduct the  
17 inspections required under this section notwithstanding the provisions of  
18 AS 46.04.050. The department shall conduct the inspections at reasonable  
19 times.

20 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).  
21  
22  
23  
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27  
28  
29

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, and inspection authority of the Depart-  
10 ment of Environmental Conservation; authorizing  
11 certain additional uses of the oil and hazardous  
12 substance release response fund; and providing for an  
13 effective date."

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

15 \* Section 1. AS 46.03.759(c) is amended to read: *Ruckie*

16 (c) Subject to the \$500,000,000 maximum set under (a) of this  
17 section the court shall assess (four)<sup>5</sup> times the penalty set out in (a)  
18 of this section if the court finds

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

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

23 (3) the defendant did not act or respond in accordance with  
24 an approved oil discharge prevention and contingency plan.

25 \* Sec. 2. AS 46.04.020(e) is amended to read:

26 (e) The department shall enter into negotiations for memoranda  
27 of understanding or cooperative agreements with the United States  
28 Coast Guard, the United States Environmental Protection Agency, and  
29 other persons in order to

1 (1) facilitate coordinated and effective oil discharge  
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-  
4 tion and contingency plans submitted to the department under AS 46.-  
5 04.030;

6 (3) provide for cooperative inspections of oil terminal  
7 facilities by the department and the United States Coast Guard or  
8 United States Environmental Protection Agency; and

9 (4) provide for cooperative oil discharge notification  
10 procedures.

11 \* Sec. 3. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

13 (a) A person may not cause or permit the operation of an oil terminal  
14 facility in the state unless an oil discharge prevention and contin-  
15 gency plan for the facility has been approved by the department and  
16 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
17 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
18 PLAN FOR THE PURPOSES OF THIS SECTION].

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an [OFFSHORE] exploration or production facility in  
21 the state unless an oil discharge prevention and contingency plan for  
22 the facility has been approved by the department and has been properly  
23 implemented.

24 (c) A person may not operate a tank vessel or <sup>RICKIE</sup> an oil barge  
25 within the waters of the state, or cause or permit the transfer of oil  
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
27 an oil barge, unless an oil discharge prevention and contingency plan  
28 for the tank vessel or oil barge has been approved by the department  
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER

1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to  
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
9 that the department [WHICH IT] determines are necessary to ensure  
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
11 has access to sufficient resources to protect environmentally sensi-  
12 tive areas and to contain, clean up, and mitigate potential oil dis-  
13 charges at or from the facility or vessel as provided in (j) of this  
14 section, and to ensure that the applicant properly implements the  
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-  
16 CHARGE] contingency plan must provide for the use of the best avail-  
17 able technology by the applicant. The department may require an  
18 applicant or holder of an approved contingency plan to take steps  
19 necessary to demonstrate its ability to carry out the contingency  
20 plan, including

- 21 (1) periodic training;  
22 (2) response team exercises; and  
23 (3) verifying access to inventories of available equipment,  
24 supplies, and personnel.

25 (f) The department, after notice and opportunity for hearing,  
26 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
27 the department [IT] determines that a change has occurred in the  
28 operation of a facility [, MARINA] or vessel necessitating an amended  
29 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after  
2 notice and opportunity for hearing, may revoke its approval of a [AN  
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or  
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has  
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-  
11 CHARGE] contingency plan to properly implement the plan, or to have  
12 access to the quality or quantity of resources identified in the plan  
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
14 required under (j) of this section in the event of a spill, [WITHIN  
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-  
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-  
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]  
18 contingency plan fails to respond to and conduct cleanup operations of  
19 an unpermitted discharge of crude oil with the quality and quantity of  
20 resources identified in the plan and in a manner required under the  
21 plan, the holder is strictly liable, jointly and severally, for the  
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760  
23 against any other person for that discharge.

24 \* Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

25 (h) The department is the only state agency that has the power  
26 to approve, modify, or revoke a contingency plan for the purposes of  
27 this section. The department shall exercise its power under this  
28 section in a timely manner. Except for prosecutions under AS 46.03.-  
29 790(b), it is not a defense to an action brought for a violation of

RICKLE

DEC only

1 (a) - (c) of this section that the person charged believed that a  
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency  
4 plan under this section, the department shall provide a copy of the  
5 contingency plan to the Department of Fish and Game and to the Depart-  
6 ment of Natural Resources and shall provide those departments a rea-  
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this  
9 section shall maintain in its area of operation, singly or in conjunc-  
10 tion with other operators in its area of operation, sufficient oil  
11 discharge containment, storage, transfer, and removal equipment,  
12 personnel, and resources to rapidly <sup>respond</sup> ~~contain~~ a

13 (1) realistic maximum oil discharge and to remove that  
14 discharge within the shortest possible time if the contingency plan is  
15 for an <sup>deleted offshore deals w/ both on shore + offshore</sup> exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the  
17 largest oil storage tank at the facility and to remove that discharge  
18 within 72 hours if the contingency plan is for an oil terminal facil-  
19 ity; if the department determines that the oil terminal facility is  
20 located in an area of high risk because of natural or manmade condi-  
21 tions outside of the facility, the department may increase the volume  
22 requirement under this paragraph so that the contingency plan must be  
23 designed for response to a discharge that is greater in amount than  
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum  
26 capacity of the vessel or barge and to remove that discharge within 72  
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention

1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-  
3 gency plan,  
4  
5

6 \* Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil  
8 terminal facility in the state unless the person has furnished to the  
9 department, and the department has approved, proof of financial abil-  
10 ity to respond in damages. Proof of financial responsibility for a  
11 crude oil terminal may not be less than \$50,000,000 per incident.  
12 Proof of financial responsibility for a noncrude oil terminal may not  
13 be less than \$25 per barrel <sup>or 1 million</sup> for the first 80,000 barrels of total  
14 noncrude oil storage capacity at the terminal and \$50 per barrel for  
15 each barrel of noncrude oil storage capacity that exceeds 80,000  
16 barrels [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY TO RE-  
17 SPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT  
18 (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPAC-  
19 ITY AT THE OIL TERMINAL FACILITY: OR (2) \$1,000,000, WHICHEVER IS  
20 GREATER]. *Maximum \$50 million*

21 \* Sec. 6. AS 46.04.040(b) is amended to read:

22 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
23 operation of an offshore exploration or production facility in the  
24 state unless the person has furnished to the department, and the  
25 department has approved, proof of financial ability to respond in  
26 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
27 responsibility for an exploration or production facility may not be  
28 less than \$50,000,000 [\$35,000,000] per incident. *Maximum \$50 million*

29 \* Sec. 7. AS 46.04.040(c) is amended to read:

*Rucker*  
*2/24/81*

1 (c) A person may not operate a tank vessel or an oil barge  
2 within the waters of the state, or cause or permit the transfer of oil  
3 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]  
4 an oil barge, unless the person has furnished to the department, and  
5 the department has approved, proof of financial ability to respond in  
6 damages. Proof of financial responsibility under this subsection may  
7 not be less than

8 (1) \$500,000,000 per incident for a tank vessel or barge  
9 carrying crude oil;

10 (2) \$100 per barrel of storage capacity or \$1,000,000,  
11 whichever is greater, for a tank vessel or barge carrying noncrude oil  
12 or other hazardous substance in an amount of 5,000 barrels or more  
13 [RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE  
14 DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE  
15 IN THE FOLLOWING AMOUNTS:

16 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-  
17 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE  
18 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204  
19 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

20 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY  
21 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS  
22 GREATER;

23 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY  
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
25 GREATER].

26 \* Sec. 8. AS 46.04.040(d) is amended to read:

27 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
28 defense to an action brought for violation of (a) - (c) [(c)] of this  
29 section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and  
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 \* Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-  
6 ance, insurance, surety, [OR] guarantee, or other security approved by  
7 the department, under terms the department may prescribe. An action  
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
10 759] may be brought in a state court directly against the insurer or  
11 another person providing evidence of financial responsibility. The  
12 applicant, and an insurer, surety, [OR] guarantor, or other person  
13 providing security approved by the department shall appoint an agent  
14 for service of process in the state. An insurer must either be au-  
15 thorized by the Department of Commerce and Economic Development to  
16 sell insurance in the state or be an unauthorized insurer listed by  
17 the Department of Commerce and Economic Development as not disapproved  
18 for use in the state.

19 \* Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires  
21 (1) one year from its issuance for self-insurance;  
22 (2) on the effective date of a change in the surety bond,  
23 guarantee, [OR] insurance agreement, or other security approved by the  
24 department; or  
25 (3) on the expiration or cancellation of the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department.

28 \* Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is

1 accepted by the department under this section shall notify the depart-  
2 ment at least 30 days before the effective date of a change, expira-  
3 tion or cancellation in the surety bond, guarantee, [OR] insurance  
4 agreement, or other security approved by the department. Application  
5 for renewal of acceptance of proof of financial responsibility under  
6 this section must be filed at least 30 days before the date of ex-  
7 piration.

8 \* Sec. 12. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
10 amounts in AS 46.04.040 change, as provided in this section, according  
11 to and to the extent of changes in the Consumer Price Index for all  
12 urban consumers for the Anchorage metropolitan area compiled by the  
13 Bureau of Labor Statistics, United States Department of Labor (the  
14 index). The index for January of the year in which this section  
15 becomes effective is the reference base index.

16 (b) The dollar amounts change on October 1 of each year. After  
17 calculation of the new amounts, the resulting amounts shall be rounded  
18 to the nearest cent.

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

28 (d) The department shall adopt a regulation announcing

29 (1) on or before June 30 of each year, the changes in

1 dollar amounts required by (b) of this section; and

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

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

10 \* Sec. 13. AS 46.04.050 is amended to read:

11 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of  
12 the operations and the minimal danger to the environment posed by the  
13 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an  
14 oil terminal facility that has an effective storage capacity of less  
15 than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels  
16 of noncrude oil.

17 \* Sec. 14. AS 46.04.060 is amended to read:

18 Sec. 46.04.060. INSPECTIONS. <sup>Adm.</sup> In addition to other rights of  
19 access or inspection conferred upon the department by law or other-  
20 wise, the department may at reasonable times enter and inspect oil  
21 [OIL] terminal facilities, [OFFSHORE] exploration and production  
22 facilities, tank vessels, and oil barges within the territorial juris-  
23 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
24 PARTMENT] to

25 (1) ensure compliance with the provisions of this chapter;

26 or

27 ~~(2)~~ (2) examine the structural integrity of tank vessels and  
28 oil barges. { terminals & pipelines

29 \* Sec. 15. AS 46.04.200 is amended to read:

1           Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
2 prepare and annually review and revise a statewide master oil and  
3 hazardous substance discharge [AND] prevention and contingency plan.

4           (b) The state master plan prepared under this section must

5                 (1) take into consideration the elements of an oil dis-  
6 charge prevention and contingency plan approved or submitted for  
7 approval under AS 46.04.030;

8                 (2) clarify and specify the respective responsibilities of  
9 each of the following in the assessment, containment, and cleanup of a  
10 catastrophic oil discharge or of a significant discharge of a hazard-  
11 ous substance into the environment of the state:

12                     (A) agencies of the state;

13                     (B) municipalities of the state;

14                     (C) appropriate federal agencies;

15                     (D) operators of facilities;

16                     (E) private parties whose land and other property may  
17 be affected by the oil or hazardous substance discharge; and

18                     (F) other parties identified by the commissioner as  
19 having an interest in or the resources to assist in the contain-  
20 ment and cleanup of an oil or hazardous substance discharge;

21                 (3) specify the respective responsibilities of parties  
22 identified in (2) of this subsection in an emergency response; and

23                 (4) identify actions necessary to reduce the likelihood of  
24 catastrophic oil discharges and significant discharges of hazardous  
25 substances.

26           (c) In preparing and annually reviewing the state master plan,  
27 the commissioner shall

28                 (1) consult with municipal and community officials, and  
29 with representatives of affected regional organizations;

1 (2) submit the draft plan to the public for review and  
2 comment;

3 (3) submit to the legislature for review, not later than  
4 the 10th day following the convening of each regular session, the plan  
5 and any annual revision of the plan; and

6 (4) require or schedule unannounced oil spill drills to  
7 test the sufficiency of an oil discharge prevention and contingency  
8 plan approved under AS 46.04.030 or of the cleanup plans of a party  
9 identified under (b)(2) of this section.

10 \* Sec. 16. AS 46.04.210(a) is amended to read:

11 (a) For any region of the state, the boundaries of which are  
12 determined by the commissioner by regulation, in which the department  
13 is required to review and approve an oil discharge prevention and  
14 contingency plan submitted by a person under AS 46.04.030, the depart-  
15 ment shall prepare and annually review and revise a regional master  
16 oil and hazardous substance discharge [AND] prevention and contingency  
17 plan.

18 \* Sec. 17. AS 46.04.900(8) is amended to read:

19 (8) "[OFFSHORE] exploration or production facility" means a  
20 platform, vessel, or other facility used to explore for or produce  
21 hydrocarbons in the waters of the state or on land in the state; the  
22 term does not include vessels used for stratigraphic drilling or other  
23 operations that [WHICH] are not authorized or intended to drill to a  
24 producing formation;

25 \* Sec. 18. AS 46.04.900 is amended by adding a new paragraph to read:

26 (18) "realistic maximum oil discharge" means the maximum and  
27 most damaging oil discharge that the department estimates could occur  
28 during the lifetime of the vessel or facility based on the size,  
29 location, and capacity of the vessel or facility; on the department's

1 knowledge and experience with the vessel or facility or with similar  
2 vessels or facilities; and on the department's analysis of possible  
3 mishaps at the vessel or facility or at similar vessels or facilities.

4 \* Sec. 19. AS 46.08.040 is amended to read:

5 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
6 money from the fund to

7 (1) investigate and evaluate the release or threatened  
8 release of oil or a hazardous substance, and contain, clean up, and  
9 take other necessary action, such as monitoring and assessing, to  
10 address a release or threatened release of oil or a hazardous sub-  
11 stance that poses an imminent and substantial threat to the public  
12 health or welfare, or to the environment;

13 (2) pay all costs incurred

14 (A) to establish and maintain the oil and hazardous  
15 substance response office and for the expenses of the oil and  
16 hazardous substance response corps and the oil and hazardous  
17 substance response depots established by that office;

18 (B) to review oil discharge prevention and contingency  
19 plans submitted under AS 46.04.030;

20 (C) to conduct training, response exercises, inspec-  
21 tions, and tests, in order to verify equipment inventories and  
22 ability to prevent and respond to oil and hazardous substance  
23 release emergencies, and to undertake other activities intended  
24 to verify or establish the preparedness of the state, a munic-  
25 ipality, or a party required by AS 46.04.030 to have an approved  
26 contingency plan to act in accordance with that plan; and

27 (D) to verify or establish proof of financial respon-  
28 sibility required by AS 46.04.040;

29 (3) provide matching funds for participation in federal oil

1 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
2 hensive Environmental Response, Compensation, and Liability Act of  
3 1980); [AND]

4 (4) recover the costs to the state or to a municipality of  
5 a containment and cleanup resulting from the release or the threatened  
6 release of oil or a hazardous substance; [.]

7 (5) prepare, review, and revise

8 (A) the state's master oil and hazardous substance  
9 discharge [AND] prevention and contingency plan required by  
10 AS 46.04.200; and

11 (B) a regional master oil and hazardous substance  
12 discharge [AND] prevention and contingency plan required by  
13 AS 46.04.210; and

14 (6) restore the environment by addressing the effects of an  
15 oil or hazardous substance release.

16 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. By  
17 January 25, 1992, the Department of Environmental Conservation shall sur-  
18 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
19 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
20 and report to the legislature its written recommendations concerning dis-  
21 charge prevention and contingency requirements or design review require-  
22 ments that should be enacted for these facilities.

23 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).  
24  
25  
26  
27  
28  
29

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, civil penalties for discharges of crude  
10 oil, and inspection authority of the Department of  
11 Environmental Conservation; authorizing certain  
12 additional uses of the oil and hazardous substance  
13 release response fund; authorizing the Department of  
14 Environmental Conservation and municipalities to  
15 enter into agreements pertaining to vessel traffic  
16 control and monitoring systems; and providing for an  
17 effective date."

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

19 \* <sup>NEW Sec.</sup> Section 1. AS 29.35.020 is amended by adding a new subsection to  
20 read:

21 (d) A municipality may enter into agreements with the United  
22 States Coast Guard, the United States Environmental Protection Agency,  
23 and other persons relating to development and enforcement of vessel  
24 traffic control and monitoring systems for oil barges and tank vessels  
25 carrying oil operating in or near the waters of the state.

26 \* Sec. 2. AS 46.03.759(c) is amended to read:

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

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

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

5 (3) the defendant did not act or respond in accordance with  
6 an approved oil discharge prevention and contingency plan.

7 \* Sec. 3. AS 46.04.020(e) is amended to read:

8 (e) The department shall enter into negotiations for memoranda  
9 of understanding or cooperative agreements with the United States  
10 Coast Guard, the United States Environmental Protection Agency, and  
11 other persons in order to

12 (1) facilitate coordinated and effective oil prevention and  
13 discharge response in the state, including agreements relating to  
14 development and enforcement of vessel traffic control and monitoring  
15 systems for tank vessels and oil barges operating in or near the  
16 waters of the state;

17 (2) provide for cooperative review of oil discharge preven-  
18 tion and contingency plans submitted to the department under AS 46.-  
19 04.030;

20 (3) provide for cooperative inspections of oil terminal  
21 facilities by the department and the United States Coast Guard or  
22 United States Environmental Protection Agency; and

23 (4) provide for cooperative oil discharge notification  
24 procedures.

25 \* Sec. 4. AS 46.04.030 is amended to read:

26 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

27 (a) A person may not cause or permit the operation of an oil terminal  
28 facility in the state unless an oil discharge prevention and contin-  
29 gency plan for the facility has been approved by the department and

1 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
2 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
3 PLAN FOR THE PURPOSES OF THIS SECTION].

4 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
5 the operation of an [OFFSHORE] exploration or production facility in  
6 the state unless an oil discharge prevention and contingency plan for  
7 the facility has been approved by the department and has been properly  
8 implemented.

9 (c) A person may not operate a tank vessel or an oil barge  
10 within the waters of the state, or cause or permit the transfer of oil  
11 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
12 an oil barge, unless an oil discharge prevention and contingency plan  
13 for the tank vessel or oil barge has been approved by the department  
14 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER  
15 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
16 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
17 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
18 HAD BEEN APPROVED BY THE DEPARTMENT].

19 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
20 least every three years.

21 (e) The department may attach reasonable terms and conditions to  
22 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
23 that the department [WHICH IT] determines are necessary to ensure  
24 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
25 has access to sufficient resources to protect environmentally sensi-  
26 tive areas and to contain, clean up, and mitigate potential oil dis-  
27 charges at or from the facility or vessel as provided in (j) of this  
28 section, and to ensure that the applicant properly implements the  
29 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The {OIL

1 DISCHARGE] contingency plan must provide for the use of the best  
2 available technology by the applicant. The department may require an  
3 applicant or holder of an approved contingency plan to take steps  
4 necessary to demonstrate its ability to carry out the contingency  
5 plan, including

- 6 (1) periodic training;
- 7 (2) response team exercises; and
- 8 (3) verifying access to inventories of available equipment,  
9 supplies, and personnel.

10 (f) The department, after notice and opportunity for hearing,  
11 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
12 the department [IT] determines that a change has occurred in the  
13 operation of a facility [, MARINA] or vessel necessitating an amended  
14 or supplemented plan, or the operator's discharge experience demon-  
15 strates a necessity for modification. The department, after notice  
16 and opportunity for hearing, may revoke its approval of a [AN OIL  
17 DISCHARGE] contingency plan if the department [IT] determines that

- 18 (1) approval was obtained by fraud or misrepresentation;
- 19 (2) the operator does not have access to the quality or  
20 quantity of resources identified in the plan; [OR]
- 21 (3) a term or condition of approval or modification has  
22 been violated; or
- 23 (4) the plan has not been properly implemented.

24 (g) Failure of a holder of an approved or modified [OIL DIS-  
25 CHARGE] contingency plan to properly implement the plan, or to have  
26 access to the quality or quantity of resources identified in the plan  
27 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
28 required under (j) of this section in the event of a spill. [WITHIN  
29 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for

1 purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other  
2 applicable law. If the holder of an approved or modified [OIL DIS-  
3 CHARGE] contingency plan fails to respond to and conduct cleanup  
4 operations of an unpermitted discharge of crude oil with the quality  
5 and quantity of resources identified in the plan and in a manner  
6 required under the plan, the holder is strictly liable, jointly and  
7 severally, for the civil penalty assessed under AS 46.03.758, 46.03.-  
8 759, or 46.03.760 against any other person for that discharge.

9 \* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

10 (h) The department is the only state agency that has the power  
11 to approve, modify, or revoke a contingency plan for the purposes of  
12 this section. The department shall exercise its power under this  
13 section in a timely manner. Except for prosecutions under AS 46.03.-  
14 790(b), it is not a defense to an action brought for a violation of  
15 (a) - (c) of this section that the person charged believed that a  
16 current contingency plan had been approved by the department.

17 (i) Before the department approves or modifies a contingency  
18 plan under this section, the department shall provide a copy of the  
19 contingency plan to the Department of Fish and Game and to the Depart-  
20 ment of Natural Resources and shall provide those departments a rea-  
21 sonable opportunity to review and comment on the plan.

22 (j) An applicant for a contingency plan required under this  
23 section shall maintain in its area of operation, singly or in conjunc-  
24 tion with other operators in its area of operation, sufficient oil  
25 discharge containment, storage, transfer, and removal equipment,  
26 personnel, and resources to rapidly contain a

27 (1) realistic maximum oil discharge and to remove that  
28 discharge within 72 hours if the contingency plan is for an explora-  
29 tion or production facility;

1 (2) discharge in an amount equal to the capacity of the  
2 largest oil storage tank at the facility and to remove that discharge  
3 within 72 hours if the contingency plan is for an oil terminal facil-  
4 ity; if the department determines that the oil terminal facility is  
5 located in an area of high risk because of natural or manmade condi-  
6 tions outside of the facility, the department may increase the volume  
7 requirement under this paragraph so that the contingency plan must be  
8 designed for response to a discharge that is greater in amount than  
9 the capacity of the largest oil storage tank at the facility;

10 (3) discharge of oil in an amount equal to the maximum  
11 capacity of the vessel or barge and to remove that discharge within 72  
12 hours if the contingency plan is for a tank vessel or oil barge.

13 (k) In this section

14 (1) "contingency plan" means an oil discharge prevention  
15 and contingency plan required under this section;

16 (2) "properly implement" means, with respect to a contin-  
17 gency plan, to

18 (A) establish and carry out procedures identified in  
19 the plan as being the responsibility of the holder of the plan;

20 (B) have access to and have on hand the quantity and  
21 quality of equipment, personnel, and other resources identified  
22 as being accessible or on hand in the plan;

23 (C) fulfill the assurances espoused in the plan in the  
24 manner described in the plan;

25 (D) comply with terms and conditions attached to the  
26 plan by the department under the authority of (e) of this sec-  
27 tion; and

28 (E) successfully demonstrate the ability to carry out  
29 the plan when required by the department under (e) of this

1 section;

2 (3) "realistic maximum oil discharge" means the maximum and  
3 most damaging oil discharge that the department estimates could occur  
4 during the lifetime of the vessel or facility based on the size,  
5 location, and capacity of the vessel or facility; on the department's  
6 knowledge and experience with the vessel or facility or with similar  
7 vessels or facilities; and on the department's analysis of possible  
8 mishaps at the vessel or facility or at similar vessels or facilities.

9 \* Sec. 6. AS 46.04.040(a) is amended to read:

10 (a) A person may not cause or permit the operation of an oil  
11 terminal facility in the state unless the person has furnished to the  
12 department, and the department has approved, proof of financial abil-  
13 ity to respond in damages. Proof of financial responsibility for a  
14 crude oil terminal may not be less than \$50,000,000 per incident.  
15 Proof of financial responsibility for a noncrude oil terminal may not  
16 be less than \$25 per barrel of total noncrude oil storage capacity at  
17 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
18 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
19 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
20 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever  
21 is greater, subject to a maximum of \$50,000,000.

22 \* Sec. 7. AS 46.04.040(b) is amended to read:

23 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
24 operation of an [OFFSHORE] exploration or production facility in the  
25 state unless the person has furnished to the department, and the  
26 department has approved, proof of financial ability to respond in  
27 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
28 responsibility for an offshore exploration or production facility may  
29 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of

1 financial responsibility for an onshore exploration or production  
2 facility may not be less than \$20,000,000 per incident.

3 \* Sec. 8. AS 46.04.040(c) is amended to read:

4 (c) A person may not operate a tank vessel or an oil barge  
5 within the waters of the state, or cause or permit the transfer of oil  
6 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]  
7 an oil barge, unless the person operating the tank vessel or oil barge  
8 has furnished to the department, and the department has approved,  
9 proof of financial ability to respond in damages. Proof of financial  
10 responsibility under this subsection may not be less than

11 (1) \$500,000,000 per incident for a tank vessel or barge  
12 carrying crude oil;

13 (2) \$100 per barrel of storage capacity or \$1,000,000,  
14 whichever is greater, subject to a maximum of \$35,000,000, for a tank  
15 vessel or barge carrying noncrude oil or other hazardous substance in  
16 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL  
17 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-  
18 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

19 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-  
20 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE  
21 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204  
22 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

23 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY  
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS  
25 GREATER;

26 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY  
27 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
28 GREATER].

9 \* Sec. 9. AS 46.04.040(d) is amended to read:

1 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
2 defense to an action brought for violation of (a) - (c) [(c)] of this  
3 section that the person charged believed in good faith that proof of  
4 financial ability to respond in damages had been furnished to, and  
5 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
6 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

7 \* Sec. 10. AS 46.04.040(e) is amended to read:

8 (e) Financial responsibility may be demonstrated by self-insur-  
9 ance, insurance, surety, [OR] guarantee, or other security approved by  
10 the department, under terms the department may prescribe. An action  
11 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
12 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
13 759] may be brought in a state court directly against the insurer or  
14 another person providing evidence of financial responsibility. The  
15 applicant, and an insurer, surety, [OR] guarantor, or other person  
16 providing security approved by the department shall appoint an agent  
17 for service of process in the state. An insurer must either be au-  
18 thorized by the Department of Commerce and Economic Development to  
19 sell insurance in the state or be an unauthorized insurer listed by  
20 the Department of Commerce and Economic Development as not disapproved  
21 for use in the state.

22 \* Sec. 11. AS 46.04.040(f) is amended to read:

23 (f) Acceptance of proof of financial responsibility expires  
24 (1) one year from its issuance for self-insurance;  
25 (2) on the effective date of a change in the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department; or  
28 (3) on the expiration or cancellation of the surety bond,  
29 guarantee, [OR] insurance agreement, or other security approved by the

1        department.

2        \* Sec. 12. AS 46.04.040(g) is amended to read:

3            (g) The person whose proof of financial responsibility is ac-  
4        cepted by the department under this section shall notify the depart-  
5        ment at least 30 days before the effective date of a change, expira-  
6        tion or cancellation in the surety bond, guarantee, [OR] insurance  
7        agreement, or other security approved by the department. Application  
8        for renewal of acceptance of proof of financial responsibility under  
9        this section must be filed at least 30 days before the date of ex-  
10       expiration.

11       \* Sec. 13. AS 46.04 is amended by adding a new section to read:

12            Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
13        amounts in AS 46.04.040 change, as provided in this section, according  
14        to and to the extent of changes in the Consumer Price Index for all  
15        urban consumers for the Anchorage metropolitan area compiled by the  
16        Bureau of Labor Statistics, United States Department of Labor (the  
17        index). The index for January of the year in which this section  
18        becomes effective is the reference base index.

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

24            (c) If the index is revised, the percentage of change is cal-  
25        culated on the basis of the revised index. If a revision of the index  
26        changes the reference base index, a revised reference base index is  
27        determined by multiplying the reference base index applicable by the  
28        rebasing factor furnished by the United States Bureau of Labor Statis-  
29        tics. If the index is superseded, the index referred to in this

1 section is the one represented by the Bureau of Labor Statistics as  
2 reflecting most accurately changes in the purchasing power of the  
3 dollar for Alaskan consumers.

4 (d) The department shall adopt a regulation announcing

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

7 (2) promptly after the changes occur, changes in the index  
8 required by (c) of this section, including, if applicable, the numer-  
9 ical equivalent of the reference base index under a revised reference  
10 base index and the designation or title of any index superseding the  
11 index.

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

15 \* S c. 14. AS 46.04.050 is amended to read:

16 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE  
17 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE  
18 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and  
19 46.04.060 do not apply to an oil terminal facility that has an effec-  
20 tive storage capacity of less than 5,000 [10,000] barrels of crude oil  
21 or less than 10,000 barrels of noncrude oil.

22 \* Sec. 15. AS 46.04.060 is amended to read:

23 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
24 access or inspection conferred upon the department by law or other-  
25 wise, the department may at reasonable times enter and inspect oil  
26 [OIL] terminal facilities, [OFFSHORE] exploration and production  
27 facilities, tank vessels, and oil barges within the territorial juris-  
28 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
29 PARTMENT] to

1           (1) ensure compliance with the provisions of this chapter;  
2     or

3           (2) examine the structural integrity of tank vessels, oil  
4 barges, oil terminal facilities, oil exploration and production facil-  
5 ities, pipelines, and other facilities related to the exploration,  
6 production, storage, and transportation of oil.

7 \* Sec. 16. AS 46.04.200 is amended to read:

8           Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
9 prepare and annually review and revise a statewide master oil and  
10 hazardous substance discharge [AND] prevention and contingency plan.

11           (b) The state master plan prepared under this section must

12           (1) take into consideration the elements of an oil dis-  
13 charge prevention and contingency plan approved or submitted for  
14 approval under AS 46.04.030;

15           (2) clarify and specify the respective responsibilities of  
16 each of the following in the assessment, containment, and cleanup of a  
17 catastrophic oil discharge or of a significant discharge of a hazard-  
18 ous substance into the environment of the state:

19           (A) agencies of the state;

20           (B) municipalities of the state;

21           (C) appropriate federal agencies;

22           (D) operators of facilities;

23           (E) private parties whose land and other property may  
24 be affected by the oil or hazardous substance discharge; and

25           (F) other parties identified by the commissioner as  
26 having an interest in or the resources to assist in the contain-  
27 ment and cleanup of an oil or hazardous substance discharge;

28           (3) specify the respective responsibilities of parties  
29 identified in (2) of this subsection in an emergency response; and

1 (4) identify actions necessary to reduce the likelihood of  
2 catastrophic oil discharges and significant discharges of hazardous  
3 substances.

4 (c) In preparing and annually reviewing the state master plan,  
5 the commissioner shall

6 (1) consult with municipal and community officials, and  
7 with representatives of affected regional organizations;

8 (2) submit the draft plan to the public for review and  
9 comment;

10 (3) submit to the legislature for review, not later than  
11 the 10th day following the convening of each regular session, the plan  
12 and any annual revision of the plan; and

13 (4) require or schedule unannounced oil spill drills to  
14 test the sufficiency of an oil discharge prevention and contingency  
15 plan approved under AS 46.04.030 or of the cleanup plans of a party  
16 identified under (b)(2) of this section.

17 \* Sec. 17. AS 46.04.210(a) is amended to read:

18 (a) For any region of the state, the boundaries of which are  
19 determined by the commissioner by regulation, in which the department  
20 is required to review and approve an oil discharge prevention and  
21 contingency plan submitted by a person under AS 46.04.030, the depart-  
22 ment shall prepare and annually review and revise a regional master  
23 oil and hazardous substance discharge [AND] prevention and contingency  
24 plan.

25 \* Sec. 18. AS 46.04.900(8) is amended to read:

26 (8) "[OFFSHORE] exploration or production facility" means a  
27 platform, vessel, or other facility used to explore for or produce  
28 hydrocarbons in the waters of the state or on land in the state; the  
29 term does not include vessels used for stratigraphic drilling or other

1 operations that [WHICH] are not authorized or intended to drill to a  
2 producing formation;

3 \* Sec. 19. AS 46.08.040 is amended to read:

4 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
5 money from the fund to

6 (1) investigate and evaluate the release or threatened  
7 release of oil or a hazardous substance, and contain, clean up, and  
8 take other necessary action, such as monitoring and assessing, to  
9 address a release or threatened release of oil or a hazardous sub-  
10 stance that poses an imminent and substantial threat to the public  
11 health or welfare, or to the environment;

12 (2) pay all costs incurred

13 (A) to establish and maintain the oil and hazardous  
14 substance response office and for the expenses of the oil and  
15 hazardous substance response corps and the oil and hazardous  
16 substance response depots established by that office;

17 (B) to review oil discharge prevention and contingency  
18 plans submitted under AS 46.04.030;

19 (C) to conduct training, response exercises, inspec-  
20 tions, and tests, in order to verify equipment inventories and  
21 ability to prevent and respond to oil and hazardous substance  
22 release emergencies, and to undertake other activities intended  
23 to verify or establish the preparedness of the state, a munic-  
24 ipality, or a party required by AS 46.04.030 to have an approved  
25 contingency plan to act in accordance with that plan; and

26 (D) to verify or establish proof of financial respon-  
27 sibility required by AS 46.04.040;

28 (3) provide matching funds for participation in federal oil  
29 discharge cleanup activities and under 42 U.S.C. 9601 - 9657

1 (Comprehensive Environmental Response, Compensation, and Liability Act  
2 of 1980); [AND]

3 (4) recover the costs to the state or to a municipality of  
4 a containment and cleanup resulting from the release or the threatened  
5 release of oil or a hazardous substance; [.]

6 (5) prepare, review, and revise

7 (A) the state's master oil and hazardous substance  
8 discharge [AND] prevention and contingency plan required by  
9 AS 46.04.200; and

10 (B) a regional master oil and hazardous substance  
11 discharge [AND] prevention and contingency plan required by  
12 AS 46.04.210; and

13 (6) restore the environment by addressing the effects of an  
14 oil or hazardous substance release.

15 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
16 January 31, 1992, the Department of Environmental Conservation shall sur-  
17 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
18 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
19 in order to determine for each facility

20 (1) its actual storage capacity;

21 (2) the type of noncrude oil products stored;

22 (3) its age, design, construction, and general condition;

23 (4) the design and construction standards applicable or rele-  
24 vant;

25 (5) the presence or absence of containment structures and equip-  
26 ment;

27 (6) its ability to respond to a release or threatened release;

28 (7) the environmental sensitivity of the surrounding area and  
29 the potential risk to the environment if a release occurs;

1 (8) the presence or absence of surface and subsurface pipelines  
2 and storage tanks; and

3 (9) other appropriate information.

4 (b) By January 31, 1992, the Department of Environmental Conservation  
5 shall report to the legislature the results of the survey required under  
6 (a) of this section and its written recommendations concerning discharge  
7 prevention and contingency requirements or design review requirements that  
8 should be enacted for noncrude oil terminal facilities with storage capac-  
9 ities of less than 10,000 barrels.

10 (c) Upon completion of the survey required under (a) of this section,  
11 the Department of Environmental Conservation may

12 (1) notify each facility of the results of the facility's in-  
13 spection; and

14 (2) provide each facility with recommendations and technical  
15 assistance concerning identified deficiencies.

16 (d) The Department of Environmental Conservation may conduct the  
17 inspections required under this section notwithstanding the provisions of  
18 AS 46.04.050. The department shall conduct the inspections at reasonable  
19 times.

20 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).

go0530hJ  
Lauterbach  
3/28/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

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 oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, and inspection authority of the Depart-  
10 ment of Environmental Conservation; authorizing  
11 certain additional uses of the oil and hazardous  
12 substance release response fund; and providing for an  
13 effective date."

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

15 \* Section 1. AS 46.03.759(c) is amended to read:

16 (c) Subject to the \$500,000,000 maximum set under (a) of this  
17 section the court shall assess four times the penalty set out in (a)  
18 of this section if the court finds

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

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

23 (3) the defendant did not act or respond in accordance with  
24 an approved oil discharge prevention and contingency plan.

25 \* Sec. 2. AS 46.04.020(e) is amended to read:

26 (e) The department shall enter into negotiations for memoranda  
27 of understanding or cooperative agreements with the United States  
28 Coast Guard, the United States Environmental Protection Agency, and  
29 other persons in order to

1 (1) facilitate coordinated and effective oil discharge  
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-  
4 tion and contingency plans submitted to the department under AS 46.-  
5 04.030;

6 (3) provide for cooperative inspections of oil terminal  
7 facilities by the department and the United States Coast Guard or  
8 United States Environmental Protection Agency; and

9 (4) provide for cooperative oil discharge notification  
10 procedures.

11 \* Sec. 3. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

13 (a) A person may not cause or permit the operation of an oil terminal  
14 facility in the state unless an oil discharge prevention and contin-  
15 gency plan for the facility has been approved by the department and  
16 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
17 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
18 PLAN FOR THE PURPOSES OF THIS SECTION].

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an [OFFSHORE] exploration or production facility in  
21 the state unless an oil discharge prevention and contingency plan for  
22 the facility has been approved by the department and has been properly  
23 implemented.

24 (c) A person may not operate a tank vessel or an oil barge  
25 within the waters of the state, or cause or permit the transfer of oil  
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
27 an oil barge, unless an oil discharge prevention and contingency plan  
28 for the tank vessel or oil barge has been approved by the department  
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER

1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to  
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
9 that the department [WHICH IT] determines are necessary to ensure  
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
11 has access to sufficient resources to protect environmentally sensi-  
12 tive areas and to contain, clean up, and mitigate potential oil dis-  
13 charges at or from the facility or vessel as provided in (j) of this  
14 section, and to ensure that the applicant properly implements the  
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-  
16 CHARGE] contingency plan must provide for the use of the best avail-  
17 able technology by the applicant. The department may require an  
18 applicant or holder of an approved contingency plan to take steps  
19 necessary to demonstrate its ability to carry out the contingency  
20 plan, including

- 21 (1) periodic training;  
22 (2) response team exercises; and  
23 (3) verifying access to inventories of available equipment,  
24 supplies, and personnel.

25 (f) The department, after notice and opportunity for hearing,  
26 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
27 the department [IT] determines that a change has occurred in the  
28 operation of a facility [, MARINA] or vessel necessitating an amended  
29 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after  
2 notice and opportunity for hearing, may revoke its approval of a [AN  
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or  
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has  
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-  
11 CHARGE] contingency plan to properly implement the plan, or to have  
12 access to the quality or quantity of resources identified in the plan  
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
14 required under (j) of this section in the event of a spill, [WITHIN  
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-  
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-  
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]  
18 contingency plan fails to respond to and conduct cleanup operations of  
19 an unpermitted discharge of crude oil with the quality and quantity of  
20 resources identified in the plan and in a manner required under the  
21 plan, the holder is strictly liable, jointly and severally, for the  
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760  
23 against any other person for that discharge.

24 \* Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

25 (h) The department is the only state agency that has the power  
26 to approve, modify, or revoke a contingency plan for the purposes of  
27 this section. The department shall exercise its power under this  
28 section in a timely manner. Except for prosecutions under AS 46.03.-  
29 790(b), it is not a defense to an action brought for a violation of

1 (a) - (c) of this section that the person charged believed that a  
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency  
4 plan under this section, the department shall provide a copy of the  
5 contingency plan to the Department of Fish and Game and to the Depart-  
6 ment of Natural Resources and shall provide those departments a rea-  
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this  
9 section shall maintain in its area of operation, singly or in conjunc-  
10 tion with other operators in its area of operation, sufficient oil  
11 discharge containment, storage, transfer, and removal equipment,  
12 personnel, and resources to rapidly contain a

13 (1) realistic maximum oil discharge and to remove that  
14 discharge within the shortest possible time if the contingency plan is  
15 for an exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the  
17 largest oil storage tank at the facility and to remove that discharge  
18 within 72 hours if the contingency plan is for an oil terminal facil-  
19 ity; if the department determines that the oil terminal facility is  
20 located in an area of high risk because of natural or manmade condi-  
21 tions outside of the facility, the department may increase the volume  
22 requirement under this paragraph so that the contingency plan must be  
23 designed for response to a discharge that is greater in amount than  
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum  
26 capacity of the vessel or barge and to remove that discharge within 72  
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention

1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-  
3 gency plan,

4  
5  
6 \* Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil  
8 terminal facility in the state unless the person has furnished to the  
9 department, and the department has approved, proof of financial abil-  
10 ity to respond in damages. Proof of financial responsibility for a  
11 crude oil terminal may not be less than \$50,000,000 per incident.  
12 Proof of financial responsibility for a noncrude oil terminal may not  
13 be less than \$35 per barrel of total noncrude oil storage capacity at  
14 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
15 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
16 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
17 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever  
18 is greater, subject to a maximum of \$50,000,000.

19 \* Sec. 6. AS 46.04.040(b) is amended to read:

20 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
21 operation of an [OFFSHORE] exploration or production facility in the  
22 state unless the person has furnished to the department, and the  
23 department has approved, proof of financial ability to respond in  
24 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
25 responsibility for an offshore exploration or production facility may  
26 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of  
27 financial responsibility for an onshore exploration or production  
28 facility may not be less than \$20,000,000 per incident.

29 \* Sec. 7. AS 46.04.040(c) is amended to read:

1 (c) A person may not operate a tank vessel or an oil barge  
2 within the waters of the state, or cause or permit the transfer of oil  
3 to or from a tank vessel [,] or [, AFTER JANUARY 1, 1981, TO OR FROM]  
4 an oil barge, unless the person has furnished to the department, and  
5 the department has approved, proof of financial ability to respond in  
6 damages. Proof of financial responsibility under this subsection may  
7 not be less than

8 (1) \$500,000,000 per incident for a tank vessel or barge  
9 carrying crude oil;

10 (2) \$100 per barrel of storage capacity or \$1,000,000,  
11 whichever is greater, subject to a maximum of \$35,000,000, for a tank  
12 vessel or barge carrying noncrude oil or other hazardous substance in  
13 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL  
14 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-  
15 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

16 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-  
17 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE  
18 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204  
19 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

20 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY  
21 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS  
22 GREATER;

23 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY  
24 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
25 GREATER].

26 \* Sec. 8. AS 46.04.040(d) is amended to read:

27 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
28 defense to an action brought for violation of (a) - (c) [(c)] of this  
29 section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and  
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 \* Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-  
6 ance, insurance, surety, [OR] guarantee, or other security approved by  
7 the department, under terms the department may prescribe. An action  
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
10 759] may be brought in a state court directly against the insurer or  
11 another person providing evidence of financial responsibility. The  
12 applicant, and an insurer, surety, [OR] guarantor, or other person  
13 providing security approved by the department shall appoint an agent  
14 for service of process in the state. An insurer must either be au-  
15 thorized by the Department of Commerce and Economic Development to  
16 sell insurance in the state or be an unauthorized insurer listed by  
17 the Department of Commerce and Economic Development as not disapproved  
18 for use in the state.

19 \* Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires  
21 (1) one year from its issuance for self-insurance;  
22 (2) on the effective date of a change in the surety bond,  
23 guarantee, [OR] insurance agreement, or other security approved by the  
24 department; or  
25 (3) on the expiration or cancellation of the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department.

28 \* Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is

1 accepted by the department under this section shall notify the depart-  
2 ment at least 30 days before the effective date of a change, expira-  
3 tion or cancellation in the surety bond, guarantee, [OR] insurance  
4 agreement, or other security approved by the department. Application  
5 for renewal of acceptance of proof of financial responsibility under  
6 this section must be filed at least 30 days before the date of ex-  
7 piration.

8 \* Sec. 12. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
10 amounts in AS 46.04.040 change, as provided in this section, according  
11 to and to the extent of changes in the Consumer Price Index for all  
12 urban consumers for the Anchorage metropolitan area compiled by the  
13 Bureau of Labor Statistics, United States Department of Labor (the  
14 index). The index for January of the year in which this section  
15 becomes effective is the reference base index.

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

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

1 (d) The department shall adopt a regulation announcing

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

4 (2) promptly after the changes occur, changes in the index  
5 required by (c) of this section, including, if applicable, the numer-  
6 ical equivalent of the reference base index under a revised reference  
7 base index and the designation or title of any index superseding the  
8 index.

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

12 \* Sec. 13. AS 46.04.050 is amended to read:

13 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of  
14 the operations and the minimal danger to the environment posed by the  
15 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an  
16 oil terminal facility that has an effective storage capacity of less  
17 than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels  
18 of noncrude oil.

19 \* Sec. 14. AS 46.04.060 is amended to read:

20 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
21 access or inspection conferred upon the department by law or other-  
22 wise, the department may at reasonable times enter and inspect oil  
23 [OIL] terminal facilities, [OFFSHORE] exploration and production  
24 facilities, tank vessels, and oil barges within the territorial juris-  
25 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
26 PARTMENT] to

27 (1) ensure compliance with the provisions of this chapter;

28 or

29 (2) examine the structural integrity of tank vessels, oil

1 barges, oil terminal facilities, oil exploration and production facil-  
2 ities, pipelines, and other facilities related to the exploration,  
3 production, storage, and transportation of oil.

4 \* Sec. 15. AS 46.04.200 is amended to read:

5 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
6 prepare and annually review and revise a statewide master oil and  
7 hazardous substance discharge [AND] prevention and contingency plan.

8 (b) The state master plan prepared under this section must

9 (1) take into consideration the elements of an oil dis-  
10 charge prevention and contingency plan approved or submitted for  
11 approval under AS 46.04.030;

12 (2) clarify and specify the respective responsibilities of  
13 each of the following in the assessment, containment, and cleanup of a  
14 catastrophic oil discharge or of a significant discharge of a hazard-  
15 ous substance into the environment of the state:

16 (A) agencies of the state;

17 (B) municipalities of the state;

18 (C) appropriate federal agencies;

19 (D) operators of facilities;

20 (E) private parties whose land and other property may  
21 be affected by the oil or hazardous substance discharge; and

22 (F) other parties identified by the commissioner as  
23 having an interest in or the resources to assist in the contain-  
24 ment and cleanup of an oil or hazardous substance discharge;

25 (3) specify the respective responsibilities of parties  
26 identified in (2) of this subsection in an emergency response; and

27 (4) identify actions necessary to reduce the likelihood of  
28 catastrophic oil discharges and significant discharges of hazardous  
29 substances.

1 (c) In preparing and annually reviewing the state master plan,  
2 the commissioner shall

3 (1) consult with municipal and community officials, and  
4 with representatives of affected regional organizations;

5 (2) submit the draft plan to the public for review and  
6 comment;

7 (3) submit to the legislature for review, not later than  
8 the 10th day following the convening of each regular session, the plan  
9 and any annual revision of the plan; and

10 (4) require or schedule unannounced oil spill drills to  
11 test the sufficiency of an oil discharge prevention and contingency  
12 plan approved under AS 46.04.030 or of the cleanup plans of a party  
13 identified under (b)(2) of this section.

14 \* Sec. 16. AS 46.04.210(a) is amended to read:

15 (a) For any region of the state, the boundaries of which are  
16 determined by the commissioner by regulation, in which the department  
17 is required to review and approve an oil discharge prevention and  
18 contingency plan submitted by a person under AS 46.04.030, the depart-  
19 ment shall prepare and annually review and revise a regional master  
20 oil and hazardous substance discharge [AND] prevention and contingency  
21 plan.

22 \* Sec. 17. AS 46.04.900(8) is amended to read:

23 (8) "[OFFSHORE] exploration or production facility" means a  
24 platform, vessel, or other facility used to explore for or produce  
25 hydrocarbons in the waters of the state or on land in the state; the  
26 term does not include vessels used for stratigraphic drilling or other  
27 operations that [WHICH] are not authorized or intended to drill to a  
28 producing formation;

29 \* Sec. 18. AS 46.04.900 is amended by adding a new paragraph to read:

1 (18) "realistic maximum oil discharge" means the maximum and  
2 most damaging oil discharge that the department estimates could occur  
3 during the lifetime of the vessel or facility based on the size,  
4 location, and capacity of the vessel or facility; on the department's  
5 knowledge and experience with the vessel or facility or with similar  
6 vessels or facilities; and on the department's analysis of possible  
7 mishaps at the vessel or facility or at similar vessels or facilities.

8 \* Sec. 19. AS 46.08.040 is amended to read:

9 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
10 money from the fund to

11 (1) investigate and evaluate the release or threatened  
12 release of oil or a hazardous substance, and contain, clean up, and  
13 take other necessary action, such as monitoring and assessing, to  
14 address a release or threatened release of oil or a hazardous sub-  
15 stance that poses an imminent and substantial threat to the public  
16 health or welfare, or to the environment;

17 (2) pay all costs incurred

18 (A) to establish and maintain the oil and hazardous  
19 substance response office and for the expenses of the oil and  
20 hazardous substance response corps and the oil and hazardous  
21 substance response depots established by that office;

22 (B) to review oil discharge prevention and contingency  
23 plans submitted under AS 46.04.030;

24 (C) to conduct training, response exercises, inspec-  
25 tions, and tests, in order to verify equipment inventories and  
26 ability to prevent and respond to oil and hazardous substance  
27 release emergencies, and to undertake other activities intended  
28 to verify or establish the preparedness of the state, a munic-  
29 ipality, or a party required by AS 46.04.030 to have an approved

1           contingency plan to act in accordance with that plan; and

2                       (D) to verify or establish proof of financial respon-  
3                       sibility required by AS 46.04.040;

4           (3) provide matching funds for participation in federal oil  
5 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
6 hensive Environmental Response, Compensation, and Liability Act of  
7 1980); [AND]

8           (4) recover the costs to the state or to a municipality of  
9 a containment and cleanup resulting from the release or the threatened  
10 release of oil or a hazardous substance; [.]

11           (5) prepare, review, and revise

12                       (A) the state's master oil and hazardous substance  
13 discharge [AND] prevention and contingency plan required by  
14 AS 46.04.200; and

15                       (B) a regional master oil and hazardous substance  
16 discharge [AND] prevention and contingency plan required by  
17 AS 46.04.210; and

18           (6) restore the environment by addressing the effects of an  
19 oil or hazardous substance release.

20       \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
21 January 31, 1991, the Department of Environmental Conservation shall sur-  
22 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
23 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
24 in order to determine for each facility

25                       (1) its actual storage capacity;

26                       (2) the type of noncrude oil products stored;

27                       (3) its age, design, construction, and general condition;

28                       (4) the design and construction standards applicable or rele-

29 vant;

1 (5) the presence or absence of containment structures and equip-  
2 ment;

3 (6) its ability to respond to a release or threatened release;

4 (7) the environmental sensitivity of the surrounding area and  
5 the potential risk to the environment if a release occurs;

6 (8) the presence or absence of surface and subsurface pipelines  
7 and storage tanks; and

8 (9) other appropriate information.

9 (b) By January 31, 1991, the Department of Environmental Conservation  
10 shall report to the legislature the results of the survey required under  
11 (a) of this section and its written recommendations concerning discharge  
12 prevention and contingency requirements or design review requirements that  
13 should be enacted for noncrude oil terminal facilities with storage capac-  
14 ities of less than 10,000 barrels.

15 (c) Upon completion of the survey required under (a) of this section,  
16 the Department of Environmental Conservation may

17 (1) notify each facility of the results of the facility's in-  
18 spection; and

19 (2) provide each facility with recommendations and technical  
20 assistance concerning identified deficiencies.

21 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).  
22  
23  
24  
25  
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27  
28  
29

To: All Teleconference Sites

From: Rep. Menard, Co-chair House Resources  
Rep. Davidson, Co-chair House Resources

Attached is the Governor's new proposal regarding financial responsibility requirements in HB 567. The financial responsibility requirements in the original version of HB 567 have been withdrawn.

Both HB 565 and HB 567 are being modified by the House Resources Committee. Tonight we welcome additional assistance and comments on both bills as we continue our efforts to craft legislation that meets the needs of Alaskans and minimize costs for small utilities and fuel distributors.

## NON-CRUDE ISSUES ADDRESSED IN HB 565 AND HB 567

<u>ISSUE</u>	<u>EXISTING LAW</u>	<u>ADMINISTRATION PROPOSAL 3/15/90</u>
Penalty Levels	<p>\$10/gallon for anadromous stream or other freshwater environment;</p> <p>\$2.50/gallon for sensitive or confined saltwater areas;</p> <p>\$1/gallon for unconfined saltwater, public land or freshwater without significant aquatic resources.</p> <p>Subject to a schedule that varies for toxicity, degradability and dispersal characteristics, as well as receiving environment.</p>	<p>\$12.50/gallon for any surface or subsurface freshwater environment;</p> <p>\$8/gallon for sensitive or confined saltwater areas;</p> <p>\$6/gallon for unconfined saltwater, public land or subsurface land.</p> <p>Subject to the existing schedule that varies for toxicity, degradability and dispersal characteristics.</p>
Exemptions	Spills of less than 18,000 gallons <u>are not</u> subject to penalties under AS 46.03.758.	Spills of less than 18,000 gallons <u>are</u> subject to penalties under AS 46.03.758.
Cleanup Credit	Allows the court to deduct the amount of oil removed from the environment when calculating penalties, with no regard for the length of time involved in the cleanup operation.	Allows the court to deduct the amount of oil removed from the environment within the first 36 hours of a discharge onto surface water or land when calculating penalties. Does not allow any credit for subsurface spills.
Financial Responsibility	SEE ATTACHED CHART	SEE ATTACHED CHART
Contingency Plans	Not required for facilities with less than 10,000 barrels storage capacity.	Not required for facilities with less than 10,000 barrels storage capacity. The department would be given the authority to survey, inspect, and inventory facilities with a storage capacity between 5,000 and 10,000 barrels. The department will report back to the legislature within a year with recommendations to address oil spill prevention and response for facilities under 10,000 barrels.

TABLE 1

**Oil Contingency Plan Requirements  
Financial Responsibility Requirements  
Vessel Inspection**

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	SB 504 HB 567	PROPOSED 3/15 REVISION
<b>Crude Oil Terminals</b>			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
<b>Non-Crude Terminals</b>			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	10 to 20,000 bbl. = \$5 million > 20,000 bbl. = \$10 million
5 to 10,000 bbl.	None	\$1 million	None
<b>Offshore exploration and production facilities</b>	\$35 million	\$50 million	\$50 million
<b>Crude Oil Tank Vessels and Barges</b>	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$500 million
<b>Non-Crude Oil Tank Vessels and Barges</b>	Tank Vessels = \$20 million, Barges = \$1 million	\$20 million	< 5,000 bbl. = None 5,000 to 10,000 bbl. = \$5 million 10,000 to 50,000 bbl. = \$1 million 50,000 to 100,000 bbl. = \$10 million 100,000 + bbl. = \$20 million

Note: the following notes are not based on a comprehensive review of vessels and facilities; rather, they are examples of how the proposed revisions might affect some operators.

Currently there are 6 Tanker Vessels chartered by Petro-Diamond and Petro-Marine that are under 50,000 bbl. capacity and are required to have \$20 million coverage. Under proposed revisions of 3/15 their Financial Responsibility requirement would drop to \$1 million.

From information provided in contingency plans, all of Yutana Barge Lines barges are under 10,000 bbl., therefore their Financial Responsibility requirement would be cut in half to \$500 thousand.

Crowley has 10 barges listed at over 100,000 bbl., but they are covered by surety bond and not a regular insurance policy.

United Marine Tug and Barge, Inc. has at least 2 barges over 50,000 bbl., so their coverage would increase from \$1 million to \$10 million.

CARGO AND REFINED PRODUCT VESSELS SUNK, WORLDWIDE, WITH A TOTAL LOSS OF CARGO (1979 TO PRESENT)

Record#	DATE	NAME	SIZE	COUNTRY	SPILL	CARGO	CAUSE
1	1/79	Betelgeuse	121,000 tons	French	40,000 tons	Crude	Exploded at dock
2	4/79	Gino	49,000 tons	Liberia	32,000 tons	Carbon Blk.	Collision
3	7/79	Atlantic Express	293,000 tons	Greek	275,00 tons	Crude	Collision
4	9/79	Chevron Hawaii	71,000 tons	U.S.A.	3,000 tons	Crude	Exploded at dock
5	2/80	Irenes Serenade	150,000 tons	Cyriot	40,000 tons	Crude	Exploded at anchor
6	3/80	Tanio	29,000 tons	Malagasy	13,000 tons	Fuel Oil	Broke up
7	1/83	Assimi	59,000 tons	Greek	55,000 tons	Crude	Fire, explosion
8	8/83	Castillo De Bellver	267,000 tons	Spanish	260,000 tons	Crude	Fire, broke up
9	11/83	Proc Basilan	16,000 tons	Phillipines	13,000 tons	Gasoline	Fire, sunk
10	10/84	Puerto Rican	35,000 tons	U.S.A	5,000 tons	Fuel Oil	Fire & explosion at port
11	3/85	Lyudrik Svobode	16,000 tons	Russia	1,000 tons	Crude	Explosion while loading
12	5/85	Petragen I	30,000 tons	Panama	5,000 tons	Refined oil	Explosion and sunk in port
13	4/88	Athenim Venture	31,000 tons	Cyriot	30,000 tons	Crude	Explosion
14	11/88	Odyssey	140,000 tons	Liberia	131,000 tons	Crude	Sunk
15	3/89	Maaguser	39,000 tons	Liberia	30,000 tons	Chemicals	Explosion and fire

933,000 tons  
90,000 tons\*

1,023,000  
x 7.4

=7,570,200 barrels

x310

=317,130,000 gallons

\* Vessels can reasonably be expected to be carrying 2,000-10,000 tons of fuel, (mean 6,000).

Source = Phone conversation with Mr. Arthur McKinzie, Tanker Advisory Center, Inc. NY, NY 3-6-90.

SECTIONAL ANALYSIS

The following is a sectional analysis of a bill that strengthens the Department of environmental Conservation's ("DEC") oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04.

Section 1 strengthens DEC's authority to require and enforce oil discharge contingency plans. Section 1 requires that contingency plans be properly implemented; clarifies and strengthens DEC's authority to approve, modify, or revoke contingency plans; requires contingency plan applicants to maintain in their areas of operation sufficient resources to contain and remove a realistic maximum oil discharge within the shortest possible time; provides the Department of Fish and Game and the Department of Natural Resources an opportunity to comment on contingency plans; and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented.

?  
properly implemented

Section 2 strengthens the financial responsibility requirements of AS 46.04.040. Section 2 establishes a \$50,000,000 financial responsibility requirement for crude oil terminal facilities; establishes a \$1,000,000 financial responsibility limit for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels; establishes a \$50,000,000 financial responsibility limit for non-crude terminal facilities with a storage capacity of more than 10,000 barrels; establishes a \$50,000,000 financial responsibility requirement for offshore exploration and production facilities; establishes a \$500,000,000 financial responsibility requirement for crude oil tank vessels and barges; establishes a \$20,000,000 financial responsibility requirement for large (greater than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances; establishes a \$1,000,000 financial responsibility requirement for smaller (less than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances.

Modify

Section 3 lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Section 4 authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels, and oil barges to ensure compliance with AS 46.04 and to examine the structural integrity of tank vessels and oil barges.

Section 5 defines "realistic maximum oil discharge," as used in sec. 1.

Section 6 provides that the Act takes effect immediately.

CS HB 567 (RESOURCES)

SECTION 1 - Allows a municipality to enter into agreements with the U.S. Coast Guard to develop and enforce a vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 2 - Increases the fine for a discharge which was grossly negligent and adds language to include prevention requirements in contingency plans.

SECTION 3 - Allows DEC to enter into agreements with the U.S. Coast Guard to prevent oil discharges and develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 4 - Requires that persons may not operate a tank vessel or oil barge without having a prevention and contingency plan and that contingency plans be properly implemented. Failure to respond to a spill in the shortest possible time is a violation of the chapter.

SECTION 5 - Authorizes DEC to revoke, modify or approve contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires an applicant for a contingency plan to plan for the removal of a discharge within 72 hours. Requires that an exploration or production facility contingency plan provide for response to the realistic maximum discharge, an oil terminal facility plan provide for response to a discharge from the largest tank at the facility, and a tanker or barge contingency plan provide for response to a discharge equal to the capacity of the vessel. Defines "properly implement" and "maximum realistic discharge."

SECTION 6-8 - Strengthens financial responsibility requirements and establishes:

1. \$50 million minimum for crude oil terminal facilities
2. \$25/barrel for non-crude oil terminal facilities with a minimum of \$1 million and a maximum of \$ 50 million
3. \$500 million for crude oil tankers and barges
4. \$100/barrel for non crude tankers and barges with a minimum of \$1 million and a maximum of \$35 million

5. \$50 million for offshore exploration and production facilities \$20 million for onshore exploration and production facilities.

SECTION 9 - It is not a defense from the financial responsibility requirement to argue that the person believed they had satisfied the financial responsibility requirements.

SECTION 10-12 - Describes methods for establishing financial responsibility and adds "security approved by the Department" as a method.

SECTION 13 - Adjusts the financial responsibility requirement with the consumer price index every three years.

SECTION 14 - Exempts crude oil terminal facilities smaller than 5000 barrels and non-crude oil terminal facilities smaller than 10,000 barrels.

SECTION 15 - Authorizes DEC the authority to inspect oil terminal facilities, exploration and production facilities, tank vessels and barges to ensure compliance and examine structural integrity of these facilities.

SECTION 16 & 17 - Includes prevention planning in the state's master and regional contingency plans.

SECTION 18 - Defines an exploration and production facility.

SECTION 19 - Allows DEC to use money from the 470 fund to review industry contingency plans and to conduct training, response exercises, inspections and tests in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies.

SECTION 20 - Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for non-crude oil terminal facilities.

HB 567/SB 504 Contingency Planning, Financial Responsibility,  
Tanker Inspections

1. Strengthen DEC's authority to require and enforce contingency plans and approve, modify and revoke plans
2. Require that plans be properly implemented
3. Requires response capability to remove a spill the quantity of the capacity of a tanker or the quantity of the largest tank at a tank farm or more if the facility is in a high risk area, require response capability to contain a spill within 72 hours
4. insert the words "prevention and" before the words "contingency plans" in all locations
5. delete the words "off shore"
6. Give DEC authority to use 470 funds for review of industry contingency plans
7. Financial responsibility for non-crude facilities ???
8. \$50 million for crude oil terminal facilities
9. \$50 million for offshore exploration
10. \$500 million for crude oil tank vessels and barges
11. Authorize inspections of tankers for structural integrity
12. Authority to require escort vessels
13. Authority to require direct radio contact between vessel and terminal and record transmissions
14. Authority to require navigational enhancements or vessel traffic system in areas at risk
15. Require terminal to report to DEC as soon as a vessel is in distress

*No admin position on offshore/onshore*

TESTIMONY - HB 567

MY NAME IS DAVE BOUKER. I AM THE GENERAL MANAGER OF NUSHAGAK ELECTRIC COOPERATIVE, A SMALL RURAL NON-PROFIT ELECTRIC UTILITY WHICH PROVIDES POWER TO THE COMMUNITIES OF DILLINGHAM AND ALEKNAGIK.

I AM HERE TO TESTIFY ON HB 567 AND MORE SPECIFICALLY ON THAT SECTION WHICH MODIFIES AS 46.04.040 TITLED, "PROOF OF FINANCIAL RESPONSIBILITY."

AT THIS TIME, AN OIL TERMINAL OPERATOR OF A FACILITY WITH 10,000 BARRELS (BBLs) OF STORAGE, OR GREATER, IS REQUIRED TO SHOW ABILITY TO SELF-INSURE OR TO HAVE AN INSURANCE POLICY OF \$1 MILLION TO INDICATE PROOF OF FINANCIAL RESPONSIBILITY FOR A SPILL DURING TRANSFER OPERATIONS. THE POLICY WHICH WE CURRENTLY HAVE IN FORCE IS WRITTEN BY LLOYDS OF LONDON AND COSTS US IN EXCESS OF \$21,000 PER YEAR.

THE PROPOSED HB 567 WOULD INCREASE THE REQUIRED COVERAGE FROM \$1 MILLION TO \$50 MILLION. AN INCREASE OF 50 FOLD. WE HAD EXTREME DIFFICULTY IN OBTAINING THE EXISTING POLICY BECAUSE NO U.S. CARRIER WOULD TOUCH IT. OUR NET WORTH IS LESS THAN \$2 MILLION AND I DO NOT BELIEVE THAT WE ARE INSURABLE FOR ANYTHING OVER THAT AMOUNT.

WE ARE LOCATED NORTH OF DUTCH HARBOR AND THIS MEANS THAT WE CAN ONLY RECEIVE FUEL DELIVERY DURING THE SUMMER MONTHS. THEREFORE, WE

HB 567 Testimony, Page 2

HAVE TO HAVE THE STORAGE CAPACITY TO CARRY US THROUGH FROM SEPTEMBER TO MAY OR JUNE. THE LOCAL WHOLESALE DISTRIBUTOR IS IN MUCH THE SAME POSITION. IF THE INSURANCE COVERAGE REQUIREMENTS INCREASE 50 FOLD, YOU CAN BE ASSURED THAT THE ATTENDANT COSTS OF THAT INSURANCE WILL MEAN SUBSTANTIAL INCREASE IN COST OF POWER, HEATING FUEL, AND GASOLINE TO RURAL COMMUNITIES LEAST ABLE TO PAY.

ONE POSSIBLE ALTERNATIVE TO THIS ISSUE MIGHT BE TO INCREASE THE EXEMPTION IN AS 46.04.050 TO 50,000 BBLs OF REFINED PRODUCTS, BECAUSE THEY ARE FAR LESS DANGEROUS THAN CRUDE AND RAPIDLY DISSIPATE IN THE ATMOSPHERE IN THE EVENT OF A SPILL. IN ADDITION, AN EXEMPTION AT THIS LEVEL WOULD PROBABLY ACCOMMODATE MOST FUEL INVENTORIES IN WESTERN ALASKA. HOWEVER, THIS ASPECT SHOULD BE LOOKED INTO BEFORE ANY FINAL DECISION IS MADE.

WE BELIEVE THAT THE CATASTROPHE OF THE OIL SPILL IN PRINCE WILLIAM SOUND GENERATED THIS BILL. HOWEVER, IT SHOULD BE NOTED THAT THE OIL COMPANIES ARE NOT AS FINANCIALLY IMPACTED BY THE BILL AS THE SMALL RURAL COMMUNITIES BECAUSE MOST OF THE OIL COMPANIES ARE FINANCIALLY SOUND ENOUGH TO SELF-INSURE WHILE WE HAVE TO IMMEDIATELY PUT UP THE CASH TO BUY INSURANCE FROM SOME FOREIGN ENTITY OR PURCHASE A LETTER OF CREDIT AND, OBVIOUSLY, WE WILL HAVE DIFFICULTY IN PURCHASING A \$50 MILLION LETTER OF CREDIT. I WOULD URGENTLY RECOMMEND THE COMMITTEE TO REVIEW THESE PROPOSED REQUIREMENTS AND THEIR ECONOMIC IMPACT BECAUSE THEY APPEAR TO PRESENT IMPOSSIBLE CONDITIONS TO US. (3/9/90:lwb\rptdb)

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

December 30, 1981

William Lawrence  
Transportation Institute  
Norton Bldg., Rm. 1502  
801 Second Avenue  
Seattle, Washington 98104

Dear Bill:

Thank you for setting up the meeting with the tug and tank barge operators on December 17. I believe the opening of these lines of communication will help to resolve the problems we face. We have already discussed these matters with the Department of Environmental Conservation.

As I promised at the meeting, I'm writing to confirm my oral statements regarding the operators' current legal status under our oil spill laws. Alaska Statute 46.03.040 does require proof of financial responsibility to respond to damages for oil spills, and as was pointed out at the meeting, operators covered by the statute who have not shown financial responsibility by one of the methods acceptable under the statute are indeed in technical violation. However, the current difficulty in obtaining insurance puts the matter in a different light.

First, if an operator is truly unable to comply with the statute, because neither the insurance nor the other forms of proof of financial responsibility are available, and the firm is unable to self-insure, then I believe it would have a valid defense to an action brought because of the technical failure to comply. And secondly, we can assure you that as long as we are convinced that an operator is making a diligent good faith effort to comply with the requirements, but is unable to do so despite its best efforts, we will not bring any such action because of the failure to comply. Naturally I consider meetings such as ours, with continuing efforts to make insurance available, to be important evidence of such good faith efforts.

Mr. William Lawrence

December 30, 1981

Page 2

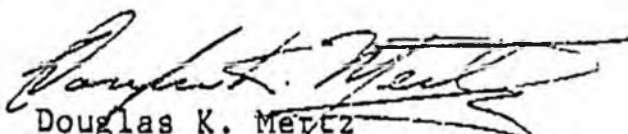
Of course, the opposite side of the coin is that if insurance, or another acceptable form of proof of financial responsibility, becomes available, the operators could not claim that compliance is impossible; and we would not consider an operator to be pursuing compliance with good faith if he made no real efforts to find or arrange that coverage. And I'm sure the operators realize that if an actual spill occurs, inability to secure insurance would not relieve them from liability for damages caused by the spill.

I hope this clarifies our position. Let me know if you have further questions. Meantime I trust you will distribute this letter to those present at the meeting, and to any other persons you believe would be interested..

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:

  
Douglas K. Metz  
Assistant Attorney General

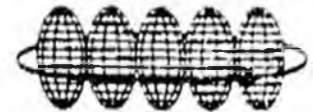
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cc: Ernst W. Mueller  
Commissioner  
Department of Environmental  
Conservation

596 3762

# TRANSPORTATION INSTITUTE

PACIFIC COAST OFFICE  
 801 SECOND AVENUE, SUITE 1502  
 SEATTLE, WASHINGTON 98104  
 (206) 624-9824



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 Executive Director  
 THOMAS A. ALLEGRETTI  
 Director, Maritime Waterways  
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January 25, 1982

Mr. Andrew M. Spear, Manager  
 Oil Pollution Control  
 State of Alaska  
 Department of Environmental  
 Conservation  
 Pouch O  
 Juneau, Alaska 99811

Re: Proof of Financial Responsibility for Oil Spills  
 Alaska Statute 46.04.040

Dear Mr. Spear:

As West Coast Manager of the Transportation Institute, representing tug and barge owners/operators trading between and/or amongst the states of Alaska, Washington, Oregon and California, I would like to thank you and Mr. Douglas Mertz for your attendance at the meeting of December 17, 1981, in our offices, to listen to comments and suggestions from members of the Institute and insurance industry representatives in connection with the subject matter.

This letter will also acknowledge receipt of Mr. Douglas Mertz's letter of December 30, 1981, copies of which have been distributed to the membership.

As you know, the purpose of our meeting of December 17, 1981, was to allow our members, together with insurance industry representatives, to discuss with you the concerns they are having in attempting to comply with Alaska Statute 46.04.040 (Proof of Financial Responsibility) insofar as this law relates to oil barges, other than inland oil barges, carrying oil as cargo (except those transporting pipeline oil). These concerns have led to considerable frustration on the part of our member vessel operators, in view of the substantial penalties, which could be imposed on them and other nonmember operators, for failure to meet the requirements of the current Alaska law.

Mr. Andrew M. Spear  
January 25, 1982  
Page Two

From the standpoint of our members, the only practical avenue available to them to attempt to meet the "Proof of Financial Responsibility" requirement is through certification by their insurers.

Our members have, over the past year, discussed the matter of Certification at length with the insurance markets in both the United States and overseas. These markets are centered in New York and London, respectively, and, between them, insure virtually the world's entire oil pollution liabilities.

The United States market, headquartered in New York, is made up of first class stock and mutual companies, who as members of the American Institute of Marine Underwriters formed the Water Quality Insurance Syndicate (WOIS) at the time of the Federal Water Pollution Control Act of 1970 to provide insurance for its clients, as a result of the liabilities that could be imposed upon them by the Act.

The London market is made up of a number of international Protection and Indemnity Clubs referred to as the "International Group of P&I Clubs." These clubs, between them, insure the oil pollution liabilities of nearly all the ocean going tanker tonnage.

As mentioned earlier, responses from the insurance industry to requests by our member operators for certification of Proof of Financial Responsibility under the Alaska law have been met with a polite but firm "no".

The specific areas that create problems for the insurers are listed as follows:

- I. Of foremost concern is the requirement for financial responsibility through insurance that (18 AAC 20.065) (2) the insurer agrees that any final judgement against the insured for damages under AS46.04.040(i) resulting from an unlawful discharge of oil from or by any vessel or facility named in the policy may be enforced or executed directly against the insurer to the amount of coverage of this policy; . . . .)." It is felt by the insurers that this provision allowing direct access, strips the insurers of their right to defenses that are allowed their insured, such as the limitation of liability provision under maritime law. Without recourse to defenses normally available to the company they are insuring, the insurance companies feel extremely vulnerable. A clarification of the rights of the insurers under direct access is needed.

Mr. Andrew M. Spear  
January 25, 1982  
Page Three

II. Another area of concern to insurers is the requirement to certify coverage to different entities such as states and countries, based on varying laws provided by these individual entities.

III. Civil penalties are allowed by the state of Alaska from \$500 - \$100,000 for the initial violation and then \$5,000 per day for each day the violation continues up to a maximum overall limit of \$100,000,000. These civil penalties can be assessed to a person who violates or causes or permits to be violated a provision of the Act or a regulation, a lawful order of the department, or a permit, or a term or cancellation of a permit issued under the Act. These penalties are excessive and the insurers also feel there is danger of making payments under the law that will amount to windfall gains for the state of Alaska.

... Under AS46.04.020 (c), the department can require clean-up beyond that required by the U.S. Coast Guard.

"If the department determined that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources or both."

This could lead to unlimited costs for cleanup far beyond that provided by insurers of the Federal Clean Water Act (\$150 per GRT) and perhaps beyond the minimum limit required for financial responsibility of \$1,000,000 since there is no check on type or nature of expense, or a lid on total expense. This is unlike a restoration for damages since 1) the determination of proper cleanup can be arbitrarily determined and, 2) there is no independent review in determining reasonable cost.

Distributed at our recent meeting was a letter addressed to me care of Christopher Arundell of Pettit-Morry Company, from Mr. Robert S. Lagattolla, President, of the Water Quality Insurance Syndicate (WQIS) dated December 15, 1981, stating the WQIS's position on oil spill statutes, including reasons for not issuing the "Alaska Endorsement" proscribed under the Alaska law. A copy of that letter is enclosed for reference. Similarly, I am also enclosing a copy of a letter from the American Institute of Marine Underwriters (AIMU) to Chris Arundell of Pettit-Morry Company dated January 14, 1982, expressing its views and the views of the American Marine Insurance Market on this subject.

Mr. Andrew M. Spear  
January 25, 1982  
Page Four

As you know, it has been stated by P&I Club representatives that the London Market's reasons for being unable to comply with Alaska law are similar to those advocated by the U.S. Market. Representatives of the "International Group of P&I Clubs" met with you early last year to express their group's position on oil pollution law, including their concerns over the Alaska law.

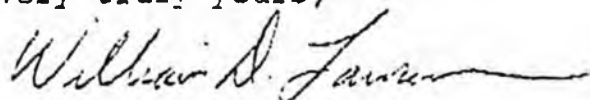
The above comments and enclosures clearly indicate that certification under the Alaska Oil Pollution Control Law will not be provided by the world insurance markets. Both the United States and London markets have a commitment to Federal pre-emption in the area of pollution laws.

It is clear that the Alaska law imposes considerable additional requirements over and above the existing Federal Pollution laws and that the oil carrying barge operators are unable to meet these additional requirements.

While we do appreciate the assurances given in Mr. Mertz's letter of December 30, 1981, we request your assistance in obtaining meaningful and satisfactory responses to insurers' concerns noted above (Items I through IV), including possible changes in the law as it presently exists in order that the carriers can achieve compliance with financial responsibility provisions.

Your prompt attention to this letter will be greatly appreciated.

Very truly yours,



William D. Lawrence  
West Coast Manager  
TRANSPORTATION INSTITUTE

WDL:lb  
Enclosures

cc: Douglas Mertz  
Members of Committee

## MEMORANDUM

State of Alaska

TO Ernst W. Mueller, Commissioner  
Department of Environmental  
Conservation


DATE May 13, 1982

FILE NO J-66-462-82

TELEPHONE NO 465-3600 x. 54

FROM WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT Financial  
Responsibility  
and the Insur-  
ance Industry  
(AS 46.04.040)

By:   
Douglas K. Mertz  
Assistant Attorney General

You have asked this office for an opinion on several questions concerning Alaska's oil spill laws, specifically the provisions dealing with proof of financial responsibility, AS 46.40.040 (§ 2, ch 116 SLA 1980). In conversations with representatives of various tank vessel and oil barge owners, it has become apparent that a good deal of confusion exists regarding the effect of AS 46.04.040. This opinion is intended to convey our interpretation of that statute as well as this department's policy regarding enforcement of it.

First, we want to make clear what the statute does not do: It does not create any new or increased liabilities whatsoever. Its role is limited to requiring proof that an owner or operator has the financial ability to compensate damages for which that person is liable under other state statutes. <sup>1/</sup> While those other statutes may expose an owner or operator to varying degrees of liability (see infra), AS 46.04.040 neither increases nor decreases the potential liability derived from those preexisting statutes.

Some concern has been expressed by the insurance industry as to the effect of the "direct action" provision of subsection (e) ( . . . An action brought under AS 46.03.-758, 64.03.760(a) or (e), or 46.04.822 may be brought in a state court directly against the insurer . . ."). Specifically, their question has been whether this provision may subject insurers to even greater liabilities than their insureds because the insurer could not assert defenses personal to the insured. Of most immediate concern is whether the insurer could take advantage of the federal Limitation of Liability Act of 1851, 46 U.S.C. § 181, et. seq., which

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1/ Specifically, AS 46.03.758, 46.03.760(a) and (e), and 46.03.822.

Ernst W. Mueller, Commissioner

May 13, 1982

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on its face is limited to vessel owners and demise charterers. The law on whether a direct action statute can deprive an insurer of the benefit of such defenses has never been settled 2/ Several jurisdictions besides Alaska allow direct actions against insurers in some circumstances. 3/

Of most direct relevance is the Louisiana statute, La. Rev. Stat. 22:655, which is a detailed provision clearly intending to work a fundamental change in the relationship between insurer, insured, and third-party claimant. At present, it appears that under the Louisiana statute an insurer may be successfully prevented from involving the insured's personal defenses. See Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969). In contrast is the federal Clean Water Act provision on financial responsibility, 33 U.S.C. § 1321(p), after which the Alaskan act is in part modeled, which allows direct actions against the insurer, but explicitly permits the insurer to invoke the insured's defenses.

The Alaska statute contains no detailed indicia of intent to deny the insured's defenses, as in the Louisiana statute, nor an explicit provision retaining the insured's defenses, as in the Clean Water Act. The legislative history contains little evidence, except for the testimony on behalf of the Department of Environmental Conservation, as prime sponsor of the bill. William A. Publicover, Deputy Director of Environmental Quality Operations, testified that the bill's intent was

. . . to provide an easy way for an individual Alaskan to collect for damages to his property or for loss of income due to an oil spill. . . We want the injured party to be able to go to state court, even small claims court, file his claim against someone who is

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2/ See Maryland Casualty Co. v. Cushing, 347 U.S. 409 (1954); Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969).

3/ See, e.g., N.Y. INS. LAW, (McKinney) Section 167; Louisiana Revised Statutes 22:655; California Insurance Code, Section 11580 (West 1977); Shingleton v. Bussey, 223 So.2d 713 (Fla. 19-69); Third Parties (Rights against Insurers) Act 1930 (United Kingdom).

Ernst W. Mueller, Commissioner

May 13, 1982

Page 3

attachable, someone who does business in Alaska, or who has an agent in Alaska, and we seek timely satisfaction of his claim.

Publicover went on to describe the costly and time-consuming process of identifying the responsible party and pursuing an action in a distant forum. The direct access provision, he said, was designed to provide a speedy remedy which as a practical matter could be secured by an Alaskan fisherman, for example, with a minor claim. Publicover did not mention any intent whatsoever to deny the insurer the insured's defenses.

Against this background, we believe the courts would read AS 46.04.040(e) as intended only to provide a local forum in which to proceed against a solvent fund, and would not read into it the much more far-reaching result intended by Louisiana's statute. In short, as we read AS 46.04.040(e), although a claimant may proceed directly against the insurer under this statute, the insurer would "step into the shoes" of the insured by being able to assert any substantive defense available to the insured.

At the same time, the insurer would always retain an absolute limit to its liability, namely the policy limits. Since the insurer's liability is derivative, through the insured's policy, even with "direct access" we believe the courts would not hold the insurer liable for more than the amount contracted for in the policy. (This interpretation is confirmed in the implementing regulations, at 18 AAC 20.065: ". . . the insurer's liability does not exceed the limits of coverage . . .").

In conversation with insurers it has also appeared that there is concern about multiple "certification" requirements, that is, about the insurers having to undertake the bureaucratic burden of supplying Alaska with a separate certificate of insurance, in addition to furnishing the federal government with a Federal Maritime Commission certificate to comply with federal requirements. We would point out, however, that AS 46.04.040 contains no technical "certification" requirement; instead, it and the related regula-

Ernst W. Mueller, Commissioner

May 13, 1982

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tions (18 AAC 20.005 -- 18 AAC 20.900) are quite flexible as to how a party may demonstrate the existence of requisite financial responsibility. As to insurance, for example, the party need only submit a suitable binder along with a copy of the underlying policy, or a certificate of entry. If financial responsibility is shown through a surety bond or guaranty sample forms are included in the regulations. If self-insurance is used, the regulations merely call for a set of financial statements and affidavits, in place of which a party may substitute forms already prepared for submission to the Securities and Exchange Commission or the Federal Energy Regulatory Commission (see 18 AAC 20.055). Thus, the regulations, far from imposing a rigid and extensive set of bureaucratic requirements, are quite flexible and easy to satisfy once the required financial responsibility is acquired.

Finally, we address the question of whether AS 46.04.040, or its related statutes, could ever result in a windfall recovery for the state (a recovery greater than actual damages) or subject an insurer to liability for a punitive penalty assessed against the insured. To answer the question it is necessary to review the four statutes to which the financial responsibility requirements of AS 46.04.040 apply:

AS 46.03.760(a) is a standard civil penalty provision providing for an assessment to the state of \$500 to \$100,000 for violations of various state pollution statute; the assessment is required to reflect "reasonable compensation in the nature of liquidated damages for any adverse environmental effects . . .," as well as state costs in investigating and correcting the violation. Subsection (b) states: "Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature."

AS 46.03.760(e) provides for recovery by the state, in a civil action, of actual measurable damages caused by unlawful oil discharges, including cleanup and restoration costs. The prohibition in subsection (b) of punitive sanctions also applies to actions under subsection (e). We read subsections (a), (b), and (e) together to provide a scheme of alternative methods for securing compensation from oil spills, through either liquidated damages (subsection (a)) or actual damages (subsection (e)); in neither case could punitive sanctions be applied. Since both subsections have the same

Ernst W. Mueller, Commissioner

May 13, 1982  
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purpose -- to provide full compensation -- we believe that a recovery under either one would be credited toward a recovery under the other, thus eliminating the possibility of a double recovery.

AS 46.03.758 is yet another provision for securing compensation to the state for damages from oil spills. Specifically, amounts assessed under this provision are intended to compensate for those elements of damage which are not able to be measured or valuated directly. Under this method, a formula is used, taking into account the amount spilled, amount recovered, the toxicity, dispersibility, and degradability of the oil, and the sensitivity of the receiving environment, to generate a final figure which would compensate for the actual damage to the environment not directly measurable. The civil penalty is explicitly not to be punitive (AS 46.03.758(a)(3)), and a person may not be subjected to civil penalty assessments under both AS 46.03.758 and AS 46.03.760(a) (see AS 46.03.758(i)).

AS 46.03.822 is the general strict liability statute for damages caused by hazardous substances, including oil; it also provides for a number of defenses. This is the statute upon which private parties may rely to secure damages.

These are the only statutes for which financial responsibility must be shown, and to which AS 46.04.040 applies; we note particularly that it does not require proof of financial responsibility for sanctions under AS 46.03.-790, the parallel criminal penalty provision. From the details of the four provisions to which the financial responsibility requirements apply, we conclude that (1) in no case would an insurer, providing coverage only under the four listed statutes, be liable for a punitive or criminal assessment; and (2) since all four of the listed provisions are basically compensatory in intent, amounts assessed under any one of them which were intended to compensate for a particular set of damages would necessarily be credited toward recoveries for the same damages under any of the other statutes, so there is no possibility of multiple recoveries for the same damages.

This discussion reflects our Department's view of the statutes and regulations in question and is the basis for any enforcement action to be taken under the law. It thus appears to us that the concerns expressed by the industry on these points are without foundation, and we are

Ernst W. Mueller, Commissioner

May 13. 1982  
Page 6

pleased to be able to give our assurances that the State of Alaska's Department of Law intends to enforce these laws in a manner which should satisfy the industry as to its fairness.

Please let me know if you have any other questions.

DKM/jb

JAY S. HAMMOND, GOVERNOR

**DEPT. OF ENVIRONMENTAL CONSERVATION**

465-2653

POUCH 0 - JUNEAU 1981

May 21, 1982

Mr. William D. Lawrence  
Manager, Pacific Coast Office  
Transportation Institute  
801 Second Ave, Room 1502  
Seattle, Washington 98104

Dear Mr. Lawrence:

Thank you and Steve Scalzo for visiting with us and discussing the various issues involved in securing proof of financial responsibility for the Alaskan tank barge operators. This letter will serve to memorialize some of our discussion and inform you of the Attorney General's opinion regarding certain sections of Alaska's pollution laws.

As you know we have been actively seeking a resolution to the problem that certain barge owners have had in securing insurance to cover the Alaska proof of financial responsibility requirements (AS 46.04.040). During the past year, discussions with you, the barge owners and the insurance brokers have resulted in the issuance of at least one insurance policy covering five vessels, a surety bond for another three, and self-insurance by one large company. In the meantime, pressure has been brought to bear on some insurance underwriters not to issue policies by certain segments of the insurance industry.

It should be noted that we are not completely satisfied that all other avenues for proof of financial responsibility have been fully employed, namely self insurance surety bond, and guarantee. Some companies claim that it is against their policy to use self-insurance and it has been pointed out that certain small operators may not have sufficient assets to self-insure or use surety bonds. Of course, you understand that company policy is not a valid excuse for noncompliance with Alaska's requirements; only legal or physical impossibility in obtaining proof of financial responsibility would provide such a defense. In order to fully evaluate this situation we request a detailed explanation of why it is not possible for tank barge operators to obtain self-insurance, insurance, surety bonds and guarantees which will satisfy the State's financial responsibility requirements under AS 46.04.040 and subsequent regulations. We would appreciate this information from each firm which is represented by your organization. As we discussed, this justification should include sufficient factual information which the Alaska Department of Environmental Conservation can evaluate and satisfy itself as to the validity of the company's position. We also request that you furnish us with any correspondence or other material you may have concerning the inability of tank barge operators to obtain pollution insurance.

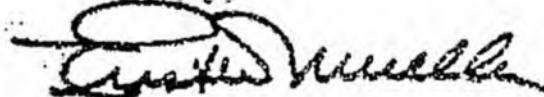
In the meantime we will open direct communications with the various marine insurance concerns, offer them our opinion as to the interpretation of the law and secure a definite answer as to their intentions in this matter.

Because it is important to conclude this matter as quickly as possible we will hold to the following schedule:

- May - June
1. Issue Department of Law legal opinion. May 13.
  2. Open communications with marine insurance underwriters.
  3. Establish marine underwriter's position and intentions.
  4. Receive information from tank barge operators (as above).
- July - August
1. Make evaluations of various methods of showing proof of financial responsibility and/or
  2. Secure and evaluate any additional information necessary.
- September
- Issue official findings on the ability of certain operators to comply with the provisions of AS 46.04.040. Proof of Financial Responsibility.

Depending on meetings with the different parties concerned, availability of information and other unknown factors, this schedule will be flexible. However, we intend to make findings on these matters at the earliest possible time. Until we issue those findings, we will not refer any cases of non-compliance with AS 46.04.040 and subsequent regulations to the Attorney General's office for prosecution. Again, it should be clear that this does not relieve anyone from the responsibility for compensating those damaged from oil spills or from the requirement to clean up any spilled oil.

Sincerely,



Ernst W. Mueller  
Commissioner

cc: Doug Mertz, Department of Law  
Distribution List -- Tank Barge Operators

*office copy*

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600 / POUCH J - JUNEAU 0011  
August 11, 1982

Mr. William D. Lawrence  
Manager, Pacific Coast Office  
Transportation Institute  
201 Second Avenue, Room 1502  
Seattle, Washington 98104

Dear Mr. Lawrence:

This is a follow up of our May 21, 1982 letter to the Transportation Institute regarding the problem of non-compliance with AS 46.04.040.

We are gravely concerned that both the citizens and the resources of the State of Alaska are not receiving the protection that was to have been afforded them by AS 46.04.040. Since January 1, 1981, many oil barges have been operating in State waters without furnishing proof of financial ability to respond to damages caused by the accidental discharge of oil.

After several discussions and meetings over the past months, we concluded that positive and definitive steps would have to be taken by both the barge operators and the State to resolve this problem. These were presented to you in my May letter. The State has now accomplished several of these tasks and has gone one important step further. This was to hire a contractor who soon will investigate the entire set of circumstances associated with the financial responsibility statute, including reasons for non-compliance.

In my letter I requested that barge owners and operators individually furnish this department with detailed explanations of why it is not possible for them to obtain insurance, self-insurance, surety bonds or guarantees. To this date we have not received a single response, even though we asked to receive this information in the months of May and June. I was concerned to hear that the Transportation Institute has done very little to urge the barge owners and operators to respond to our request for information.

Please recall that the commitment we gave the operators was conditional upon their taking measures to obtain liability coverage. We expect firm and tangible evidence of these measures in the form of correspondence, as an example. A mere verbal communique is entirely inadequate and will not be acceptable. Also, we expect that all four provisions for demonstrating financial responsibility be investigated by the operator and evidence of that investigation be sent to us for evaluation. For example, this might take the form of audited balance sheets to manifest the self-insurance option.

Mr. William D. Lawrence

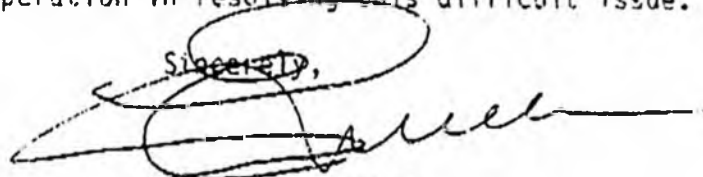
Page 2

August 5, 1982

As I mentioned previously, the contractor will start his investigation very shortly and one of his tasks involves review of evidence of efforts to obtain liability coverage. Failure to obtain adequate evidence from this review could result in our reevaluating our current agreement to withhold referring cases to the office of the Attorney General.

Once again, we urge your cooperation in resolving this difficult issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ernst W. Mueller", written over the word "Sincerely,". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ernst W. Mueller  
Commissioner

cc Doug Mertz  
Barge Operators



# 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 phenomema 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.

REGIONAL CITIZEN ADVISORY COMMITTEE

March 12, 1990

Representative Curt Menard  
P.O. Box V  
Juneau, AK. 99811

Dear Mr. Menard:

Attached is some information about the Regional Citizen's Advisory Committee (RCAC) and a memorandum with regards to our positions on pending State Legislation. Our Legislative Sub-Committee will be working to develop position papers, testimony, and in some cases specific language for oil spill related bills. The fifteen directors of RCAC look forward to working with the legislature as well as the oil industry to put in place the best laws possible to prevent, respond to, and mitigate the impacts from future oil spills.

Thank You.



Tim Robertson  
V.P. Oil Spill Prevention & Response

TR/ph  
cc: Marilyn Hyman

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THE FOLLOWING REPORT, AS CORRECTED, WAS APPROVED BY THE RCAC ON MARCH 9, 1990

Memorandum -- 9 March 1990

To: RCAC

From: Legislative Subcommittee

Your legislative subcommittee recommends RCAC take a supporting position on the following legislation:

1. SB359/Comparable House Measure

Establishes \$10 million within the Sec. 470 funds to support social and economic needs of a municipal response to a spill, through DCRA.

RCAC would support the efforts of the Oiled Mayors. In our statements, we would remind people of our stand that we feel the Alyeska plan, as submitted, is inadequate because it does not address social and economic impact of a spill.

2. SB 497/HB 409

Part of the Governor's oil spill package, the bill strengthens DEC access to terminal facilities, allows for administrative penalties, changes methods for compliance orders and provides for environmental audits.

The bill has passed committees of referral in the House and awaits floor action.

RCAC should support the legislation, as it brings Alaska environmental law in step with the rest of the country and strengthens RCAC's access.

In doing so, we should support proper funding and staffing of DEC for enforcement of this law and laws they already have.

3. SB504/HB567

The bill, submitted by Gov. Cowper and the Oil Spill Commission, would raise the standard for mandatory response plans. RCAC should support the bill with the following additions or caveats:

a. The bill should mandate prevention as well as response in contingency plans.

b. RCAC's should be recognized as a part of both the review of a

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**RCAC Legislative Subcommittee Report -- page two**

plan and as essential to the operation of any plan. This is a good place to further mandate agency cooperation with citizen's advisory committees. We feel this legislation, if sufficiently modified, is the best way to tackle the concerns behind the Resources Committee bill draft that would create RCAC's on the state level.

c. On the bill's most controversial provision, we suggest the RCAC support language which would have a spill contained within 72 hours and picked up within the shortest possible time. Language also implies that immediate response is not required under the law, and we should clarify that language. Finally, on the issue of "realistic maximum discharge" vs. "most probable discharge" we support the former in concept, but believe RCAC should review this specific language further until we better understand the effect it would have on the current plan.

d. We would like to see the bill mandate legal and social and economic provisions of a prevention/response plan, and to see the DEC-Alaska agreement on handoff of a response to a spiller recognized and clarified in the law.

e. We should note in testimony that several parts of the current law seem not to have been enforced by DEC, and use that to support a strong fiscal note for this provision, including funding of community review of response plans.

4. The RCAC will follow HB 565, SB 502, SB 503, HB 566, HB 315, HB 316 and legislation concerning citizens advisory committees and citizens suits. We will gain committee concurrence before taking a position.

5. Resources required: For the amendments we propose to SB 504/HB 567 we will attempt to have an amendment written by legislative staff but may wish to hire drafting counsel and to bill back some secretarial time. We wish to have the ability for a member of the committee to be in Juneau at immediate notice. We will teleconference with the RCAC as a whole if any change from these positions is required. We do not believe a retained lobbyist is required. We would welcome participation from anyone on the committee not currently on the subcommittee.

Position papers we prepare on these issues will be distributed to RCAC members in advance of use in order to involve our constituents in the process and to keep them up to speed.

Pending approval of Messrs. Walker and Butler, Tim Robertson will serve as co-chair for state legislation. Mead Treadwell will serve as co-chair for federal legislation. RCAC will plan to have someone in Juneau during the session's last week.

## REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee (RCAC) offers the best chance for the public to influence oil industry operations in this state. The RCAC is The Alaskan version of the successful system of citizen participation in the formulation of oil storage and transportation policy in the remote Shetland Islands of Scotland.

The formation of an interim RCAC, originally named the Alyeska Citizens Advisory Committee (ACAC), was initiated by the Alyeska Pipeline Service Company in June, 1989. Alyeska was responding to the need for citizens' participation in the process of formulating an effective oil spill prevention and response plan for Prince William Sound, as required by Alaska Department of Environmental Conservation in aftermath of the Exxon Valdez grounding.

The 15 committee members represent the communities of Prince William sound, the Kenai Peninsula and Kodiak Island, as well as fishing, conservation, aquaculture and native groups. No member of the committee represents Alyeska or the owner corporations.

As a fully independent entity, this interim committee has vigorously pursued its goals. The RCAC has begun its review of the Alyeska Oil Spill Response and Contingency Plan, and has taken on the additional responsibilities of monitoring the Alyeska Pipeline Terminal in order to help ensure its environmentally correct operation and the safe shipping of North slope Crude through Prince William Sound.

To guarantee the continued existence of a citizens advisory group, the committee is now in the process of developing bylaws and articles of incorporation as a nonprofit corporation, as well as negotiating a contract between RCAC and Alyeska for the permanent committee.

The interim committee has also involved itself in federal oil spill legislation. Most recently, RCAC modified Senate legislative language mandating a citizens advisory committee system, and in November sent a three-member subcommittee to Washington, D.C., to support the inclusion of this language in oil spill legislation before the House of Representatives. The concept of the advisory committee was introduced in the Senate by Senator Murkowski as a section of the oil spill liability bill passed in August.

The advisory committee language supported by RCAC was attached by Representative Young to the Coast Guard appropriations bill passed in October, rather than to the House version of the oil spill liability bill. The advisory committee language was later dropped from the legislation in conference, but Rep. Young's action succeeded in bringing the issue to the fore in the House, which is now on record as strongly supporting the concept. Senate and House members are expected to conference in March on the oil spill bill, chances are good that the Citizen Advisory Legislation will be part of the final bill.

The RCAC legislative subcommittee is planning to work towards better State Legislation related to Oil Spill Prevention and Response as well as Oil Spill Impact Mitigation. With its regional representation and independent status, the RCAC can add legislative refinements based on knowledge gained through real involvement.

The RCAC can act as an effective watchdog to the oil industry in Alaska. The first line of defense against oil spill or oil-related impacts is prevention. This is the field of endeavor which will be actively pursued by the environmental and technical subcommittees to be appointed by the RCAC. In addition, the RCAC will interact with federal and state regulatory agencies on an ex-officio basis.

## ACAC MEMBERS

March 1, 1990

3/2

NAME	ADDRESS	PHONE	FAX
GEORGIA BUCK CITY OF WHITTIER	CITY OF WHITTIER P.O. BOX 608 WHITTIER, AK 99893	472-2327(WK)	472-2404
JIM BUTLER PENINSULA BORO. REP	144 N. BINKLEY AVE SOLDOTNA, AK 99869	262-7815(WK) 283-5633(HM)	262-1892
CHARLES CHRISTIANSEN MAYOR LARSEN BAY	BOX 8 LARSEN BAY, AK 99815	847-2203	
WAYNE COLEMAN KODIAK ISLAND BOROUGH	710 MILL BAY RD KODIAK, AK 99815	486-5738	486-2886
CHRIS GATES CITY OF SEWARD VP-PORT OPS/ VTS	5th & ADAMS BOX 167 SEWARD, AK 99864	224-3331(WK) 224-8867(HM)	224-3248
MARILYN LELAND C.D.F.U. SECRETARY	BOX 939 CORDOVA, AK 99574	424-3447(WK) 424-7778(HM)	424-3430
JOHN McMULLEN PSWAC	PWSAC OFFICE CORDOVA, AK 99574	424-7511(WK)	424-7514
STACIE PASCAL CHUGACH ALASKA CORP.	3000 A STREET SUITE 400. ANCHORAGE, AK 99503	563-8866(WK)	563-8402
TIM ROBERTSON CITY OF SELDOVIA VP-O.S.R.	DRAWER B SELDOVIA, AK 99823	234-7469(WK) 234-7491(HM)	234-7430
ANN ROTHE NAT'L WLD. FEDERATION CHAIRPERSON	750 W. 2ND AVE SUITE 200 ANCHORAGE, AK	258-4800(WK)	258-4811
LESLIE SMITH  KODIAK CITY	710 MILL BAY RD. KODIAK, AK 99815	486-8642(WK)	486-8600
MARGE TILLION CITY OF HOMER	P.O. BOX 835 HOMER, AK 99603	235-7085(HM) (CITY)	235-7085 235-3140
MEAD TREADWELL P.O. BOX CORDOVA VP-SCIENCE	P.O. BOX 111 CORDOVA, AK 99574	424-0200(WK) 424-0200(HM)	424-0000
RILL WALKER CITY OF VALDEZ TREASURER	509 W. 3rd AVE. ANCHORAGE, AK 99501	263-8251(WK) 274-7522(WK)	263-8320
JADON WELLS CITY OF SELDOVIA VP-TERM/ENV.	P.O. BOX 117 SELDOVIA, AK 99823	895-4874(WK)	

*Ray Gillespie*  
*Gillespie & Associates*  
*Lobbying & Governmental Affairs*



Please reply to:  10390 Mendenhall Loop Road  215 Fidalgo Ave., Suite 201  
Juneau, Alaska 99801 Kenai, Alaska 99611  
(907) 463-3375 (907) 283-5405

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

*MARILYN*

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?

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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.

Alaska Rural Electric Cooperative Association  
Comments Regarding  
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain \$50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association  
Nome Joint Utilities  
Nushagak Electric Cooperation (Dillingham)  
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, \$50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for \$1 million. Quotations for pollution liability insurance policies with very restricted coverage have ranged from \$23,000 to \$45,000 per year each.

Nushagak Electric presently maintains a \$1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of \$23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

\* Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.

To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than \$2 million, and its annual revenues are about \$2.4 million. Approximately \$2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require \$1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The \$1,000,000 requirement for these very small utilities would be as impossible as the \$50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.



**SAUPE ENTERPRISES, INC.**  
 P.O. BOX 70510  
 FAIRBANKS, AK 99707

FAX TRANSMITTAL RECORD

FAX NUMBER - (907) 452-1033  
 Telephone - (907) 452-1238  
 Date Mar. 8 1990

TO: House Resources Committee ATTN: \_\_\_\_\_  
 FAX# % Rep. Sharp (Gloria) SUBJECT: H.B. - 567  
1-465-2294

(#Pages Sent: This plus one)

Message: Testimony offered to members of the House Resource Comm. relative to H.B. - 567:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years.

I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It is heartening to me, *and to others like me,* to know that you all share the concern, confusion, and uncertainty that we feel regarding H.B. - 567. I applaud any attempts to identify exactly what the Bill will require, and I share your fear that the regulations *may* not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "567" include little operations like my Fairbanks bulk plant! In fact, plants as small as  $\frac{1}{4}$  our size, along with many river barges, would also be put out of business by "567" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically use only about 5,000 Bbls. at any given time.)

The DEC *has* indicated an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "567" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to spill that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as unlikely a scenario as our being able to meet "567"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone our size to even suggest we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "567" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!

Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "567". It would be sheer hysteria for me to even anticipate \$50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The \$50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the \$1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of \$500,000 but the additional premium for just the  $\frac{1}{2}$  million extra was \$53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received ~~Monday~~ from my insurance broker: Quote:

"The limit of \$50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!

*B. Saupé*  
Bernie Saupé

PETRO STAR INC.

Telephone (907) 488-0730  
Telecopier (907) 488-9057  
TELEX 36-686

P.O. Box 56239  
North Pole, Alaska 99705

**Walt Schlotfeldt**  
President

March 7, 1990

Mr. Curt Menard  
Co-Chair  
House Resources Committee  
Alaska State Legislature  
P.O. Box V (M-3100)  
Juneau, Alaska 99811

RE: HB 567

Dear Chairman Menard:

I would like to preface my comments on HB 567 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with HB 567. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from \$2,500 to \$100,000 per day may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific

recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...) appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring applicants for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its area of operation (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in

committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area. What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and equipment as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would

probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have \$50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a \$50 million risk. We currently have \$1 million insurance.

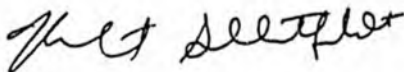
I have highlighted the many concerns I have with HB 567. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under HB 567. Lastly, and most significantly,

Chairman Curt Menard  
March 7, 1990  
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please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide these comments, and would be happy to answer any questions that you may have.

Sincerely,



Walt Schlotfeldt  
President

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

707 A STREET, SUITE 202  
ANCHORAGE, AK 99501  
PHONE: (907) 258-6345  
FAX: (907) 279-4302

Walter B. Parker, Chairman  
Esther Wunnicka, Vice Chairman  
Margaret J. Hayes  
Michael J. Herz  
John Sund  
Timothy M. Wallis  
Edward Wenk, Jr.

March 6, 1990

MEMORANDUM

TO: Chairperson Drue Pearce, Special Committee on Oil & Gas  
Committee Members

FROM: Walter B. Parker *WBP*  
Chairman

I appreciate the offer to testify at length on the Governor's bills and our recommendations at some future date. After listening to the testimony offered on Monday, March 5, by Alyeska, ARCO and the State, I have the following specific comments:

Ability to Respond to Worse Case Scenarios

Mr. Asplund of ARCO stated a worst case would be 1.8 million barrels for Prince William Sound, exactly the figure I would use. What was not offered by industry was how do we achieve this figure. It can only be done by a regional response plan which brings in the capabilities of all concerned--industry, state, and federal.

The following have been offered:

Alyeska 10K barrels per hour name plate capacity. Allowing for 35% best case recovery in 72 hours	252,000
ARCO, per testimony, with a 24-hour lag to allow for mobilization from West Coast	250,000
Other five Alyeska owners	<u>(unknown)</u>
Barrels	502,000

The above figures are for containment and best case recovery situations, ie. less than six foot sea state and no more than 1 knot currents.

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Senator Pearce  
Mar 6, 1990

ARCO's proposed 70,000 ton skimmer could be built to recover 25,000 barrels per hour based on it having half the capacity to pump oil out of the water that is common at the Valdez terminal for pumping oil into tankers. This would have a capacity of 600,000 barrels per day and allowing for a 35% best case recovery rate, it would recover 630,000 barrels in 72 hours. Our total best 72-hour case recovery is now 1,132,000. Thus the remaining question is how to make up the 670,000 barrel difference. Allowing for 20% evaporation of the light ends during this period, or 360,000 barrels, we can see that we are approaching our goal and have 310,000 barrels remaining for which capability must be demonstrated. Here is where the API/PIRO response may come in, also federal response from the Navy, the Corp of Engineers, the Coast Guard, and if necessary further Alyeska response. In any case, by a combination of new technology already being proposed by ARCO and by accumulation of other sources into a regional response plan, we have come close to a creditable "worst case response" capability.

The next question is why must this response be mounted in 72 hours. If you examine the oil spill simulations in our report, you will note that it is after 72 hours that the greatest impact on the beaches occurs. Once the oil is on the beach, the Commission considers the battle lost. Therefore, our strong recommendations are on the immediacy of the response efforts.

As our report shows, Exxon Valdez is only 34th on the list of 65 great oil spills. Thus, the possibility of spills where the entire tanker load is lost, 1,800,000 barrels for Prince William Sound or 500,000 barrels for Cook Inlet, is still a very real worst case situation.

There are presently 94 tankers licensed for operation into Alaskan ports. Only 10 are covered by Alyeska's present plan for a "worst case" loss; 43 are covered by combining the Alyeska and ARCO plans, adding the large skimmer as described covers 70 tankers leaving only 24 uncovered.

What are the costs of achieving this level of protection, remembering we are only achieving worst case protection by mechanical containment and recovery in good weather conditions? The costs included here are estimated by me based on our contractors estimates for similar equipment.

#### One Time Costs

Alyeska Costs (already committed but no cost breakdown yet provided, so this is my estimate	\$60,000,000
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Memo  
Senator Pearce  
March 6, 1990

ARCO Costs (less 4 ERV and 4 other vessels in Alyeska Costs, note that this system serves entire West Coast	\$ 32,000,000
70,000 Ton Skimmer Costs (\$93 million for new ship by Commission estimate plus \$20 million for skimmer conversion by ARCO estimates	<u>\$ 113,000,000</u>
1.132.000 barrels in 72 hours recovery	\$ 205,000,000
Full Worst Case, another 310,000 barrels	80,000,000
Full Worst Case Recovery System in good weather	<u>\$ 285,000,000</u>

Annual Costs

Alyeska	\$10,000,000
ARCO	5,000,000
70,000 Ton Skimmer	10,000,000
Additional Recovery	<u>5,000,000</u>
TOTAL	\$30,000,000

Operating costs as above should cover 72 hour initial period but do not cover beach cleanup costs.

Assuming a 10-year depreciation on one time costs, the annual costs for "worst case" mechanical recovery in Prince William Sound are \$58,000,000 or the profits on 5 days throughput at the Valdez terminal.

\*\$6 X 9,750,000 barrels

\*From Deakins Report

Now the question is, what is the cost of "worst case recovery" in bad weather. The present options are burning or dispersants. Future options may include gelling agents as described in our report. The costs of bad weather treatment are:

Burning, the loss of the ship and cargo	
250,000 T Tankers, new	\$192,000,000
cargo 1.8 million barrels @ \$20	<u>36,000,000</u>
Total	\$218,000,000
70,000 T Tanker, new	\$ 93,000,000
cargo, 500,000 barrels @ \$20	<u>10,000,000</u>
Total	\$103,000,000

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Senator Pearce  
March 6, 1990

The costs of the flights and igniting  
agents plus recovery of crew \$ 250,000

Dispersants: Following the British  
method of aerial application and the  
most favorable 1 to 20 crude to dispersant  
ratio, we require for the worst case  
1,800,000 barrels, some 90,000 barrels  
of dispersant or 3,780,000 gallons  
@ \$3/gal \$ 11,340,000

Costs of 700 C130 flights of 5 hour  
duration or 3,500 flight hours @ \$3500  
per hour\* \$ 12,250,000

Worst Case by dispersant \$ 23,590,000

Gelling agents: This method is untried, untested, and  
wholly hypothetical. The ratio of 40 to 1, agent to oil,  
is the best known and the costs are in the ballpark of  
what is being paid by the US Navy for gelling agents.

Gelling agents 45,000 barrels, 6,250  
tons or 1,890,000 gal @ \$12/gal \$ 22,680,000

Costs of 350 C130 flights of 5 hours  
duration @ \$3500 per hour\* 6,125,000  
Total \$ 28,805,000

\* Assumes dispersants or gelling agents are located at Anchorage  
or Kenai.

Thus, it is true that the costs of a worst case response are  
large, whatever method is used. The alternative of avoiding it is  
equally costly in the long run. The size of the worst case  
scenario for each region will be governed by how much risks the  
industry places on the region. Exxon Valdez has shown us that the  
area at risk can be very large if response is not immediate enough  
to keep the oil from migrating to near and distance beaches.

#### Need for State Tanker Inspections

Regarding the need for state inspection on board tankers, our  
report details the sorry history of how the Coast Guard backed off  
after 1979 when the Alyeska owners' law suit and later legislative  
action eliminated the state presence on tankers. The Coast Guard  
budget on marine safety, wherein ship inspections lie, was cut 28%  
between 1982 and 1989. Allowing for inflation this was a real cut

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March 6, 1990

of 40%. The fleet, meanwhile, aged another 7 years, with only two new additions Exxon Valdez and Exxon Long Beach being added in this period. Thus, inspections dropped as the ships got older. The Coast Guard testified at length about its concerns with increasing hull fatigue before House Resources on January 24. Despite this concern of the Coast Guard, I view the chances of major budget increases in marine safety as small unless the initiatives come Congress.

REVIEW AND COMMENTS  
ON  
ALYESKA PIPELINE SERVICE COMPANY  
PRINCE WILLIAM SOUND  
TANKER SPILL PREVENTION AND RESPONSE PLAN

BY  
THE REGIONAL CITIZENS ADVISORY COMMITTEE

MARCH 24, 1990

The "ALYESKA PIPELINE SERVICE COMPANY PRINCE WILLIAM SOUND TANKER SPILL PREVENTION AND RESPONSE PLAN FOR PRINCE WILLIAM SOUND", published January 30, 1990, will be referred to hereinafter as the Plan. The comments contained in this document relate only to the main body of the plan. A review of the appendices and resource documents will be submitted under separate cover.

The Regional Citizens Advisory Committee (RCAC) is a non-profit corporation of 15 members. The members represent the communities of Prince William Sound, the Kenai Peninsula and Kodiak Island area as well as fishing, aquaculture, environmental and native groups of the region (membership list attached). No member of the committee represents Alyeska or the owner companies. This Committee represents various communities, governing bodies and both statewide and national organizations. The comments made by RCAC in this document are made on behalf of the Committee as a whole and not as a specific statement of the individual organizations represented. Lack of comment on sections of the Plan by this Committee should not be viewed as an acceptance of those sections by each represented community, governing body or organization.

The tragedy of the EXXON VALDEZ has made us aware of the risks of oil transportation across our sounds and along our coasts. We, the citizens of the region, have the most at stake if this Plan fails. Therefore we have the most cause for vigilance in the process that protects our communities, fishing grounds, subsistence use area, air, water and playgrounds. We are committed to working with the oil industry, the state and federal agencies and the legislative bodies to make the transportation of oil through Prince William Sound the safest and most environmentally sound system of its kind in the world. The members of the RCAC feel strongly that the citizens of the region directly impacted by the EXXON VALDEZ must have a role in the prevention of, planning for and response to future oil spills and other environmental impacts from the oil industry.

Since the RCAC was formed in June 1989 we have devoted over 5,000 volunteer hours to deal with organization, acquainting ourselves with Alyeska's operations and reviewing its Plan. It became very

apparent to us is that the task of preventing and responding to tanker oil spills must be a team effort which required active cooperation of and participation by Alyeska, the owner companies, the shippers, the marine pilots, the United States Coast Guard (USCG), the Alaska Department of Environmental Conservation (ADEC), legislators and the citizens of the region, among others. To this end our comments are not directed exclusively to Alyeska, but also to the team that must work towards prevention and response.

This review begins with some general comments and an overview of issues about which the RCAC feels strongly and progresses into a section-by-section review of the Plan. We hope Alyeska and the regulatory agencies will find our review useful. The Committee is dedicated to being a continuing part of development and implementation of this Plan.

OVERVIEW

The final report of the Alaska Oil Spill Commission on The Wreck of the Exxon Valdez has the following to say about contingency plans:

"A contingency plan bridges idea and action to be taken in the event of an oil spill. As will become apparent, a plan exists on paper that can be evaluated intellectually. Personnel and equipment to implement it are real and can be examined and evaluated together only through spill drills or with actual spills. Then is when the bridge between idea and action is supposed to be crossed. Both preparation and execution contribute to the result."

In order to cross the bridge from idea to action successfully, Alyeska and the rest of the team must prepare for and practice responding to spills. This must be a process which is removed from corporate concerns over profits and future liabilities for oil spills. A contingency plan should represent the best efforts of oil spill prevention and response experts to plan for spills.

The RCAC would like to compliment Alyeska for adopting the Incident Command System (ICS) for management of future oil spills. We feel that, if the ICS system is properly implemented, it will provide the best chance for a integrated response to oil spills. The RCAC also acknowledges Alyeska's use of Escort Response Vessels and Tugs. These vessels provide a good measure of prevention and the most immediate response possible. Alyeska's initial response system may very well be the best in the world.

Alyeska has assembled some of the world's leading experts in oil spill prevention and response to draft their Plan and implement it. The RCAC acknowledges these experts and respects their opinions on these technical subjects. However, it is apparent this Plan has

been treated as a legal document, not a technical document; and, therefore, it fails to provide the bridge from the oil spill experts to the action which is required. RCAC recognizes that Alyeska and its owner companies are currently in litigation for alleged non-performance relating to the March 24, 1989 oil spill. It appears certain portions of the Plan are missing because they may impact current litigation. We believe it is incumbent upon ADEC and other regulatory agencies to insure that all pertinent information and actions are included. The Committee feels strongly that oil spill prevention, response and clean-up should remain paramount to any legal aspects and impacts of the Plan.

When Alyeska first started assembling the Plan, it indicated to the RCAC that the Plan would cover all aspects of spill response: from the first drop of oil hitting the water, through the entire cleanup, to the response to community socio economic impacts, and environmental mitigation. The Plan has evolved to a three day plan of initial response, which will then be handed off to the spiller which may function under an entirely different plan. The Committee foresees that a vacuum of clean-up responsibility will likely develop after the initial 72 hours of response. The RCAC strongly opposes this evolution. We feel there should be only one plan which will cover all aspects of spill prevention and response. This one Plan would be followed no matter which member controls the team.

It is incumbent upon this Committee to point out to the public and our constituency that this Plan is limited in geographic area and time. It does not provide a plan which covers the gamut of risk that oil transport puts on the State of Alaska. It is the recommendation of this Committee that a larger, all encompassing plan be drafted which includes the areas excluded in this Plan. The larger Plan should include tanker owner plans, PIRO, and state and federal agencies. ADEC should be responsible for overseeing the development of a comprehensive statewide "umbrella plan" into which the Alyeska Plan should be integrated with other contingency plans covering areas outside of Prince William Sound and beyond Alyeska's 72-hour response.

When Alyeska began to assemble this Plan, it said the areas outside Prince William Sound that were impacted by the EXXON VALDEZ oil spill would be covered by the Plan. The Plan as submitted has no provisions for protective booming or skimming systems outside Prince William Sound. The Plan does not address any critical habitat or communication systems outside the Sound. Yet, the Plan states "there will be few circumstances in which a catastrophic spill can be substantially contained and removed". We already know where a spill not contained or removed will go. RCAC feels strongly that the Plan must address and prepare a response to spills from within the Sound which migrate out of the Sound. Likewise, we feel the Plan should cover TAPS trade spills that occur outside Prince William Sound which may impact any of the coasts of Alaska.

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Alyeska has assembled some of the world's leading experts in oil spill prevention and response to draft their Plan and implement it. The RCAC acknowledges these experts and respects their opinions on these technical subjects. However, it is apparent this Plan has been treated as a legal document, not a technical document; and, therefore, it fails to provide the bridge from the oil spill experts to the action which is required. RCAC recognizes that Alyeska and its owner companies are currently in litigation for alleged non-performance relating to the March 24, 1989 oil spill. It appears certain portions of the Plan are missing because they may impact current litigation. We believe it is incumbent upon ADEC and other regulatory agencies to insure that all pertinent information and actions are included. The Committee feels strongly that oil spill prevention, response and clean-up should remain paramount to any legal aspects and impacts of the Plan.

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The Committee feels the premise contained in the Plan that "there will be very few circumstances in which a catastrophic spill can be substantially contained and removed" unacceptable. We believe Alyeska must adequately prepare for the catastrophic loss of an entire cargo of the largest tanker calling at the terminal. It is our intention to provide Alyeska with recommendations for incremental increases in response capacity until such a contingency can be adequately managed. This response capacity must include not only nameplate containment and skimming capacity, but must include strategies for effectively utilizing that capacity.

The RCAC believes it is more important to be able to manage and deploy 30,000 feet of boom and 10,000 bbl/hr. of skimming capacity than to own 50,000 feet of boom and 200,000 bbl/hr. of skimming capacity that is ineffectively utilized.

The RCAC feels the Plan must clearly state that the first response priority is to remove spilled oil from the water. This takes precedence over removing oil from the beaches or dispersing it with chemicals. It should also be make clear that economics are not the criteria by which spill response decisions are made.

PREVENTION is the most important section of the Plan. Yet many of the most important preventative measures are outside Alyeska's control or are not addressed. The RCAC feels crude oil should not be shipped when there is no possibility for mechanical recovery from the water. The ability to respond to oil spills in various seasons and conditions of wind, sea state, ice and darkness needs to be evaluated and quantified. Restrictions to shipment of crude oil need to be implemented based on this data. Other preventative measures, such as restrictions of vessels with a pollution history,

In addition, the RCAC feels the public review process has been shortchanged. Meetings were held in communities at a time when few people had an opportunity to review the Plan upon which they were being called to comment. Tape recordings were being made of the meetings, but there were not plans to transcribe the comments and no one appeared to be taking notes. The Committee is concerned that although many local citizens took the time to make their comments, those comments cannot be considered by ADEC because of a lack of a record.

Once the Plan is approved, ADEC and the USCG must be adequately funded, staffed and directed to monitor implementation and results of the Plan. Safeguards must be installed to prevent complacency and cost cutting measures from removing or weakening the Plan.

#### TEAM WORK

RCAC is very concerned about the current relationship between the parties which must work together to effectively prevent and respond to oil spills. At present, the members are fragmented and in adversarial roles. The tanker owners, the marine pilots, the Coast Guard and the ADEC have to become part of the planning process. Let us all commit to working together to provide the best system of protection for the Alaska coastal environment and communities.

Statement of  
Jerry A. Aspland  
President, ARCO Marine, Inc.  
Before the Alaska House Resources Committee  
House Bill 567  
Juneau, Alaska  
March 20, 1990

Dear Chairmen Davidson and Menard:

I appreciate the opportunity to express the views of ARCO Marine, Inc. on House Bill 567, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, is concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills, and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The first is sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying

environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management, all the contingency plans and equipment can not be utilized most effectively.

While ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of HB 567 with which we believe compliance is impossible. Section 1 of HB 567, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish

much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with proposed HB 567, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity to submit comments. ARCO Marine, Inc. stands ready to assist your committee. If you have any questions, I would be pleased to hear from you regarding this statement or any other related subjects.

Jerry Aspland  
President  
ARCO Marine, Inc.



# ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301  
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 29, 1990

Representative Cliff Davidson  
Alaska State House of Representatives  
Pouch V  
Juneau, Alaska 99811

RE: House Bill 567

Dear Representative Davidson:

This letter is in response to your request that I put in writing the essence of the remarks I made to the House Resources Committee yesterday.

My basic point is that increasing the rate of financial responsibility on refined petroleum storage tanks from \$25 to \$35 per barrel may seem like a small change, but it is devastating to some of the rural utilities I represent.

## Kotzebue Electric Association

One Example is Kotzebue Electric Association, which has 51,190 barrels of tank capacity. Under present law, they must demonstrate financial responsibility of \$1 million. Under the draft CS for HB 567 considered on March 27, their requirement would increase to \$1,279,750 (\$25 per barrel). Under the draft CS considered yesterday, their requirement would be \$1,791,650 (\$35 per barrel). We swallowed hard and decided not to object to this feature of the March 27 draft, but the increase in the March 28 draft is more than they can reasonably do.

To satisfy the \$35 per barrel requirement, with an insurance policy, Kotzebue Electric would have to buy a \$2 million policy. I estimated the cost of such policy based on the assumption that they would have a peak of 2.1 million gallons of fuel in storage. The current rate on the first \$1 million of coverage is 2.1 cents per gallon. I estimated the rate on the second \$1 million at 50% of the rate for the first \$1 million. This calculation produces an annual premium of \$66,150.

As I explained to the committee, this policy would cover third party liability only. It would not pay a nickel for cleanup costs for the portion of an oil spill remaining on the utility's own property.

DEMOCRACY IN ACTION

Representative Cliff Davidson  
March 29, 1990  
Page Two

Kotzebue Electric would have difficulty maintaining their present arrangement with the ARECA Insurance Exchange to demonstrate financial responsibility because their net assets are only a little more than \$2 million, and they would have to commit essentially all of their credit to guarantee their ability to pay this one obligation. It would leave no credit for things like buying fuel.

Nome Joint Utilities

Nome Joint Utilities is a second example. Their storage capacity is 80,952 barrels. They presently self-insure their \$1 million financial responsibility.

Under the March 27 draft, Nome's requirement would increase to \$2,047,600. Under the March 28 draft, their requirement would be \$2,873,320. To satisfy this requirement with insurance, they would have to buy a \$3 million policy. I estimated the cost of such a policy based on the assumption that their peak fuel storage would be 3.2 million gallons. The rate on the first \$1 million is currently 2.1 cents per gallon. I estimated the rates for the second and third \$1 million layers at 50% and 25% respectively of the rate for the primary layer. This calculates out to \$117,600 in premiums.

The average cost per consumer per year for these insurance policies would be about \$67 in Kotzebue and \$101 in Nome. Another witness suggested that this doesn't really matter because the state would pay most of the cost through the PCE program. The fact is, PCE pays much less of utility costs than is generally supposed. The portion of the KWH sales which are subject to PCE assistance is 46% in Kotzebue and 43% in Nome. The full cost of the rest of the sales are paid by the consumers.

Cliff, we want to be reasonable, but we urgently ask you and the committee to get the rate for financial responsibility back to \$25 per barrel. After all, that is an increase of 150% from the current rate of \$10 per barrel.

Sincerely,



David Hutchens  
Executive Director

Testimony by Annie McKenzie  
House Resources Committee  
March 9, 1990

HB 567

Mr. Chairman and committee members: My name is Annie McKenzie. I am a small business owner from Seldovia and am currently serving as a volunteer for the Alaska Environmental Lobby. I served as volunteer coordinator for the Seldovia response team during the Exxon-Valdez spill. From that perspective, I'd like to comment on contingency plans in house bills 567.

Contingency plans must prepare for cleanup of total discharge of contents within 72 hours. If this is impossible to achieve, as stated by Jerry Asplund of ARCO Marine (Senate Special Subcommittee on Oil & Gas hearing, March 5, 1990), then the amount of product being transported should be decreased to a level than can be adequately dealt with. The bill must also include language for immediate implementation of contingency plans.

Contingency plans must call for adequate equipment to be stockpiled in strategic locations. Industry testimony earlier this week at Senate Oil & Gas indicated they plan only to list equipment availability. Stockpiling of emergency materials for a worst case scenario became evident in Seldovia & other coastal communities outside PWS during the Exxon-Valdez spill. We built cumbersome home-designed log and seine boom to protect our bays since all available commercial boom was used initially in Prince William Sound.

The industry was also unable to provide sufficient tankerage for waste oil. A modified fleet of Seldovia fishing boats collecting oil off the water was shut down a number of times because barges, we were told, were all being used in Prince William Sound. These are a couple of examples of the lack of preparation by the oil industry for a large spill and the need for stockpiling of materials.

The contingency plan for the area south of Seal Fock calls only for use of dispersants. This is inadequate since weather does not always allow for their use. We should have well-placed stockpiles of equipment and materials along with coast with plans for utilization.

All oil-spill contingency plans should have well-developed

methods for disposing of all collected waste materials. Exxon-Valdez waste was disposed of in landfills outside the state, a method which threatens purity of groundwater, and by incineration, a method which releases dioxins and furans into the environment. Dioxins and furans are some of the most powerful and deadly toxins known. Minute amounts of these chemicals are known to cause cancer, birth defects, and immune deficiency responses. They are fat soluble, remaining in the food chain from the smallest organisms up through fish and mammals to humans. Incinerating away from populated areas does not protect humans from their damage, since contaminated fish may travel long distances before being caught and consumed. The purity of Alaskan fish and the health of consumers should not be placed at risk by incineration of oily waste.



Containment of a spill within the dike area prevents spread and further harm from a spill, however, in remote areas of the state it may not be reasonably possible to secure enough equipment and manpower to remove that spill from the dike area within 72 hours. What will HB 567 require? /an }

4. The latest committee substitute requires that a barge have sufficient equipment to cleanup a spill equal to the maximum capacity of the vessel or barge within 72 hours. Is it realistically possible to carry sufficient equipment and manpower on a barge to accomplish this? Delta Western has two million gallon barges which ply the Alaska waters. We are attempting to find out exactly with more precision what this requirement will mean in terms of manpower and equipment.

5. The committee substitute of 3/27/90 stated a financial responsibility requirement of a storage tank facility in excess of 5,000 barrels of \$25.00 per barrel for the first 80,000 barrels and \$50.00 per barrel for each barrel in excess of 80,000 barrels. The companies are currently attempting to work with their insurance companies to find out if such coverage is available.

However, the 3/28/90 committee substitute has changed that to \$35.00 per barrel financial responsibility requirement for non-crude oil storage terminal. We have not yet had the opportunity to work with the insurance industry yet on the latest CS.

6. The term "properly implemented" should be further defined so that companies know with more precision what equipment and manpower will be required to meet the contingency plan approval requirements.

Attached is a copy of the recommendations made by Mr. Clancy Phillipsborn, the author of Appendix G. Appendix G to the Alaska Oil Spill Commission Report recommends, among other things, that the Legislature review the analysis of the civil penalty scheme for oil spill liability and compensation in Alaska which was done as a master thesis at the University of Washington, Institute of Marine Studies. In addition, it recommends a review of pending Federal Legislation which may accomplish similar goals, those of the Alaska Legislature in defining a liability and compensation system.

March 29, 1990  
Page Three

Again, my clients are prepared to work with the Committee to draft a reasonable bill. These operators share the concern for implementing the highest level of safety procedures and prevention techniques, however, they must register objection to hastily conceived legislation.

Attachment

# MEMORANDUM

# State of Alaska

TO: Bob Evans  
Deputy Chief of Staff  
Office of the Governor

DATE: March 16, 1990

FILE NO.:

THRU: TELEPHONE NO.: 465-2600

SUBJECT: Oil Spill  
Legislation

FROM: Amy D. Kyle *AD Kyle*  
Deputy Commissioner  
Department of Environmental  
Conservation

We have further analyzed two issues related to the oil spill legislation that we discussed briefly at our session with the Governor last week. (We have also prepared a more detailed briefing memo on issues related to financial responsibility and contingency plans for the governor) A separate memo on the issue of onshore facilities is being prepared for Denby Lloyd.

The two issues addressed herein are the "72 hour" requirements for contingency plans and an issue related to dollars per gallon penalties that has arisen during hearings on these bills.

1. 72 hours - As you will recall, the original proposal for oil spill contingency plan legislation included a requirement that the plans address a "worst case" spill in 72 hours. The provision for "worst case" was changed to "maximum realistic discharge." The provision for a timeframe for planning was dropped.

During the discussion last week, it appeared that the reason for dropping the 72 hour provision was a concern that the language, as written, did not appear to be a design standard but rather a performance standard. There was a concern about whether a spill could be always be cleaned up in 72 hours.

To address this, we have, with the assistance of the Department of Law, drafted language that would rectify this issue and make it clear that the 72 hour requirement is a design standard for contingency plans. This language is attached as item 1. We are seeking your concurrence to go forward with this language.

2. Dollars per gallon penalties - During the hearings on the oil spill legislation package, concerns about the "dollars per gallon" penalties for non-crude oil spills have been raised. To respond to these concerns, we would propose

to reduce the dollar amount of the penalties for non-crude oil spills from what has been proposed in the current legislation to levels that are close to what was adopted last year for crude oil. This language is attached as item 2. We are seeking your concurrence to go forward with this language.

The House Resources Committee is planning to mark up this legislation this weekend and move it next Tuesday. For our thoughts to be of help to them, we need to decide how to proceed today. We appreciate your assistance.

cc: Denby Lloyd, Special Staff Assistant  
Jeff Bush, Department of Law  
Rod Swope, Department of Natural Resources

Proposed Amendments to HB 567  
Regarding the "72 Hour" Provisions

1. Revise proposed AS 46.04.030(f) (pg. 2, ln. 17--23) to read as follows:

An applicant for an oil discharge contingency plan required by this section shall maintain in its area of operation, singly or in conjunction with other operators in its area of operation, sufficient oil discharge containment, storage, transfer, and removal equipment, manpower, and resources to immediately contain a realistic maximum oil discharge and to remove that discharge within 72 hours after the discharge. The requirements of this subsection apply for planning and equipping purposes only.

2. Revise proposed AS 46.04.030(h) (pg. 2, ln. 26--pg. 3, ln. 14) to read as follows:

The department may attach reasonable terms and conditions to its approval or modification of an oil discharge contingency plan which the department [IT] determines are necessary to insure that the applicant for an oil discharge contingency plan has access to sufficient resources to protect environmentally sensitive areas, [AND] to immediately contain a realistic maximum oil discharge, and to [,] cleanup [,] and mitigate the oil discharge from the facility or vessel within 72 hours after the discharge [THE SHORTEST FEASIBLE TIME]. The oil discharge contingency plan must provide for the use of the best available technology by the applicant. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of available equipment, supplies, and personnel.

3. Revise proposed AS 46.04.030(j) (pg. 3, ln. 29--pg. 4, ln. 13) to read as follows:

Failure of a holder of an approved or modified oil discharge contingency plan to properly implement the plan, or to have access to the quality or quantity of resources identified in the plan or [AND, IN THE EVENT OF A SPILL] to respond with those resources within the shortest possible [FEASIBLE] time in the event of a spill, is a violation of this chapter for

purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified oil discharge contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

Proposed Amendments to HB 565  
Regarding Dollars Per Gallon Penalties

1. Revise proposed AS 46.04.758(b) (1) (pg. 2, ln. 24--pg. 3, ln. 3) to read as follows:

Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

- (A) \$12.50 per gallon of oil that enters any surface or subsurface freshwater environment;
- (B) \$8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;
- (C) \$6.00 per gallon of oil that enters an unconfined saltwater environment or onto the land or subsurface land of the state.

2. Revise proposed AS 46.04.758(f) (pg. 4, ln. 27--pg. 5, ln. 6) to read as follows:

For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged onto a surface freshwater or saltwater environment or onto the surface land of the state, the court shall deduct the number of discharged gallons of oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, sinking agents, or other means is not considered removal for purposes of this subsection. This subsection does not apply to oil discharged into subsurface water or land of the state.



NORTH PACIFIC FUEL  
P.O. BOX 1487  
KODIAK, ALASKA 99815

Rep. Cliff Davidson  
Juneau Alaska

March 21, 1989

Dear Cliff:

Re: HB 565 and HB 567

I have reviewed the contents of the above mention bills and have a couple of concerns about them.

The areas that concern me the most are Financial Responsibility and Penalties, in regards to refined oil terminals.

BACKGROUND

In Alaska, everything runs on Petroleum Products, fishing, timber, heating homes, airplanes, and automobiles. The fuel distributor (and his oil terminal) play a vital link in basic survival in Alaska.

If laws are passed that make it more expensive for a fuel distributor to operate, the Alaskan consumer is the only one who will pay the bill.

If laws are passed that force the fuel distributor out of business then the Alaskan consumer has no place to purchase the vital products he needs to run industry, heat his home, just basicly survive.

When you get away from the parts of Alaska linked to the Oil Refineries on the Kenai Peninsula (or Fairbanks) by road, Oil Terminals have to be able to be able to supply the city, village or cannery for extended periods of time. So the size of the storage needs to be large.

Costs of ocean transportation increase as the quantity of fuel delivered decrease. Weather conditions can keep a fuel barge from reaching its destination for days, weeks or in some situations all winter. Because of conditions like this the fuel distributor needs to have adequate storage to take a large quantity of fuel and still not be in a "run out" situation.

## FINANCIAL RESPONSIBILITY

There should be a sliding scale attached to financial responsibility. To classify all terminals over a 10,000 bbls the same is grossly unfair. An amount per barrel stored would be more fair, so a facility storing 15,000 barrels would not have the same responsibility as one storing 150,000 barrels.

The legislature needs to consider what is available for Terminals Operators to cover the financial responsibility requirement. We are not all Exxon or Arco with unlimited resources to pledge. To those of us that are Alaskan owned business, this means buying insurance. The coverage may not be available or the price may be out of sight.

At one point a few years ago many dealers were not covered because the coverage was simply not available.

More thought needs to go into the regulations covering Refined Oil Terminals in the State. It is not good government to pass laws that cause extreme hardship and have no solution.

## PENALTIES

The emphasis on penalitys is obviously designed to catch companies like Exxon that do major damage and have lots of money. The net effect of these penalitys on a smaller company (fishing boat, freighter, independent oil company etc) could be devistaitng. A person may not be able to clean up the spill, fix the problem that caused the spill and still pay the penalitys.

## PREVENTION

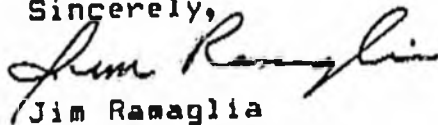
It is important that Oil Terminal Owners keep upgrading their facilities, if we have to put all our resources into paying insurance and saving accounts to pay fines in case we have a problem. There is that much less money to us to make our Facilities more enviromentaly safe.

CLOSING

We need to keep our environment safe and clean for ourselves and our children, but we need to do it in a manner that is reasonable and not destructive to business and consumers. There are only two types of individuals to pay these costs, taxpayers and consumers.

As you make you laws please consult with the industry which will be affected by the laws, the insurance companies which will need to provide the coverage. This will result in a system that works. To many times the legislature will pass a bill that creates an unworkable law.

Sincerely,



Jim Ramaglia  
Vice President

## MEMORANDUM

## State of Alaska

TO: ADEC Staff

DATE: November, 29, 1989

FILE NO:

TELEPHONE NO: (907) 465-2630

THRU:

SUBJECT: Offshore & Productions  
Facilities with Approved  
Proof of Financial  
Responsibility

FROM:

Glenn Adams



The following offshore and production facilities have approved proof of financial responsibility through June 30, 1990.

Owner/Operator Name	Facility Name	Location
Amerada Hess Corp. 1185 Ave. of the Americas New York, NY 10036	Northstar "A" Gravel Island Seal Gravel Island	Beaufort Sea Beaufort Sea
Arco Alaska, Inc. P.O. Box 100360 Anchorage, AK 99510	Prudhoe Bay Topping Plant Prudhoe Bay Oilfield Kuparuk River Oilfield Lisburne Participating Area Swanson River Oilfield Beluga River Oilfield King Salmon Platform Stinsen Exploratory Program	North Slope North Slope North Slope North Slope Kenai Kenai Cook Inlet Beaufort Sea
Amoco Production Co. P.O. Box 800 Denver, CO 80201	Platforms: Anna, Bruce, Baker and Dillon East Foreland Delivery System	Cook Inlet Kenai
Marathon Oil Co. P.O. Box 190168 Anchorage, AK 99519	Platforms: Dolly Varden and Spark Trading Bay Onshore Production- Facility Granite Point Production Facility Resolution Island Steelhead Platform Spurr Platform	Cook Inlet Cook Inlet Cook Inlet Beaufort Sea Cook Inlet Cook Inlet
Phillips Petroleum P.O. Drawer 66 Kenai, AK 99611	NCIU Platform "A"	Cook Inlet

(2)

Owner/Operator Name	Facility Name	Location
Shell Oil Company P.O. Box 2463 Houston, TX 77252	Onshore Gathering System at Middle Ground Shoal Field Platforms: Shell "A" and Shell "C" Goose Island Tern Island	Cook Inlet Cook Inlet Beaufort Sea Beaufort Sea
B.P. America, Inc. 200 Public Square Cleveland, OH 44114	Niakuk Island (Manmade) Well #4 Endicott Development, Main Production Island, Satellite Drilling Island Endeavor Island, SAG Delta #9 Niakuk Island (Natural), Wells 1, 1A, 2, and 2A	North Slope North Slope North Slope North Slope
Union Oil Co. of Calif. 909 West Ninth Anchorage, AK 99501	Grayling Platform Monopod Platform Granite Point Platform	Cook Inlet Cook Inlet Cook Inlet
Union Pacific Resources Company c/o Nortec 750 W. Second Avenue, Suite 100 Anchorage, AK 99501	"Diamond M. Falcon" Jackup Rig at No. 1 WECO-UPRC Cannery Creek 42-36 Exploratory Well	Cook Inlet

567



FACSIMILE TRANSMITTAL



ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
OIL & HAZARDOUS SUBSTANCE SPILL RESPONSE  
9000 OLD GLACIER HIGHWAY, SUITE 200  
P.O. BOX 0  
JUNEAU, ALASKA 99811-1800  
Telephone: (907)465-2630 Facsimile: (907)789-5673

Other ADEC fax numbers:  
Anchorage: 562-4026  
Soldotna: 262-2294

FCO and EH, Juneau: 463-3566  
Fairbanks: 451-6130  
Valdez: 835-8103

To: Marilyn Heiman

\_\_\_\_\_

Attn: \_\_\_\_\_

Fax number: 465-4565

From: Glen Adams

ADEC

Number of pages including cover sheet: 15

Comments:

per request - All tankers, barges, terminals  
and off-shore facilities that have approved forms  
of financial responsibility for FY90

## MEMORANDUM

## State of Alaska

TO: ADEC Staff

DATE: September 19, 1989

FILE NO:

TELEPHONE NO:

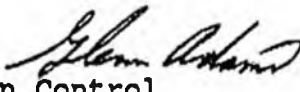
THRU:

SUBJECT:

465-2630

Vessels w/Approved  
Proof of Financial  
Responsibility

FROM:

Glenn Adams   
Oil Pollution Control

The following tank vessels have approved proof of financial responsibility through June 30, 1990 except as noted:

Vessel Owner/Operator <i>MANAGER</i>	Vessel Name	Comments	Financial Responsibility
Amerada Hess Corp. 1185 Ave. of the Americas New York, NY 10036	St. Lucia Mt. Cabrite Seal Island	Taps only Taps only Taps only	Guaranty Amerada Hess
Arco Marine Inc. 300 Oceangate Long Beach, CA 90802-5617	Arco Alaska Arco Anchorage Arco Juneau Arco Prudhoe Bay Arco California Arco Fairbanks Arco Independence Arco Sag River Arco Spirit Arco Texas		Self-insured Arco
Bay Tankers 270 Sylvan Ave. Suite 100 Englewood Cliffs, NJ 07632	Bay Ridge	Taps only	Guaranty B.P. America
America Trading Transportation Co. 555 Fifth Avenue New York, NY 10017	American Trader		Guaranty B.P. America

ADEC STAFF

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September 19, 1989

Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Chevron Shipping Co. 225 Bush St., Rm 1015 San Francisco, CA 94104	Chev. California Chev. Mississippi Chev. Oregon Chev. Washington Chev. Colorado Chev. Louisiana Chev. Arizona	Taps only	Self-insurance Chevron Corp.
Exxon Shipping Co. P.O. Box 1512 Houston, TX 77251-1512	Exxon Benicia " " New Orleans " " North Slope " " Philadelphia " " San Francisco " " Baton Rouge " " Baltimore " " Baytown " " Galveston " " Jamestown " " Lexington " " Long Beach " " Princeton " " Washington " " Valdez " " Yorktown	Taps only "	Guaranty Exxon Corporation
Interocean Management Corporation Three Parkway Suite 1300 Philadelphia, PA 19102	Brooks Range Thompson Pass	Taps only Taps only	Guaranty B.P. America
Keystone Shipping Co. 313 Chestnut Street Philadelphia, Pa. 19106	Antigun Pass Kenai Keystone Canyon Tonsina  Chestnut Hill Golden Gate Kittanning	Taps only Taps only Taps only Taps only  " "	Guaranty B.P. America  Chas Kurtz Co. Inc
Marithon Oil Co. Natural Gas Division P.O. Box 3128 77253 Houston Texas	Polar Alaska Arctic Tokyo	LNG LNG	Guaranty Marithon Oil

DEC Staff

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September 19, 1989

Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Maritime Overseas Corporation 43 West 42nd Street New York, N.Y. 10036	Eastern Lion	Taps only	Guaranty Amerada Hess
	Northern Lion	Taps only	
	Southern Lion	Taps only	
	Western Lion	Taps only	
Overseas New York Overseas Washington Overseas Boston Overseas Ohio	Overseas New York	Taps only	Guaranty
	Overseas	Taps only	
	Overseas Boston	Taps only	
	Overseas Ohio	Taps only	
Overseas Juneau	Taps only	Guaranty/Overseas Shipholding Group	
Mobil Oil Corp. 150 East 42nd Street New York, N.Y. 10017-5666	Mobil Arctic Mobil Meridian Syosset		Self-insurance Mobil Oil Corp.
OMI Corp. 280 Park Avenue New York, NY 10017-1282	OMI Columbia	Taps only	Guaranty B.P. America
Shell Oil Company P.O. Box 2463 Houston, TX 77252	B.T. San Diego E.T. Alaska		Guaranty Shell Oil
Sun Transport, Inc. P.O. Box 2224 Aston, PA 19014-2224	Texas Sun	Taps only	Self-insurance Sun Co., Inc.
	New York Sun	" "	
	Philadelphia Sun	" "	
	Tropic Sun	" "	
	Prince William Sound	" "	
Texaco Marine Ser., Inc. 2000 Westchester Ave. White Plains, NY 10650	Texaco California		Self-insurance Texaco Inc.
	" " Connecticut		
	" " Florida		
	" " Georgia		
	" " Massachusetts		
	" " Minnesota		
	" " Mississippi		
	" " Montana		
	" " New York		
	" " Rhode Island		
" " Brooklyn	Taps only		

ADEC

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September 19, 1989

Vessel Owner/Operator	Vessel Name	Comments	Financial Responsibility
Trinidad Corporation P.O. Box 11787 St. Louis, MO 63105-3721	Admiralty Bay Aspen Glacier Bay	Taps only " " " "	Guaranty B.P. America
West Coast Shipping Company P.O. Box 4258 Los Angeles, CA 90051-2258	Coast Range Sansinena II Sierra Madre		Guaranty Union Oil
Flyum's Barge Ser., Inc. P.O. Box 2838 Homer, AK 99603	Bradley River	Self- propelled barge	Insurance
Western Hemisphere P.O. Box 2401 Santa Monica, CA 90406-2401	Lion of Calif.		Self-insurance Tosco Corporation
White Pass Transporta- tion, Ltd. P.O. Box 4070 Whitehorse, Yukon YIA 3TI	Frank H. Brown	Cargo/ Tanker	Insurance
Marine Transport Lines, Inc. 150 Meadowland Pky. Secaucus, NJ 07096-1550	Various vessels		Military Sealift Command - U.S.N.S.
BP America 200 Public Square Cleveland, Ohio 44114-2375	Various vessels		Guaranty
<i>H.S. Oil Refining Co. P.O. Box 21913 S.A. Cal. 90063</i>	<i>Cove Tanker</i>	<i>" "</i>	<i>Insurance</i>

ADEC

-5-

September 19, 1989

Companies providing guarantees or insurance coverage for spot charters.

COMPANY		Financial Responsibility
Tesoro Alaska Petroleum Company 8700 Tesoro Drive San Antonio, TX 78217	20 M	Guaranty
Petro-Diamond, Inc. P.O. Box 92713-9617 Irvine, CA 92713-9617	20 M	Surety bond
Pacific Resources, Inc. P.O. Box 3379 Honolulu, HI 96842	20 M	Insurance
Petro-Marine Services 1600 A Street, Suite 307 Anchorage, AK 99501	20 M	Insurance
Mapco-Alaska Petroleum Inc. 1800 South Baltimore Avenue Tulsa, OK 74101-0645	20 M	Guaranty
Pacific Fuel Trading Corporation (Japan Air Lines) c/o Alexander & Alexander of Washington 2800 Columbia Center 701 Fifth Avenue Seattle, WA 98104-7074	20 M	Insurance
Astra Oil Company, Inc. 100 Ocean Gate, Suite 940 Long Beach, CA 90802	20 M	Insurance
Chinese Petroleum Corporation c/o Unical International Supply & Trading Co. 1201 West Fifth Street Los Angeles, CA 90017	20 M	Insurance
Wickland Oil Company 2 Embarcadero Center, Suite 510 San Francisco, CA 94111	20 M	Insurance
Cove Shipping Incorporated 200 Virginia Street Mobil, AL 36603		

*U.S. Oil and Refining Co.*  
P.O. Box 36913  
L.O. Co. 90036

20 M Insurance

# MEMORANDUM

# State of Alaska

TO: ADEC Staff

DATE: November 1, 1989

FILE NO:

TELEPHONE NO: (907) 465-2630

THRU:

SUBJECT: Barges with Approved Proof of Financial Responsibility

FROM:

Glenn Adams *Glenn Adams*  
Oil Pollution Control

The following barges have approved proof of financial responsibility through June 30, 1990:

OWNER/OPERATOR	BARGE NAME OR NUMBER	PROOF FOR FINANCIAL RESPONSIBILITY
Crowley Maritime Corporation 101 California St. San Francisco, CA 94111-5875	Satco 10	Surety Bond
	Satco 21	
	S.T. 23	
	Kodiak #1	
	Orca #2	
	14	
	450-10	
	16	
	254	
	B&R 5	
	B&R 80-2	
	120-1	
	160-1	
	BC 151	
	BC 154	
	211	
	213	
	251	
	312-3	
	CINNABAR	
	Cordova	
	McKinley	
	Palmer	
	Juneau	
✓102		
450-3		
450-6		
Satco 20	Surety Bond	
S.T. 22		
Napamute		
EEK		
Oil #1		
17		
500-2		
18		
DB 300		
B&R 80-1		
B&R 80-3		
120-2		
160-4		
BC 152		
210		
212		
218		
255		
Artic Challenger		
PAC 570		
Nikiski		
Ketchikan		
Kodiak		
101		
450-2		
450-4		
450-7		

WNER/OPERATOR	BARGE NAME OR NUMBER	PROOF FOR FINANCIAL RESPONSIBILITY
	<p> <i>CC: 148,282</i>                      450-8  <i>148,502</i> ✓ 450-11                      ✓ 250-10                 </p>	<p> <i>CC: 148,282</i> 450-9                      UT-10                 </p>
<p>                     Foss Maritime Co.                      660 West Ewing Street                      Seattle, WA 98119-1587                 </p>	<p>                     ✓ Foss 256                      Foss 248-P1                      Tesoro                      Energizer                      Foss 255                 </p>	<p>                     Foss Tongass Insurance                      Foss 248-P2                      SEA 76                      Phoenix 121                      HANDELA (2/1/90)                 </p>
<p>                     Boyer Towing Inc.                      7318 4th Ave. So.                      Seattle, WA 98108                 </p>	<p>Callapooya</p>	<p>Kootznahoo Insurance</p>
<p>                     Delta Western                      P.O. Box 102916                      Anchorage, AK                      99501-2916                 </p>	<p>D.W. 282</p>	<p>Self-insured</p>
<p>                     United Marine Tug                      &amp; Barge, Inc.                      1441 N. Northlake Way                      Seattle, WA 98103                 </p>	<p>                     KRS 180-1                      UMTB 180-2                      MLC 260                      MLC 165                 </p>	<p>                     MLC 332                      MLC 333                      ✓ MLC 340-1                      MLC 344                 </p>
<p>                     Seaspan International,                      Limited                      10 Pemberton Avenue                      North Vancouver, B.C.                      V7P 2R1                 </p>	<p>                     Seaspan 822                      Seaspan 824                      Seaspan 870                 </p>	<p>Insurance</p>
<p>                     Yutana Barge Lines, Inc.                      P.O. Box 220                      Nenana, AK 99760                 </p>	<p>                     Riverways7                      Riverways8                      Riverways9                      Riverways10                      Riverways11                      Riverways12                      Frank Turner #1                      Stewart                      Lucky                 </p>	<p>                     Oil Barge 1                      Oil Barge 2                      Oil Barge 3                      Oil Barge 4                      Oil Barge 5                      Oil Barge 6                      Polaris #6                      Barge 17                 </p>
<p>                     Trident Seafoods Corp.                      5303 Shilshole Ave., N.W.                      Seattle, WA 98107                 </p>	<p>NC-S-1</p>	<p>J-S-1 Insurance</p>
<p>                     Knappton Corporation                      P.O. Box 83018                      Portland, OR 97203                 </p>	<p>Palmer</p>	<p>Sitka Insurance</p>

OWNER/OPERATOR	BARGE NAME OR NUMBER	PROOF FOR FINANCIAL RESPONSIBILITY
Exxon Corporation P.O. Box 3342 Houston, TX 77253	Exxon Barge #502	Self-insure
Samson Tug & Barge Co., Inc. P.O. Box 559 Sitka, AK 99835	ANNAHOOTZ	Insurance
Texaco Marine Services, Inc. 2000 Westchester Ave. White Plains, NJ 10650	Valiant/Pennsylvania Victory/Texas (tug/barges)	Self-insure
Smith Lighterage Co., Inc. P.O. Box 106 Dillingham, AK 99576	Skip I	Ray 'Sons
Insurance		
Moody's Sea Lighterage, Inc. Aleknagik, AK 99555	Sealite I	ST 20
Insurance		
Kugkaktlike Limited General Delivery Kipnuk, AK 99614	Chalin	Kangitsuk
Insurance		
Alaska Marine Charters, Inc. 106 110th Place S.E., Suite B Belluvue, WA 98004	Investigator	<i>GT 172147 14,619</i>
Insurance		
Northland Services, Inc. 601 South Myrtle Street Seattle, WA 98124	ZPC 401	Kvichak Trader
Insurance		
Bering Sea Fisheries, Inc. 4413 83rd Avenue, S.E. Everett, WA 98205	King Salmon	Insurance
Brice Inc. P.O. Box 668 Fairbanks, AK 99707	OBS-4000	Insurance
Bering Marine Corporation P.O. Box 3757 Seattle, WA 98124	KC-4	KC-251
Insurance		
<i>White Star Transportation, Ltd. 2-24-80</i>	<i>Alaskan Spirit</i>	<i>Insurance</i>

MEMORANDUM

State of Alaska

TO: ADEC Staff

DATE: November 20, 1989

FILE NO:

TELEPHONE NO: (907)465-2630

THRU:

SUBJECT: Oil Terminal with approved Proof of Financial Responsibility

FROM:

Glenn Adams *Glenn Adams*  
Oil Pollution Control

The following Oil Terminals have approved proof of financial responsibility through June 30, 1990.

<u>Owner/Operator</u>	<u>Fuel Storage Location</u>	<u>Proof for Financial Responsibility</u>
Alaska Pulp Corp. P.O. Box 1050 Sitka, AK 99835	Sitka	Surety bond
Alyeska Pipeline Service Company 1835 S. Bragaw St. Anchorage, AK 99512	Valdez Marine Terminal (TAPS)	Self-insurance and Guaranty
Anchorage Fueling and Service Company 810 "N" Street Anchorage, AK 99501-3243	Port of Anchorage and Anchorage International Airport	Insurance
Crowley Maritime Corp. P.O. Box 2287 Seattle, WA 98111	Captain's Bay Terminal Nome Tank Farm Kotzebue Tank Farm	Surety bond
Chevron U.S.A. Inc. 225 Bush St., Rm. 1015 San Francisco, CA 94104	Anchorage Terminal Valdez Terminal	Guaranty
Kenai Pipeline Company 555 Market Street San Francisco, CA 94120 -7141	Kenai Pipeline Terminal	Self-insurance

<u>Owner/Operator</u>	<u>Fuel Storage Location</u>	<u>Proof for Financial Responsibility</u>
Delta Western P.O. Box 102916 Anchorage, AK 99501 -2916	Dillingham Bulk Plant Juneau Bulk Plant Dutch Harbor Bulk Plant Wood River Tank Farm Naknek Bulk Plant Yakutat Bulk Plant Captain's Bay (offshore)	Self-insurance
Ketchikan Pulp Company P.O. Box 6600 Ketchikan, AK 99901	Ward Cove	Self-insurance
Mobil Oil Corporation 150 East 42nd Street New York, NY 10017-5666	Ketchikan Terminal	Self-insurance
Marathon Oil Company P.O. Box 102380 Anchorage, AK 99510	Trading Bay Production Facility Granit Point Production Facility	Self-insurance
Yutana Barge Lines, Inc. P.O. Box 220 Nenana, AK 99760	Fort Yukon Oil Terminal (Yukon Fuel Inc.) Galena Oil Terminal (Nenana Fuel Co.) St. Michael Fuel Co.	Insurance
Phillips Petroleum Co. P.O. Box 66 Kenai, AK 99611	Kenai LNG Plant	Self-insurance
Reeve Aleutian Airways, Inc. 4700 W. International Airport Road Anchorage, AK 99502-1091	Cold Bay Airport Terminal (Frosty Fuel Company)	Self-insurance
Shell Oil Company 601 W. Fifth Ave., Suite 810 Anchorage, AK 99501	Onshore Gathering System facilities (Middle Ground Shoal Field) Cook Inlet	Self-insurance
Tesoro Alaska Petroleum Company 3380 "C" Street Anchorage, AK	Kenai Terminal Anchorage Terminal Valdez Terminal Fairbanks Terminal	Self-insurance
Texaco U.S.A. P.O. Box 7812 Universal City, CA 91608-7812	Anchorage Sales Terminal	Self-insurance

<u>Owner/Operator</u>	<u>Fuel Storage Location</u>	<u>Proof for Financial Responsibility</u>
UNOCAL Refining & Marketing P.O. Box 76 Seattle, WA 98121	Juneau Bulk Plant (Taku Oil Sales) Ketchikan Terminal Sitka Bulk Plant (Sitka Sound Seafoods, Inc.)	Self-insurance
White Pass & Yukon Corporation, Ltd. P.O. Box 4070 Whitehorse, Yukon Y1A 3T1	Skagway (Pacific & Arctic Railway & Navigation Company) Haines, Skagway, Sitka, Ketchikan, Petersburg, Wrangell (Haines Terminal & Highway Company) Craig (Southeast Alaska Oil Companies, Inc.)	Self-insurance
Eskimos Inc. P.O. Box 129 Barrow, AK 99723	Block B Tank Farm Browerville Tank Farm Wainwright Storage Facility	Insurance
Saupe' Enterprises, Inc. P.O. Box 510 Fairbanks, AK 99707	Fairbanks Bulk Plant Fairbanks Bulk Lube Oil Plant	Insurance
oco Alaska Petroleum, Incorporated Pouch 720 Fairbanks, AK 99707	North Pole Refinery Fairbanks Bulk Facilities Anchorage Bulk Facilities <i>GALENA BULK STORAGE 11/4/90</i>	Self-insurance
Naknek Electric Assn., Incorporated P.O. Box 118 Naknek, AK 99633	Tank Farm in Naknek	Insurance
Municipality of Anchorage P.O. Box 6650 Anchorage, AK 99519-6650	George M. Sullivan Power Plant	Self-insurance
Harbor Enterprises, Inc. P.O. Box 389 Seward, AK 99669	Seward (Harbor Fuel Serv.) Dutch Harbor Main Plant-RESOFF Dutch Harbor-Ballyhoo (Petro Marine Services) Nikiski (Arness)	Insurance
Nushagak Electric Cooperative, Inc. P.O. Box 350 Dillingham, AK 99576	Tank Farm in Dillingham	Insurance

<u>Owner/Operator</u>	<u>Fuel Storage Location</u>	<u>Proof for Financial Responsibility</u>
Conoco Incorporated 3201 "C" St., Suite 200 Anchorage, AK 99503	Milne Point Central Facilities pad	Surety bond
TriCent Seafood Corp. 5303 Shilshole Ave., N.W. Seattle, WA 98107	Sand Point (Popoff Is. Fuel Co.)	Insurance
Kodiak Oil Sales, Inc. P.O. Box 1487 Kodiak, AK 99615	Kodiak Bulk Plant (North Pacific Fuel)	Insurance
Nome Joint Utility Systems P.O. Box 70 Nome, AK 99762	Nome Tank Farm	Self-insurance
Golden Valley Electric Association, Inc. P.O. Box 1249 Fairbanks, AK 99707-1249	North Pole Fuel storage facility	Self-insurance
North Slope Borough P.O. Box 69 Barrow, AK 99723	Barrow Tank Farm Point Hope Tank Farm Wainwright Generator Plant	Self-insurance
Peter Pan Seafoods 1000 Denny Building Sixth & Blanchard Seattle, WA 98121-1802	King Cove False Pass	Self-insurance
Highland Resources, Inc. P.O. Box 636 Haines, AK 99827	Haines Terminal	Insurance

(2)

Owner/Operator Name	Facility Name	Location
Shell Oil Company P.O. Box 2463 Houston, TX 77252	Onshore Gathering System at Middle Ground Shoal Field Platforms: Shell "A" and Shell "C" Goose Island Tern Island	Cook Inlet Cook Inlet Beaufort Sea Beaufort Sea
B.P. America, Inc. 200 Public Square Cleveland, OH 44114	Niakuk Island (Manmade) Well #4 Endicott Development, Main Production Island, Satellite Drilling Island Endeavor Island, SAG Delta #9 Niakuk Island (Natural), Wells 1, 1A, 2, and 2A	North Slope North Slope North Slope North Slope
Union Oil Co. of Calif. 309 West Ninth Anchorage, AK 99501	Grayling Platform Monopod Platform Granite Point Platform	Cook Inlet Cook Inlet Cook Inlet
Union Pacific Resources Company c/o Nortec 750 W. Second Avenue, Suite 100 Anchorage, AK 99501	"Diamond M. Falcon" Jackup Rig at No. 1 WECO-UPRC Cannery Creek 42-36 Exploratory Well	Cook Inlet

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**THE ROLE OF INSURANCE FOR  
THE PREPAREDNESS AND RESPONSE TO OIL SPILLS:  
LIABILITY AND COMPENSATION ISSUES**

**PREPARED FOR  
THE ALASKA OIL SPILL COMMISSION  
UNDER CONTRACT #026**

**BY**

**THE MITIGATION ASSISTANCE CORPORATION**

**DECEMBER 1989**

**THE ROLE OF INSURANCE FOR  
THE PREPAREDNESS AND RESPONSE TO OIL SPILLS:  
LIABILITY AND COMPENSATION ISSUES**

**INTRODUCTION**

The insurance industry can potentially be an important partner in a comprehensive program to reduce oil spill losses by providing insurance incentives for the safe transportation of oil and other hazardous cargo. This research paper seeks to examine the current state of the maritime insurance industry -- in general and in Alaska -- and offer suggestions on how insurance can play a role in reducing losses and improving preparedness and response. Information on pollution insurance was gathered from reports in insurance journals, congressional testimony, and articles and analyses by insurers, academics, newspapers, and government publications. In addition, telephone interviews were conducted with insurance representatives from Exxon, the Lloyd McClennan Insurance group, and the National Flood Insurance Program.

Exxon has accepted responsibility, but not liability, for oil damages resulting from the accidental grounding of the Exxon Valdez in March of 1989. To date, Exxon has spent \$1.25 billion in cleanup and in the payment of damages to individuals and businesses that suffered from the direct impacts of the oil spill, including economic injury due to lost business (Wall St. Journal November 30, 1989). In addition to further cleanup and unresolved private claims, Exxon faces potentially huge fines and penalties under numerous state and federal statutes governing water pollution. The Alyeska Pipeline Service Company may be as liable as Exxon since it is obligated under the Prince William Sound Contingency Plan to respond to, contain, and clean up spills in the Sound. "Alyeska handed off the spill response to Exxon without approval by the state, and Exxon's subsequent response was not according to the state-approved plan" (Oil Spill Chronicle November 14, 1989). In any case, judgments regarding liability and compensation are sure to be discussed in the courts for years.

## INSURANCE THEORY

Insurance offers a means of managing risk by distributing it among large numbers of individuals or enterprises. Risk is the possibility of injury or loss. Through the payment of insurance premiums, "the insured avoids the risk of suffering a large loss by substituting the certainty of suffering a small one... in effect, the insurer distributes risk among all of its insureds" (Abraham 1986).

It should be noted that there are a number of ways besides insurance to manage risk. In oil transportation, optimizing safety through advanced technology, training programs, adequate staffing, repair and maintenance, response plans, and other methods is a particularly important means of risk management. Within the insurance industry, risk pools, deductibles, and policy limits are risk management techniques.

In theory, insurance assigns the costs and benefits of risk exposure to those who experience the risk, stimulates the policy holder's motivation to avoid risks "through a differential rate structure which rewards prudence and penalizes imprudence," and provides for accumulation of reserve funds to meet large payout requirements associated with rare catastrophic occurrences. In practice, however, insurance functions depend on the price of the service, the appeal of the service, the industry's willingness to provide the service, and industry's assessment of its capacity to meet extraordinary payouts without sacrificing its economic viability (Petak and Atkisson 1982).

As the industry's assessment of its ability to accurately predict risk declines, the prices for the service rise, or may not be offered at all. When a solid actuarial base of information concerning the probability of loss to particular persons or properties under particular defined circumstances is missing, the price goes up or the industry's willingness to engage in the service goes down (Petak and Atkisson 1982).

When such prohibitive conditions exist, the federal government may become involved in order to help remove disincentives to purchase, assist in assessing risks, and assist in developing reserves, or "capacity," for meeting very large payouts (e.g., flood insurance and earthquake insurance, discussed below). The federal government could also assume a more direct role by: (1) having in premium payments (with state and local governments), (2)

acting as a direct reinsurer for prime oil spill insurance carriers, or (3) providing research, technical assistance, and financial support in the establishment of state insurance programs (Petak and Atkisson 1982).

Currently, there is pending federal oil spill legislation that exceeds these possibilities. The legislation is titled the "Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989." It has been passed by the House of Representatives as HR 1465 and is currently before the Senate for modification, amendment, and passage. This legislation will combine, supercede, and improve a host of earlier laws.

A stronger regulator role (than Petak and Atkisson's or the pending legislation) might require the purchase of a particular type of insurance as a condition for receiving federally insured loans, federally subsidized loans, and/or loans provided by federally regulated financial institutions. The insurance industry strictly opposes such "mandation," unless it is accompanied by means to protect insurers from huge payouts in catastrophic incidents. There exists, however, many examples of mandatory insurance: states require purchase of no-fault automobile insurance, lenders require purchase of fire insurance, states require purchase of workmen's compensation insurance, etc. A variation of required insurance is contingent insurance, where coverage (either private or federal) is provided only when certain conditions, such as licensing, manning, training, and equipment standards are met.

## HAZARD INSURANCE

### Insurance as Hazard Policy

The development of the National Flood Insurance Program (NFIP) and the investigation into a national earthquake insurance program has grown out of a recognition that these hazards are national problems with far-reaching economic impacts. These federal programs also attempt to fill the void created by the private insurance industry's inability to market this type of service profitably. These programs also recognize the limited means that potential victims otherwise have to protect themselves and reduce their vulnerability to hazard risks. These programs are designed to meet needs similar to those posed by a potential oil spill.

The primary difference between federal flood and earthquake insurance and federal oil spill insurance is that in the former, insurance is purchased by those at risk from losses resulting from unpredictable natural events. Oil spill insurance (if it were to become available) would be purchased by those responsible for losses resulting from preventable human error or mechanical failure. Insurance from floods and earthquakes (potentially) gives those at risk from losses some control over their own protection. Oil spill insurance would protect the spiller from liability claims resulting from those at risk to losses, who have no way to protect themselves other than placing the responsibility for compensation with those responsible for the damage. Under these programs, potential victims can protect themselves against flood or earthquake, but not the effects of oil spills. In the latter instance, the victim's only protection is being provided by the perpetrator. Thus, the latter is really compensation, not insurance.

Vulnerability is the susceptibility or exposure to injury, loss, or liability from a hazard. Alaska's vulnerability to oil spill hazards is largely a consequence of national energy needs and the development of Alaska's oil reserves, the Trans-Alaska Pipeline, and the transportation of oil through the state's sensitive coastal environment. People, businesses, economics, natural resources, and the environment are potentially vulnerable. The considerable risks are nonetheless acceptable to local, state, and national interests, who share with private industry in the benefits and risks involved. As a petroleum-dependent society, it is said that "we're all in the oil business" because to some degree, all Americans are affected by Alaska's oil trade, which accounts for nearly one quarter of U.S. petroleum production. Considering this, and the possibility that private industry may not be able to insure oil pollution liability in the future, arguments for a user's tax or national insurance program to compensate oil spill losses may deserve further examination, and in fact, is an element of the pending federal oil spill liability legislation.

#### Insurance as a Mitigation Tool

Hazard mitigation "is a management strategy that balances current actions and expenditures with potential losses from future hazard occurrences" (Petak and Atkisson 1982). Mitigation activities go further than distributing or sharing the risk and are intended to

eliminate or reduce the probability of occurrence of a hazard event, or reduce the impacts of hazards that do occur. Successful mitigation usually involves a combination of approaches in a coordinated, cost-effective strategy. Providers of fire insurance, for example, offer mitigation incentives by basing a community's fire coverage premiums partly on factors such as proximity to fire stations and hydrants, available water pressure, hose diameters, and number and type of fire trucks. Local governing boards maintain favorable fire insurance rate classes for their communities by ensuring that fire alarms, water supplies, facilities, staffing, equipment, and training exceed industry standards. While the cost to a community for these improvements could easily be \$1 million, each structure owner's premium might be reduced by \$25.00. In a community of 50,000 insured structures, this would represent an *annual* savings of \$1.25 million.

Some general insurers are encouraging comprehensive prefire plans for large facilities, businesses storing hazardous and flammable substances, and structures containing costly assets, such as computers. The two objectives of prefire planning are to identify potential fire hazards in specific facilities and to familiarize firefighters with these hazards in advance. Prefire plans consider building characteristics, fire suppression systems, available public fire protection, warning systems, evacuation plans, hazards in proximity, assignment of emergency duties, coordination with law enforcement, emergency medical services and local media, and types, quantities, and locations of hazardous and flammable materials (Brotzman 1989). Both approaches to fire insurance provide incentives to reduce fire losses by maximizing the firefighting capabilities of the response system. Provisions in the national flood and earthquake programs offer additional examples of how risks may be balanced with proactive efforts to prevent or reduce losses.

#### National Flood Insurance Program (NFIP)

The 1968 National Flood Insurance Act (Public Law 90-448) made nationally-subsidized flood insurance available to individuals in communities that enforced federally approved floodplain management regulations. Following passage of a 1969 amendment, floodprone communities could become eligible for limited amounts of flood insurance under an "emergency phase." As detailed flood maps and local regulations were developed,

communities could enter the "regular" program, whereby larger amounts of insurance coverage became available to policyholders (May and Williams 1986).

The Flood Disaster Protection Act (Public Law 93-234) in 1973 mandated that floodprone communities regulate their floodplains or forfeit access by its residents to federal loans and loans from federal institutions. This regulation was softened in 1977 to prohibit only federal disaster flood relief, unless flood insurance was purchased.

The Federal Emergency Management Agency (FEMA) is the federal agency responsible for managing the flood insurance and disaster relief programs. FEMA's responsibilities in implementing the program fall under two categories: insurance activities (e.g., enrolling individual participants, establishing rates, paying claims) and floodplain management activities (e.g., establishing flood zones, enrolling communities, establishing standards). Flood insurance is available only to individuals in communities that have adopted a floodplain ordinance and regulations developed under FEMA guidelines. The objective of the ordinance is to ensure that proposed development does not aggravate existing flood hazards and that new buildings will be protected from future floods. Communities that do not adhere to the floodplain management standards may be suspended from the NFIP. Communities and individuals may appeal suspensions or locations of structures on FEMA maps. Of the roughly 20,000 floodprone communities in the U.S., over 17,000 participate in the NFIP (May and Williams 1986).

In an effort to recognize and encourage community activities that go beyond minimum program standards to reduce flood losses, the NFIP has developed a Community Rating System that awards flood insurance premium credits to communities that undertake: (1) public information activities, such as outreach projects; (2) mapping and regulatory activities, such as open space preservation; (3) flood damage reduction activities, such as flood control projects; and/or (4) preparedness activities, such as flood warning systems. Like fire insurance incentives, there is an enormous potential savings to constituents of a jurisdiction willing to fund some major improvements that will mitigate the risk.

### Earthquake Insurance

In response to the limited availability and high cost of earthquake insurance in high risk areas of the U.S., a federally-supported system has been developed to cover catastrophic losses and protect insurers and reinsurers from "institution-destroying loss levels," where reserves are insufficient or the magnitude of an accident exceeds worst-case scenarios (Petak and Atkisson 1982).

Underwriters of earthquake insurance need to establish the Probable Maximum Loss for each hazard zone and for individual locations in order to determine total earthquake exposure and reinsurance needs. The most important and most elusive factors affecting earthquake underwriting decisions are probability that an earthquake will occur and estimated maximum intensity. However, utilizing probability studies, seismic building codes, and hazard mitigation recommendations, geologists today are much more capable of making these projections. Other factors that influence the underwriting include: proximity to known faults, height of structure, soil conditions, age of structure, type of construction, type of materials, and the value of contents (Holtom 1989).

Although earthquakes are beyond anyone's control, the selection of risks, underwriting standards, retentions, deductibles, and rates are not. Careful consideration of these factors can take some of the unknowns out of earthquake underwriting (Holtom 1989).

Currently the federal government is investigating the possibility of establishing a national earthquake insurance program, similar to the flood program, where insurance would be made available at a subsidized rate, but only after a community adopts regulations that require new construction to meet seismic safety standards and perhaps the retrofitting of certain classes and types of older, more vulnerable structures.

Development of an "actuarially sound national catastrophe fund" to compensate oil spill victims from federal and state and oil industry contributions might accomplish essentially the same ends "as a more conventional insurance system" (Petak and Atkisson 1982).

## MARITIME INSURANCE

Commercial insurers provide maritime insurance to cover the hull, cargo, and, to some extent, the liability associated with the transportation by commercial vessels. The U.S. hull insurance market grew up following World War I in order to accumulate capacity, develop underwriting expertise, and keep expenses under control. The American Hull Insurance Syndicate, comprised of 55 member companies, was formed to create a single agency for the underwriting of hull business, such as issuing policies, collecting premiums, and settling claims on behalf of its member companies. There is also a market of independent insurance companies writing hull business. Together, they have a capacity of over \$80 million (about \$40 million each). The Syndicate also insures ship owners outside the U.S. and is active in reinsurance relationships with European nations and other international markets (Schumacher 1984).

In order to determine adequate premium levels to meet exposures presented by a particular shipowner, the Syndicate typically reviews:

1. The background of executive and operating officers of the fleet;
2. The age, classification status, and condition of fleet ships;
3. The operations, training, and origin of fleet crews;
4. The trading patterns of the company;
5. Cargos carried;
6. The distribution and frequency of the routes used;
7. The maintenance and repair policies of the company (Schumacher 1984).

### Pollution Liability Insurance

Prior to the 1970s, the insurance industry provided comprehensive general liability policies for U.S. businesses which covered a broad range of commercial liability due to accidental personal injury or property damage. In the early 1970s, certain pollution-related liabilities were specifically excluded as the nature and cost of pollution incidents and associated liabilities became more evident. Some insurers developed separate policies, specifically to cover pollution risks, that imposed dollar limits per incident (General Accounting Office [GAO] 1987).

By the mid-1980s, however, few insurance companies were offering pollution insurance due to the uncertainties regarding potentially enormous claim payments, "unfavorable" legal trends involving liability standards and insurance coverage, and the broad liability established by federal and state environmental laws. The insurance industry has maintained that the basic concerns of underwriting a risk -- the process of identifying and evaluating risks and setting the premium to be charged for risks accepted by the insurer -- cannot be satisfied when assessing pollution risks, thereby making them uninsurable (GAO 1987).

Commercial pollution insurance is generally unavailable and when it is, coverage is limited and expensive and selectively provided to clients that carry coverage by the insurer for other risks. One option to traditional insurance coverage is participant-owned and operated risk pools that cover catastrophic liability losses. It is unclear from the literature examined in this research how effective risk pools have been in meeting the insurance needs of the oil transportation industry. Another option for pollution liability coverage, when available, is reinsurance. Reinsurers are companies (or governments) that assume a portion of the potential liability risks that the insurance companies underwrite in exchange for a share of the premium (GAO 1987).

In the absence of available and affordable liability coverage, many oil shippers operate without it once they have demonstrated financial capability to the limits of liability set forth in applicable federal laws. These financial requirements ensure that operators have assets on hand to cover the pollution liabilities faced. In essence, these shippers are self-insured.

Ocean maritime insurance differs from property and casualty insurance in that there are no regulations regarding the filing of rates and policy forms with state insurance authorities (partly due to great variations in commodities, vessels, distances, etc.) (Picone 1989). Liability insurance premiums are calculated according to the type of vessel and the degree of risk of different classes of vessels. Oil carriers are rated at the high risk end of the scale. In spite of these differential ratings, owners with poor loss records have generally paid only slightly higher premiums (Schenker 1981).

In light of California's Proposition 103 rollback of automobile insurance rates, the U.S. marine insurance market is concerned about the political climate for retaining its exemption from rate and form regulations. The U.S. market is very slow relative to the international insurance market, primarily due to the unpredictable future of U.S. trade. All quotas on imports, for instance, impact the business of cargo underwriters (Picone 1989).

The potential for huge catastrophic payouts has probably had the greatest impact on the market. According to John Hickey, President, American Hull Insurance Syndicate, "There is no way that we can continue to pay tomorrow's catastrophe claims with today's inadequate premiums." The hull syndicate had a profitable year in 1988 because they were selective and "lucky," and because they had no major casualties for two years. "We shall continually strive to write marine business the only way we know how -- profitably. We are a unique organization with a long tradition and we are perfectly positioned to pick up the pieces when the current market explodes -- which it will," said Hickey (Picone 1989).

Although the Exxon Valdez is a relatively new tanker, the average age of most ships, according to Lloyd's Register, is over 10 years old, and the high costs of shipbuilding will preclude any rapid modernization of the fleet. Due to the poor economic condition of the shipping industry, according to Walter Kramer, Vice President of the American Institute of Marine Underwriters, the emphasis "is on cost-cutting measures and economies of scale." Kramer maintains that the aging fleet and smaller crews on more automated ships will contribute to more accidents in the future. The research being conducted for the paper, "The Impact of Fatigue and Other Factors on Human Performance and How They Relate to Maritime Accidents," also supports this. Higher underwriting losses will then lead to higher insurance rates, compounding problems in the industry. Ship owners and insurers need to work together to reduce the chances of accidents, and those "practicing sound hull loss prevention techniques should receive credit for their efforts" (Picone 1989).

## OIL SPILL LIABILITY AND COMPENSATION

### International Conventions

The myriad international, national and state laws, statutes, and funds that address pollution from oil spills has been widely characterized as a "patchwork quilt" of overlaying standards and liability limits. The following is a discussion of the various acts, treaties, and funds potentially applicable to U.S. oil transportation interests or to accidents in U.S. waters.

The Convention on Civil Liability for Oil Pollution Damage (1969) and Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (1971) provide a means of sharing oil pollution costs among countries that are parties to the Conventions. The two international oil spill treaties establish maximum liability amounts of oil shippers (Smets 1983). The 1984 Civil Liability Convention (CLC) establishes a financial responsibility regime where each party is required to ensure that ships in its ownership have insurance or other financial security to cover the owners' liability under the Convention up to the prescribed limits.

The 1984 CLC and FUND Protocols implement the provisions of the above conventions. They allow member nations a way to enforce judgments that affect foreign vessels and help ensure that the assets of the owner or insurer liable for oil pollution will be available to meet damage claims. The U.S. has failed to ratify the 1984 Protocols. Opponents maintain that the Protocols would provide coverage beyond current federal and state laws under only a limited set of circumstances and, in some cases, they would preempt state liability laws. Supporters argue that the Protocols offer a way to share the costs of U.S. oil spills worldwide by allowing the U.S. access to the international oil spill compensation fund and would also allow the U.S. to influence international maritime negotiations. Amendments to the Protocols, they claim, could be added in the future to increase liability limits (U.S. Senate 1989).

The Bush Administration favors adoption of the 1984 Protocols but opposes the preemption of state liability laws beyond the extent necessary to implement the Protocols. Secretary of Transportation Skinner has testified that any claims for damages in excess of the owner's

limit of liability could be brought directly to the international fund, which, according to Skinner, has an excellent record of payment (on average, eight months) (U.S. Senate 1989).

The French government ratified the 1984 Protocols within two months of their introduction, but unfortunately six years after the Amoco Cadiz accident. Eleven years later, the lawsuits are being settled for a fraction of what France spent dealing with the spill (U.S. Senate 1989).

### Federal Laws

The Federal Water Pollution Control Act, 1970, as amended by The Clean Water Act, requires owners to file a certificate of financial responsibility for each tank ship owned that demonstrates financial capability to the extent of the owner's minimum cleanup liability.

The Clean Water Act of 1977 provides liability of up to \$50 million for the actual costs incurred by federal and state governments to remove the oil and restore natural resources and the environment. Section 311 provides that the vessel owner is liable to the U.S. Government at \$150 per gross ton unless the spill is the result of "willful negligence or willful misconduct within the privity and knowledge of the owner," then the liability of the spiller is unlimited. At \$150/gross ton, the liability limit for the Exxon Valdez is approximately \$14 million. The 311 (k) revolving fund is maintained by federal appropriations at a targeted balance of \$35 million and is administered by the U.S. Coast Guard. Only one-half of the \$143 million from the fund spent since 1971 has been recovered from responsible parties. The fund currently stands at only \$2 million (House of Representatives 1989a).

The Federal Limited Liability Act allows ship owners to petition to limit liability for damages to the value of the vessel and freight on board following the accident, thus disallowing liability for any damages. This legislation has been enforced inconsistently in past oil spill litigation.

The Offshore Oil Pollution Compensation Fund is a renewable fund of up to \$200 million administered by the Secretary of Transportation to cover oil removal costs and damages to fishing, recreation, ecosystems, and related activities. These funds, as well as those under Section 311 of The Clean Water Act and the following two acts, would all be combined into one large oil spill compensation fund under the pending federal legislation.

Other federal laws that may be applicable in major oil spills are the Outer Continental Shelf Lands Act Amendments (OCS) of 1978 and the Deep Water Ports Act of 1974.

#### State Liability Systems

The Trans-Alaska Pipeline (TAP) Fund was established in 1973 by the Trans-Alaska Pipeline Authorization Act to pay damage claims, including cleanup costs resulting from oil spills from vessels carrying oil to ports from the pipeline system. The Fund is liable without regard to fault for damages in excess of \$14 million but not more than \$100 million per incident. To date, the Fund has never paid a claim. Exxon has agreed to administer all claims it receives and may submit claims to the Fund before the two-year application deadline in March of 1991. Since the act exempts the Fund from liability arising from a claimant's negligence, Fund officials intend to contest any claims filed by Exxon (GAO 1989).

Alaska Statute 46.03.780 Liability for Restoration provides that a spiller is liable to the state for damages related to the sum of money required to "restock," "replenish," and "restore" the environment to its previous condition. Damages are recovered by the State Attorney General on behalf of the citizens of Alaska (Graham 1989).

Alaska Statute 46.03.822 Strict Liability for the Discharge of Hazardous Substances provides that the "person owning or having control over" a polluting vessel may be relieved of strict liability only if the spill is due to act of war, negligence of a third party, negligence on the part of the state of Alaska or the United States, or an Act of God (Graham 1989).

Alaska Statute 46.03.758 Civil Penalties for Discharges of Oil, enacted in 1977, establishes "substantial civil penalties" in order to provide a "meaningful incentive for the safe handling of oil" and to insure compensation for the state. The regulations establish a range of penalties, depending upon "toxicity, degradability, and dispersal characteristics" of the spilled oil and the "sensitivity and productivity of the receiving environment." Alaska Statute 46.03.758(b)(2) provides that penalties can be multiplied by a factor of five if the spill is due to an intentional or grossly negligent act or if the spiller did not make reasonable attempts to contain and clean up the spill (Graham 1989).

Variations in the maximum penalty amounts are designed to accommodate recovery needs in the most sensitive environments:

1. Maximum \$10.00 per gallon for oil entering most freshwater environments;
2. Maximum \$2.50 per gallon for oil entering most confined saltwater environments;
3. Maximum \$1.00 per gallon for unconfined saltwater or other environments without significant aquatic resources (Graham 1989).

Other features of the Civil Penalty statute include:

1. A vicarious liability provision that holds owners liable for actions of their contractors. Intended to provide a further incentive for safe operations, this feature also increases the likelihood the state will be able to recover for damages to the environment;
2. A liability limit of \$100 million was added under strong pressure from the oil industry, which argued that the industry needed advance knowledge of its maximum potential exposure;
3. A deduction for the gallons cleaned up from penalties owed by the spiller, in order to provide an incentive to clean up as much spilled oil as possible;
4. Reductions in penalties for mitigating circumstances, when events surrounding a spill would make full penalties inappropriate;
5. Exemption of spills less than 18,000 gallons, in order to provide some protection for small oil handlers (Graham 1989).

A spiller may be liable under the Civil Penalty statute, as well as other state statutes, but recovery will generally be sought under one statute or the courts may interpret the action as a double recovery. The state may allege liability under all applicable state and federal statutes and then pursue the course that provides the maximum potential recovery. Once a case is filed, however, it is usually settled out of court for a lump sum amount. Otherwise, if left to the courts, a determination would be made as to which is the controlling statute.

A detailed investigation of Alaska's civil penalty scheme for oil spill liability and compensation was completed in January of 1989 at the University of Washington's Institute for Marine Studies (Graham 1989). The investigation was documented as a Master's Thesis and includes an evaluation of the existing system. The report concludes that Alaska's civil penalty approach is viable. However, it also identifies inconsistencies and shortcomings, and offers sound recommendations to make Alaska's liability and compensation system more effective. This report is attached to this paper as an appendix. Review of this study's recommendations by the Alaska Oil Spill Commission (AOSC) and the state legislature is an important recommendation of this report.

### PROBLEM STATEMENT

In the aftermath of the Exxon Valdez accident, the Alyeska Pipeline Service Company -- the industry consortium that operates the Trans-Alaska Pipelines on behalf of seven oil companies that own the facilities -- has been soundly criticized for allegedly allowing the oil companies to save money by curtailing preparations for a large-scale oil spill throughout the 1980s. In addition to the problems caused by economic and competitive pressures, automation, safety violations, and a poor preparedness and response evidently also contributed to the disaster (this is also substantiated by research completed for the paper, "The Impact of Fatigue and Other Factors on Human Performance and How They Relate to Maritime Accidents").

1. Economic pressures: the competitive pressures in the oil and oil transportation industry, particularly with respect to competing with foreign carriers, most of which rely on lower standards and have less technology to

finance. Oil transporters are under constant pressure to move fast and stay on schedule. The Exxon Valdez was five days behind schedule when it ran aground. The Exxon Valdez was also on the outer fringes of the Coast Guard Vessel Traffic System (VTS) when the accident occurred. Federal cutbacks are primarily responsible for the failure to extend the VTS to the outer rim of Prince William Sound. The cost of extending the system, according to the Coast Guard, is estimated at \$20 million (House of Representatives 1989a). Expansion of VTS is included in the pending federal legislation.

In 1981, a 20-member emergency team responsible for 24-hour response to oil spills in Valdez Harbor and Prince William Sound was disbanded by Alyeska to cut costs. Alyeska officials argued that such a large-scale spill as the Valdez was highly unlikely (New York Times). Also in 1981, Alyeska turned down an offer from the city of Valdez to stockpile cleanup equipment and materials. Alyeska personnel advised city officials that warehousing booms, dispersants, and other types of cleanup resources sufficient to attack a large-scale spill would be "a tremendous waste of city money" (House of Representatives 1989a). The pending legislation will reinstate national emergency strike teams and require contingency plans for major spills and adequate equipment for response.

2. Automation: as discussed in this paper, more automated ships and smaller crews may lead to an increase in accidents and resulting oil spills. When the Valdez ran aground, the systems that automatically power and steer the ship were on, a violation in that part of the Sound. These systems may have contributed to both the grounding and the large volume of oil released.
3. Safety violations: violations of the Valdez master pilot involving alcohol have been the most publicized, but a number of other violations connected to the accident apparently took place: the Valdez didn't notify the Coast Guard, as required, that it was leaving the shipping lanes to avoid ice floes; and federal

violations involving improper manning for the waters, including control of the ship by third mate (not certified as a pilot) and the failure of the Master to be on the bridge. The look-out was out of position, helping the local pilot depart the ship just minutes before the grounding.

4. Inadequate response and preparedness: As mentioned above, there were inadequate resources in Valdez to respond to an accident of this magnitude. Alyeska's contingency plan included a scenario for a catastrophic incident and noted that the response would be inadequate. After the Valdez spill, it took hours for emergency work to begin. Alyeska's only cleanup barge was out of service, an absorbent boom was buried under snow, and only 45 drums of dispersant were on hand -- enough to dissipate 3% of the spill (Anchorage Daily News November 3, 1989).

Our investigation did not find any evidence that insurance adversely affected the response to this incident. This question came to light when the response to a recent (November, 1989) Alaska grounding was delayed until the hull underwriter could determine whether or not there could be any salvage value. Possible responses involved burning, sinking, or blowing up the ship. These actions were not allowed without the approval of the underwriter.

### POSSIBLE SOLUTIONS

The advantages and disadvantages of a number of alternatives to maximizing safety and preparedness through insurance and liability mechanisms are discussed below.

#### Unlimited Liability

The threat of unlimited liability, it is argued, encourages a higher standard of care in the oil industry and prompts prevention-related activities in both the public and private sectors. Supporters of unlimited liability essentially support the rights of states to establish liability, in order to go beyond federal or international minimums as necessary to protect the health and welfare of their people and environments. Opponents of unlimited liability maintain

that this alternative will result in commercial insurance being unavailable and the oil industry taking its business away from states with unlimited liability laws. (Since nearly one quarter of the U.S. source of petroleum comes from Alaska, this seems unlikely.) Most states and environmental groups argue that states should nonetheless have the right to protect their tourist and fishing industries from oil spills at the expense of a certain amount of business activity (United States Senate 1989).

Advantages:

1. Strongest position in support of "the spiller/polluter pays" principle;
2. Encourages a higher standard of care;
3. Preserves state's rights.

Disadvantages:

1. No insurer will provide unlimited coverage;
2. Oil industry may avoid states with unfavorable limits;
3. Spiller could "hide" assets, declare bankruptcy, and "walk away" from spill.

Limited Liability

In the wake of the Exxon Valdez disaster, future liability limits will face pressures to relate more realistically to the full range of oil pollution damages -- not just for cleanup, but for damages to property, natural resources, losses in earnings, and loss of use of real or personal property. Documentation of a carrier's financial capability levels may also have to follow suit (Schenker 1981). If Congress sets liability limits in the proposed federal compensation and liability legislation, limits could be driven by the financial capability of each company and by its commitment to state-of-the-art technology as a safety incentive (i.e., lower limits available to shippers that commit to modern cleanup equipment, modern monitoring systems, advanced ship designs, etc.). (United States Senate 1989). The recommendations of the investigative report detailing Alaska's civil penalty scheme for oil spills makes similar recommendations through the elimination of certain provisions, including the \$100 million ceiling on penalties. The pending federal legislation suggests lower limits for safer transfer points, such as deepwater ports.

Advantages:

1. High, but fair liability limits might stimulate U.S. marine insurance market;
2. Parties responsible for spills will at least pay something, both into reserve fund and for damages up to limits;

Disadvantages:

1. Probably won't cover all damages in catastrophic accidents;
2. Unless the limits of liability are very high (and reflective of full range of costs), the "cost of doing business mentality" toward managing oil (spills are inevitable) will prevail (United States Senate 1989).

User's Fees

In addition to setting minimum liability limits, toughening standards, and lifting all liability limits in some cases, possibly the most important feature of proposed federal liability and compensation legislation is the establishment of a national fund for cleanup and recovery costs that exceed liability limits. The fund would be developed through a 5-cent per barrel tax on the oil industry, the rationale being that oil companies should bear a responsibility for cleaning up and restoring the environment when damages exceed the responsible party's limit of liability (United States Senate 1989). According to Atlantic Richfield Company testimony before the Senate Subcommittee, merging the federal funds created by the TAPS Act, OCS Act, and Deep Water Ports Act would immediately establish a reserve fund in excess of \$400 million (United States Senate 1989). This is included in the pending legislation. This legislation also includes user fees for the expansion of the VTS.

Advantages:

1. Prevents need for each state to establish its own fund (more economical and efficient);
2. Allows oil shippers to pay into one centralized oil fund instead of individual funds of each state;
3. Retains state liability laws;

4. Can be established together with adoption of 1984 Protocols to cover incidents where damages exceed Convention liability limits;
5. When fund builds up, part of it can be dedicated to improving safety measures, training programs, etc.

Disadvantages:

1. Does nothing to eliminate the "patchwork quilt" of regulations.

National Contingent Insurance

As was the case with hazard insurance for floods and earthquakes prior to the development of national and federally-supported insurance programs, commercial pollution insurance, when available, has become increasingly unaffordable. Nationally, we are all dependent on the Alaskan oil business and concern over the frequency and magnitude of the impacts of oil spills has become a strong national issue. In addition, its resources and natural beauty make Alaska a "national treasure" and a source of national pride. Proponents of national oil pollution insurance make these and other points in support of arguments for a national program.

Advantages:

1. Mitigation and contingency planning can be required as a condition of participation;
2. Incentives relating to the cost of coverage can be employed to prompt oil shippers to operate in as safe a manner as possible.

Disadvantages:

1. Oil shippers may become more complacent or careless with insurance protection to fall back on;
2. Many are not convinced that the oil industry can be relied upon to protect the environment.

### Deepwater Ports

Government and industry could investigate the possible development of new offshore deepwater ports, such as the Louisiana Offshore Oil Port (LOOP), where spills may be less likely to occur and easier to clean up than those closer to shore. The open waters around offshore ports are also more amenable to the use of "non-mechanical cleanup means," such as dispersants. Oil is transported between port and shore via underground pipelines.

#### Advantages:

1. Eliminates threats of groundings and narrow channels;
2. Spills would affect less sensitive environments;
3. LOOP operates wide "safety zone" around port and 24-hour traffic control and communications.
4. Pending legislation calls for lower liability limits for vessels utilizing deepwater ports.

#### Disadvantages:

1. LOOP has been losing money and has not proven to be an economical alternative for potential port users or investors (United States Senate 1989).
2. Exposure to harsher environment could potentially limit the number of days facilities could be used.

### RECOMMENDATIONS

1. The AOSC and the state legislature should review the analysis of the civil penalty scheme for oil spill liability and compensation in Alaska (Graham 1989) and determine the appropriateness of the studies' recommendations for adoption and implementation.
2. The development of a user's tax and national oil spill compensation fund offers a number of important advantages over the "patchwork" liability and compensation system currently in place, and deserves further examination in the near term. These,

and many useful mitigation measures, are incorporated into the pending federal legislation. Alaska should strongly support this legislation package.

3. Localized liability and penalty schemes should be investigated on a port-by-port basis. These schemes should investigate the potential of providing access to terminals contingent not only upon certain levels of liability or financial capability, but also upon certain standards for vessel manning, training, licensing, and equipment.
4. Offshore deepwater ports -- and their obvious advantages in limiting oil spill damages -- may provide the best long-term solution to the problem, provided that economic and environmental problems can be overcome.

Any of these initiatives should be pursued in the context of a complementary liability and compensation system that: (1) defines the relationship with other international, federal, and state laws; (2) preserves state liability laws; (3) clearly defines the liability of each shipowner and the scope of claims that can be made against the responsible party; (4) retains the "polluter pays" principle in pollution liability; and (5) serves to bring under a single umbrella all aspects of oil spill liability and compensation to ensure that all claimants are compensated (United States Senate 1989). The pending federal legislation accomplishes these goals and should be promoted. Reviewing the recommendations of Alaska's civil penalty scheme for oil spills will also accomplish these goals. Developing particular schemes for individual ports can address the varying degree of risk due to frequency of vessels and localized conditions. This may also provide the only mechanism that ensures that a certain level of safety is maintained by visiting vessels, regardless of their nation of origin or registry.

The national flood and earthquake insurance programs, as models, can serve to guide those involved in the development of a similar program for oil spill pollution hazards. Loss prevention should become a strong factor in the development of insurance rates and costs. Repetitive offenders might find it difficult to obtain protection at any cost (Schenker 1981)

or find insurance too expensive to stay in business. Those ship owners and operators working to reduce the likelihood of accidents should get credit for doing so.

Lower liability limits could be made available only to those companies that can demonstrate financial responsibility, good safety records, and a commitment to state-of-the-art technology. Inadequate training procedures, inadequate charts and guiding systems, and inadequate maintenance and repair policies are examples of reasons to deny lower liability limits (United States Senate 1989).

The Exxon Valdez disaster has revealed the need for more mitigation and preparedness planning throughout the system (ship owners, pipeline operators, local, state, and federal governments). Contingency response plans should consider the extraordinary resource demands placed on the response system in major oil spill accidents, and then improve plans through regular drills and exercises. Following the grounding of the Arco Anchorage off Port Angeles in 1985, Arco, the Coast Guard, and the Washington Department of Ecology co-managed a successful cleanup effort that took four months. Coordinators credited a joint response exercise conducted a year earlier with creating a familiarity that led to a smooth working relationship in the actual event (Anchorage Daily News May 7, 1989).

The best opportunities to implement mitigation measures generally follow the occurrence of a disaster, when the hazard is still fresh in memories and there is usually a mandate to improve or change the system. The state of Alaska, Alyeska Pipeline Service Company, and Exxon have all taken proactive steps to mitigate the impacts of future spills. Alyeska has acquired several new, large oil skimming vessels to escort tankers from the Valdez Terminal out of Prince William Sound. Alyeska now plans to stockpile cleanup equipment and supplies and is increasing tariffs approximately \$3 per barrel in order to finance pipeline corrosion repairs, oil spill prevention and improved spill response, and legal fees from the Valdez spill. The state is raising severance taxes to create a \$50 million emergency relief fund for oil spill cleanups (Anchorage Daily News November 2, 1989) and the AOSC has recommended a number of new safety measures, including giving authority to the State Harbor Authority to close down ports if conditions are unsafe (Anchorage

Daily News November 12, 1989). The glaring shortfalls in response and preparedness systems may, in the long run, prove to be more positive if steps are undertaken that prevent future such occurrences. It is important to institutionalize these measures now so that the system does not become lax in between oil spills.

Although the costs of monitoring systems, training programs, and other prevention and response measures may seem relatively minor compared to oil profits, cost/benefit analyses of mitigation opportunities must demonstrate that mitigation and preparedness are in the best financial interests of the oil industry as well. A public/private partnership is likely to produce the best mitigation results.

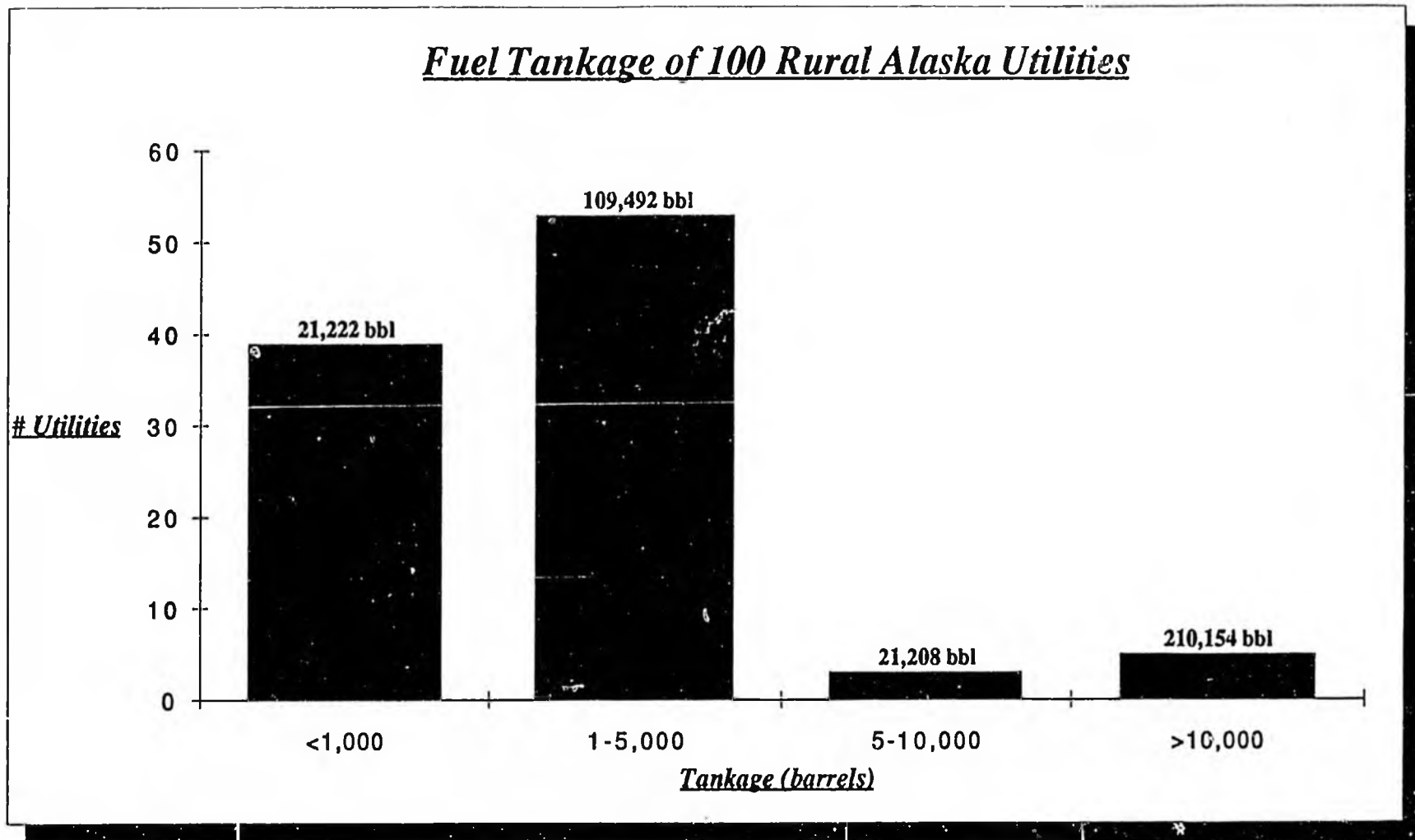
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### Fuel Tankage of 100 Rural Alaska Utilities



Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>1000 Barrels</u>		
<u>1</u> Aklachak	30,000	714
<u>2</u> Allakaket	20,000	476
<u>3</u> Anaktuvuk Pass	35,000	833
<u>4</u> Arctic Village	18,000	429
<u>5</u> Atmautluak	28,000	667
<u>6</u> Atkasuk	17,000	405
<u>7</u> Beaver	30,000	714
<u>8</u> Bethel	40,000	952
<u>9</u> Birch Creek	8,000	190
<u>10</u> Chuathbaluk	20,000	476
<u>11</u> Circle	10,000	238
<u>12</u> Clarks Point	10,000	238
<u>13</u> Crooked Creek	20,000	476
<u>14</u> Eagle	15,000	357
<u>15</u> Ekwook	2,500	60
<u>16</u> Hoonah	35,018	834
<u>17</u> Hughes	10,000	238
<u>18</u> Igiugig	25,000	595
<u>19</u> Kaktovik	20,000	476
<u>20</u> Kasaan	20,500	488
<u>20</u> Klawock	1,140	27
<u>21</u> Kokhanok Bay	20,000	476
<u>22</u> Koliganek	25,000	595
<u>23</u> Kwigillingok	30,000	714
<u>24</u> Levelok	30,000	714
<u>25</u> Newtok	20,000	476
<u>26</u> Nuiqsut	40,000	952
<u>27</u> Old Harbor	1,950	46
<u>28</u> Pedro Bay	40,000	952
<u>29</u> Platinum	10,000	238
<u>30</u> Point Lay	20,000	476
<u>31</u> Rampart	40,000	952
<u>32</u> Red Devil	20,000	476
<u>33</u> Ruby	7,000	167
<u>34</u> Sheldon Point	30,000	714
<u>35</u> Sleetmute	20,000	476
<u>36</u> Stony River	20,000	476
<u>37</u> Takotna	30,000	714
<u>38</u> Telida	12,000	286
<u>39</u> Venetie	15,000	357
	45,200	1,076
		21,222

Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>1,000 - 5,000 Barrels</u>		
<u>1</u> Alakanuk	124,534	2,965
<u>2</u> Ambler	101,546	2,418
<u>3</u> Angoon	45,200	1,076
<u>4</u> Anvik	51,903	1,236
<u>5</u> Central	45,000	1,071
<u>6</u> Chalkyitsik	65,000	1,548
<u>7</u> Chevak	137,530	3,275
<u>8</u> Cordova	55,000	1,310
<u>9</u> Eek	67,253	1,601
<u>10</u> Elim	67,899	1,617
<u>11</u> Emmonak	129,617	3,086
<u>12</u> Gambell	107,521	2,560
<u>13</u> Goodnews Bay	64,057	1,525
<u>14</u> Grayling	66,255	1,578
<u>15</u> Holy Cross	77,439	1,844
<u>16</u> Hooper Bay	158,642	3,777
<u>17</u> Huslia	66,255	1,578
<u>18</u> Kake	46,000	1,095
<u>19</u> Kaltag	87,103	2,074
<u>20</u> Kiana	113,393	2,700
<u>21</u> Kivalina	94,743	2,256
<u>22</u> Kongiganak	60,000	1,429
<u>23</u> Koyuk	69,110	1,645
<u>24</u> Lower Kalskag	81,184	1,933
<u>25</u> Marshall	76,324	1,817
<u>26</u> Mekoryuk	80,172	1,909
<u>27</u> Minto	42,000	1,000
<u>28</u> Mountain Village	176,055	4,192
<u>29</u> New Stuyahook	80,508	1,917
<u>30</u> Nightmute	47,000	1,119
<u>31</u> Nikolai	55,360	1,318
<u>32</u> Noatak	80,508	1,917
<u>33</u> Norvik	144,901	3,450
<u>34</u> Nulato	113,400	2,700
<u>35</u> Nunapichuk	152,197	3,624
<u>36</u> Pilot Station	94,633	2,253
<u>37</u> Point Hope	62,000	1,476
<u>38</u> Quinhagak	100,247	2,387
<u>39</u> Russian Mission	55,581	1,323
<u>40</u> Saint Michael	75,304	1,793
<u>41</u> Savoonga	133,623	3,182
<u>42</u> Scammon Bay	80,957	1,928
<u>43</u> Selawik	130,527	3,108

Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

Community	Gallons	Barrels
<u>1,000 - 5,000 Barrels (cont'd)</u>		
44 Shageluk	53,032	1,263
45 Shaktoolik	59,807	1,424
46 Shishmaref	114,743	2,732
47 Shungnak	113,655	2,706
48 Stebbins	79,941	1,903
49 Togiak	130,226	3,101
50 Tooksook Bay	98,931	2,356
51 Tuntutuliak	60,000	1,429
52 Tununak	73,271	1,745
53 Wales	51,590	1,228
		109,492
<u>5,000-10,000 Barrels</u>		
1 Illamna	315,000	7,500
2 Saint Mary's	215,751	5,137
3 Unalakleet	360,000	8,571
		21,208
<u>&gt;10,000 Barrels</u>		
1 Kotzebue	2,150,000	51,190
2 Naknek	1,660,000	39,524
3 Nome	3,400,000	80,952
4 Nushagak	1,064,481	25,345
5 Wainwright	552,000	13,143
		210,154
<u>TOTALS 100 Utilities surveyed</u>	<u>15,207,217</u>	<u>362,077</u>
	Total gallons	Total Barrels
	<u>152,072</u>	<u>3,621</u>
	Average gallons	Average Barrels

Recommendation 54  
Full-cost  
reimbursement

*As a prevention incentive, existing regulations should be broadened to insure that in future spills the state can recapture all expenses directly or indirectly incurred by the state, its subdivisions and private parties to whom the state owes reimbursement or who have benefited under the state's oil spill disaster economic-maintenance program.*

Disagreement on reimbursable costs that resulted in an economic loss to the state resulted in the cancellation of a contract by which, on the pipeline route, DEC exercised EPA authority over spills, all to the detriment of environmental protection. Reimbursability became a criteria for state response in the *Exxon Valdez* spill, to the detriment of the environment and people injured by the spill. A fund should be created in state government to help local governments cover public spill costs caused by oil and hazardous substance releases that cannot be charged back to responsible parties.

Recommendation 55  
Private contingency  
plans

*Private parties carrying oil must have a state-approved plan of response to spills of all sizes, including a worst-case scenario, that can be used under either private, federalized or "Alaskanized" spill response.*

The state requirement that Alyeska's contingency plan respond to the "most probable" spill, however, put a lid on expectations about response to a worst-case spill. Alyeska did not prepare beyond the state's minimum standard and did not advocate a higher one.

The risk of a catastrophic spill cannot be reduced to zero as long as oil is carried in large quantities. But the interval between spills can be lengthened and the impact mitigated.

Under known and approved technology, it is also incorrect to assume during contingency and response planning that nearly all oil will be recovered. Under extreme circumstances of weather and location, no oil may be recovered. Here the emphasis should be on critical habitat protection.

In reviewing plans for unfavorable circumstances, DEC should determine a standard of "good effort" rather than one based on a fully successful result.

We know of no effective way to prevent major damage once oil reaches the intertidal zone and shore. To be most effective spill response must be immediate to keep oil from spreading or reaching shore and critical habitat. In the case of a spill near shore, it is not the magnitude of the response over time but what is done in the first few hours that offers the most protection.