

HB 1916

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-1-91

The FINANCE Committee considered:

HB 196

HOUSE BILL NO. 196

LIABILITY OF RESPONSE ACTION CONTRACTORS

"An Act limiting civil liability for acts or omissions of an oil spill response action contractor and establishing strict liability on responsible parties for certain acts or omissions of a response action contractor; amending the definition of 'response action'; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 196 (fin) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) 2700 5-1-91

zero fiscal note _____

zero fiscal note(s) 000 3-18-91

	SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Larson			<i>[Signature]</i>		X	
Phillips						
Sharp	<i>[Signature]</i>	✓				
Boyer	<i>[Signature]</i>	X				
Brown	<i>[Signature]</i>	✓				
Sponer	<i>[Signature]</i>	✓				
Jacko	<i>[Signature]</i>	✓				
Barnes						
Javarr						
Madden	<i>[Signature]</i>	✓				

[Signature]
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 196 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting civil liability for acts or omissions of an oil spill response action
2 contractor and establishing strict liability on responsible parties for certain acts or
3 omissions of a response action contractor; amending the definitions of 'response action' and
4 'response action contractor'; relating to a report by the Citizens Oversight Council on Oil
5 and Other Hazardous Substances; providing for the repeal on July 1, 1992, of changes
6 made by this Act; and providing for an effective date."

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

8 * Section 1. AS 46.03.822(a) is amended to read:

9 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
10 set out in (b) of this section and the exception set out in (i) of this section, the following persons
11 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
12 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
13 RESOURCES OF THE STATE OR A MUNICIPALITY.] and for the costs of response.

1 containment, removal, or remedial action incurred by the state or a municipality, resulting from
2 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
3 threat of an unpermitted release of a hazardous substance:

4 (1) the owner of, and the person having control over, the hazardous substance at
5 the time of the release or threatened release: this paragraph does not apply to a consumer product
6 in consumer use;

7 (2) the owner and the operator of a vessel or facility, from which there is a
8 release, or a threatened release that causes the incurrence of response costs, of a hazardous
9 substance;

10 (3) any person who at the time of disposal of any hazardous substance owned or
11 operated any facility or vessel at which the hazardous substances were disposed of, from which
12 there is a release, or a threatened release that causes the incurrence of response costs, of a
13 hazardous substance;

14 (4) any person who by contract, agreement, or otherwise arranged for disposal or
15 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
16 substances owned or possessed by the person, other than domestic sewage, or by any other party
17 or entity, at any facility or vessel owned or operated by another party or entity and containing
18 hazardous substances, from which there is a release, or a threatened release that causes the
19 incurrence of response costs, of a hazardous substance:

20 (5) any person who accepts or accepted any hazardous substances, other than
21 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
22 from which there is a release, or a threatened release that causes the incurrence of response costs,
23 of a hazardous substance.

24 * Sec. 2. AS 46.03.822(a) is repealed and reenacted to read:

25 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
26 set out in (b) of this section and the exception set out in (i) of this section, the following persons
27 are strictly liable, jointly and severally, for damages to persons or property, whether public or
28 private, including damage to the natural resources of the state or a municipality, and for the costs
29 of response, containment, removal, or remedial action incurred by the state or a municipality,
30 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
31 the substantial threat of an unpermitted release of a hazardous substance:

1 (1) the owner of, and the person having control over, the hazardous substance at
2 the time of the release or threatened release; this paragraph does not apply to a consumer product
3 in consumer use;

4 (2) the owner and the operator of a vessel or facility, from which there is a
5 release, or a threatened release that causes the incurrence of response costs, of a hazardous
6 substance;

7 (3) any person who at the time of disposal of any hazardous substance owned or
8 operated any facility or vessel at which the hazardous substances were disposed of, from which
9 there is a release, or a threatened release that causes the incurrence of response costs, of a
10 hazardous substance;

11 (4) any person who by contract, agreement, or otherwise arranged for disposal or
12 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
13 substances owned or possessed by the person, other than domestic sewage, or by any other party
14 or entity, at any facility or vessel owned or operated by another party or entity and containing
15 hazardous substances, from which there is a release, or a threatened release that causes the
16 incurrence of response costs, of a hazardous substance;

17 (5) any person who accepts or accepted any hazardous substances, other than
18 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
19 from which there is a release, or a threatened release that causes the incurrence of response costs,
20 of a hazardous substance.

21 * Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

22 (k) In this section, "damages" include damage to persons or to public or private property,
23 damage to the natural resources of the state or a municipality, and damage caused by acts or
24 omissions of a response action contractor for which the response action contractor is not liable
25 under AS 46.03.823 or 46.03.825.

26 * Sec. 4. AS 46.03.823(a) is amended to read:

27 (a) A person who is a response action contractor with respect to a release or threatened
28 release of a hazardous substance other than oil whose acts or omissions are not contrary to a
29 response plan or order by a state or federal agency having jurisdiction over the release or
30 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that
31 results from the release or threatened release unless the release or threatened release is caused

1 by an act or omission of the response action contractor that is negligent or grossly negligent or
2 constitutes intentional misconduct. To show negligence by a response action contractor, a
3 claimant must show that the acts or omissions of the contractor under the response action contract
4 were not in accordance with generally accepted professional standards and practices at the time
5 the response action services were performed.

6 * Sec. 5. AS 46.03.823(a) is repealed and reenacted to read:

7 (a) A person who is a response action contractor with respect to a release or threatened
8 release of a hazardous substance whose acts or omissions are not contrary to a response plan or
9 order by a state or federal agency having jurisdiction over the release or threatened release is not
10 civilly liable for injuries, costs, damages, expenses, or other liability that results from the release
11 or threatened release unless the release or threatened release is caused by an act or omission of
12 the response action contractor that is negligent or grossly negligent or constitutes intentional
13 misconduct. To show negligence by a response action contractor, a claimant must show that the
14 acts or omissions of the contractor under the response action contract were not in accordance
15 with generally accepted professional standards and practices at the time the response action
16 services were performed.

17 * Sec. 6. AS 46.03.823(g) is repealed and reenacted to read:

18 (g) In this section, "response action" means an action taken in connection with the
19 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,
20 including investigation, evaluation, plan development, mapping and surveying, engineering,
21 design and construction, removal, and equipment provision.

22 * Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

23 (g) In this section,

24 (1) "response action" means an action taken in connection with the mitigation or
25 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,
26 plan development, mapping and surveying, engineering, design and construction, removal, and
27 equipment provision:

28 (2) "response action contract" means a written contract or agreement to provide
29 response action with respect to a release or threatened release of a hazardous substance, entered
30 into by a person with

31 (A) the department:

1 (B) another person who has entered into an agreement with the department
2 that provides for response action subject to the department's oversight and control;

3 (C) a federal agency with jurisdiction over the release or threatened
4 release; or

5 (D) another person potentially liable for the release or threatened release
6 under state or federal law;

7 (3) "response action contractor" means

8 (A) a person who enters into a response action contract with respect to a
9 release or threatened release of a hazardous substance and who is carrying out the
10 contract, including a cooperative organization formed to maintain and supply response
11 equipment and materials that enters into a response action contract relating to a release
12 or threatened release; and

13 (B) a person who is retained or hired by and is under the control of a
14 person described in (A) of this paragraph to provide services related to the response
15 action contract.

16 * Sec. 8. AS 46.03 is amended by adding a new section to read:

17 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
18 is a response action contractor with respect to a release or threatened release of oil whose act or
19 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly
20 liable for injuries, costs, damages, expenses, or other liability that results from the release or
21 threatened release, or from the response action contractor's act or omission in response to the
22 release or threatened release, unless the person bringing a claim against the response action
23 contractor proves by a preponderance of the evidence that

24 (1) the response action contractor would have been liable for the initial release
25 or threatened release under AS 46.03.822 even if that contractor had not carried out a response
26 action;

27 (2) the response action contractor acted with gross negligence or intentional
28 misconduct; or

29 (3) the response action contractor, without approval by the federal or state on-
30 scene coordinator, substantially deviated from an oil spill contingency plan previously approved
31 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible

1 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms
2 of that plan under a contract with parties responsible for the release under AS 46.03.822.

3 (b) The limitation on liability contained in (a) of this section does not apply to

4 (1) an action for personal injury or death;

5 (2) an action for damages to tangible personal property not caused by oil; or

6 (3) an act or omission that occurs more than 15 days after the release.

7 (c) If the liability of an oil spill response action contractor is not limited under (a) of this
8 section or if the provisions of (a) of this section do not apply because of (b) of this section, the
9 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or
10 other liability that results from the response action contractor's act or omission with respect to
11 a release or threatened release of oil unless the act or omission of the oil spill response action
12 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection
13 does not apply to an oil spill response action contractor who would have been liable for the
14 initial release or threatened release of oil under AS 46.03.822 even if that contractor had not
15 carried out a response action.

16 (d) In this section, "response action" means an action taken to respond to a release or
17 threatened release of oil, including but not limited to mitigation, clean up, or removal of a release
18 or threatened release of oil.

19 * Sec. 9. AS 46.03.826 is amended by adding new paragraphs to read:

20 (14) "response action contract" means a written contract or agreement to provide
21 response action with respect to a release or threatened release of a hazardous substance entered
22 into by a person with

23 (A) the department;

24 (B) another person who has entered into an agreement with the department
25 that provides for response action subject to the department's oversight and control;

26 (C) a federal agency with jurisdiction over the release or threatened
27 release; or

28 (D) another person potentially liable for the release or threatened release
29 under state or federal law;

30 (15) "response action contractor" means

31 (A) a person who enters into a response action contract with respect to a

1 release or threatened release of a hazardous substance and who is carrying out the
2 contract, including a cooperative organization formed to maintain and supply response
3 equipment and materials that enters into a response action contract relating to a release
4 or threatened release;

5 (B) a person who is retained or hired by and is under the control of a
6 person described in (A) of this paragraph to provide services related to the response
7 action contract; and

8 (C) a person who acts as a volunteer and is engaged in a response action.

9 * Sec. 10. AS 46.03.822(k), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

10 * Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances
11 (AS 24.20.600) shall review the entire subject of response action contractor civil liability and the status
12 of oil spill contingency plan holders. The review of both subjects shall be completed and a report
13 submitted to the legislature before January 15, 1992. The report must address whether further
14 modifications are necessary to state laws on response action contractor civil liability, and include an
15 analysis of whether the present state laws that require shippers and owners to hold contingency plans
16 and that enable shippers and owners to contract with response action contractors to carry out contingency
17 plans are adequate to protect the public in the event of an oil spill.

18 * Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

19 * Sec. 13. Sections 1, 3, 4, 6, 8, 9, and 11 of this Act take effect immediately under AS 01.10.070(c).

FISCAL NOTE

No. 1
 Bill Version: CSHB 196(O&G)
 (H) Publish Date: 3/13/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: DEC
 Title: Limited Liability for oil spill BRU: Environmental Quality
response action contractors Component: SPPM
 Sponsor: House Oil & Gas
 Requestor: House Oil & Gas COMPONENT SERIAL NO.

1	0	1	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600
 Division: Commissioner's Office Date: March 11, 1991

Approved by Commissioner: *Janice Adair*
 Agency: ADE Date: 3/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 2

Bill Version: CSHB 196 (JUD)

(H) Publish Date: 5/1/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
Title: "An act limiting civil liability for acts or omissions of an oil spill response action contractor..."
Sponsor: House Special Committee on Oil & Gas
Requestor: House Judiciary

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

COMPONENT SERIAL NO: 783

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	32.0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	32.0	0	0	0	0	0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	32.0	0	0	0	0	0
TOTAL	32.0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

CSHB 196(JUD) proposes a study be prepared to assess the oil spill response action contractor civil liability and oil spill contingency plan holder status. Funding would be from the Oil and Hazardous Release Response Fund. To perform this study, the Citizens' Oversight Council would need funds for contractual services for legal and other research.

see attached page

Prepared By: Pamela A. Sloops, Director

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Division: Administrative Services

Citizens' Oversight Council

Date: 4/23/91

Approved By: Warren W. Endicott, Executive Director

Agency: Legislative Affairs Agency

Date: 4/23/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

CONTINUATION OF FISCAL NOTE: CSHB 196(JUD)

CSHB 196(Jud) limits liability for civil damages for oil spill response action contractors who respond to a release or a threatened release of oil, unless the contractor acts with gross negligence or intentional misconduct. The limited liability is intended to encourage aggressive oil spill response.

In analyzing this bill, the legislature found that there were good public reasons to address the issue of oil spill response action contractor liability. However, the legislature also found that the subject is extremely complex because of the varying public interests and the variations in the types of response action contractors currently operating in Alaska. The legislature wants the study to identify the types of contractors responding to different oil spill discharges so that the legislature could finely tune which response action contractors operating in which scenarios ought to have limited liability for civil damages.

The legislature also intended the study to address the relationships between different response action contractors and the holders of contingency plans. In order to have a strengthened and cohesive oil spill response, it is critical that the contingency plan holder and the response action contractor adhere to a single plan with direction and oversight by state and federal agencies. In analyzing current law, the legislature found that confusion in response may still exist. Accordingly, the legislature has requested that the study include an assessment of whether the present state laws that require oil shippers and owners to hold contingency plans, and that enable oil shippers and owners to contract with response action contractors to carry out contingency plans, are adequate to protect the public in the event of an oil spill.

CONTRACTUAL

Estimate approximately 2 months or 320 hours of research and report preparation.

Estimate contracting at approximately \$100 per hour on the assumption that the contractor would assume all expenses for the project, including travel, supplies, postage, copying, computer services, etc.

$\$100 \times 320 \text{ hours} = \$32,000$

SPONSOR STATEMENT IN SUPPORT OF CSHB 196 (JUDICIARY)
Bill Hudson Chairman, House Special Committee on Oil and Gas

May 1, 1991

The need for strong and prompt oil spill cleanup capability is well recognized by the public. Spills from the *Torrey Canyon*, the Santa Barbara oil well incident, the IXTOC #1 blowout, the grounding of the *Arco Merchant*, the *Amoco Cadiz* and finally the *Exxon Valdez* incidents all gravely punctuated the need for new laws.

With the advent of Alaska's legislation requiring strict liability for spill damages (Ch. 112, SLA 1972), oil spill response action cleanup contractors (RAC's) became exposed to unlimited strict liability. This created a difficult situation for RACs and legislative efforts were then made to reduce the threat of such law suits (Ch. 39, SLA 1989 & Ch. 191, SLA 1990). Nevertheless, current Alaska law does not provide the same emergency response immunity to RACs as it does for other emergency responders.

CSHB 196 amends AS 46.03.822 and .823 and adds section .825 which proposes to shift the liability for certain acts of simple negligence during the first 15 days following the spill, so long as the RAC's act or omission is not contrary to the order of the state or federal On Scene Coordinator (OSC), or substantially deviates from the applicable oil spill contingency plan. "Substantial deviation" does not include minor departures from a plan that are inevitable in a crisis situation. Instead the phrase refers to a significant, and/or unjustifiable departure of a RAC from the fundamental requirements of an applicable plan.

CSHB 196 also calls for a complete study of the issues of RAC liability to be made by the legislature's Citizen's Oversight Council by January 15, 1992. To ensure that this will be done, the bill also contains a sunset provision of one year.

The bill also requires that a Response Action Contractor who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e) and as approved by the Department of Environmental Conservation. There is some question as to whether this amendment will actually expand access to response action services as it is possible that a RAC may simply elect to withhold service rather than accept financial responsibility in a format that it finds unacceptable.

The benefits of this bill extend beyond encouragement of rapid initial response. The implementation of HB 567 in June of this year will require the demonstration of significant

oil spill cleanup capabilities by the industry. Statewide, oil facilities and operations without the financial resources to have their own cleanup capability, will have to turn to spill cleanup cooperatives and cleanup RACs for the cleanup services required by law. At this time these operators have been reluctant to join cleanup co-ops partly because of their exposure to unlimited liability. In addition, cleanup contractors have become sensitized to the liability issue and are now reconsidering offering their services. This bill is intended to reduce some of the initial impediments to start-up of potential cleanup businesses and the formation of co-ops.

This bill also is expected to assist in the successful resolution of response action contracts in Prince William Sound that will assure uninterrupted supply and distribution of ANS crude to a wide array of companies that have been negatively impacted by Alyeska's requirements for \$1 Billion in financial responsibility from shippers. This bond requirement was established in response to Alyeska's interpretation of RAC liability under existing Alaska law. As a result some companies have already been excluded from the maritime transport of ANS crude (Cove Shipping, U. S. Refining); others have withdrawn from the trade (Mobile and reportedly Shell this summer); while others have had their supply and/or distribution threatened (Tesoro and Conoco).

In addition, by being more consistent with other states and the federal law, large RACs such as the Marine Response Corporation (MSRC) should be more inclined to respond to spills in Alaska and perhaps even locate here. This bill has no effect on the responsibilities for cleanup or on the planning standards enacted by the legislature in 1990.

In summary, CSHB 196

1. Shifts the liability for damages caused a RAC's simple negligence during the first 15 days of oil spill cleanup to the spiller so long as the RAC.
 - a. Does not cause personal injury.
 - b. Does not violate an order of the On Scene Coordinator.
 - c. Does not substantially deviate from the applicable oil spill contingency plan.
2. Calls for a study of the state's liability laws to be done by next legislative session.
3. Sunsets these provisions in one year so this legislature will be able to reconsider the issue.
4. Requires that a RAC who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e) and as approved by the Department of Environmental Conservation.

SECTION-BY-SECTION ANALYSIS OF CSHB 196 (JUDICIARY)

The 13 sections of CSHB 196 (Judiciary) fall into three categories:

1. Substantive sections: that is, those sections that either define the liability of oil spill response action contractors (RACs) or transfer that liability to the spiller;
2. conforming amendments to existing law; and
3. sections which merely set out existing law -- which will be "restored" after this legislation sunsets.

1. The Substantive Sections:

Section 8. This is the most significant section of the bill. It provides that oil spill RACs are responsible for damages caused by their cleanup activities if they were grossly negligent or acted with intentional misconduct. This limited liability, however, applies only during the first 15 days following the spill, and only if the oil spill RAC was not responsible for the spill itself. Nor is the oil spill RAC's liability limited if it substantially deviates from an approved oil spill contingency plan that was either prepared by that RAC, or which the RAC agreed to follow in a cleanup contract with the spiller.

Subsection (b) provides, in addition, that limited liability does not apply to actions for personal injury or death, or for actions for damages to tangible personal property not caused by the oil.

Subsection (c) provides that if, for any of the reasons stated

above, the oil spill RAC's liability is not limited to "gross negligence," the injured party will have to prove simple negligence in order to hold the oil spill RAC liable. However, if the oil spill RAC also caused the spill, the RAC will still be strictly liable.

Subsection (d) was added by House Judiciary and provides that a Response Action Contractor who seeks a demonstration of financial responsibility from a shipper or other potential client must accept any of the forms of financial responsibility that are acceptable to the State as described in AS 46.04.040(e). These include the following: 1) self insurance; 2) insurance; 3) surety; 4) guarantee; 5) letter of credit; and 6) insurance pools such as Protection and Indemnity Clubs ("P & I Clubs"). The intent is to assure that Alaska shippers and other users of spill response services have the same options for demonstrating financial responsibility to a RAC as they do to the State.

The requirements of this amendment are effective as to any response action contract entered into or renewed on or after the effective date of the legislation.

Subsection (e) limits those "response actions" for which liability is limited only to activities undertaken in response to an actual or imminently threatened spill.

Section 3. This section provides that, if an oil spill RAC's liability is limited under Section 8, the spiller is strictly liable for those damages.

Section 9. This section sets out the type of people who are covered by the limitation of liability in Section 8. It uses

existing law's definitions of "response action contract" and "response action contractors," with one important addition -- volunteers are now covered by the limitation of liability. See p. 7, l. 8.

Section 11. This section provides that the Citizens' Oversight Council on Oil and Hazardous Substances will prepare and submit a report to the legislature by January 15, 1992 on the liability issues covered by this bill. Since this legislation will "sunset" on July 1, 1992 (see below), the report is intended to aid the legislature in considering this issue next year.

2. The Conforming Amendments.

Section 1. Section 3, as we have seen, transfers certain liabilities from the oil spill RAC to the spiller. It does so by adding a definition of "damages" for which the spiller is responsible to Alaska's basic strict liability law (AS 46.03.822). Since Section 3 now sets out the damages for which the spiller is liable, there is no longer any need to repeat the now-redundant list in Section 822(a). Section 1 therefore deletes this now-surplus language (p. 1, ls. 11-13); otherwise, it makes no change in the liability statute. Except for the bracketed and capitalized language on page 1, all of Section 1 merely sets out existing law.

Section 4 and Section 6. Section 8 creates limitations on liability specific to oil spill response action contractors. AS 46.03.823 is an existing liability statute dealing with all hazardous waste cleanup contractors (including oil spill RACs). Section 4 and Section 6 remove oil spill RACs from the coverage of

Section 823 by inserting the words "other than oil" on p. 3, l. 28 and p. 4, l. 19. Except for these words, the remainder of these sections simply set out existing law, which will still be applicable to people involved in other types of hazardous substances cleanup.

Section 13. This section provides an immediate effective date.

3. "Sunset" Provisions.

Section 10 repeals the substantive provisions of this bill, and Section 12 makes that repeal effective July 1, 1992. Once the new law is repealed, it is necessary to restore the law as it exists today. Section 2, Section 5 and Section 7 of the bill accomplish this by setting out presently existing law, while Section 12 then provides that these existing laws will be "restored" on July 1, 1992.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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TELEPHONE
(907) 465-2600

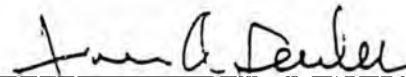
March 11, 1991

POSITION PAPER

HB 196

House Bill 196 proposes to shift the liability for simple negligence from an innocent oil spill response action contractor (RAC) to the party responsible for the spill so long as the RAC's act or omission is not contrary to a response plan or an order of the Federal or State on-scene coordinator.

The Department of Environmental Conservation supports HB 196 for the reasons set out in Section One of the Legislation, Findings and Purpose.



John A. Sandor
Commissioner

CSHB 196 Background

SECTION A,

No. 1

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 11, 1991

The Honorable Bill Hudson
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Greetings:

It has come to my attention that some of the major transporters of bulk petroleum products are in the process of reviewing their responsibilities under Ch. 191, SLA 1990, to prepare contingency plans and to clean up spills of oil and other hazardous substances by June 1, 1991. It is my understanding that the cost of preparedness, because of the lack of response action contractors willing to operate in Alaska, among other aspects of the Act, is so high that these transporters are reconsidering the economics of serving Alaska distributors.

We must quit the overall belief that spill responsibilities are limited to the multinational corporations (the worst possible event while ANWR and other national events towards wetlands and coastal exploration are on the Congressional minds would be a airlift or river barge loaded with fuel would cause a major spill and no clean up contractor available). The Juneau boat harbor is a situation that did happen and is documented in the following paragraph.

Last weekend the group here in Juneau that is organized to respond to oil spills was called out by the Coast Guard to clean up a spill caused by the sinking of a vessel in the small boat harbor. The group responded, but the next day they met to consider whether or not they would respond in the future because of the liability imposed on response action contractors under Ch. 191. I do not know what their decision was, or if they have reached a decision, but their concern may be an indicator that cooperatives organized to respond to spills either may refuse to respond to spills by persons who are not members of the cooperatives or that cooperatives may be forced to disband, leaving no organization available to respond to spills.

CSHB 196 Background

SECTION A,

No. 2

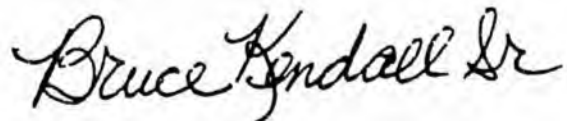
April 11, 1991

Emergencies could even cause a special session, which may be required if amendment cannot be achieved in this session and fuel supplies, especially for those areas of the state that are not equipped to clean up spills, are disputed or not delivered to those communities dependent upon bulk shipments, including the communities on the Interior river systems.

I am also concerned that even if the bulk transporters of petroleum products continue in the Alaska trade, the price of fuel may rise severely because of the necessity to cover the increased costs of spill response. This could have a major impact on the prices of home heating fuel, automobile gasoline and diesel fuel and fuel for electrical generation equipment throughout Alaska, but especially in the small, rural communities. If fuel deliveries are disrupted, the fishing season could be seriously affected.

I hope that you will look carefully at this problem to make sure that we are able to maintain fuel shipments and provide adequate spill response capability throughout the state at the same time.

Respectfully,

A handwritten signature in cursive script that reads "Bruce Kendall Sr".

Bruce B. Kendall, Sr.
Legislative Liaison

QUESTIONS AND ANSWERS REGARDING CSHB 196 (JUDICIARY)

1. DOESN'T EXISTING LAW ALREADY LIMIT THE LIABILITY OF CLEANUP CONTRACTORS?

AS 46.03.823 adopts the common law liability rule of simple negligence. For RACs who had no involvement in the spill itself, that is not a limitation on liability. Additionally, AS 46.03.823 provides that, under a number of poorly defined circumstances, the innocent RAC may be strictly liable for any damage caused during spill cleanup.

2. WHY SHOULD WE LIMIT THE LIABILITY OF OIL SPILL RACS?

Oil spill RACs are responding to an emergency in a crisis atmosphere. As a result, they are particularly vulnerable to lawsuits. Alaska has recognized this by limiting liability to "gross negligence" for people who respond to other kinds of emergencies -- including medical emergencies and disaster emergencies. AS 09.65.090-091.

The threat of lawsuits can deter people from becoming oil spill cleanup contractors, and can cause unnecessary delays by existing contractors in implementing spill response.

3. BUT DOESN'T ALASKA HAVE PLENTY OF OIL SPILL CLEANUP CAPABILITY EVEN UNDER EXISTING LAW?

Yes, a lot of people came forward to help cleanup the Exxon Valdez spill. However, this was after Exxon, one of the largest companies in the world, acknowledged responsibility for cleanup. This is not always the case.

Moreover, there are many areas of the State that do not have

spill cleanup capability. Last year, the legislature significantly increased oil spill cleanup capability requirements. The new law takes effect this June, and in most places in the state, oil terminals and shippers -- particularly small ones -- are expected to be unable to meet those requirements.

We have already seen Alaska's cleanup liability laws threatening the availability of necessary oil spill cleanup services in Prince William Sound. People have been reluctant to join the new Cook Inlet spill coop (CISPRI) because of potential liability. A Juneau contractor testified in the House Resources Committee that it was reconsidering its entry into the field because of liability concerns. The oil industry's new nationwide cleanup corporation -- MSRC -- has made it clear that it is uninterested in locating assets in any state that does not limit oil spill cleanup contractor liability.

Aggravating the problem is the fact that the United States Congress, and the legislatures of California, Hawaii, Washington, Texas, Florida, Virginia and Delaware have already adopted a "gross negligence" standard for oil spill cleanup contractors. A number of other states will be following suit shortly. Being among a shrinking minority of states with unlimited cleanup contractor liability, Alaska will find itself at an even greater competitive disadvantage in attracting necessary resources.

4. ISN'T HB 196 A SPECIAL-INTEREST BAIL-OUT BILL TO HELP TESORO OBTAIN CLEANUP COVERAGE FROM ALYESKA?

As a result of existing law, Alyeska has conditioned the availability of cleanup services for Tesoro's transportation of

crude oil through Prince William Sound on financial responsibility terms that Tesoro can't meet. Whether or not Alyeska's demands are reasonable or constitute an overreaction to the problem, the existing liability problem that prompted Alyeska's decision is real. The Alyeska situation presents the most current, dramatic illustration of this larger problem. It is, however, only a symptom of Alaska's unreasonable liability rules for oil spill cleanup contractors -- one that has already spread to other areas of the state, and will spread further as Alaska's new cleanup requirements take effect.

5. ALYESKA HAS INDICATED THAT IT IS UNSATISFIED WITH CSHB 196 (JUDICIARY). WHY PASS THIS BILL IF IT WON'T FIX THE TESORO/CONOCO/ALYESKA PROBLEM?

The goal of this legislation is not to "fix" a private dispute. However, the Alyeska/Tesoro situation was precipitated, in substantial part, by an unreasonable liability environment. That is a legitimate legislative concern. CSHB 196 (Judiciary) would define an oil spill RAC's liability in essentially the same way as new federal law, and the laws of our sister coastal states. Whether a particular RAC -- be it Alyeska or anyone else -- chooses to remain unreasonable is not something that should influence this basic public policy decision.

6. CAN'T WE JUST PROVIDE THAT OIL SPILL RACS CAN BE INDEMNIFIED FOR THEIR SIMPLE NEGLIGENCE?

Congress, and other states, have considered, and rejected, indemnification as an alternative approach to limited liability. Indemnification has three different problems:

1. When a crisis occurs, there will be no time to negotiate

an indemnification agreement. Indemnification has been used to limit the liability of hazardous chemicals cleanup contractors, since that type of cleanup is normally preceded by months of study and negotiation. However, since oil spill cleanup RACs operate in a different environment, the federal government and other states have realized that the indemnification approach doesn't work here;

2. Indemnification does not prevent a person from being sued. It merely promises that someone might pick up the bill for the lawsuit later. The point of limited liability legislation is to remove the threat of litigation itself; and

3. Under HB 196, the liability for the cleanup contractor's negligence is transferred to the spiller. However, since oil spill cleanup is often done under contract with the state, an indemnification approach would transfer that liability from the RAC to the public. The spiller, rather than the people of Alaska, should pay for the consequences of good faith cleanup actions.

7. DOES THIS BILL "WEAKEN" ALASKA'S LIABILITY LAWS?

With respect to the spiller, the bill strengthens Alaska law by making it clear that the spiller is responsible for damages caused by cleanup contractors.

With respect to the cleanup contractor, the legislation strengthens existing law by attaching consequences to the cleanup contractor's failure to substantially comply with a contingency plan which it authored, or which it agreed to follow by contract. Remember that, under existing law, the RAC is neither the holder

of, nor legally responsible for, the contents of the contingency plan. That responsibility falls on the spiller (i.e. the tanker operator). This positive aspect of the legislation was a principal reason why the Prince William Sound Regional Citizens Advisory Committee, and the Citizens Oversight Council, withdrew any objections to the legislation.

8. TRANSFERRING THE LIABILITY TO THE SPILLER IS FINE, BUT WHAT HAPPENS IF THE SPILLER IS INSOLVENT, OR CAN'T BE FOUND?

As a result of recent state and federal legislation, the possibility of inadequate compensation from the spiller has been minimized.

First, with respect to tankers, Alaska law subjects both the tanker owner/operator and the owner of the oil to unlimited strict liability for all damages. This will often result in two "deep pockets" in the event of a spill.

Moreover, all major oil handling activities in the state must post substantial financial responsibility under both federal and state law. These financial guarantees are accessible by any injured party, irrespective of the spiller's financial solvency.

Finally, there now exists a state fund to insure the adequacy of state cleanup funds. More importantly, Congress has now created a \$1 billion/incident federal fund which is available to anyone who cannot obtain satisfaction from the responsible parties themselves.

April 11, 1991

Representative Cliff Davidson
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: CSHB 196 (Oil & Gas)

Dear Representative Davidson:


The Alaska Miners Association supports this bill.

Anyone involved in oil spill cleanup and response should be encouraged to concentrate on the work at hand, i.e. cleaning up the spill, without being concerned that their every decision and action will be subject to detailed scrutiny and possible liability.

Without this change/clarification at least two things will occur:

1. Cleanup efforts will be hampered and delayed through concerns for liability, and
2. The cost for all petroleum products to outlying areas of the state will increase unnecessarily as suppliers seek to protect themselves from frivolous charges, acts of omission, and honest mistakes.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Phil Holdsworth
Kent Dawson

Post-It™ brand fax transmittal memo 7671		# of pages > 3
To <i>H. Hastings</i>	From <i>John T</i>	
Co.	Co.	
Dept. <i>401546.3</i>	Phone #	
Fax #	Fax #	

Alyeska pipeline

SERVICE COMPANY

1604 SOUTH BRADAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 879-1811, TELEFAX (907) 879-1817

March 15, 1991

Representative Bill Hudson
 Capitol Room 111, MS 3100
 Box 7
 Juneau, Alaska 99811

Re: H.B. 196

278-5026

Dear Representative Hudson:

You recently asked Paul Richards to comment on H.B. 196 on behalf of Alyeska Pipeline Service Company. We have reviewed the issue of potential legislative changes to response action contractor liability in the context of the financial responsibility requirements in our Oil Spill Response Service Agreements. As a result of this review, we have developed the following statement of our position:

"Alyeska Pipeline Service Company, which operates the trans Alaska pipeline system, is an initial oil spill response action contractor for tank vessels in Prince William Sound. The vessels have incorporated Alyeska's initial response plan into their contingency plans. Under the terms of contracts between Alyeska and the owners, operators or charterers of these vessels, Alyeska is indemnified for costs and certain liabilities that might arise out of Alyeska's response on behalf of a vessel. The contracts also require that the party contracting on behalf of a vessel demonstrate financial responsibility to perform its indemnity obligations. Tesoro has been unable to demonstrate compliance with the financial responsibility provisions of the standard contract and is presently operating under a temporary agreement that expires on June 30, 1991. Alyeska has advised Tesoro that the temporary agreement will not be extended.

"Alyeska supports enactment of Alaska legislation that a response action contractor can be liable for simple negligence in its oil spill response activities ONLY when its acts are inconsistent with the National Contingency Plan or directives of the President or when its actions cause personal injury or death. Congress enacted this standard in section 4201(a) of the Oil Pollution Act of 1990. If such legislation becomes law in Alaska, Alyeska will reduce the financial responsibility requirements for all tank vessels contracting for its initial oil spill response

SECTION E,
 No. 3

Representative Bill Hudson
March 15, 1991
Page 2

services. The amounts of such reduced requirements have not been determined. However, on the basis of Tesoro's current financial condition and available insurance coverage, and existing insurance coverage of owners of the vessel that Tesoro is using to transport its oil, Alyeska is confident that Tesoro will have no difficulty in arranging to meet such revised financial responsibility requirements.

"If the Alaska law ultimately adopted has a narrower exemption from liability for simple negligence than that provided by federal law, Alyeska will review the financial responsibility requirements of its contracts for initial oil spill response in light of the exposure to liability that remains under the new law. If substantial exposure to liability for simple negligence remains, Alyeska may not be able to reduce the financial responsibility requirements to a level that Tesoro can meet."

Please contact me or Mr. Richards if we may be of further assistance.

Sincerely yours,


J. H. Harmiller
President

encl

cc: Gene Burden
Paul Richards



CITY OF KENAI

"Oil Capital of Alaska"

210 Fidalgo Avenue
Kenai, Alaska 99611

TELEPHONE 283-7535
FAX 907-283-3014

April 10, 1991

Representative Bill Hudson, Chairman
House Oil and Gas Committee
State of Alaska
P.O. Box V
Juneau, AK 99811

RE: **[REDACTED] LIABILITY LIMITS FOR OIL CLEAN-UP
CONTRACTORS**

The City Council of the City of Kenai, at their meeting of April 3, 1991 unanimously stated their support of House Bill 196. The bill, as you are aware, is designed to afford limited immunity from lawsuits to citizenry groups responding to oil spills caused by another, unless the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

These groups consist of spill response contractors, countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared, on an emergency basis, to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information.

Exposure to unlimited liability in the course of response activities may deter responders from performing clean-up activities on behalf of the person or persons actually responsible for the spill.

The City Council of the City of Kenai supports House Bill 196 and encourages the Alaska State Legislature to pass this legislation. Where limitations on immunity are granted to responders, it is

CSHB 196 Background

SECTION E,

No. 4

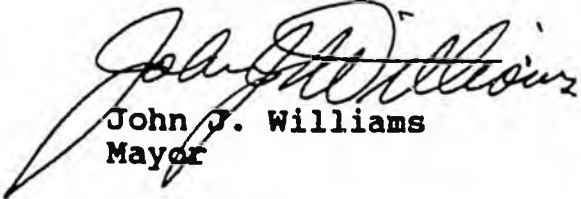
Representative Bill Hudson
April 10, 1991
Page 2

important that victims be fully protected and compensated for damages. The party responsible for the spill in the first instance should be liable for any damages caused by the responders' simple negligence.

Again, the City Council of the City of Kenai supports this legislation.

Sincerely,

CITY OF KENAI



John J. Williams
Mayor

JJW/clf

Introduced by: Brown

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

A RESOLUTION OF THE KENAI PENINSULA CAUCUS CONCERNING "OIL SPILL RESPONDER'S LIMITED IMMUNITY."

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and,

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and,

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities.

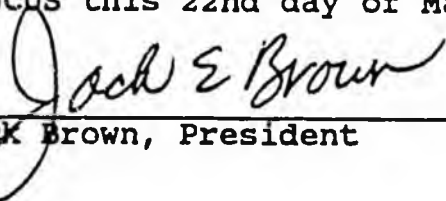
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and,

BE IT FURTHER RESOLVED, that the Kenai Peninsula Caucus supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and,

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

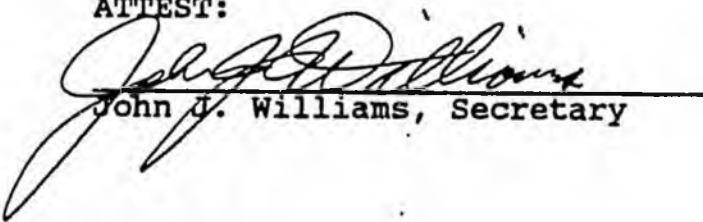
COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

PASSED BY THE KENAI PENINSULA CAUCUS this 22nd day of March, 1991.



Jack Brown, President

ATTEST:



John J. Williams, Secretary

(3/8/91)

Introduced by: Brown, Superman
Date: April 16, 1991
Action: ADOPTED
Vote: UNANIMOUS

KENAI PENINSULA BOROUGH

RESOLUTION 91-37 (SUBSTITUTE)

A RESOLUTION SUPPORTING TESORO ALASKA

WHEREAS, the continued operation of the Tesoro Refinery is being threatened by an unreasonable demand by Alyeska management; and

WHEREAS, Alyeska is demanding Tesoro to secure a billion dollars insurance bond; and

WHEREAS, Tesoro Alaska has in good faith attempted to secure this bond; and

WHEREAS, Tesoro Alaska can provide a billion dollars of P and I insurance and Alyeska rejected this offer; and

WHEREAS, Tesoro Alaska contributes substantially to the tax base of the Kenai Peninsula Borough:

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1: That the Kenai Peninsula Borough Assembly urges the Alaska State Legislature to intervene on Tesoro's behalf and resolve this situation.

Section 2: That copies of this resolution be distributed to Governor Walter Hickel, the Alaska State Legislature, Tesoro Alaska and Alyeska.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 16th DAY OF April, 1991.


James W. Skogstad, Assembly President

ATTEST:


Acting Borough Clerk



Marine Spill Response Corporation
G. Stephen Duca
Vice President
Readiness and External Affairs

March 25, 1991

Representative Bill Hudson
Chairman
House Special Committee on Oil and Gas
Alaska House of Representatives
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Mr. Chairman:

In your letter of March 6, 1991 addressed to our General Counsel Mr. Joseph E. Lees, you asked for **comments on HB 196**. We have carefully reviewed the bill. **Sections 1, 2, 3 and Sec. 5, (46.03.825) are of particular interest to MSRC. In general, MSRC supports state legislation that enacts a limited immunity for all oil spill responders as protective as the provision found in PL 101-380.** It appears that the intention of HB No. 196 is to accomplish this and therefore our comments are intended to help bring about this end. For your convenience I am enclosing model legislation on responder immunity that MSRC has prepared to assist states as they consider this legislative issue.

The language of H.B 196 concerns itself with "response action contractors", a defined term in the proposed legislation. **MSRC feels that limiting immunity to this category of responders is not in consonance with the intent of the legislation.** As noted in the bill/s preamble, limited immunity is needed because it is in the public interest to promote a bold, vigorous response during emergencies. **Yet a "response action contractor" is a person who must act pursuant to a written contract or agreement to provide "response Actions".** (See 46.03.826(15).) To assure themselves that they qualify for responder immunity however, they first have to assure that written contracts are in place. This could delay the response and thus by limiting immunity on the basis of a responders status as a "response action contractor", the state will limit the quality of the response needed during spills.

~~The language of Section 2 of the bill could be interpreted to make oil spill responders liable if a spill occurs from one of their vessels during response and cleanup operations. (See Sec. 46.03.822)). This is inconsistent with the stated purpose of the bill to provide responders with a limited immunity because they are required to act under emergency conditions. Oil spill containment vessels (barges, dracones, etc.) are a critical, integral part of a responder's offshore operations. To limit a responder's immunity with respect to such an important part of spill response operations renders all response operations hostage to the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of the bill.~~

Specific comments, keyed to the draft bill, are provided in an additional enclosure. ~~In general these are clarifications of bill language to insure that:~~

- (1) all responders are provided with immunity irrespective of their status as operating under a contract, volunteer, etc.,
- (2) spills from response vessels will not convert the status of a responder to a responsible party.

Thank you for your opportunity to provide you with our insights into this important piece of legislation. Please don't hesitate to contact me if there is anything further you may need.

Sincerely,



G. S. Duca
Vice President
Readiness and External Affairs

Enclosures

A Model State Act Regarding Limited Immunity for Persons Responding to Oil Spills

proposed by the
Marine Spill Response Corporation

This model State Act makes State law consistent with new federal oil spill legislation that provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or the threat of an oil spill. The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan (NCP), or under the direction of the Federal On-Scene Coordinator (OSC) or the appropriate State official. Because the plans and orders may not cover every detail or eventuality of a spill response, actions that are in keeping with the overall objectives of the plans or Coordinator's orders are deemed to be within the scope of this Act.

Just as with response to fire, response to an oil spill must be immediate and decisive. Like firemen, oil spill responders cannot control the timing or location of their work. Both types of responders must take immediate action based on very limited information, attacking the problem quickly if there is to be any realistic chance of mitigating the worst harm. Limited immunity for firefighters has been long recognized because of these circumstances, and this bill extends similar protection to oil spill responders.

Without similar immunity, the enormous financial risks and liability exposures associated with spill response will deter those persons who are not responsible for the initial spill, such as cleanup contractors, fishermen, and barge owners, from prompt, aggressive cleanup, or even from any response at all. The United States Congress recognized the need to provide limited immunity to oil spill responders in the Oil Pollution Act of 1990. However, Congress did not preempt State oil spill liability laws, so a similar provision is needed in State law. Federal and State responder liability laws should be uniform. To respond decisively, responders must be able to act without being forced to consider the boundaries or interaction of varying liability regimes.

The liability for damages resulting from the oil spill cleanup efforts falls on the party responsible for the initial discharge, not on persons trying to help clean up or mitigate the damage. Under this bill, victims of oil spill damage will have a means of compensation. They may recover from the person responsible for the initial discharge or, where the responsible party is unidentified or unable to pay, from the federal Oil Pollution Fund (and, perhaps a State fund, if provided by State law). In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

Some States provide immunity only to those persons who do not charge for their services. Refusing immunity to persons who charge for their services in the context of catastrophic oil spills works to deny the public the benefit of cooperatives and subcontractors who have the expensive oil spill response equipment and trained personnel that are the key to mitigating damage from the spill, but who must be able to charge for their services in order to maintain their readiness. Volunteer responders have a role, too, but professional responders equipped with their equipment and training have the greatest likelihood of making a significant difference in the spill response. Thus, this act covers all responders, whether they volunteer or work for pay.

This draft State legislation was developed by the Marine Spill Response Corporation (MSRC), a nonprofit mutual benefit corporation organized exclusively to promote the welfare of the public by mitigating environmental damage to the coastal and certain upstream waters of the United States. This newly created organization seeks to establish a program to render its best efforts to contain and cleanup certain large oil spills beyond local response capabilities. It will use funds provided by the oil and shipping industries to build, staff and equip five regional response centers and numerous prepositioned equipment sites. Together with a host of other responders, MSRC hopes to dramatically improve this nation's ability to respond to large oil spills in coastal and tidal areas, in part through bold and decisive response to a spill event. Responder immunity is a critical requirement for that type of rapid response.

1 Section 1. [*Short Title.*] This act may be cited as the [State] Act Regarding Liability for
2 Persons Responding to Oil Spills.

1 Section 2. [*Definitions.*] For the purposes of this Act the term:

2 (1) "damages" means damages of any kind for which liability may exist under the laws
3 of this State resulting from, arising out of, or related to the discharge or threatened discharge
4 of oil.

5 (2) "discharge" means any emission (other than natural seepage), intentional or
6 unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting,
7 emptying, or dumping;

8 (3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S.
9 Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal
10 responses under subpart D, or the official designated by the lead agency to coordinate and direct
11 removal under subpart E, of the National Contingency Plan;

12 (4) "National Contingency Plan" means the National Contingency Plan prepared and
13 published under section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)),
14 as amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

15 (5) "oil" means oil of any kind or in any form, including, but not limited to, petroleum,
16 fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

17 (6) "person" means an individual, corporation, partnership, association, State,
18 municipality, commission, or political subdivision of a State, or any interstate body.

19 (7) "removal costs" means the costs of removal that are incurred after a discharge or
20 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the
21 costs to prevent, minimize, or mitigate oil pollution from such an incident;

22 (8) "responsible party" means a responsible party as defined under § 1001 of the Oil
23 Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

1 Section 3. [*Exemption From Liability.*]

2 (a) Notwithstanding any other provision of law, a person is not liable for removal costs
3 or damages which result from actions taken or omitted to be taken in the course of rendering
4 care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed

5 by the Federal On-Scene Coordinator [or by the State official with responsibility for oil spill oil
6 response].

7 (b) Subparagraph (a) does not apply--

8 (1) to a responsible party;

9 (2) with respect to personal injury or wrongful death; or

10 (3) if the person is grossly negligent or engages in willful misconduct.

11 (c) A responsible party is liable for any removal costs and damages that another person
12 is relieved of under subparagraph (a).

13 (d) Nothing in this section affects the liability of a responsible party for oil spill
14 response under State law.

Enclosure (2)

PAGE/LINE

REMARKS

1/1

Delete "civil". Statutes generally provide specific penalties for acts that are deemed to be criminal offenses. Removing the word "civil" clarifies the intent of the statute.

1/1-2

Delete "response action contractors" and replace it with "responders". ("Responder(s)" should be used wherever "oil spill contractor(s)" appears in the bill.) All responders to an oil spill need to have a limited immunity as they go about the work of responding to and mitigating the effects of a release, whether or not they have a response action contract. The basis for this limitation rests upon the need for bold, vigorous action in the face of the emergency conditions, lack of information/conflicting information, the responder's inability to control essential elements that directly affect his operations, such as the weather during a spill and the limitations of technology on the efficacy of the operations that he is able to undertake. For example bird/animal rescue and community volunteers face the same category of problems as those responding to the spill with mechanical cleanup capabilities.

2/21

"limiting the liability of innocent" should be changed to, "providing a limited immunity to".

2/22-23

Delete, "are...spill." and replace with, "do not constitute gross negligence or willful misconduct and are consistent with the National Contingency Plan (NCP) or as otherwise directed by the President or by a State official with responsibility for oil spill response. This immunity does not apply to cases of personal injury or wrongful death."

3/8-11

This subparagraph appears to make the responder liable for releases of hazardous materials from one of his vessels (barges, dracones, etc.) engaged in receiving recovered oil/oily wastes that would be categorized as hazardous substances. The collection of recovered oil/oily debris is a critical, integral task in the response and cleanup operational scenario. To limit his immunity with respect to such an important part of spill response operations renders all response operations hostage to

the dangers of a simple negligence standard, rather than gross negligence or willful misconduct standard of performance of the bill.

3/12-17

This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. (See previous remarks for supporting rationale.)

4/8

Given the complexity of Alaska's liability laws, it is important that the immunity provision be begin with the phrase, "Notwithstanding any other provision of law,".

4/9-11

"act...coordinator". Recommend replacement of this portion of the bill with, "who renders care, assistance or advice for a release or threatened release of oil that is consistent with the National Contingency Plan (NCP) or as otherwise directed by the President or by the state official with responsibility for oil spill response." See previous remarks for supporting rationale.

4/15-17

This sub-section also appears not to provide a limited immunity for a critical portion of response and cleanup operations. Section 46.03.825(a)(1) provides an exception to responder immunity if the response action contractor would have been liable for the release or threatened release under state of federal law even "if that contractor had not carried out a response action" with respect to the release or threatened release. This section may simply be trying to prevent the spiller from taking advantage of the immunity. However this provision could apply to non-spiller responders too. For example, there may be liability under the Alaska law for a person who fails to comply with the terms and conditions of a response action contract of a remedial action plan, or a contingency plan. Thus, if a responder has a contract with a potential spiller to respond in a certain way, then under the state law the contractor must respond in accordance with the contract. This could make the responder liable for the release "if that contractor had not carried out a response action". As a result, the responder may be denied immunity.

4/after 21

Recommend add a provision that makes the responsible party liable for removal costs and damages that another person is relieved of under this section of the bill. (See MSRC model bill.)

North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99635
NORTH PENINSULA CHAMBER OF COMMERCE

(907) 776-8369

FROM 987 639 8388

RESOLUTION

A RESOLUTION SUPPORTING OIL SPILL RESPONDER'S LIMITED IMMUNITY

WHEREAS, it is in the interest of the citizens of the State of Alaska and the Kenai Peninsula Borough to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to all spills; and

WHEREAS, the success of a spill response organization depends upon spill response contractors as well as countless fishermen, subcontractors, and other part-time professionals and specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE NORTH PENINSULA CHAMBER OF COMMERCE:

Section 1: That the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to the best of their abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

Section 2: That the North Peninsula Chamber of Commerce supports and encourages Alaska State legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and

98-08-17 11:35

CSHB 196 Background
SECTION E,
No. 9

North Peninsula Chamber of Commerce

P.O. Box 8053


Nikiski, Alaska 99635

(907) 776-8369

FROM 907 659 8308

Section 3: That where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damages caused by responder's simple negligence.

ADOPTED BY THE NORTH PENINSULA CHAMBER OF COMMERCE ON THIS
7th DAY OF March, 1991.



Marie Becker, President of THE
NORTH PENINSULA CHAMBER OF COMMERCE

'90.02.17 11:35



David N. Lakin
Director of Government Affairs

March 1, 1991

Patrick J. Malone, Aide
Representative Mike Navarre
Alaska State Legislature
P.O. Box V
Juneau, Alaska, 99811

Dear Mr. Malone:

MSRC indeed supports efforts to amend Alaska's current responder immunity law.

Basically, we believe oil spill responders should receive limited immunity to encourage them to become involved and act boldly in the chaotic and risky business of oil spill response. We are attempting to have responder immunity provisions at least as protective as those contained in the Oil Pollution Act of 1990 (Section 4201), adopted by coastal states and certain other jurisdictions of the U.S. The federal statute provides immunity from removal costs or damages to anyone rendering care, assistance or advice consistent with the National Contingency Plan (NCP) or as otherwise directed by the federal on-scene coordinator. We also believe that responder actions in accordance with the directions given by appropriate state officials should be immune. This limited immunity would not pertain to acts of gross negligence or willful misconduct or to cases of personnel injury or wrongful death. Furthermore, the responsible party (i.e., the owner or operator of the vessel or facility) would be made liable for any damages for which immunity is provided to responders.

Below are the answers to the questions submitted in your letter of February 22, 1991. If you need any additional information regarding this or related spill response issues involving MSRC or responder immunity, please contact me.

1. While no final decision has been made about whether MSRC will operate in Alaska, we consider the current state law to be a substantial disincentive to MSRC involvement. (We note however, that Alaska's statute predates the federal act). You should know that by resolution, our Board of Directors has reaffirmed the importance of state responder immunity provisions to the role MSRC could eventually have in a given state. As a national mutual benefit (not-for-profit) corporation, we must consider our total liability exposure so as not to jeopardize the entire national response system because of the laws of any particular state.

Mr. Patrick J. Malone
March 1, 1991
Page Two

2. Yes, four coastal states to date have adopted the federal immunity standard. In 1990, Florida, Virginia and Hawaii enacted such legislation. On January 31, 1991 the Governor of Delaware signed a similar law. Commissions and task forces in Alabama, Louisiana, Maine and Texas, which have closely examined the oil spill issue on a comprehensive basis, have all recommended the adoption of the federal responder immunity standard. So far this year, responder immunity legislation which tracks the federal law, has passed the state senates in Georgia and Mississippi. Our current information indicates the Oregon House Committee on Environment and Energy agreed to introduce the federal language as a committee bill on February 18.
3. California's comprehensive oil spill legislation contains the federal responder immunity provision. Unfortunately, it limits its time to a maximum of 90 days. Furthermore, there are several other provisions which we feel make it unsuitable for use as model state legislation.

I hope this information is helpful and provides with the background you need for Mr. Navarre to introduce his bill. As I stated before, if I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



David N. Lakin
Director of Government Affairs

GSD/jlh



Key Questions About Limited Liability for Oil Spill Responders

1. Who are oil spill responders?

- The resources required to respond to a serious oil spill include a broad cross section of fishermen, barge operators, bird and animal rescue centers, spill response contractors and spill cooperatives. Each of these organizations and subcontractors need limited immunity if they are to be expected to respond unhesitatingly to oil spills.

2. Why do spill responders need limited immunity?

- Without reasonable protection from liability, the countless private persons and organizations necessary to respond to a major oil spill will not be willing to participate unhesitatingly in spill clean-up activities.

- Instead, like doctors intimidated by malpractice insurance costs, they will become inordinately concerned with the need for advice from their lawyers and the desire to have state or federal authorities clear every decision before proceeding. For many, the risk will simply be too great and they will decline to participate at all.

3. Why do spill responders need immunity now when they have been responding to spills for years without immunity?

- Since the Exxon Valdez spill, the costs and litigation exposure flowing from oil spills have escalated dramatically.

- Exxon and its responder Alyeska, for example, have spent nearly \$2 billion already and they face another \$3 to 5 billion in liability claims. With unlimited liability and uninsurable levels of exposure, the risks have become too high.

4. What is the "good samaritan" immunity provision being proposed?

- Under federal legislation and under the laws of the states of Florida, Virginia, and Hawaii spill response organizations (as distinct from those who are responsible for the spill) are not liable for removal costs or damages arising from their response activities, unless they act with gross negligence or willful misconduct, or cause personal injury or death.

- MSRC and the existing spill response organizations seek this same limited immunity for responders in the oil spill legislation before other state legislatures.

5. Are there precedents for this form of immunity?

- Yes. There are other examples of good samaritan immunity covering organizations like fire and police departments, emergency paramedics, medical personnel and others.

- In nearly every instance, the public policy justification for granting limited immunity is the same: the need to insure that highly trained personnel remain willing to respond unhesitantly despite adverse and sometimes dangerous circumstances, and to ensure that they remain willing to make difficult decisions with less than complete information.

6. Doesn't granting limited immunity to the responder simply let the spiller off the hook thereby pushing the cost onto the innocent victim?

- To the contrary, where the responder is immune, the proposed amendment would expressly make the spiller liable both for its own spill related action and for the responder's acts or omissions as well.

- Moreover, where the spiller cannot compensate the injured party for its damages (e.g., where the spiller has been rendered bankrupt by the spill), the victim is compensated by the federal fund which is paid for entirely by the oil industry.

- Thus, the immunity provision works to allocate risk only as between the spiller and the responder; it does not deny the innocent victim full compensation.

7. Why should oil spill response organizations be granted limited immunity when those who handle hazardous waste disposal on land continue to operate without immunity?

- In the on-land hazardous waste response, the clean-up entity ordinarily has several weeks, if not months, to test, analyze and review appropriate response procedures before beginning clean-up operations.

- By contrast, in any major spill, the response organization literally has only a few hours to marshal its initial resources at the scene and to begin making outcome determinative decisions.

- These critical, time-sensitive decisions often must be made in the midst of nearly total chaos, adverse weather, fast moving currents, high seas and far less than complete information. Time is of the essence and there is no opportunity for the studied review available to the on-land hazardous waste response organization.

8. Why wouldn't the responders' concerns be satisfied by indemnification from the spiller?

- The concept of indemnification requires the defendant (responder) to exhaust all administrative and judicial remedies before the right to indemnification from the spiller arises. Given the high probability that negligence allegations will arise in nearly every catastrophic response, the responder's management would routinely be tied up in

years of time consuming and costly depositions, trial preparation and actual litigation before becoming eligible for consideration for indemnification.

-Moreover, a system which exposes the responder to these highly disruptive transaction costs will have an inherent chilling affect on responder's willingness to act boldly and decisively in future spills. Instead of rushing into the fray, responders will rush to their lawyers and await every opportunity to have some state or federal authority direct, and thereby insulate, their every move.

- Again, time is of the essence and responders must be encouraged to make difficult decisions under inordinately adverse conditions and with far less than complete information.

9. Won't limited immunity enable responders to be sloppy in the performance of their work?

- No. A sloppy or casual responder will quickly find that it has crossed the line between simple negligence, for which it is immune, and gross or willful negligence, for which it has no immunity.

- Oil spill response is fast becoming one of the most intensely monitored and regulated activities anyone can undertake. Federal, state and local authorities, not to mention the press, television, environmentalists, local fishermen and the public at large, monitor the responder's every move.

10. Isn't immunity just a special interest measure sought by the the oil companies that support the large spill cooperatives?

- No. While it is correct that some of the largest spill response organizations are funded by oil companies, the immunity is broadly supported by nearly everyone who wants to participate in the clean-up of spills caused by someone else.

- Throughout the country, local groups like fishermen bird rescue personnel are actively urging legislatures to grant immunity to those who respond to oil spills. Without immunity, they too cannot participate actively in oil spills without inviting unlimited and unacceptable liability exposure.

- Moreover, the U.S. Coast Guard and some environmental groups support responder immunity in recognition of the fact that without this provision, they will not have the resources needed to deal with oil spills.

- This growing call for responder immunity has been strongly and expressly endorsed by editorials in The San Francisco Examiner, the Wall Street Journal, and other newspapers all urging immunity be granted to oil spill responders.

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. BOX 4049 KENAI, ALASKA 99611

(907) 283-3600

283-3600

FAX (907) 283-3306

UCIDA OPPOSES HB 196 & ITS OBJECTIVE OF LOWERING FURTHER LIABILITY STANDARDS FOR RAC'S

April 2, 1991

1. In both 1989 & 1990 the Alaska legislature lowered the standard of liability for RAC's from the normal standard of "strict liability", i.e. liable for whatever injuries the person caused, whether he was negligent or not.

Presently

1. RAC's are ONLY liable if they are negligent or engaged in intentional misconduct.

2. RAC's are ONLY liable when his or her own acts or omissions cause injuries.

3. In 1989 legislature stated that:

"To show negligence by a response action contractor, a claimant must show that the acts or omissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time that response action services were performed.

standards and practices at the time that response action

4. Negligence is found ONLY when it would be unreasonable to act as the liable party did, in the circumstances surrounding the response action.

CHANGED → 5. As proposed, the RAC would be immunized from liability for rogue actions taken that were contrary to applicable plans and orders of the agency directing the response.

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities


Theo Matthews

Post-It™ brand fax transmittal memo 7671

To: <i>115 E. Riki</i>	From: <i>UCIDA</i>
Co.:	Co.:
Dept.:	Phone #:

CSHB 196 Background

SECTION E,
No. 15

U.S. OIL & REFINING CO.
5150 Wilshire Boulevard • Los Angeles, CA 90036
P.O. Box 36913 • (213) 938-7156 • TWX 9103213973

WILLIAM C. KITTO
Vice President
Crude Oil Supply

18 March 1991

Representative Bill Hudson
P.O. Box V
Juneau, Alaska 99811

Dear Representative Hudson:

U.S. Oil & Refining Co. and its wholly owned subsidiary, U.S. Oil Supply Co., have been involved in the business of transporting ANS crude oil from Valdez to the State of Washington and to other Alaskan ports by tankers for several years. This activity was necessary to supply U.S. Oil & Refining Co.'s refinery in Tacoma, Washington with crude oil as well as to supply other refineries such as Tesoro, Texaco, and Shell.

Alyeska had agreed to provide clean-up services to shippers of crude oil from Valdez in case such shippers spilled crude in Prince William Sound. When Alyeska decided, however, that its legal liability resulting from these services was unlimited even though it had not caused the spill, Alyeska demanded indemnity from such shippers in the amount of \$1 billion. Such a requirement could not be satisfied through insurance by the shippers or tanker owners and thus prevented U.S. Oil & Refining Co. and others from continuing to transport ANS crude. Of course, for the owners of Alyeska and other very large oil companies, the requirement was not impossible to meet. They just indemnify Alyeska by contract. This is not an option open to smaller companies such as ourselves.

We believe in taking responsibility for our own actions and insuring these activities to the extent possible. Ships which we used were members of TOVALOP and always provided \$700 million of P&I insurance; and we as shippers always met the financial responsibility requirements of the State of Alaska and are members of CRISTAL. However, to be required to indemnify others such as Alyeska for their negligence and in such a substantial sum as \$1 billion not only seems unreasonable but is in fact impossible. The result was our being prevented from continuing to transport ANS to our refinery in Tacoma. The economic impact of not buying barrels delivered on U.S. Oil vessels is estimated to be over \$5 million per year.

CSHB 196 Background

SECTION E,
No. 18

Representative Bill Hudson
18 March 1991
Page 2

The proposed House Bill No. 196 would limit the liability of the spill responders such as Alyeska. Since it would apparently satisfy Alyeska that its potential liability would be covered by insurance available to shippers, we are hopeful that companies such as ours would be able to transport ANS as they have done in the past. It does not avoid or limit the liability of anyone who spills oil nor do we believe it should. However, the oil spill responder who did not create the spill is then permitted to quickly respond to the clean-up need without taking on unreasonable responsibility for the spill created by others.

Your help in advancing the proposed legislation will be greatly appreciated.

Very truly yours,

U.S. OIL & REFINING CO.

W.C. Kitto

W.C. Kitto
Vice President



Please enter into the record my testimony to the Resources
 committee name
 committee on H.B. 196, dated 4-10-89
 bill/subject

FROM 907 659 8300

I've watched Tesoro's growth over the years and know how important they are to the peninsula and the state. I'm concerned about environmental protection and think that the Spill Responder should commence actions immediately. I also understand that Tesoro has no other source of crude oil feed to their refinery than through shipping via Overseas Washington from Valdez to Nikiski and that Alaska is demanding \$1 Billion in Insurance or cash that Tesoro can't meet. If Alaska does not change this requirement they (Tesoro) could be put out of business. I support a law that will treat Spill responders like other emergency responders. Tesoro has always made an effort to keep the area informed of their problems and projects. They have good credibility in our community and have a major impact on the economy here.

I strongly urge the Resources committee to pass this Bill on and do everything possible to get it passed this session.

Signed: Maei Beudet
 Testifier
Public
 Representing (Optional)
P.O. Box 8205
 Address
Nikiski, Alaska 99635
 Phone No.

98.08.17 11:34



Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

The Oil Reform Alliance and United Fishermen of Alaska are strongly opposed to the intent of HB196. We think a bill that reduces the state's liability standards for response action contractors (RACs) is both unnecessary and undesirable.

Our biggest concern with HB196 is that it weakens laws passed only last year, laws designed to strengthen oil spill prevention and response incentives. Alaska's current liability standard offers more protection to the public than the federal government's standard of gross negligence. The right of states to set higher standards than the federal government is a key provision of the Oil Pollution Act of 1990 (OPA90) and this right should not be dismissed lightly.

If HB196 is viewed from the perspective of fishermen and communities as victims, the inadequacies of this bill become apparent. HB196 effectively places another hurdle across the path of victims trying to get compensation for damages caused by a catastrophic oil spill. Further, it shifts the liability of spill response from RACs to taxpayers.

It is questionable whether someone can assume another's liability. The spiller retains the right to argue that they are not liable. The burden of proof, under HB196, lies with the "person bringing a claim against the RAC" (CS HB196 pg. 6, lines 19-20). Until the case is settled in a court of law, the victim remains uncompensated.

Arguments in favor of this bill state that Alaska's legal atmosphere and liability exposures that discourage new cleanup contractors from entering the state. But factually, the number of RACs has increased significantly since Exxon Valdez spill. In Alaska, RACs could also get the same cover of protection that they seek in HB196 by indemnification through contingency plans.

Tesoro's plea for immunity from Alaska's liability standards does not stem from a problem with existing law; rather, it stems from Alyeska's requirement of a one billion dollar direct action bond from all parties regardless of size. Last session countless hours were spent tailoring HB567 for both large and small operators. If Alyeska restructured its bonding requirement, Tesoro's problems evaporate.

Conoco's testimony of their recent response to a spill with an unknown responsible party is misleading. Conoco implied that "volunteer" response, in cases where the spiller is either unknown or insolvent, would be limited in the future unless RACs were immunized.

However under existing law, if the spiller is unknown or insolvent, the state assumes control of the cleanup - and reimburses RACs for reasonable expenses. It is important to realize that Conoco did respond to a spill with an unknown responsible party under existing law with existing liability standards.

Liability protection for small RACs, such as fishermen or communities, can be achieved through contractual indemnification. The problem with strict liability as perceived by Tesoro, Conoco, and even the community RACs simply does not exist.

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.09.823(a)).

Existing law provides ample protection for RACs and marginal protection for the public. To further weaken the state's liability standard would be a grave and regrettable step away from the lessons learned from the Exxon Valdez spill.



UNITED FISHERMEN OF ALASKA

Greg Selder
Executive Director

211 4th Street, Suite 112
Juneau, AK 99801

(907) 586-2820
Within Alaska: 1-800-478-FISH
Fax# (907) 463 2545

Alaska
M Brs:
Eliason
Zarruff
Davidson
Nauwre

PACIFIC FISHERIES LEGISLATIVE TASK FORCE



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EXECUTIVE DIRECTOR
Mary Morgan

PACIFIC FISHERIES LEGISLATIVE TASK FORCE RESOLUTION Concerning 'Oil Spill Responder's Limited Immunity'

WHEREAS, it is in the interests of the citizens and resources of California, Oregon, Washington, Alaska, and Idaho to ensure that qualified, highly trained oil spill response organizations are in place and ready to respond to oil spills anywhere along our coastlines; and

WHEREAS, the success of the modern-day spill response organization depends upon countless fishermen, subcontractors, veterinarians, and other part-time specialists who must be prepared on an emergency basis to act swiftly and unhesitantly in the face of adverse circumstances and often with far less than complete information; and

WHEREAS, these responders will be deterred from performing clean-up activities on behalf of the person or persons actually responsible for the spill if they are unduly exposed to unlimited liability in the course of their response activities;

NOW, THEREFORE, BE IT RESOLVED by the Pacific Fisheries Legislative Task Force that the fishermen and other spill responders, who perform under adverse conditions to the best of their trained abilities and following the directions of recognized state and federal authorities, should be afforded limited immunity from lawsuits arising as a consequence of their response activities; and

BE IT FURTHER RESOLVED, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in

cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death; and

FURTHER BE IT RESOLVED, where limitations on immunity are granted to responders, it is important that victims be fully protected and compensated for damages, and the party responsible for the spill in the first instance shall be liable for any damage caused by responder's simple negligence.

COPIES of this Resolution shall be transmitted to the Honorable George Bush, President of the United States; and Members of the United States Senate and the House of Representatives of Alaska, Washington, Oregon, California, and Idaho.

**ADOPTED JUNE 16, 1990,
IN SITKA, ALASKA**

Simple Negligence:

'A person is negligent if he does not use reasonable care. Negligence may result from action or inaction. A person is negligent if he does not act as a reasonably careful person would act under similar circumstances. In this case you [the jury] must decide whether or not defendant used reasonable care under the circumstances.'

...Wilson v. State, 669 P.2d 1292, 1295 (Alaska 1983)

Gross Negligence:

"[M]ost courts consider that 'gross negligence' falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind...[i]t signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and that it is, in other words, merely an extreme departure from the ordinary standard of care."

...Storrs v. Lutheran Hospitals, 661 P.2d 632, 634, n. 1, (Alaska 1983)

ALASKA'S POLICY ON EMERGENCY RESPONDERS:

AS 09.65.090...A person at a hospital or any other location **WHO RENDERS EMERGENCY CARE OR EMERGENCY COUNSELING TO AN INJURED, ILL, OR EMOTIONALLY DISTRAUGHT PERSON** who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

...This section does not preclude liability for civil damages as a result of **GROSS NEGLIGENCE OR RECKLESS OR INTENTIONAL MISCONDUCT.**

AS 09.65.091...A person who provides equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other governmental agency **DURING A STATE OF EMERGENCY DECLARED BY AN AUTHORIZED REPRESENTATIVE OF THE STATE OR LOCAL GOVERNMENT** is not liable for the death of or injury to any person or damage to any property caused by that person's actions, except when the trier of facts finds that the person acted **INTENTIONALLY, RECKLESSLY, OR WITH GROSS NEGLIGENCE.**

CSHB 196 Background

SECTION A,

No. 3

"(iii) into or on the waters of the exclusive economic zone;
or

"(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

"(B) In carrying out this paragraph, the President may—

"(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

"(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

"(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(2) **DISCHARGE POSING SUBSTANTIAL THREAT TO PUBLIC HEALTH OR WELFARE.**—(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

"(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

"(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

"(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

"(3) **ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.**—(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

"(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President.

"(4) **EXEMPTION FROM LIABILITY.**—(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President.

"(B) Subparagraph (A) does not apply—

"(i) to a responsible party;

"(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(iii) with respect to personal injury or wrongful death; or

"(iv) if the person is grossly negligent or engages in willful misconduct.

"(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

"(5) **OBLIGATION AND LIABILITY OF OWNER OR OPERATOR NOT AFFECTED.**—Nothing in this subsection affects—

"(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

"(B) the liability of a responsible party under the Oil Pollution Act of 1990.

"(6) **RESPONSIBLE PARTY DEFINED.**—For purposes of this subsection, the term 'responsible party' has the meaning given that term under section 1001 of the Oil Pollution Act of 1990."

(b) **NATIONAL CONTINGENCY PLAN.**—Subsection (d) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)) is amended to read as follows:

"(d) **NATIONAL CONTINGENCY PLAN.**—

"(1) **PREPARATION BY PRESIDENT.**—The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

"(2) **CONTENTS.**—The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

"(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

"(B) Identification, procurement, maintenance, and storage of equipment and supplies.

"(C) Establishment or designation of Coast Guard strike teams, consisting of—

"(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

"(ii) adequate oil and hazardous substance pollution control equipment and material; and

"(iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.

"(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

"(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

"(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

"(G) A schedule, prepared in cooperation with the States, identifying—

RAC Liability: Summary of Recent Legislation

State	No Liability for Negligence	Time Limit for Limited Liability	Liability for Gross Negligence	Liability for Intentional Misconduct	Liability for Personal Injury or Wrongful Death	Liability for Not Following Nat. Contingency Plan or Lawful Authority	Responsible Party Liable for RAC Negligence
IR 100	X		X	X	X	X	X
Federal	X		X§	X	X	X	X
California	X†*	X	X	X	X	X	X
Delaware	X		X	X	X		X
Florida	X		X	X	X#	X	X
Georgia	X		X	X	X	X	X
Hawaii	X		X	X	X#	X	
Miss.	X		X	X	X	X	X
Texas	X		X	X	X#	X	
Virginia	X		X§	X	X	X	X
Wash.	X†		X	X	X#		





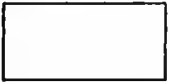
† Good faith requirement.

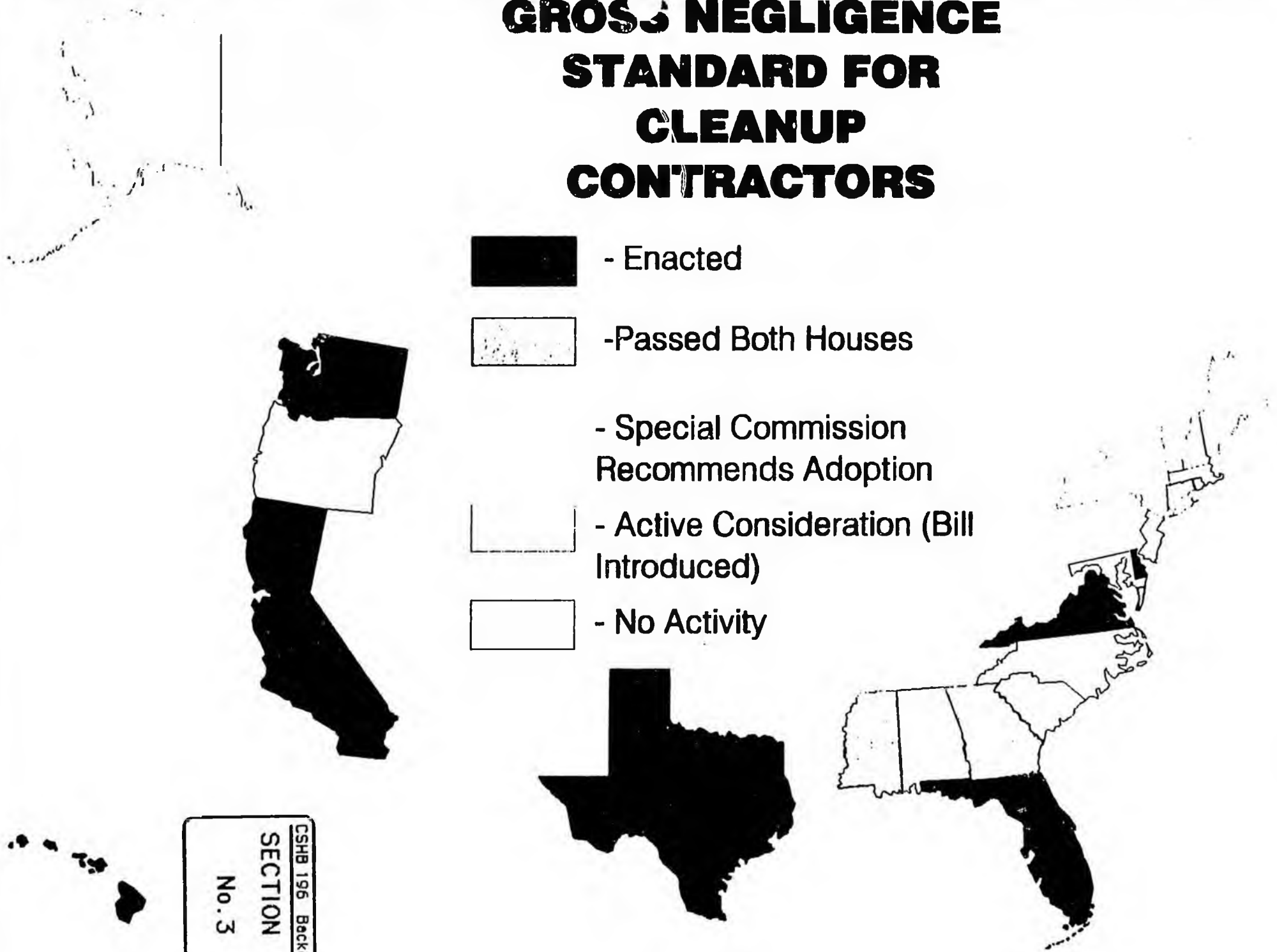
§ Act of God, act of war, and act of third party are defenses.

* Must be certified by State.

Personal Injury and wrongful death not specifically mentioned.

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS

-  - Enacted
-  - Passed Both Houses
-  - Special Commission
Recommends Adoption
-  - Active Consideration (Bill
Introduced)
-  - No Activity



CSHB 196 Background
SECTION B,
No. 3

CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

CSHB 196 (Resources) and Federal Law vs. Existing Alaska Law

Liability Under Existing Alaska Law and CSHB 196(R) After 15/30 Days

Liability Under CSHB(R) 196 for First 15/30 Days and Federal Law

Not Even Simply Negligent

Simply Negligent

Grossly Negligent

Substantial Violation Of Contingency Plan

Violated OSC Order

Intentionally Caused Harm

Caused Personal Injury or Death

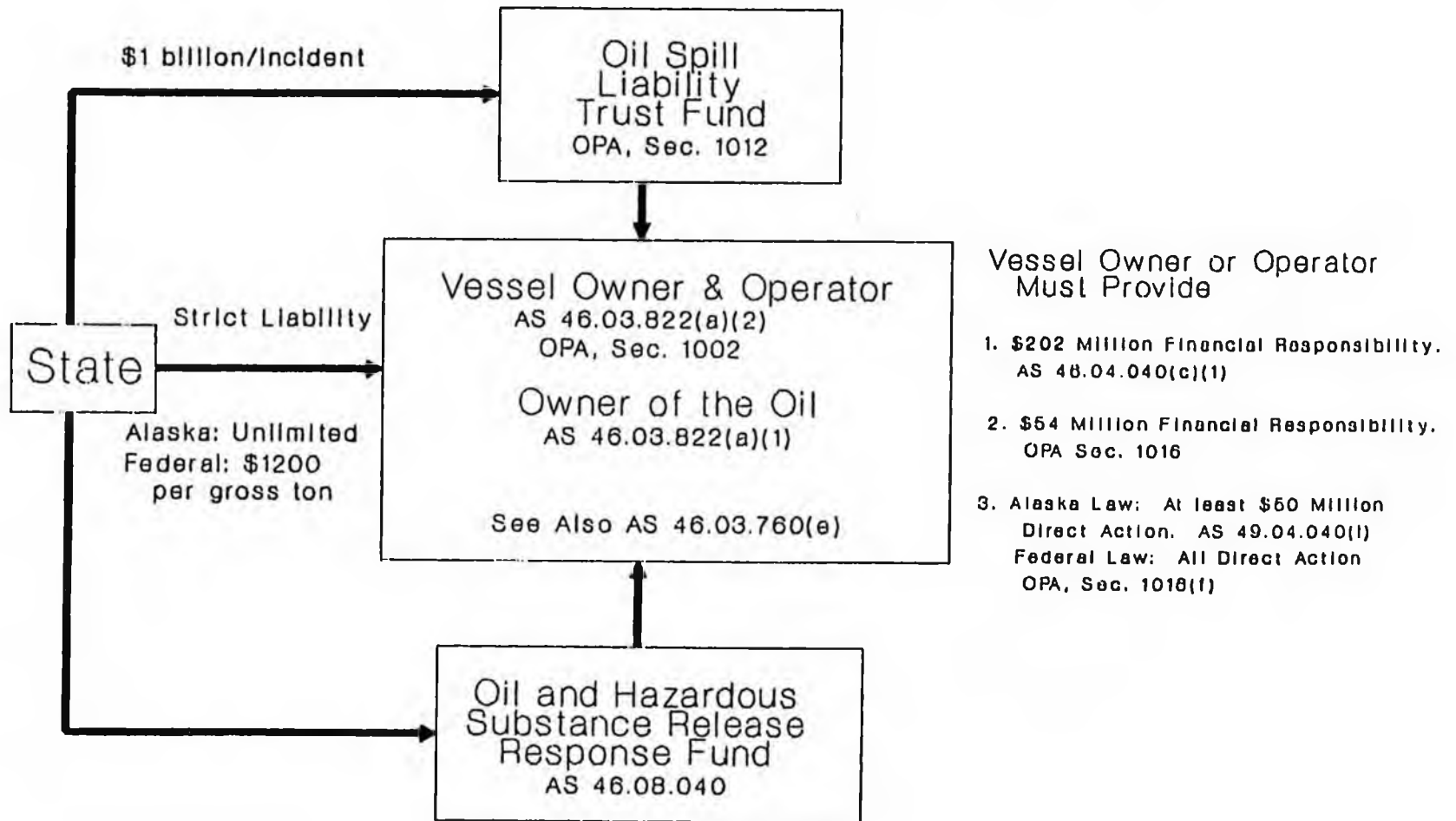
Note: Arguable Liability Here Under Existing Law

Note: Vessel and Oil Owner Both Expressly Liable for Simple Negligence of Cleanup Contractor Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for Simple Negligence of Cleanup Contractor Under Sec. 4201(a)(c)(4)(C) of OPA

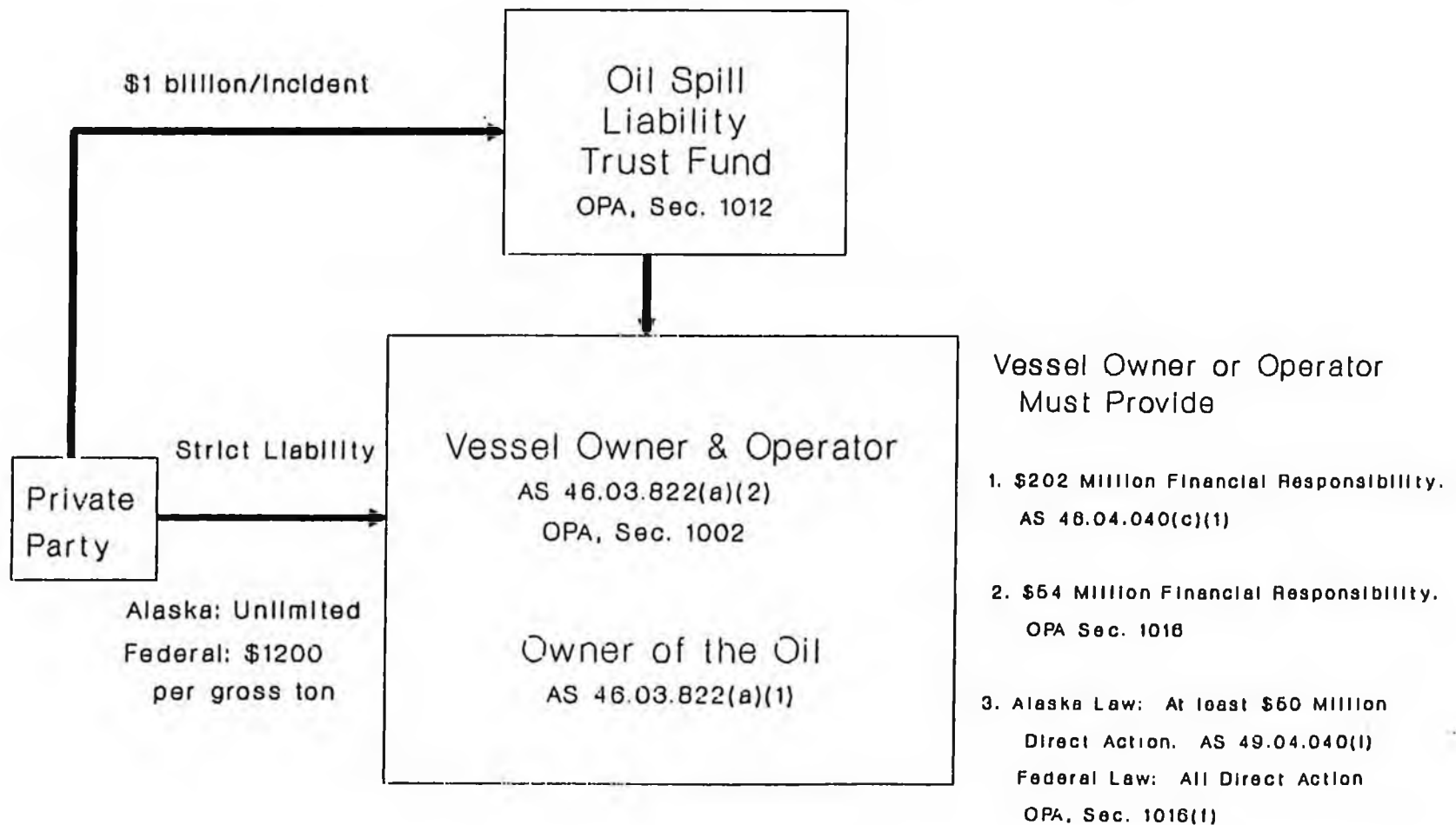
RECOVERY OF CLEANUP COSTS CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



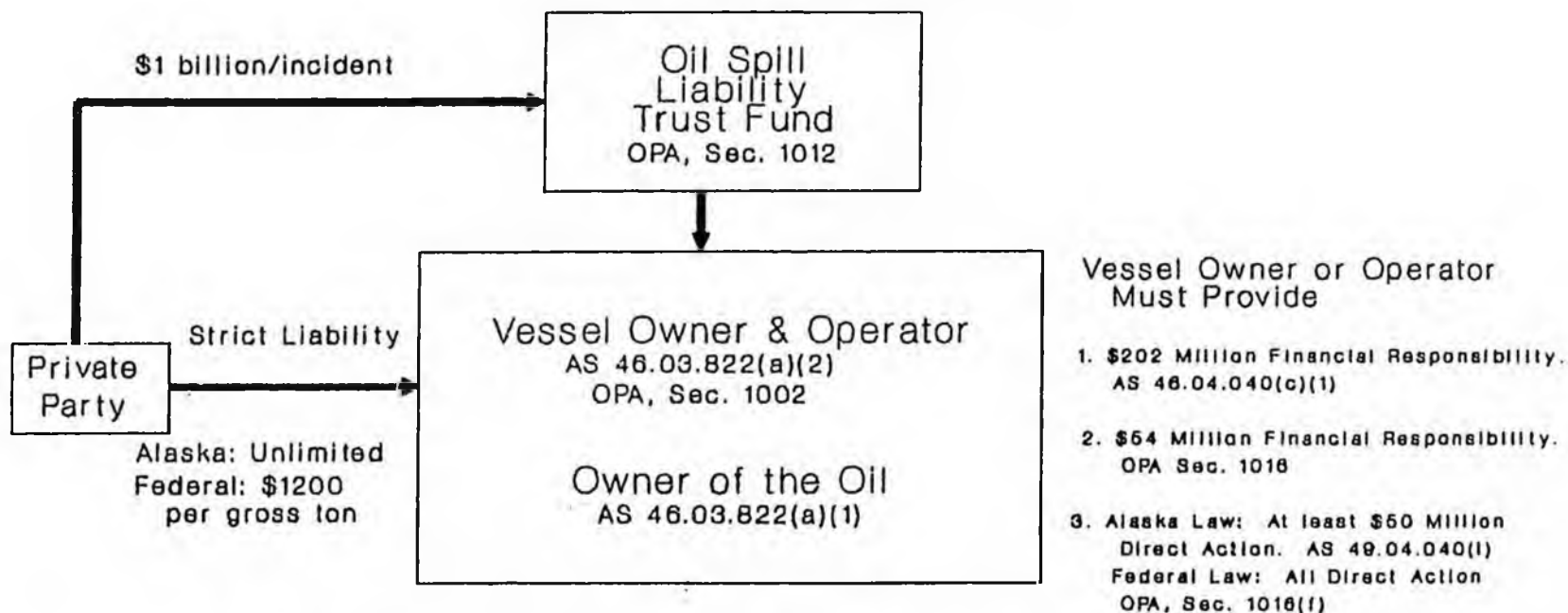
DAMAGE RECOVERY CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



DAMAGE RECOVERY FOR CLEANUP CONTRACTOR'S SIMPLE NEGLIGENCE*

Under CSHB 196



Note: Vessel and Oil Owner Both Expressly Liable for Simple Negligence of Cleanup Contractor Under CSHB 196, Sec. 3.

Vessel Owner and Operator Expressly Liable for Simple Negligence of Cleanup Contractor Under Sec. 4201(a)(c)(4)(C) of OPA.

*Based on a Crude Spill From 90,000 DWT Oil Tanker

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

→ LEGISLATIVE RESEARCH AGENCY REQUEST 91.144
Oil Spill Response Contractor Liability Laws
in Other States