HB

196

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 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 ommissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practices at the time their response action services were performed.

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

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

Theo Matthews

Administrative Assistant, UCIDA

APR 02 '91 19:32 LEG. AFFAIRS - SOLDOTNA

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9354
Fax - (907) 262-1881

TO: LIONUNEAU

ATTN: Margaret FAX: 465 2864 PHONE: 465 4648

FROM: Rio Soldotna PHONE:

INSTRUCTIONS: Here's testimony for 91-03-160

DATE: 4-2 TIME: 5:30
DISCARD ORIGINALS ___ HOLD FOR PICKUP ___

NUMBER OF PAGES (not counting the cover sheet): 1

TRANSMITTED BY: Anne

APR 02 '91 19:31 LEG. AFFAIRS - SOLDOTNA

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 3-26-91

To: ANDY — FOR REP. BILL HUDSON
FAX # = 907-465-2299

Company / Organization: _____

URGENT ✓ *NORMAL* _____

From MR. STEVE DUCA **Office #:** 202-408-5703

Remarks:

Pages to follow 8 + Cover = 9 pages

Please call (202) 408-5700 if there is a problem with the transmission

Enclosure (1)

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.

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

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

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

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

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

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

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

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

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

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

Section 3. [*Exemption From Liability.*]

(a) Notwithstanding any other provision of law, 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 Federal On-Scene Coordinator [or by the State official with responsibility for oil spill oil response].

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

(1) to a responsible party;

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

(3) 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).

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

MSRC
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 assists 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.

1350 I Street, NW Suite 300 Washington, DC 20005 Telephone 202 408 5700 Fax 202 371 0401

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 andcleanup 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, draconcs, 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

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 direct 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.)

Kenai
BICENTENNIAL
1791 * 1991
Village with a Past - City with a Future!

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: *HOUSE BILL 196 - 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

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

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

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

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 ommissions of the contractor under the response action contract were not in accordance with generally accepted professional standards and practives at the time their response action services were performed.

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

Current standards are sufficient to cover the liability exposure of all RAC's - including fishermen and local communities. Ucida feels that no change is needed.

UCIDA would, however, like to comment on the actual issue that appears to us to be driving this legislation. Alyeska has imposed on Tesoro financial requirements in a format that is directly actionable. To the best of our knowledge such coverage that exceeds the $20 million ball park is impossible to get. Alyeska then requires $1 billion of such coverage of Tesoro. Tesoro then feels obliged out of self preservation to promote legislation that will reduce Alyeska's liability exposure to incidents of gross negligence in the hope that, if successful, Alyeska will impose requirements that Tesoro can meet.

UCIDA regards the above scenario as little less than blackmail on the part of Alyeska. What will prevent them from requiring $5 billion in directly actionable insurance next year? UCIDA does recognize however that Tesoro has a legitimate problem with this bonding requirement - it literally has been placed by Alyeska between the proverbial rock and a hard spot. UCIDA has expressed both of these sentiments to our local Borough Assembly and to Tesoro representatives.

UCIDA respectfully requests that the legislature consider replacing this legislation - which is not needed- with language that addresses the real issue - bonding requirements that are reasonable but that can be capped in some manner to prevent industry from using them as a lever to undermine good public policy.

We would like to suggest two possible options:

1) Legislation that would limit a RAC's ability to require proof of financial responsibility to a level no greater than that required by the state in AS 46.04.040. UCIDA understands that the level set in AS 46.04.040 should not be static - it clearly will be adjusted from time to time by the legislature to conform to good public policy.

2) If an RAC requires bonding requirements above those set in AS 46.04.040, then the RAC should be required to accept oil pollution insurance syndicate coverage.

In conclusion, UCIDA does not support changing current state liability statues. Even the concept of a sunset provision and a 30 day window is poor public policy. Alyeska and other similarilly situated RACs will turn over spill resonse to any spiller well within the 30 day window. Legislation is needed to address Tesoro's immediate dilemma and the general issue of bonding requirements in the future.

Sincerely,

Theo Matthews

Theo Matthews, Administrative Assistant
UCIDA

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

BOX 4649 - KENAI, ALASKA 99611

(907) 283-3600

FAX COVER LETTER
FAX NUMBER (907) 283-3306

DATE: 4/23/91 TIME: 11 AM

NUMBER OF PAGES (INCLUDING COVER LETTER): 7

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 283-3600 AS SOON AS POSSIBLE.

TO: House Judiciary members c/o
Rep Donley - chair
Rep Gruenberg - vice-chair
Rep Ellis
Rep Parnell
Rep Hanley
Rep Martin
Rep. Miller

FROM: UCIDA

SUBJECT: Mr. Chairman, UCIDA would appreciate it if copies of our previous testimony on C S For HB No 196 could be given to members of your committee.

Further testimony is in preparation and hopefully will be ready for todays committee meeting.

Sincerely, M. Matthews

RECEIVED

12 April 1991

PO Box 2397
Homer, Alaska 99603

Legislators
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

Dear Representative Davidson:

I strongly oppose HB 196 and its CS. Liability standards do not need to be lowered in this way.

I should like to respectfully submit that you consider UCIDA's suggested options which address the bonding issue and appear on page 2 of Mr. Theo Matthews letter to you dated 10 April.

Before you move on the above though please carefully examine the existing law which provides ample protection for RACS. The increased number of RACS since the Exxon Valdez spill should be ample proof of that.

HB 29 is another priority bill in my opinion. We certainly cannot expect DEC to be everywhere. Citizens suits provide some badly needed protection in a state as vast as ours. The bill is well written, gives a sixty day compliance period and would be an effective way to protect our air, land, water, wildlife and health from the dangers of pollution.

Thank you for your hard work.

Sincerely,

Gail Parsons

Gail Parsons

cc: Senator Paul Fischer
Rep. Mike Navarre
Rep. Gail Phillips

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600 *FAX (907) 283-3306*

April 16, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

UCIDA would like to follow-up on our comments of April 10, 1991 on CS for HB No. 196. UCIDA continues to oppose this legislation since we feel it represents bad public policy and does not address or resolve the very issue that appears to be driving it - bonding requirements imposed by one sector of private industry (Alyeska) on another sector of private industry (Tesoro).

UCIDA doubts that public legislation will ever be able to resolve disputes between members of the private sector. To attempt to help one - in this case Tesoro - merely leaves the state vulnerable to open ended demands by the other - in this case Alyeska.

As we remarked on April 10, 1991, even if this legislation were to pass, what would prevent Alyeska from requiring $5 billion in directly actionable insurance next year?

Even though UCIDA does not support this legislation, we feel compelled to comment on a few points:

1) Sec 46.03.825 (a)

Speaks to an act or omission "not contrary to an order of the federal or state on-scene coordinator". The obvious defense in court of a RAC will be that if "we weren't told not to do it, we are not liable".

The point should be that when a RAC is acting under the direction of the federal or state coordinator, then some changes in liability rules might be expected.

2) Sec. 46.03.825 (a)(2)

Gross negligence is not defined by AS 46.03.823(a). However, "negligence" is defined by AS 46.09.823(a), therefore, whatever the definition of "gross negligence" may come to be, we know that the result of this seciton will be that a RAC whose acts or omissions under the response action contract was not in accordance with generally accepted professional standards and practices at the time their response action services were performed, will not be liable in many instances.

3) Sec. 46.03.825(a)(3)

Two points should be made:

a) "Substantially deviated" is not defined and we believe the standard should in any event be "deviated". We understand that industry would like a definition agreed to for the phrase "substantially deviated" and would propose that if industry would give us their defintion of "gross negligence" then perhaps an agreed definition of "substantially deviated" would be appropriate.

b) The and portion of 46.03.825(a)(3) seems clearly designed as another loophole designed for the use of 2nd and 3rd party RAC's who have not "previously agreed to comply with the terms of that plan". Further, it is often the case that a RAC will not be working for the parties responsible for the release. In this event, it appears you revert back to the "gross negligence" standards as a claimants' only grounds for action.

If a RAC does not agree to comply with the oil contingency plan, they clearly should be afforded no relaxation in liability standards. The and portion of AS 46.03.825(a)(3) should be deleted.

In conclusion, UCIDA will continue to oppose the relaxation of liablility standards for RACs as a means of trying to resolve a dispute between members of private industry. If, however, the committee passes out this bill, a 1 year "sunset provision" would be appropriate. With such a provision, the committee could at least determine if the goal of affording

Tesoro some relief was met and perhaps by then the legislature will be prepared to address the issue of bonding requirements.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

cjd
cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
Senator Paul Fischer
Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

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April 10, 1991

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Chairman, House Resource Committee

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UCIDA regards the above scenario as little less than blackmail on the part of Alyeska. What will prevent them from requiring $5 billion in directly actionable insurance next year? UCIDA does recognize, however, that Tesoro has a legitimate problem with this bonding requirement - it literally has been placed by Alyeska between the proverbial rock and a hard spot. UCIDA has expressed both of these sentiments to our local Borough Assembly and to Tesoro representatives.

UCIDA respectfully requests that the legislature consider replacing this legislation - which is not needed- with language that addresses the real issue - bonding requirements that are reasonable but that can be capped in some manner to prevent industry from using them as a lever to undermine good public policy.

We would like to suggest two possible options:

1) Legislation that would limit a RAC's ability to require proof of financial responsibility to a level no greater than that required by the state in AS 46.04.040. UCIDA understands that the level set in AS 46.04.040 should not be static - it clearly will be adjusted from time to time by the legislature to conform to good public policy.

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Sincerely,

Theo Matthews

Theo Matthews, Administrative Assistant
UCIDA

cc: Senator Lloyd Jones, Chairman, Senate Resource Committee
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Rep. Gail Phillips
Rep. Mike Navarre
Rep. Jim Zawacki
Kenai Borough Assembly
Mayor Don Gillman
Gene Burden, Tesoro
Oil Reform Alliance
UFA

RECEIVED APR 1991

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

P.O. Box V
State Capitol
Juneau, Alaska 99811

HB 196

April 12, 1991

The Honorable Dave Donley
Chairman
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Dave:

I would like to take this opportunity to bring to your attention a bill which will soon be referred to your committee. HB 196 was introduced by the House Special Committee on Oil and Gas last month and is currently being heard in the Resources Committee.

Both committees have done a great deal of work on this legislation and I expect that a committee substitute, acceptable to all parties involved, will be reported out of the Resources Committee early next week. I would like to request the Judiciary Committee's immediate consideration of this legislation.

It is imperative that HB 196 pass the Legislature this session. HB 196 would limit civil liability for acts or omissions of an oil spill response action contractor and establish strict liability on responsible parties for certain acts or omissions of a response action contractor.

Dave, I would really appreciate your assistance on this one. I believe that the bill which will be reported to your committee will be acceptable to all parties and hope you will consider it quickly.

Thanks for your assistance. I look forward to talking to you further on this matter.

Respectfully,

Bill

Bill Hudson
Chairman, House Special Committee on Oil and Gas

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 3

To Al Hastings	From John T
Co.	Co.
Dept. 401546.3	Phone #
Fax #	Fax #

Alyeska pipeline SERVICE COMPANY

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278-1511, TELEX 090-25-127

March 15, 1991

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

278-5026

Re: H.B. 196

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

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. B. Hermiller
President

smk

cc: Gene Burden
Paul Richards

ALYESKA LAW (907) 265-8586
MAR 15 '91 11:31

RECEIVED APR 1 8 1991

ALASKA STATE LEGISLATURE
REPRESENTATIVE MIKE NAVARRE

Co-Chair
House Finance Committee
P.O. Box V
Juneau, Alaska 99811
(907) 465-3779

April 16, 1991

M E M O R A N D U M

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Representative Mike Navarre

SUBJECT: House Bill 196

This measure, dealing with liability of Response Action Contractors, is currently under review by the House Resources Committee. It is anticipated to pass out soon. Passage of HB 196 may determine whether or not Tesoro Alaska Petroleum Company will continue to have the ability to ship crude oil from the Valdez Terminal to its Nikiski Refinery. As you can see, the bill may have significant impact on my district.

Since time is of the essence, I'd appreciate it if you could schedule HB 196 at your earliest convenience, perhaps "pending referral" from Resources.

Thanks for your help.

DISTRICT 5
34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842

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

WILLIAM C. KITTO
Vice President
Crude Oil Supply

18 March 1991

Representative Cliff Davidson
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

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.

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

paw/0169

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M April 18, 1991

SUBJECT: Response Action Contractors
(CSHB 196 (Res))

TO: Representative Bill Hudson

FROM: Michael M. Ford MM-F.
Legislative Counsel

Enclosed is an amendment requested by Andy Spear. It limits the extent to which an oil spill response action contractor can shift to an oil spiller the contractor's liability for damages caused by the contractor during cleanup of a spill.

As I understand it, the public policies behind this limitation are at least twofold: (1) to help keep oil industry companies in business (by prohibiting contractors from setting terms that are too onerous); and (2) to keep some incentive in place for the contractor to act with care when performing its response action duties.

However, I have one caveat to mention: inherent in any approach that limits agreements between parties where one party provides services to another is that the limit can simply cause the services to become unavailable. If enough response action contractors do not "like" the limitation of the enclosed amendment, the contractors can simply refuse to contract.

Please let me know if I can be of further assistance.

MFF:pl:gc
91-274.plm

Enclosure

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

P.O. Box V
State Capitol
Juneau, Alaska 99811

April 24, 1991

To: House Judiciary Members

From: Representative Bill Hudson
Chairman, House Special Committee on Oil and Gas

Re: CSHB 196(Jud)

ISSUE DEFINITION

At the beginning of this session Tesoro and Conoco came to me with a problem they were experiencing which threatens the very existence of their respective companies which in turns threatens the royalty share of the state of Alaska for Milne Point oil and most importantly the jobs of over 500 Alaskans in the Kenai Peninsula. As the Chairman of the House Special Committee on Oil and Gas, I felt this was an appropriate area of concern for the committee and legislation was later introduced in an attempt to find a resolution to the problem. Several hearings have been held and as is often the case in the formulation of public policy, this legislation has been substantially modified.

Simply put, under current law oil spill response action contractors (RAC) in Alaska are experiencing a severe legal problem: specifically a RAC could be sued for its actions taken to clean up an oil spill, despite the fact that the RAC did not have any involvement in spilling the oil. Furthermore, a RAC could be held strictly liable for cleanup damages for a spill which they did not cause -- a dangerous standard to hold someone responding in a crisis atmosphere to.

In response to this situation, some RACs have sought to protect themselves from possible lawsuits by requiring that those companies contracting with them for clean up services be able to meet standards of financial responsibility. In the case of Tesoro and Conoco, they must provide $ 1 billion dollars in direct action insurance before Alyeska, the RAC for PWS, will guarantee cleanup services for tankers under contract to these companies.

Tesoro and Conoco are unable to obtain the $ 1 billion dollars in financial responsibility and unless the legislature acts this session are in danger of going under.

Although this matter will in all likelihood eventually be solved in court, the legislature, through passage of CSHB 196 (JUD) can remove any legitimate reason for a RAC's excessive insurance requirements.

Two companies have already withdrawn from the TAPs tanker trade as a result of Alyeska's provisions. This is a critical situation requiring immediate attention.

The United States Congress, California, Washington, Hawaii, Florida, Texas, Virginia, Delaware, Mississippi and Georgia have limited oil spill clean up contractors to a gross negligence standard. This is a nationally recognized problem. What CSHB 196 (JUD) proposes to do is to shift, not reduce, for 15 days, the liability for acts of simple negligence during an oil spill cleanup from the RAC to the party responsible for the spill so long as the RAC's act or omission is not contrary to the orders of the state or federal on scene coordinator or substantially deviates from the oil spill contingency plan. This change will keep Alaska's liability law as strong as any in the nation.

Passage of this legislation helps Tesoro and Conoco by removing any legitimate justification for the $ 1 billion financial responsibility that Alyeska is requiring. Alyeska is not supporting this legislation; despite that fact that this bill gives Alyeska the federal standard it seeks with the one exception being that a RAC loses the federal standard of gross negligence if it substantially deviates from the contingency plan. Alyeska has no direct economic interest in seeing this problem solved this year -- it is Tesoro, Conoco and others that will pay the price of our inaction. Alyeska has stated that it will not continue a response services agreement beyond June 30, 1991 absent some change in the current situation.

CSHB 196 (JUD) will directly help both Tesoro and Conoco and both companies have strongly urged its immediate passage. This legislation will also help other RACs throughout the state, for example CISPRI in Cook Inlet. During the last legislature, legislation was passed requiring substantial improvements in contingency planning, which often includes the use of cooperatives or contracts for cleanup services. Shippers in Cook Inlet have demonstrated a reluctance to join CISPRI because of their possible exposure to liabilities in responding to spills that are not their own. Passage of CSHB 196 (JUD) will specifically address that concern.

I urge you to carefully consider this legislation and hope you will join with me in endorsing its swift passage.

SPONSOR STATEMENT IN SUPPORT OF CSHB 196 (JUDICIARY)

Bill Hudson Chairman, House Special Committee on Oil and Gas

April 28, 1991

The events of past years have resulted in a heightened awareness of the need for strong oil spill cleanup capability and the protection of the public from damages caused by such accidents. 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, today a cleanup contractor can still be held strictly liable for damages in cleaning up a spill that was not caused by the RAC.

CSHB 196 proposes to shift the liability for acts of simple negligence during an emergency oil spill cleanup from the RAC to the party responsible for 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. This will be accomplished by amending AS 46.03.822 and 823 and by adding section AS 46.03.825. As amended, the bill now limits the exemption to 15 days, and calls for a complete study to be done by the next legislative session on this complex issue. To ensure that this will be done, the bill also contains a sunset provision of one year.

I first became interested in this matter when Tesoro and Conoco came to me with the problems created in meeting the financial responsibility requirements of $1 Billion placed on them by Alyeska as a condition of Alyeska providing necessary oil spill cleanup service in Prince William Sound. Because of the direct action aspect of the insurance, Tesoro and other companies without the ability to self insure, are not able to meet the requirements and are now

operating under a temporary wavier in Prince William Sound. This wavier will be revoked June 30th of this year. If the legislature does not act now, it may be impossible for these companies to transport A-N-S crude to refineries in Cook Inlet. I believe that even if Alyeska does not lift it's financial responsibility requirements, passage of this bill will remove the legal justification for those requirements.

I would like to make it clear that although the sunset amendment narrows the bill to solving the Alyeska/Tesoro difficulties, it is not the only reason the bill was introduced. On June 30 of this year, HB 567 will take effect requiring significant oil spill cleanup capabilities be demonstrated 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 by law. At this time those 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 will also make it possible for innocent parties to respond to oil spills without fear of law suits for acts of simple negligence. So, if a fisherman discovers a mystery spill, he can immediately respond - without calling his or her lawyer first. In addition, by being more consistent with other states and the federal law, large RACs such as the Marine Response Corporation (MSRC) will 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.

There has been considerable support for CSHB 196 and there has been some concern and I believe that we have addressed the majority of those concerns. Working with the Citizens Advisory Council, the oil industry, environmental groups, and fishing organizations, we have prepared this final version of the bill. Other states looking at similar measures have enjoyed support from many environmental groups, fishing groups, the Coast Guard as well as the oil industry.

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.

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366
Fax 907-463-3312

HB 196: RESPONSE ACTION CONTRACTOR LIABILITY

The Alaska Environmental Lobby opposes HB 196. HB196 attempts to lessen the liability of response action contractors (RAC), the businesses with whom oil shippers contract to cover spill response and clean-up. By giving professional spill responders variance from normal liability rules, Alaska takes the risk of exposing our natural resources to yet, another insufficient response to and clean-up of a major oil spill.

This bill has been presented as a means to assist a small Alaskan oil shipper who is currently unable to meet the bonding requirements of the only response action contractor available in its area of operation. Alyeska, the only RAC in the Prince William Sound, has required a one billion dollar bond of Tesoro, in order to act as its RAC in the event of a spill. This bond is not a legal requirement, but rather a "cost of doing business." It will however, put Tesoro out of business, as they can not post the bond.

Although the passage of HB 196 may persuade Alyeska to lower its bonding requirement and thus allow Tesoro to stay in business, there is no guarantee that this will occur. Alyeska will still be able, at any time, to raise the figure and once again, threaten to put Tesoro out of business. After the bill passed House Resources last week, Marnie Issacs of Alyeska stated that the bill "does not allow us to relax our liability standards." (Penninsula Clarion, 4/18/91.)

Aside from not provided a guaranteed means of lowering Alyeska's bonding requirement of Tesoro, the bill could have the following adverse effects:

** **RAC's may not be as careful if liability is limited.** This bill would give RAC's incentives to use less than efficient methods and cheaper materials, and to expend less than their best efforts to contain and clean up a spill. While the days immediately after an oil

spill will always be a crisis situation, RAC's should be trained to respond under exactly these circumstances;

** **Not requiring the responders to substantially comply with an articulated, existing, contracted-for, State-approved contingency plan is ludicrous.** Why have a planning process if the industry is not expected to follow the plan?;

** The question remains whether someone will always ultimately be liable. **By "shifting" liability back to the spiller, claimants may not always be able to recover on damages caused by an RAC.** If the spiller is unknown, abandons the spill, is insolvent or otherwise removes its assets, or receives special "immune" status by way of a spill settlement, parties injured by the RAC may be left without recourse other than the state.

Tesoro's bonding problem must be resolved in a way other than by potentially degrading the environment with HB 196. Don't we value our sensitive coastal areas and our pristine land and water as much as the state of New York, with its paved-over lands and comparatively tiny oil shipping areas, which has resisted passage of a bill similar to HB-196 for several years? If the intent of the bill is to make certain that Tesoro can continue to operate in Prince William Sound, then address the issue directly. Why does HB 196 fail to address this issue and instead promotes new and unparalleled levels of irresponsibility among professional response action contractors who are trained to and indeed make their livings by answering the call to clean up oil?

Issue Paper prepared by Mary Irvine and Marna Schwartz for AEL 4-21-91

RECEIVED

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 E Brown

Jack Brown, President

ATTEST:

John J. Williams

John J. Williams, Secretary

(3/8/91)

Alyeska blasted for billion-dollar bond

Borough Mayor Don Gilman Wednesday blasted Alyeska Pipeline Service Co. for what he calls an "unreasonable" demand that threatens to shut down Tesoro-Alaska Petroleum Corp.'s Nikiski refinery.

Alyeska is requiring Tesoro to come up with a $1 billion bond to continue shipping oil from the Alyeska pipeline terminal in Valdez to Cook Inlet.

Tesoro officials say they can't possibly meet the requirement. And since they get 90 percent of the crude oil for their Nikiski refinery from Valdez, the refinery would be in serious trouble if it was no longer able to ship from there, said Tesoro vice president Gene Burden.

Gilman said the major member companies of Alyeska — Exxon, British Petroleum and ARCO — are using Tesoro as a pawn in order to pressure the Legislature to pass a bill restricting Alyeska's liability in the event of a spill.

"They're using Tesoro," Gilman said. "They're being unreasonable."

But Alyeska spokesperson Marnie Isaacs said the $1 billion requirement is necessary because of the liability Alyeska could be subject to if it responds to a spill from Tesoro or another shipper in Prince William Sound.

"Alyeska serves as the initial response action contractor for those vessels calling at the terminal in Valdez," she said. "Because of the state's liability requirements, Alyeska ... asked the owner-operator or charter of the vessels to pledge a billion dollar bond, which, simply put, indicates they would have access to funds to manage the claims arising from a spill."

The other five companies operating vessels in Prince William Sound — Exxon, BP, ARCO, Shell and Chevron— have been able to comply with the $1 billion requirement, mainly by pledging $1 billion in corporate assets.

But Tesoro can't do that, Burden said.

"All five of those other companies are very, very large companies," he said. "Our whole company's only worth $200 million. To come up with a bond of a billion dollars is just not possible."

He thinks Tesoro should not be required to put up as large an amount as the other companies because Tesoro transports only a small percentage of the oil coming from the terminal, its tanker loads are much smaller, and it has taken many preventive measures, including the recent introduction of a double-bottomed tanker.

Alyeska and Tesoro have worked out a temporary agreement that allows Tesoro to continue operating in the Sound until June 1 with $1 billion in insurance, rather than a bond.

Alyeska says it may lower its requirements if the Legislature passes a bill limiting Alyeska's liability in case problems occur when it responds to a spill.

"The core of the problem rests with the state's current liability laws," Isaacs said.

The way the law stands now, the standard of liability is "simple negligence," which Isaacs said could mean if Alyeska responds according to its plan with the state, but inadvertently loses some oil from a boom, it could be held liable.

Alyeska wants the standard of liability for a spill responder to be "gross negligence," which is harder to prove in court than simple negligence.

Tesoro also favors such a bill because it would limit the liability for the Cook Inlet spill response cooperative of which Tesoro is a member.

But fishing and environmental groups are opposed to the idea because they believe it would lessen the incentive for spill responders to be prepared.

A compromise bill, which sought to limits liability but only for the first 15 days after a spill and only if a company does not "substantially deviate" from its contingency plan, was passed out of the House Resources Committee Tuesday.

But Alyeska is not satisfied with the language in the bill, Isaacs said. "The bill is helpful, but it doesn't go quite far enough," she said. "We feel [illegible] language does not allow us to relax our liability standards."

Mayor Gilman also favors legislation limiting spill responders' liability because the Kenai Peninsula Borough is a member of the Cook Inlet response cooperative and taxpayers could also be held liable for problems resulting from the cooperative's response to a spill.

But Gilman, a former state senator, does not believe the legislation will pass. He says the bill has to get through two more House committees and the full House and the Senate, and he doesn't believe that will happen in the remaining 34 days of the legislative session.

He believes Alyeska is being inflexible about the bill.

"They don't want anything less than gross negligence," he said. "What I think is happening is Alyeska is trying to get the gross negligence standard, and they're doing it on the backs of Tesoro."

"The big three (Exxon, BP and ARCO) are using this thing unmercifully and unnecessarily," Gilman said.

Isaacs says that Alyeska is "very sympathetic to Tesoro's situation."

"We would like to find a way to accommodate Tesoro's needs and still protect the company's (Alyeska's) liability," she said.

Some of Tesoro's supporters in borough and state government have suggested the Alyeska owner companies are trying to put Tesoro out of business, but Isaacs denies that and Gilman says he does not believe that's the case, either.

"But if that's the fallout, they could care less," he said. "The big guys just don't care. They could care less if this refinery closed down."

The Kenai Peninsula Borough Assembly cares a great deal, however.

Tesoro employs about 150 people on the borough, according to Burden. The company provides a good chunk of borough tax revenues.

The Borough Assembly unanimously passed a resolution Tuesday night, which was supported even by fishing groups, urging the Legislature to intervene on Tesoro's behalf.

Burden says if Tesoro and Alyeska can't come to an agreement, Tesoro will file suit against the pipeline company, which would include seeking an injunction to allow the company to continue shipping out of Prince William Sound after June 1.

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 <u>is</u> 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 <u>two</u> "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.

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 State Legislature

Please enter into the record my testimony to the RESOURCES
committee name

committee on H.B. 176 , dated 4-1-91 .
bill/subject

SIR'
FROM LISTENING TO JUNEAU (TEL/CONN 4-10-91)
THE LAWYER'S WANT TO CRIPEL OR OUTRIGHT KILL
THE OIL INDRUSTY, AND THE OIL INDRUSTRY
SUPPORT COMPANYS WITH THE INSURANCE LIGBILTY
BONDING ECT.
THE FISH INDUASTY AND OIL INDRUSTRY HAVE
WORKED IN THE SAME BODY OF WATER FOR THE
LAST 23 YEARS I KNOW OF
WHY KILL ONE, AND SAVE THE OTHER- WHY CAN'T
WE HAVE BOTH

Signed: Orris Kring
Testifier

FISHERMAN / CONSTRUCTION
Representing (Optional)

BOX 8569 NIKISKI ALASKA 99635
Address

(907) 776-8256
Phone No.

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9364
Fax - (907) 262-1881

TO: Dave L.L.O. Please deliver to the [redacted] Committee.

ATTN: Team Members FAX: _____ PHONE: _____

FROM: _____ PHONE: _____

INSTRUCTIONS: testimony on HB 196 hearing 4-10-91

PLEASE NOTE: ALL ODD NUMBERED PAGES WILL BE TRANSMITTED FIRST, THEN THE EVEN NUMBERED.

DATE: 4-11-91 TIME: 12:05pm
DISCARD ORIGINALS ___ HOLD FOR PICKUP ___

NUMBER OF PAGES (not counting the cover sheet): 5

TRANSMITTED BY: -RS

Alaska State Legislature

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

committee on H.B 196 bill/subject, dated 4-10-91.

Here is a copy of our resolution from the North Peninsula Chamber of Commerce.

Thank you
Marie Beeler -

Signed: Marie Beeler
Testifier

President North Pen. Chamber of Comm.
Representing (Optional)

P.O. Box 8053 Nikiski, AK. 99635
Address

907 776-8369
Phone No.

1/88 Legislative Information Office

MAR 11 91 12:20 LEG. AFFAIRS - SOLDOTNA

Alaska State Legislature

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

committee on H.B. 196 bill/subject . dated 4-10-89 .

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 Prince William Washington from Valdez to Nikiski and that Alyeska is demanding $1 Billion in Insurance or cash the Tesoro can't meet. If Alyeska 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 product 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: Marii Beeler
Testifier

Public
Representing (Optional)

P.O. Box 8005
Address

Kenai, Alaska 99635
Phone No.

3/88 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the RESOURCES committee name

committee on H.B 196 bill/subject, dated 4-10-91.

I HAVE LIVED IN ALASKA FOR 24 YEARS. AND HAVE WORKED IN THE REFINERIES, AS WELL AS OFF SHORE & PIPELINE BARG. AS A HAND, DECKHAND, AND SUPERVISOR. I AM RESPONSIBLE FOR UPWARDS OF 40 PEOPLE. TESORO HAS PROVIDED A SORTS OF LIVEING FOR A GOOD PART OF THESE PEOPLE AS WELL AS COMMUNITEE SERVICES THAT GO ABOVE & BEONDE ANY THING EXPADED. FROM ANY COMPANY. I DO NOT BELIVE IN THIS BILLION DOLLAR POLICY. I THINK IT SHOULD BE TREATED AS AN EMERGENCY RESPONICE, WITCH IT WOULD BE, OR HAVE THE STATE SUBSIDIZE IT. I ALSO COMM. FISH. AND WAS INVOLVED IN THE GLACIER BAY SPILL, AND VALDEZ SPILL AS WELL. I HAVE 3.5 CHILDREN WHO LOVE THE OUT DOORS. I JUST THINK THAT THIS BILLION DOLLORS FAILE AUGHTO BE STOPPED.

Signed: [redacted] MICHAEL A. WERNER PROJ. M
Testifier

AKCO
Representing (Optional)

P.O. Box 3186 NIKISKA, AK 99635
Address

776-5365 / 776-8739
Phone No.

P.O. Box 8053 Nikiski, Alaska 99635 (907) 776-8369

NORTH PENINSULA CHAMBER OF COMMERCE

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

North Peninsula Chamber of Commer

P.O. Box 8053 Nikiski, Alaska 99635 (907) 776

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.

Maria Becker

Maria Becker, President of THE
NORTH PENINSULA CHAMBER OF COMMERCE

WHAT IS THE REGIONAL CITIZENS' ADVISORY COUNCIL (RCAC)?

The Regional Citizens' Advisory Council (RCAC) was established in response to the Exxon Valdez oil spill to be a regional citizens' oversight organization. Alyeska Pipeline Service Company, the operator of the Trans Alaska Pipeline Terminal at Valdez, worked cooperatively with the citizens affected by the spill to form RCAC. Members include:

Communities in the affected area:
- City of Cordova
- City of Homer
- City of Kodiak
- City of Seldovia
- City of Seward
- City of Valdez (2)
- Kodiak Island Borough
- Kenai Peninsula Borough

Alaska State Chamber of Commerce
Chugach Alaska Corporation
Cordova District Fishermen United
Kodiak Village Mayors Association
National Wildlife Federation
Prince William Sound Aquaculture Corp

HOW WAS RCAC ESTABLISHED?

After the spill, the state required Alyeska to submit an aggressive new prevention and response (contingency) plan. The Alaska Oil Spill Commission had strongly recommended increased citizen involvement.

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RCAC emerged from this process, incorporating as a nonprofit to insure independence. The resulting contract with Alyeska requires that it provide an annual budget of $2 million for "as long as oil flows through the line" and ready access to all it facilities. The federal Oil Pollution Act of 1990 reinforced this action and specified terms.

WHAT IS THE STRUCTURE OF RCAC?

A sixteen-member board and staff accomplishes its goals primarily through three working committees:

- *Port Operations and Vessel Traffic Systems (POVTS)*
- *Oil Spill Prevention and Response (OSPRC)*
- *Terminal Operations and Environmental Monitoring (TOEM)*

Additionally, a *Scientific Advisory Committee (SAC)*, comprised of scientists and technical experts, reviews research proposals and advises the working committees and the council on technical issues.

The contract specifies that RCAC committees will perform:

- *independent research and monitoring of oil spill prevention and response efforts*
- *tanker safety*
- *environmental effects of terminal operations.*

RCAC uses this information to develop recommendations for environmental safeguards to Alyeska and government regulatory agencies.

THE RCAC IS INDEPENDENT OF ALYESKA

"The Council is willing to participate in the citizens' advisory process for the public and Alyeska on a permanent basis only on the conditions that it be truly independent from Alyeska and that Alyeska provide the Council with a permanent source of adequate funding." (Alyeska/RCAC contract)

WHY IS RCAC NEEDED?

A major lesson learned from the Exxon Valdez spill is that oil transportation is a risky business, and the people who bear the burden of

that risk must be involved at all levels of decision making. No substitute exists for local knowledge experience and commitment. Often we have been adversaries working against one another rather than citizens' cooperatively seeking progress and improvements.

STATUS AND UPDATE ON COMMITTEE ACTIVITY:

Oil Spill Prevention and Response Committee (OSPRC)

- Alyeska C-Plan Comments: To date, the OSPRC has provided comments on Appendix A. Scenarios, Appendix D. Training, and Appendix E. Community and Fishing Vessel Involvement. The Council has approved all three sets of these comments.
- State 1991 Response Plan for Exxon Valdez Oil Spill: OSPRC drafted comments on this plan and the council approved them.
- State Oil and Hazardous Materials Substance Discharge Prevention and Contingency Plan Comments: The committee provided comments to DEC on their draft Prevention and Contingency Plan and hired two experts to comment also. DEC requested additional comments and assistance from OSPRC to refine the plan in greater detail due to the caliber of comments and demonstration of commitment.
- Transition Issue Resolution: OSPRC drafted a resolution expressing concern with the 72-hour transition and nearshore response issues for address by the council. This position is being used by RCAC representatives in the Alyeska Contingency Plan Steering Committee and its working groups.
- Alyeska Contingency Plan Steering Committee and Working Groups: OSPRC members are actively involved in the technical working groups under the Steering Committee. Members work with others to improve the contingency plan. OSPRC members sit on the dispersants/burning/bioremediation, oily waste and the nearshore protection, and beach cleanup working group.
- "Safe Spill" Literature Search and RFP: Members of the committee supported a literature search for "Safe Spill," a non-toxic, biodegradable crude oil substitute. Currently, the draft RFP is in the final stages of development and should be forwarded to the council by the March 21-23 meeting.

- White Papers: The committee is contracting for white papers and briefings in several key areas and has identified potential experts for papers on small-boat technology, risk assessment, and bioremediation. The ECO risk assessment contract, which analyzes the Alyeska Risk Assessment Document by Technica, is under way. The small-boat technology contract was recently finalized and should be completed by May.

Port Operations and Vessel Traffic Systems Committee (POVTS)

- POVTS reviewed proposed changes in the Vessel Traffic System and a letter has been sent to the Coast Guard requesting information regarding its decision to utilize a dependent surveillance system in Prince William Sound.
- Vessel escort procedures have been reviewed, and letters have been sent to shipping agencies and pilots seeking their views on the desirability of having a tug attached during a portion of the transit. A subcommittee will address this issue. Its members have observed the operation of tractor and conventional tugs in Puget Sound March 1, 2, and 3 and will report its findings to the council.
- POVTS committee commissioned Jim Dickson, safety officer at the Sullom Voe Harbor Authority, Shetland Isles, to develop a document which identified oil spill prevention actions that are appropriate to Alaska and Prince William Sound. RCAC recently received the second draft of his report, and it is being circulated for public review through April 22, 1991.
- POVTS reviewed the proposed Coast Guard regulations pertaining to the requirement for double hulls on tankers drafted a position paper and submitted it to the council for its endorsement and support.

Terminal Operations and Environmental Monitoring Committee (TOEM)

TOEM opened an office in Valdez last month. Current activities include:

- Setting up a series of public meetings in the communities of Prince William Sound to identify the public's environmental concerns about oil industry activities. These meetings will likely take place in late April or early May.

- Soliciting a critical analysis of the design and modeling of Alyeska's air monitoring program in the Valdez area.
- Hiring a consultant to complete an inventory of actual and potential sources of environmental pollution stemming from terminal and tanker operations. These issues will be catalogued in a computerized "matrix" for ready access.
- Drafting a request for proposals for a report on the likely fate and effects of hydrocarbons emitted into the air during tanker loading at the Alyeska terminal. If warranted, the next step would be an actual field study.
- The ultimate task of the committee is to physically monitor effects on the environment caused by oil industry activities in Prince William Sound. This comprehensive environmental monitoring program is a significant scientific undertaking that will require extensive field work over several years. Most of what the committee is doing now is in preparation for this task.

Scientific Advisory Committee (SAC)

- SAC has established request for proposal procedures, completed a biological monitoring and socioeconomic modeling RFP for RCAC approval and has reviewed the OSPRC's "safe spill" RFP.

All committees meetings are open to the public, and in 1991 committees plan to hold their meetings in member communities to keep the public involved and informed.

Arsonist hustled spill work

By CHARLES WOHLFORTH
Daily News reporter

How did bankrupt arsonist Jim L. Robinson become an overnight millionaire leasing boats for the Exxon Valdez oil spill cleanup? Partly by supplying bribes and prostitutes to cleanup contracting and logistics officials, and by making a banker his partner, a Daily News investigation suggests.

Robinson is a twice-convicted felon currently out on bail for escape. Before the oil spill, he didn't own any boats. But with the help of his friends in business, he collected more than $3.19 million chartering vessels for the oil-spill cleanup.

A Daily News investigation shows how he may have gotten those breaks:

• A former Robinson employee said he saw Robinson hand an envelope stuffed with $100 bills to L. Edward Atkinson, who was then logistics chief for Exxon's cleanup contractor, Veco Inc., and

Please see Page A-6, ROBINSON

ROBINSON: Arsonist got a state of spill...

Continued from Page A-1

is now Veco's North Slope operations manager. Atkinson says he never took any money from Robinson.

A tape recording of a phone call between Robinson and fired Exxon contract official Bill Alexander shows Robinson was still giving Alexander money and prostitutes and paying for his auto repairs even after Exxon began investigating the two for kickbacks.

And court documents and witnesses show First Bank of Ketchikan Vice President Richard D. "Butch" Olmstead, a partner with Robinson, quadrupled his own $20,000 investment in six weeks after arranging First Bank loans to the partnership to buy vessels for the spill. Olmstead's boss at the bank said the loans were proper.

Robinson came out of the oil spill owning a dozen large boats, but when the spill's easy money ran out, he quickly lost his fortune. He filed for business and personal bankruptcy late last month, only 18 months after emerging from an earlier bankruptcy.

Creditors had already seized six of his vessels, and a seventh is detained in Homer by the U.S. Coast Guard as unseaworthy.

One of the vessels, the Red Jacket, was seized by a Seattle shipyard to which Robinson owes $50,000, and is under detention by the Coast Guard for safety violations. The Red Jacket lost two crewmen on an uninhabited Aleutian Island under mysterious circumstances in November.

Robinson's business debts total more than $1 million and Exxon is suing him for $2.5 million over boat-charter contracts from the oil spill cleanup. Key Bank of Alaska, to which Robinson owes $255,000, won a court order to seize his bank accounts last month. After serving the order on 11 banks and credit unions in Anchorage, bank officials turned up $20, according to court documents.

Arizona authorities are trying to return Robinson to prison to finish a sentence for arson and face new charges of escape. He is now out on $10,000 bail awaiting an extradition hearing.

A FRIENDLY BANKER

Robinson, now 48, arrived in Craig, Alaska, in 1981, within weeks of walking away from an Arizona halfway house where he was serving a four-year sentence for arson of an unoccupied structure. His real name was Kenneth Harvey Robertson, but in Craig he renamed himself Jim Leroy Robinson and created a past as a well-to-do property owner in Arizona. He married, opened a gas station in Craig, and made friends with local banker Butch Olmstead.

Robinson and Olmstead both moved to Ketchikan in the mid-1980s. Olmstead moved up the bank hierarchy. Robinson opened a new garage. But in 1986 Robinson declared bankruptcy to escape debts from his Craig gas station and his treatment for bladder cancer.

Robinson stayed in bankruptcy until 1989, when he and Olmstead started chartering boats for the oil-spill cleanup.

Robinson's garage sat on pilings on the Ketchikan waterfront next door to the Arctic Bar, where he hung out and did some of his business. Former bartender Phillip Webb said that, when the Exxon Valdez spill hit, the talk of the bar was the money to be made chartering vessels to Exxon. He suggested getting involved to Robinson.

Within a month, Robinson, Olmstead and state ferry worker Barry Manning made an informal partnership agreement to buy boats for the spill, according to affidavits they later signed. Robinson hired Webb as his field manager.

A partnership agreement said Olmstead put in $20,000, Robinson $50,000, and Manning $42,000, with each partner entitled to an equal share of the profits. The rest of the money to buy the boats — at least $185,000 — came as loans from Ketchikan's First Bank, where Olmstead was a branch manager and vice president. The loans, which the three partners were equally responsible to repay, were arranged by Olmstead.

Olmstead wouldn't comment for this article, but First Bank President William Moran Jr. said the loans were proper. He said Olmstead did not try to hide his involvement in the partnership and was not involved in underwriting the loans.

No law prevents a bank from lending money to its officers as long as they are treated like any other borrower, said Willis Kirkpatrick, director of the state Division of Banking and Securities. Moran would not provide the amounts or terms of the loans.

The first boat the partnership bought was the Double Eagle, a 62-foot wooden vessel. In a deposition last year, Robinson said the boat's purchase price of $185,000 was paid for with a six-month bank loan. He said Olmstead took care of financing on vessels the partnership bought, although he didn't say specifically that Olmstead arranged the Double Eagle loan.

But Webb said he first met Olmstead the month after oil spill when the banker came to look at the Double Eagle, which was tied up outside the bar. Webb said Robinson told him Olmstead was "surveying" the vessel for a loan; Webb said he later saw Olmstead in Valdez, where he videotaped the Double Eagle. Webb said he assumed that also was related to the loans.

According to Robinson's payroll records, which Webb kept, Webb left for Valdez aboard the Double Eagle on April 29, 1989, and worked there for the next 43 days. For supplies and equipment, he had Olmstead's Gold Mastercard, until its credit limit ran out.

Jim Robinson in a 1988 photo

GETTING CONTRACTS

Fishermen and other boat owners all over Alaska were eager to get contracts on the Exxon cleanup. Charter rates were high enough to pay for most boats after a few months' work.

Among the first Robinson boats hired was the Double Eagle.

In the first week of May, Webb said, Robinson set up a meeting with Atkinson of Veco, Exxon's main contractor on the cleanup. Atkinson was in charge of logistics in Valdez and prepared vessel contract requests, he told the Daily News in a recent interview. Atkinson now manages North Slope operations for Veco.

The night before the meeting, Robinson and Webb saw Atkinson in the bar at the Westmark Hotel in Valdez, Webb said. They ate with Atkinson for more than two hours, he said, while Robinson offered Atkinson money and women for help with his boats. Atkinson told Robinson to come to his office the next day at noon, Webb said, and to bring $5,000.

Webb said, in interviews and a signed statement, he was present at the meeting, about 1 p.m. the next day. Atkinson told them he was talking to someone else from southeast Alaska about hiring boats, but was keeping his promise to talk to Robinson first, Webb said. Robinson gave Atkinson an unsealed envelope containing a sheaf of $100 bills; Atkinson thumbed through the money and put it in a drawer, Webb said. He said Robinson told him the envelope contained $5,000.

Atkinson then ordered an assistant to make refitting the Double Eagle a top priority. In one day a team of carpenters and electricians set up the boat to sleep 11 and installed new appliances and a new television and video recorder, Webb said.

Atkinson said he remembered that Veco chartered the Double Eagle to act as a berthing vessel for mechanics, and that Veco installed plywood bunks, but he didn't specifically remember any meetings with Robinson and said he wasn't paid off.

"In looking at records, I'm sure you would find paperwork where I had signed to put that on charter," he said. But he said he never took any money or gifts. "I don't come that cheap, and I haven't yet heard a figure mentioned from anybody for anything that would make me consider spending time in jail. And, like I say, I was not offered any money, bribes or anything during the spill."

Exxon is suing Robinson for kickbacks to its Valdez contract manager, Bill Alexander, who worked with Atkinson in a small office on pilings over the Valdez small-boat harbor. Alexander has said the practice of taking gifts from boat owners was commonplace. He refused an interview for this story through his wife, but she said he was only Exxon's scapegoat.

Exxon attorney Eric Sanders said Alexander denied others as taking bribes, but Sanders would not say who they were. He said Exxon was unable to substantiate Alexander's allegations, and the company does not know of any bribes paid to Veco official. After the Daily News asked about Webb's allegations, Exxon searched its documents on the Double Eagle for connections between Robinson and Atkinson and found none, Sanders said. Exxon has never interviewed Webb.

The Double Eagle's contract for the cleanup began May 9, 1989, according to court documents, and ended Sept. 30, 1989, according to Sanders. The charter rate at midsummer was $3,000 a day for the Double Eagle, according to an Exxon contract filed in Ketchikan court in an unrelated case. At that rate, Robinson would have taken in more than $420,000 from the Double Eagle alone that summer.

At the meeting where the payment was made, Webb said, Atkinson and Robinson also discussed the charter of an old 160-foot wooden ferry named the Defiance.

Allan Almquist, a Ketchikan fisherman who had been involved in a business venture with Robinson before, said he bought the boat with Robinson for $14,000, with the two splitting the purchase price evenly. Almquist said he entered into the deal after Robinson showed him a 90-day, $840,000 contract for the vessel.

But the Defiance was in poor shape, and Almquist said he moved it to the middle of the night to avoid the notice of the Coast Guard in Ketchikan. When he arrived in Seward, Coast Guard officials there were waiting and declared the Defiance unfit for habitation. It sat idle for six weeks, never did any spill work, and finally sank unattended at anchor in Resurrection Bay, said Almquist and his brother, Robert Almquist.

But Sanders, the Exxon attorney, said Robinson was paid for having the Defiance on charter for almost 60 days. An Exxon document lists the charter at $3,000 a day.

Atkinson of Veco said the Defiance was unsuitable and Veco never chartered it. But he said he might have met with Robinson about the vessel.

At one point during the summer of 1989, Robinson had 12 vessels on contract to Exxon for a total of $24,400 a day, contracts show. Altogether, Exxon and Veco paid Robinson $3.19 million during 1989, according to tax records.

Olmstead, who put $20,000 into the partnership, agreed to sell out to Robinson — six weeks after the partnership was officially formed — for $98,500, not including any profits that had already been distributed, according to court documents. Out of that sum came about $5,000 Olmstead owed on his Gold Mastercard for spill supplies.

Robinson later bought out Manning, too, but kept working to keep his boats on contract through the winter and into the summer of 1990. In late summer of 1989, he made an agreement with Exxon that set his charter rates for the next year at 1989 rates or higher.

EASY COME, EASY GO

By the end of 1989, Robinson's problems were already starting. Exxon had begun investigating the relationship between Robinson and Alexander after receiving tips from unhappy Robinson employees.

Sunday, April 7, 1991

Arsonist got a share of spill cleanup work

Jim Robinson in a 1988 photo

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Atkinson of Veco said the Defiance was unsuitable and Veco never chartered it. But he said he might have met with Robinson about the vessel.

At one point during the summer of 1989, Robinson had 12 vessels on contract to Exxon for a total of $24,400 a day, contracts show. Altogether, Exxon and Veco paid Robinson $3.19 million during 1989, according to tax records.

Olmstead, who put $20,000 into the partnership, agreed to sell out to Robinson — six weeks after the partnership was officially formed — for $98,500, not including any profits that had already been distributed, according to court documents. Out of that sum came about $5,000 Olmstead owed on his Gold Mastercard for spill supplies.

Robinson later bought out Manning, too, but kept working to keep his boats on contract through the winter and into the summer of 1990. In late summer of 1989, he made an agreement with Exxon that set his charter rates for the next year at 1989 rates or higher.

EASY COME, EASY GO

By the end of 1989, Robinson's problems were already starting. Exxon had begun investigating the relationship between Robinson and Alexander after receiving tips from unhappy Robinson employees.

Allen Almquist gave the Daily News a tape recording of Robinson talking on the telephone with Exxon's Alexander. Almquist said he didn't know where the tape came from because he received it in the mail in an unmarked envelope.

Almquist said he recognized both voices on the tape. Exxon attorney Sanders also confirmed they are Alexander and Robinson.

The tape wasn't dated, but on it the two men discuss Exxon's investigation of Alexander.

Alexander and Robinson, between frequent obscenities, discuss the need to be careful and avoid being seen together. Robinson mentions a cost; Sanders said Exxon's investigation found that Robinson attempted to give a cost to Alexander's wife.

Alexander's voice is high and strained when he says, "I don't know what is going to happen, you know? I don't know."

They also discuss money. Robinson asks Alexander if he wants cash or cashier's checks, and how he wants the payment delivered. Alexander finally asks to have the money hand-delivered. Robinson also promises to send Alexander a 20-year-old blond prostitute and says he is having Alexander's truck worked on in an Anchorage shop.

"I'll set the broad up for you," Robinson says. "I— they can't say nothing about a girl coming to your house, can they?"

"Tell her to give me a call," Alexander says.

Robinson also tries to assure Alexander he won't get him in any more trouble.

"S—, you know, just forget it, there's no attack on that deal," Robinson says. "Ah, you know, like I said, I wouldn't do nothing, there's nothing that I would do to create you any problems. It's just you done too much to, for me."

Robinson's stepdaughter, Nikki Rodriguez, who handled finances in his Ketchikan office during part of 1989 and 1990, said he called her that winter and told her to get a $5,000 cashier's check from the bank in Bill Alexander's name, with a note on it saying it was to sponsor Alexander's race car.

Robinson never did any spill work in 1990. Exxon fired Alexander that April, then sued Robinson in June for paying kickbacks.

Without the Exxon work, Robinson's business soon crashed. His vessels had jobs over the summer hauling construction and logging equipment between Alaska towns, but he started missing payments on his bills in early 1990. He ignored safety and licensing regulations and in Homer was known for not paying crewmen their full wages.

The problems came to a head last November. On a trip to get construction equipment in the Aleutian village of Atka, the Red Jacket put two men ashore on uninhabited Seguam Island, purportedly to get water. They disappeared.

The incident brought the attention of the Coast Guard, which detained the Red Jacket in Dutch Harbor for safety violations. When the vessel was released, Robinson took it to Seattle for repairs. There it was again detained by the Coast Guard for a laundry list of safety problems.

The Red Jacket went into drydock at the Unimar International shipyard on Lake Union. Unimar stopped work when Robinson's tab reached $50,000 and is now holding the vessel in drydock, according to company attorney Ruth Nelson.

The boat's Dutch Harbor and Kenai fuel supplier, Offshore Systems of Bellevue, Wash., filed a $20,000 lien against the Red Jacket, said vice president Jim Dohler. And Robinson didn't pay $32,000 for the charter of an airplane that searched for the Red Jacket's missing barge and crewmen in November, his bankruptcy filing says.

Key Bank, which has loaned Robinson $355,000 in the last 10 months — including a Jan. 4 loan secured by the Red Jacket — won court orders to seize five other Robinson boats in Seward and Homer. Unpaid crewmen demanding $25,000 in wages had the 94-foot Keston seized in Port Orchard, Wash., early this year.

The 80-foot Karen, built in 1977, hasn't been seized by creditors, but is under detention by the Coast Guard because Robinson sent it to sea twice with a hole in it that may have made it unseaworthy, said Lt. Jerry Wilson. He said Robinson couldn't get the boat repaired because Homer harbor officials, who said they are owed $7,800 in docking fees that are more than a year delinquent, wouldn't allow Robinson to use repair facilities until they were paid.

The IRS is after Robinson, too, for $28,000 in tax penalties, according to his bankruptcy filings.

Robinson was in Anchorage recently, free from a Seattle jail on a $10,000 property bond. He is due back in court there next week.

He didn't return several phone calls from the Daily News to his Anchorage office over a three-week period.

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
HB 196	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.

HOUSE AMENDMENT TO SENATE BILL NO. 2987

To the Secretary of the Senate:

This is to notify you that the House of Representatives adopted the following amendment(s):

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. This act may be cited as the Mississippi Liability of Persons Responding to Oil Spills Act.

SECTION 2. For the purposes of this act the term:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil;

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

(c) "Federal on-scene coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

(d) "National Contingency Plan" means the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as

amended by the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990);

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil; but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that act;

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body;

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

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

SECTION 3. (1) Notwithstanding any other provision of law, 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 federal on-scene coordinator or by the state official with responsibility for oil spill response.

(2) Subsection (1) does not apply:

(a) To a responsible party;

(b) To personal injury or wrongful death; or

(c) If the person is grossly negligent or engages in willful misconduct.

(3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1).

(4) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

SECTION 4. The Commission on Environmental Quality shall promulgate any necessary rules and regulations in order to carry out the provisions of this act.

SECTION 5. This act shall take effect and be in force from and after its passage.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; TO REQUIRE THE COMMISSION ON ENVIRONMENTAL QUALITY TO PROMULGATE RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

CHARLES J. JACKSON, JR.
Clerk of the House of Representatives

MISSISSIPPI LEGISLATURE

REGULAR SESSION 1991

By: Senators Bilbo, Hall

To: Environment Prot, Cons and Water Res

SENATE BILL NO. 2987
(As Passed the Senate)

AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO AN OIL SPILL OR THREAT OF AN OIL SPILL IN A MANNER CONSISTENT WITH THE NATIONAL CONTINGENCY PLAN AND THE OIL POLLUTION ACT OF 1990; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be cited as the Mississippi Liability of Persons Responding to Oil Spills Act.

SECTION 2. For the purposes of this act the term:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge of threatened discharge of oil;

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

(c) "Federal on-scene coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

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

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil; but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of this act;

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body;

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

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

SECTION 3. (1) Notwithstanding any other provision of law, 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 federal on-scene coordinator or by the state official with responsibility for oil spill response.

(2) Subsection (1) does not apply:

(a) To a responsible party;

(b) To personal injury or wrongful death; or

(c) If the person is grossly negligent or engages in willful misconduct.

(3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1).

(4) Nothing in this section affects the liability of a responsible party for oil spill response under state law.

SECTION 4. This act shall take effect and be in force from and after its passage.

SENATE BILL 179

AS PASSE

By: Senator Coleman of the 1st, Allen of the 2nd and Hammill of the 3rd

AN ACT

To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to provide for limited immunity from liability for persons responding to an oil spill or threat of an oil spill; to provide for definitions; to provide for applicability; to provide for certain liability regarding removal costs and damages; to provide for liability with respect to certain responsible parties; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, is amended by adding at the end thereof a new article, to be designated Article 7, to read as follows:

"ARTICLE 7

12-5-500. As used in this article, the term:

(1) 'Damages' means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2)'Discharge' means any emission, other than natural seepage, whether intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(3) 'Federal on-scene coordinator' means the federal official designated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses under subpart D or the official designated by the lead agency to coordinate and direct removal under subpart E of the National Contingency Plan.

(4) 'National Contingency Plan' means the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act, 31 U.S.C. 1321(d), as amended by the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

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

(6) 'Person' means an individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

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

(8) 'Responsible party' means a responsible party as defined under Section 1001 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

12-5-501. (a) Notwithstanding any other provision of law, 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 federal on-scene coordinator or by any state official with responsibility for oil spill response.

(b) Subsection (a) of this Code section shall not apply:

(1) To a responsible party;

(2) With respect to personal injury or wrongful death;

(3) If the person is grossly negligent or engages in willful misconduct; or

(4) To a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.).

(c) A responsible party shall be liable for any removal costs and damages that another person is relieved of under subsection (a) of this Code section.

(d) Nothing in this Code section shall affect the liability of a responsible party for oil spill response under any applicable state law."

Section 2. All laws and parts of laws in conflict with this Act are repealed.

THE FOLLOWING DOCUMENT(S)
MAY NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of, and the damage, cleanup, costs, and liability for, oil spills in coastal waters of the state; providing for adequate response to spills of oil and other pollutants in coastal waters; levying a coastal protection fee; creating the coastal protection fund; amending licensing requirements for pilots in state waters; making an appropriation; and providing civil and criminal penalties.

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

SECTION 1. Subtitle C, Title 51, Natural Resources Code, is amended by adding Chapter 40 to read as follows:

CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. SHORT TITLE. This chapter may be cited as the Oil Spill Prevention and Response Act of 1991.

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling, storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges;

(3) provide for development of a state coastal discharge contingency plan through planning and coordination with the Texas Water Commission to protect coastal waters from all types of spills and discharges; and

(4) administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(c) The legislature declares that it is the intent of this

coastal waters or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters.

(8) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the commissioner properly certifies the organization.

(9) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(10) "Fund" means the coastal protection fund.

(11) "Harmful quantity" means that quantity of oil the discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(12) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Water Commission.

(13) "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(14) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(15) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(16) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Water Commission.

(17) "Owner" or "operator" means:

(A) any person owning, operating, or chartering

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national contingency plan. In responding to the discharge the commissioner or the state-designated on-scene coordinator shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

(c) The commissioner or the state-designated on-scene coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate, and direct response operations.

Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to the commissioner's authority under this chapter, any person or discharge cleanup organization may assist in abating, containing, or removing pollution from any unauthorized discharge of oil. This chapter does not affect any rights not inconsistent with this chapter that any such person or organization may have against any third party whose acts or omissions caused or contributed to the unauthorized discharge.

(b) Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for response costs, provided the commissioner approves compensation prior to the assistance being rendered. Prior approval for compensation may be provided for in the state

coastal discharge contingency plan. The commissioner, on petition and for good cause shown, may waive the prior approval prerequisite.

Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS. (a) No action taken by any person or discharge cleanup organization to abate, contain, or remove pollution from an unauthorized discharge of oil, whether such action is taken voluntarily, or pursuant to the national contingency plan or state coastal discharge contingency plan, or pursuant to a discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

(b) No person or discharge cleanup organization that voluntarily, or pursuant to the national contingency plan or the state coastal discharge contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or willful misconduct.

Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may

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establish and maintain equipment and personnel at places the commissioner determines may be necessary to facilitate response operations.

Sec. 40.106. REFUSAL TO COOPERATE. (a) If a responsible person, or a person or discharge cleanup organization under the control of a responsible person, participating in operations to abate, contain, and remove pollution from any unauthorized discharge of oil, reasonably believes that any directions or orders given by the commissioner or the commissioner's designee under this chapter will unreasonably endanger public safety or natural resources or conflict with directions or orders of the federal on-scene coordinator, the party may refuse to comply with the direction or orders.

(b) The party shall state at the time of refusal the reason or reasons why the party refuses to comply. The party shall give the commissioner written notice of the reason or the reasons for the refusal within 48 hours of the refusal.

Sec. 40.107. PRESUMPTION OF NATURAL RESOURCES DAMAGES. (a) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with state-designated natural resources trustees, according to the procedures and plans contained in the state coastal discharge contingency plan shall create a rebuttable presumption of the amount of such damages.

(b) The commissioner may establish the rebuttable

presumption by submitting to the court a written report of the amounts computed or expended according to the state plan. The written report shall be admissible in evidence.

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A person may not leave, abandon, or maintain any structure or vessel involved in an actual or threatened unauthorized discharge of oil on public or private lands or at a public or private port or dock, in a wrecked, derelict, or substantially dismantled condition, without the consent of the commissioner.

(b) The commissioner may remove any vessel or structure described in Subsection (a) of this section and may recover the costs of removal from the owner or operator of the vessel or structure.

Sec. 40.109. REGISTRATION OF TERMINAL FACILITIES. (a) A person may not operate or cause to be operated a terminal facility without a discharge prevention and response certificate issued pursuant to rules promulgated under this chapter.

(b)(1) As a condition precedent to the issuance or renewal of a certificate, the commissioner shall require satisfactory evidence that:

(A) the applicant has implemented a discharge prevention and response plan consistent with state and federal plans and regulations for prevention of unauthorized discharges of oil and abatement, containment, and removal of pollution when such discharge occurs; and

... except for acts ... willful misconduct. ... EQUIPMENT AND PERSONNEL. The commissioner may

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any action brought by the state, a county, city, or district.

(h) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(i) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(j) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(k) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a private individual or entity which requests the state not to pursue that action.

(*l*) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

8670.56.6. (a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall

not apply to any oil spill response action which is inconsistent with the directions of the Coast Guard, the director, or, in the absence of overriding directions of the Coast Guard or the director, is inconsistent with applicable contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the tanker, barge, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

~~(4) The qualified immunity under this section shall only apply to response activity during the first 60 days after the spill for persons whose primary purpose is the business of responding to oil spills and who are regularly engaged in the business of responding to oil spills. No immunity shall attach to response activity after expiration of the first 60 days for the parties described herein.~~

~~(5) The qualified immunity under this section shall attach, without the limitation described in paragraph (4), to those responding parties that do not "regularly engage" in the oil spill response business and to persons and entities who are primarily dedicated to the preservation and rehabilitation of wildlife. There shall be no limitation on the duration of the immunity.~~

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, or the responsible party's agents, employees, and subcontractors, for the discharged oil, or for the tanker, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall:

(1) Notwithstanding subdivision (b) or (h) of Section 8670.56.5 or any other provision of law, be strictly and

~~jointly and severally liable for all damages arising pursuant to subdivision (g) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.~~

~~(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).~~

~~(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.~~

~~(e) This section shall not apply to any action for personal injury or wrongful death.~~

~~(f) As used in this section, a "cooperative" means an organization of private persons which is established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spills of oil.~~

~~(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.~~

~~(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.~~

~~(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.~~

~~(j) The immunity granted pursuant to subdivision (a) shall apply to a cooperative only if that cooperative has contracted with the administrator to respond to oil spills~~

~~in accordance with the state oil spill contingency plan and this chapter. The administrator shall enter into contract with any cooperative that is qualified and that offers to contract, on mutually acceptable terms, in accordance with the state oil spill contingency plan and this chapter.~~

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in (1) above, the administrator shall also be authorized to negotiate and enter into indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts

to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public safety or welfare.

(B) The remaining work is of such a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to such response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of persons who are not regularly engaged in the business of responding to oil spills. Persons who are not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) persons who are primarily dedicated to the preservation and rehabilitation of wildlife and (B) persons who derive their livelihood primarily from fishing.

(l) As used in this section, "response efforts" means rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

DELAWARE 1991 SESSION LAW SERVICE
FIRST SESSION OF THE 136TH GENERAL ASSEMBLY
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Additions and deletions are not identified in this document.

Ch. 5
S.B. No. 6
HAZARDOUS WASTE CLEANUP--LIABILITY OF THIRD PARTIES

AN ACT TO AMEND TITLE 10, DELAWARE CODE, RELATING TO LIMITATION OF LIABILITY FOR OIL AND HAZARDOUS MATERIAL DISCHARGE CLEANUP.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by adding thereto a new Section to read as follows:

<< DE ST TI 10 s 8135 >>

"s 8135. Limitation on Liability of Third Parties Rendering Assistance in Oil or Hazardous Material Discharge Cleanup.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, wilful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of liability as set forth in Subsection (a) of this Section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under Subsection (a) of this Section.

(d) This Section shall not be construed to limit any liability of any person for personal injuries or wrongful death as a result of the acts or omissions of such person."

<< DE ST TI 10 s 8134 >>

Section 2. Amend Chapter 81, Title 10 of the Delaware Code by striking s 8134 in its entirety.

SYNOPSIS

This bill is proposed by the Delaware River and Bay Oversight Committee. The bill would limit liability for removal costs and damages (other than personal injury or wrongful death) of a third party who renders assistance in a cleanup operation to those acts which amount to gross negligence or reckless, wilful, wanton, or intentional misconduct.

Approved January 31, 1991.

DE LEGIS 5 (1991)
END OF DOCUMENT

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.

700 H Street, #4 Anchorage, Alaska 99501 • (907) 274-3621

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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

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 196(O&G)
(H) Publish Date: 3/13/91

Revision Date: _____ Department Affected: DEC

Title: Limited Liability for oil spill response action acontractors BRU: Environmental Quality

Component: SPPM

Sponsor: House Oil & Gas

Requestor: House Oil & Gas **COMPONENT SERIAL NO.** 1 0 1 6

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						
REVENUE						

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: J. A. Sanders

Agency: ADEC Date: 3/11/91

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

Rev 10/90

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: CSHB 196(JUD)

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
REVENUE	0	0	0	0	0	0

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. Stoops, Director — Michele Brown, Exec. Director — 465-3850
Division: Administrative Services — Citizens' Oversight Council — Phone: 561-2101 — 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).

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 x 320 hours = $32,000

(7)

HOUSE COMMITTEE REPORT

Date Referred: April 19, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4-29-91

The JUDICIARY 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 (Jud)

[ ] the same title

[X] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[X] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[X] fiscal impact Leg. Affairs Agency

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[X] zero fiscal note(s) DEC 3-13-91

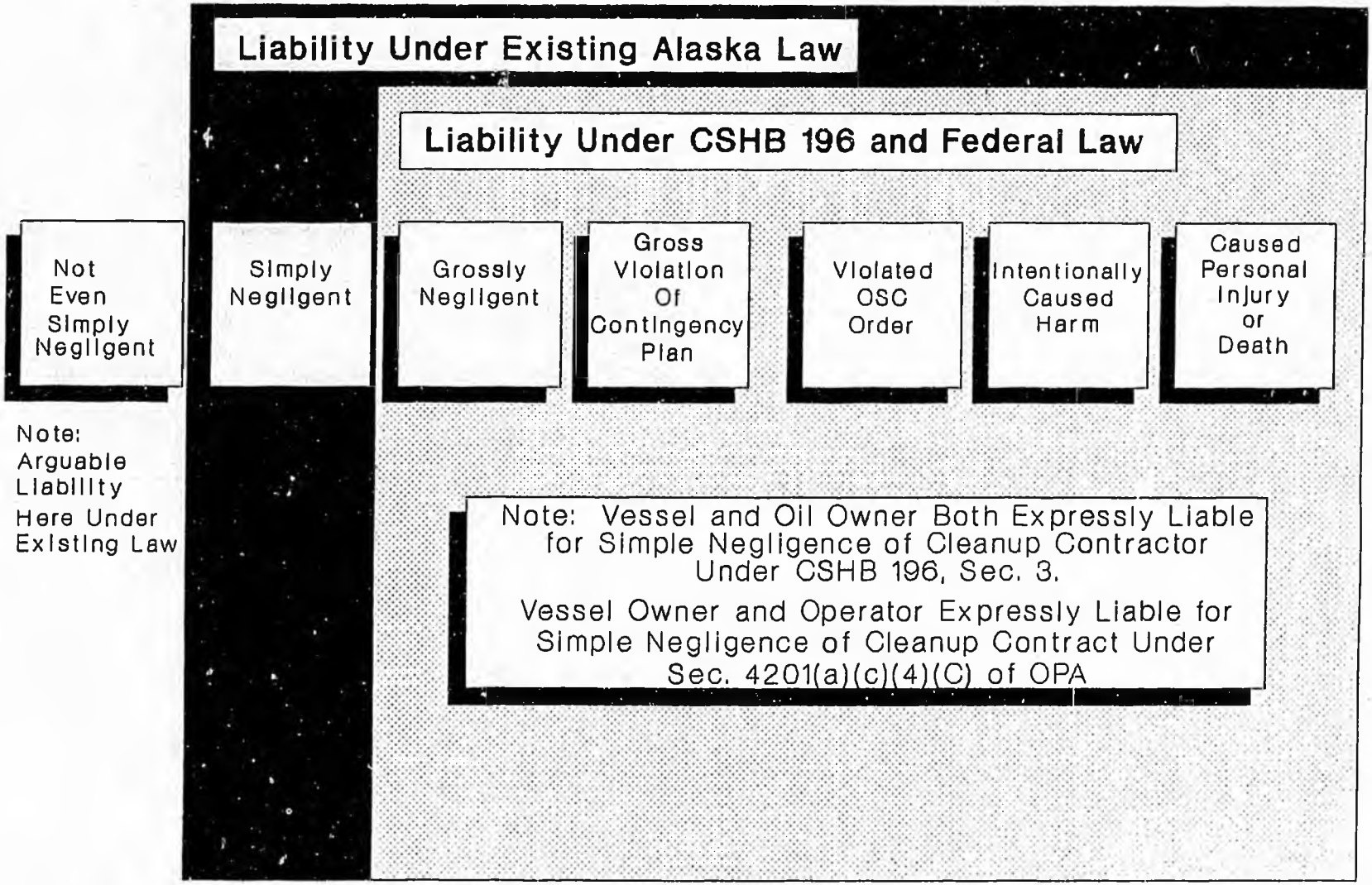
SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
Terry Mastiss	✓				
Matt Thorsenberg	✓	Mark Hanley		X	
		Ellis		X	
		Kenneth Parnell		✓	
		Dave Donley		X	

Dave Donley

CHAIRMAN'S SIGNATURE

CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

CSHB 196 and Federal Law vs. Existing Alaska Law



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)

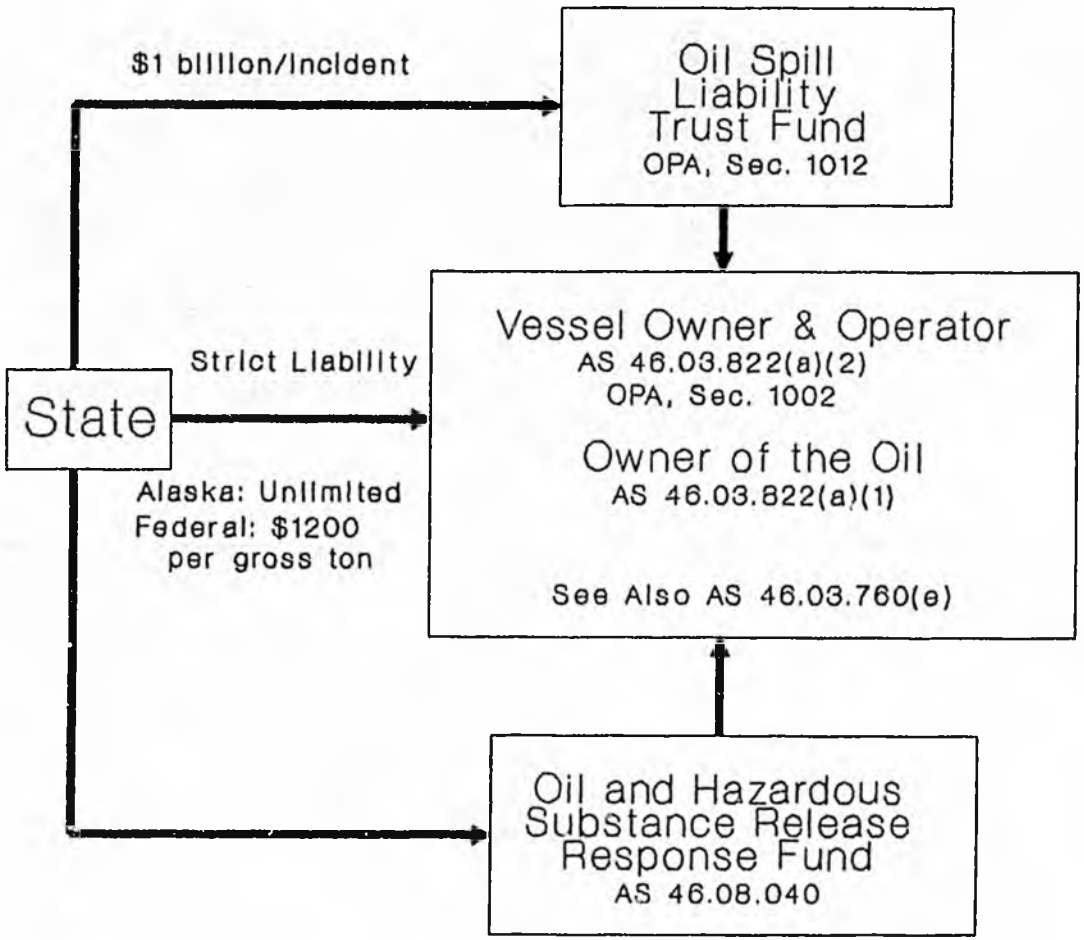
Gross Negligence:

"[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)

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

Under Both Existing Law and CSHB 196

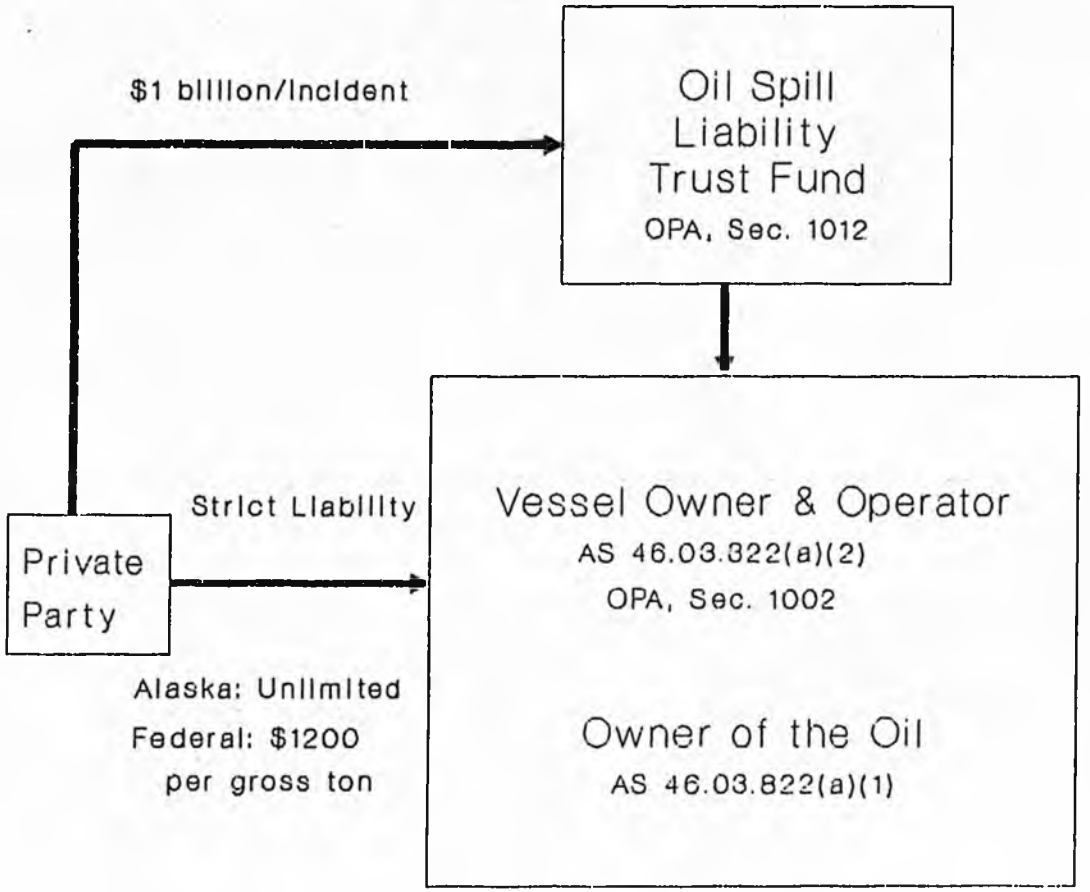


Vessel Owner or Operator Must Provide

1. $202 Million Financial Responsibility. AS 46.04.040(c)(1)
2. $64 Million Financial Responsibility. OPA Sec. 1016
3. Alaska Law: At least $50 Million Direct Action. AS 49.04.040(l)
   Federal Law: All Direct Action OPA, Sec. 1016(f)

DAMAGE RECOVERY
CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



Vessel Owner or Operator Must Provide

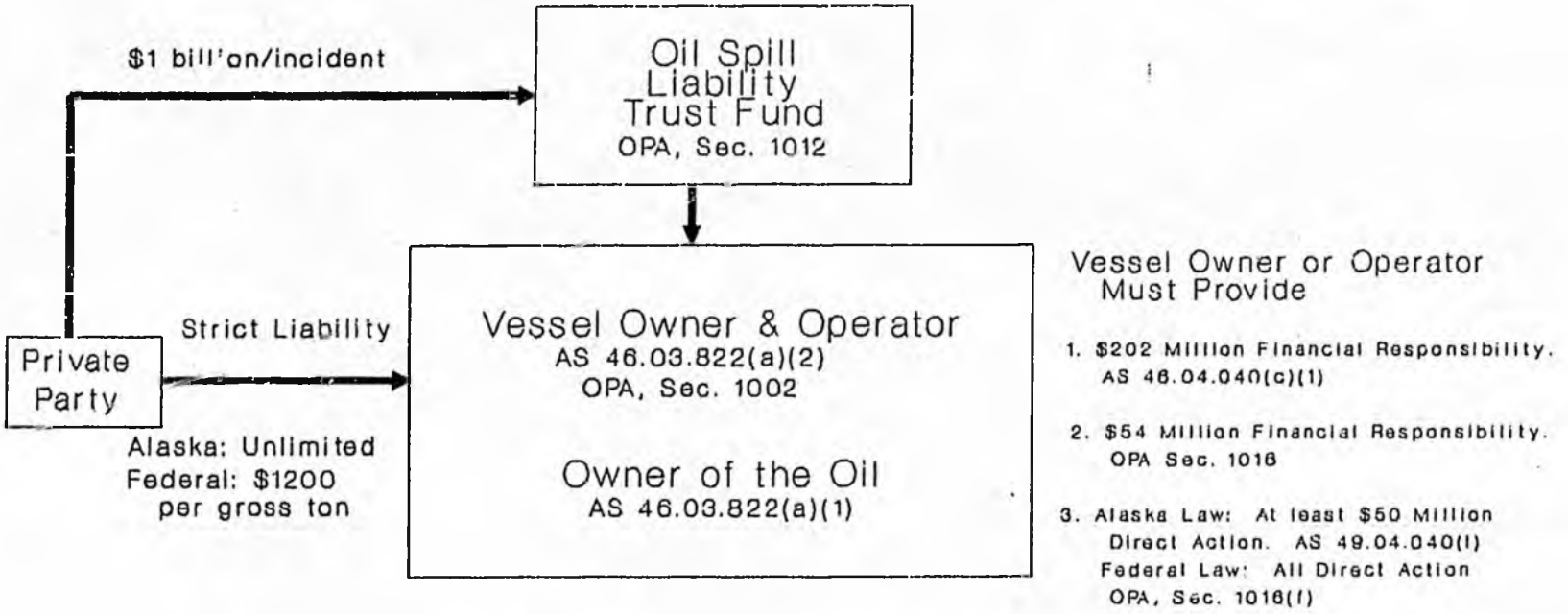
1. $202 Million Financial Responsibility.
   AS 46.04.040(c)(1)

2. $54 Million Financial Responsibility.
   OPA Sec. 1016

3. Alaska Law: At least $50 Million Direct Action. AS 49.04.040(1)
   Federal Law: All Direct Action
   OPA, Sec. 1016(1)

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**

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

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.

...Pacific Fisheries Legislative Task Force, June 16, 1990 (Sitka)
Alaska Delegates: Sen. Eliason
Sen. Zharoff
Rep. Davidson
Rep. Navarre

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders.

A law that does not address responder's concern abut liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take those factors into account if effective programs are to be put in place.

...United States Coast Guard, August 28, 1990

Because unnecessary impediments to expeditious oil spill response should be minimized, we support the concept of immunizing spill responders by passing through their liability to the spiller, under the following conditions: none of the spiller's original liability is in anyway reduced, and there are adequate assurances that all damages will be paid, and that the injured parties can be made whole.

...The California Sierra Club, April 21, 1990

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not.

...The San Francisco Examiner, June 10, 1990

Right now, oil spill teams can be sued just for showing up to fight the damage. for events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions...

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

...International Bird Rescue Research Center, et al., August 1990

Should qualified immunity not be granted to responder as outlined in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

...Ventura County Commercial Fishermen's Association, May 4, 1990

If She's Not A Good Samaritan, Just Who Is?

The men and women who respond to an oil spill crisis are willing to accept many dangers. Good Samaritans in every sense of the word, they risk uncertain seas, fire and exposure.

But there's one risk that's truly unacceptable. A crippling lawsuit against the recovery team itself. Yet, because of an odd quirk in the law, that's a real possibility.

Right now, oil spill teams can be sued just for showing up to fight the damage. For events that occur in the chaos of a recovery effort. For the land that is damaged as a result. And the price tag can run into the billions.

Is this reasonable? The Congress of the United States doesn't think so. The California State Senate doesn't think so. In fact, only one group wants to be able to make the people fighting the oil spill pay for the spill itself. The California Trial Lawyers Association.

This powerful special interest group has managed to block the final steps in enacting Good Samaritan protection for oil recovery teams. Why? For the oldest reason of all—they want the fees.

Senator Barry Keene and Assemblyman Ted Lempert are working overtime to protect California's coastline. And we have a major interest in their efforts. We are the people who fight oil spills. Some of us do so to protect our fishing grounds. Some to save innocent wildlife. Others, as part of a responsible petroleum industry. We believe that whoever *spills* the oil should be liable for the costs—not the people who clean it up.

PHOTO COURTESY OF INTERNATIONAL BIRD RESCUE RESEARCH CENTER

We urgently need your help to pass Good Samaritan liability protection for our efforts. We believe our work deserves the same immunity from lawsuits as a doctor who stops to help a heart attack victim on the street. Indeed, we stop everything to help an injured Earth when she needs it.

Please send in the coupons below and tell the California State Assembly to pass SB 2040 authored by Senator Barry Keene. It's the only way to keep some very Good Samaritans on the job.

Join Us In Saying NO To The Trial Lawyers, Yes on SB 2040.

Call Us.
We will send a FREE mailgram in your name to your State Assembly member.

Call Toll Free.
1-800-325-6000.
Ask for Operator 9752.

This is a toll free Western Union Service.

Write Us.
Fill out this coupon and send it to us:

YES! I support Senate Bill 2040 (Keene) and protection for California's oil spill recovery teams. Please add my name to the list of people who want to say yes to the environment.

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Return to: International Bird Rescue Research Center c/o 1222 6th Street, Suite 300 Sacramento, CA 95814

Or, Tell 'Em Yourself.
Please Mr. Speaker:
Don't let the trial lawyers keep oil recovery teams off the beach. Please pass the U.S. Congress and the California State Senate by enacting Senate Bill 2040 (Keene).

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

Send to: Hon. Willie L. Brown, Jr., State Capitol, Sacramento, CA 95814

SPONSORED BY
International Bird Rescue Research Center
Clean Bay • Clean Coastal Waters • Clean Seas
Ventura County Commercial Fishermen's Association
Marine Spill Response Corporation

Ventura County Commercial Fishermen's Association
SERVING COMMERCIAL FISHERMEN SINCE 1987

V.C.C.F.A. * 1567 SPINNAKER DRIVE * STE. 203-199 * VENTURA, CALIF. 93001
(805) 985-9705

Honorable George Deukmejian
Governor of California
State Capital First Floor
Sacramento, CA. 95814

May 4, 1990

Dear Governor Deukmejian,

Ventura County Commercial Fishermen's Association (VCCFA) has developed the Fishermen's Oil Response Team (FORT). As you are aware this resource of certified commercial fishermen is designed to be called upon by clean up coordinators during an emergency. FORT would provide additional manpower, vessels, and aircraft as needed to respond within the first hours of an oil spill emergency not days later.

I have received information that California Trial Lawyers Association wishes to change the wording of SB-2040. Instead of providing qualified immunity for spill respondents, they prefer to negotiate indemnification of said respondents.

Please let me know your viewpoint on this important issue. Should qualified immunity not be granted to respondes as outline in the bill, FORT has no chance of succeeding. I cannot ask the men and women who have voluntarily trained and been certified in oil spill recovery to participate if the possibility of a lawsuit hangs over their heads when they are cleaning up someone else's spill.

Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALDEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

Your support is welcome. Enclosed is our newsletter and I would appreciate your subscription.

Sincerely,

Brian Jenison

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS

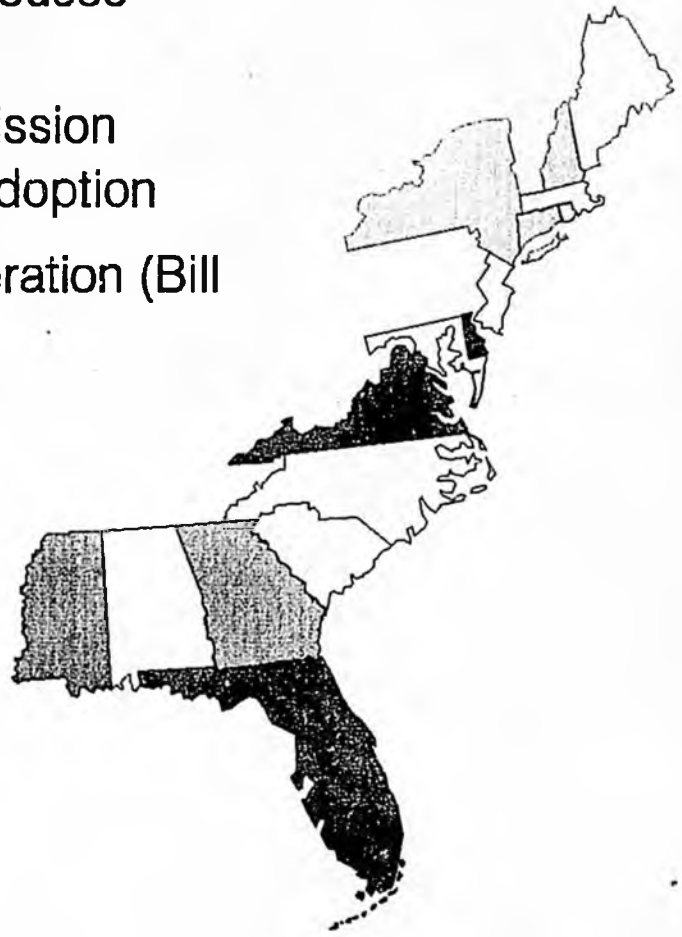
- Enacted

-Passed Both Houses

- Special Commission Recommends Adoption

- Active Consideration (Bill Introduced)

- No Activity



ATTACHMENT A
Definitions of Liability Standards

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

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FIFTH EDITION

BY

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ST. PAUL MINN.
WEST PUBLISHING CO.
1979

do what a person of ordinary prudence would have done under similar circumstances. Amoco Chemical Corp. v. Hill, Del.Super., 318 A.2d 614, 617. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. Pence v. Ketchum, La., 326 So.2d 831, 836.

The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while "wantonness" or "recklessness" is characterized by willfulness. The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in his conduct toward others from which injury may result.

See also Actionable negligence; Active negligence; Cause; Comparative negligence; Concurrent negligence; Fault; Imputed negligence; Invitation; Joint negligence; Laches; Legal negligence; Palsgraph doctrine; Parental liability; Product liability; Reasonable man doctrine; Reckless; Simple negligence; Standard of care; Strict liability; Supervening negligence.

Actionable negligence. See Actionable negligence.

Active negligence. See Active negligence.

Collateral negligence. In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. Weber v. Buffalo Railway Co., 20 App.Div. 292, 47 N.Y.S. 7.

Comparative negligence. See Comparative negligence.

Concurrent negligence. Arises where the injury is proximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. See also Concurrent negligence.

Contributory negligence. The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. Honaker v. Crutchfield, 247 Ky. 495, 57 S.W.2d 502. Conduct by a plaintiff which is below the standard to which he is legally required to conform for his own protection and which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's harm. Li v. Yellow Cab Co. of California, 13 Cal.3d 804, 119 Cal.Rptr. 858, 864, 532 P.2d 1226.

Conduct for which plaintiff is responsible amounting to a breach of duty which law imposes on persons to protect themselves from injury, and which, concurring and cooperating with actionable negligence for which defendant is responsible, contributes to injury complained of as a proximate cause. Cowan v. Dean, 81 S.D. 486, 137 N.W.2d 337, 341.

The defense of contributory negligence has been replaced by the doctrine of comparative negligence *(q.v.)* in many states. See also *Exceptions and limitations, infra.*

An affirmative defense which must be pleaded and proved by defendant Fed.R.Civil P., Rule 8(c).

Doctrine is also applicable to one who through his own negligence has contributed to material alteration of a negotiable instrument. U.C.C. § 3–406.

Criminal negligence. Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or wilful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death.

That species of want of care by which a person may be criminally liable. It varies from jurisdiction to jurisdiction and is called culpable negligence in some. However, it generally refers to conduct which is not intentional and ordinarily not wilful, wanton and reckless.

See Negligent homicide; Negligently; Negligent manslaughter.

Culpable negligence. Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted.

Degrees of negligence. While there are degrees of care, and failure to exercise proper degree of care is "negligence," most courts hold that there are no degrees (*e.g.* slight, ordinary, gross) of negligence, except in bailment cases or under automobile guest statutes. Murray v. De Luxe Motor Stages of Illinois, Mo.App., 133 S.W.2d 1074, 1078. The prevailing view is that there are no "degrees" of care in negligence, as a matter of law; there are only different amounts of care as a matter of fact. To the extent that the degrees of negligence survive, they are described below.

Exceptions and limitations. The general rule in automobile accident cases that contributory negligence bars recovery for the injuries sustained is subject to various exceptions and limitations. Thus the defense of contributory negligence may be inapplicable where defendant's negligence is of a gross or willful character. Moreover, application of the doctrine of contributory negligence is limited by the last clear chance doctrine or similar doctrines, or by comparative negligence statutes.

Gross negligence. The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

jurisdiction. August v. August, 65 Ga.App. 883, 16 S.E.2d 784, 785.

Ne exeat regno /niy éksiyət régnow/. Lat. In English practice, a writ which issues to restrain a person from leaving the kingdom. It was formerly used for political purposes, but is now only resorted to in equity when the defendant is about to leave the kingdom; it is only in cases where the intention of the party to leave can be shown that the writ is granted.

Ne exeat republica /niy éksiyət rəpəblikə/. Lat. In American practice, a writ similar to that of *ne exeat regno (q.v.)*, available to the plaintiff in a civil suit, under some circumstances, when the defendant is about to leave the state.

Nefas /niyfæs/. Lat. That which is against right or the divine law. A wicked or impious thing or act.

Nefastus /nəfæstəs/. Lat. Inauspicious. Applied, in the Roman law, to a day on which it was unlawful to open the courts or administer justice.

Negatio conclusionis est error in lege /nəgéysh(iy)ow kənklúwz(h)iyównəs èst éhrər in líyjiy/. The denial of a conclusion is error in law.

Negatio destruit negationem, et ambæ faciunt affirmationem /nəgéysh(iy)ow déstruwət nəgèyshiyównəm èt æmbiy féyshiyənt æfərméyshiyównəm/. A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio /nəgéysh(iy)ow d(y)úwpleks èst æfərméysh(iy)ow/. A double negative is an affirmative.

Negative. A denial; a proposition by which something is denied; a statement in the form of denial. Two negatives do not make a good issue.

As to negative Covenant; Easement; Servitude; Statute; and Testimony, see those titles.

Negative averment. As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, e.g., that premises are not in repair, which, although negative in form, is really affirmative in substance, and the party alleging the fact of non-repair must prove it. An averment in some of the pleadings in a case in which a negative is asserted. U. S. v. Eisenminger, D.C.Del., 16 F.2d 816, 819.

Negative condition. One by which it is stipulated that a given thing shall not happen.

Negative covenant. A provision in an employment agreement or a contract of sale of a business which prohibits the employee or seller from competing in the same area or market. Such restriction must be reasonable in scope and duration.

Negative easement. A right in owner of dominant tenement to restrict owner of servient tenement in exercise of general and natural rights of property. Fort Dodge, D. M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515, 521. A negative easement is one effect of which is not to authorize doing of act by person entitled to easement, but merely to preclude owner of land subject to easement from doing of an act which, if no easement existed, he would be entitled to do. McLaughlin v. Neiger, Mo.App., 286 S.W.2d 380, 383.

Negative evidence. Testimony that an alleged fact did not exist. See Rebuttal evidence.

Negative pregnant. In pleading, a negative implying also an affirmative. Such a form of negative expression as may imply or carry within it an affirmative. A denial in such form as to imply or express an admission of the substantial fact which apparently is controverted; or a denial which, although in the form of a traverse, really admits the important facts contained in the allegations to which it relates. Cramer v. Aiken, 63 App.D.C. 16, 68 F.2d 761, 762.

Negglidare. To claim kindred.

Neglect. May mean to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. And it may mean a designed refusal or unwillingness to perform one's duty. In re Perkins, 234 Mo.App. 716, 117 S.W.2d 686, 692.

The term is used in the law of bailment as synonymous with "negligence." But the latter word is the closer translation of the Latin *"negligentia."*

Failure to pay money which the party is bound to pay without demand. An omission to do or perform some work, duty, or act. Failure to perform or discharge a duty, covering positive official misdoing or official misconduct as well as negligence.

See also Excusable neglect; Negligence.

Culpable neglect. Such neglect which exists where the loss can fairly be ascribed to the party's own carelessness, improvidence, or folly. State ex rel. Fulton v. Coburn, 133 Ohio St. 192, 12 N.E.2d 471, 477, 10 O.O. 249.

Willful neglect. The neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

Neglected child. A child is "neglected" when his parent or custodian, by reason of cruelty, mental incapacity, immorality or depravity, is unfit properly to care for him, or neglects or refuses to provide necessary physical, affectional, medical, surgical, or institutional or hospital care for him, or he is in such condition of want or suffering, or is under such improper care or control as to endanger his morals or health. In re DuMond, 196 Misc. 16, 17, 92 N.Y.S.2d 805.

Neglected minor. One suffering from neglect and in state of want. People v. De Pue, 217 App.Div. 321, 217 N.Y.S. 205, 206. See Neglected child.

Negligence. The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to

It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the wilful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from wilful and intentional conduct which is or ought to be known to have a tendency to injure.

Gross negligence consists of conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor is aware. Glaab v. Caudill, Fla.App., 236 So.2d 180, 182, 183, 185. That entire want of care which would raise belief that act or omission complained of was result of conscious indifference to rights and welfare of persons affected by it. Claunch v. Bennett, Tex.Civ.App., 395 S.W.2d 719, 724; Snyder v. Jones, Tex.Civ.App., 392 S.W.2d 504, 505, 507. Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

Hazardous negligence. Such careless or reckless conduct as exposes one to very great danger of injury or to imminent peril.

Imputed negligence. Refers to doctrine that places upon one person responsibility for the negligence of another; such responsibility or liability is imputed by reason of some special relationship of the parties, such as parent and child, husband and wife, driver and passenger, owner of vehicle and driver, bailor and bailee, master and servant, joint enterprise, and parent and custodian of a child. Schmidt v. Martin, 212 Kan. 373, 510 P.2d 1244, 1246.

Generally the doctrine of imputed negligence, as applied to automobile accidents, visits on one person legal responsibility for the negligent conduct of another. The doctrine applies only in limited classes of cases, as where there is a right to control in the relationship of master and servant, principal and agent, or a joint enterprise. The independent negligence of one person ordinarily is not imputable to another person except where the relation between the persons gives rise to an express or implied agency in the person committing the act of negligence.

Legal negligence. See Legal negligence.

Ordinary negligence. The omission of that care which a man of common prudence usually takes of his own concerns. Briggs v. Spaulding, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662. Failure to exercise care of an ordinarily prudent person in same situation. A want of that care and prudence that the great majority of mankind exercise under the same or similar circumstances. Wherever distinctions between gross, ordinary and slight negligence are observed, "ordinary negligence" is said to be the want of ordinary care.

Ordinary negligence is based on fact that one ought to have known results of his acts, while "gross negligence" rests on assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.

Passive negligence. Failure to do something that should have been done. It is negligence which permits defects, obstacles, or pitfalls to exist on premises; that is, negligence which causes dangers arising from physical condition of land. Pachowitz v. Milwaukee & Suburban Transport Corp., 56 Wis.2d 383, 202 N.W.2d 268, 275.

Difference between "active" and "passive" negligence is that one is only passively negligent if he merely fails to act in fulfillment of duty of care which law imposes upon him, while one is actively negligent if he participates in some manner in conduct or omission which caused injury. King v. Timber Structures, Inc. of Cal., 240 Cal.App.2d 178, 49 Cal.Rptr. 414, 417.

Per se negligence. The unexcused violation of a statute which is applicable is per se or automatic negligence in some states. See also Negligence per se.

Slight negligence. A failure to exercise great care. Slight negligence is defined to be only an absence of that degree of care and vigilance which persons of extraordinary prudence and foresight are accustomed to use. Briggs v. Spaulding, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662.

Subsequent negligence. Exists where defendant sees plaintiff in a position of danger and fails to exercise due and proper precaution to prevent injury to plaintiff. Holman v. Brady, 241 Ala. 487, 3 So.2d 30, 33.

Wilful, wanton or reckless negligence. These terms are customarily treated as meaning essentially the same thing. The usual meaning assigned to "wilful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow; and it has been said that this is indispensable. See for example Tyndall v. Rippon, 5 Del.Super. 458, 61 A.2d 422; Wolters v. Venhaus, 350 Ill.App. 322, 112 N.E.2d 747; Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229, appeal dismissed 322 U.S. 713, 64 S.Ct. 1270, 88 L.Ed. 1555; Tighe v. Diamond, 149

Ohio St. 520, 80 N.E.2d 122, 37 O.O. 243. The result is that "wilful," "wanton" or "reckless" conduct tends to take on the aspect of highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. As a result there is often no clear distinction at all between such conduct and "gross" negligence, and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care. It is at least clear, however, that such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.

"Wantonness" constituting gross and wanton negligence within automobile guest statute indicates a realization of imminence of danger and a reckless disregard, complete indifference, and unconcern of probable consequences of the wrongful act. Mann v. Good, 202 Kan. 631, 451 P.2d 233, 236.

Negligence, estoppel by. An estoppel which occurs when one who is under a legal duty, either to the person injured or to the public, to act with due care, fails to do so, and such failure is the natural and proximate cause of misleading that person to alter his position. An estoppel arises when one by acts, representations, intentionally or negligently, induces another to change his position for the worse. Smith v. Vara, 136 Misc. 500, 241 N.Y.S. 202, 209.

An estoppel arises when one by acts, representations, or admissions, or by silence when he ought to speak, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief so that he will be prejudiced if the former is permitted to deny the existence of such facts.

Estoppel may exist where a party has led another into the belief of a certain state of facts by conduct of culpable negligence, calculated to have that result, and the other party has acted upon such belief to his prejudice. Scott v. First Nat. Bank, 343 Mo. 77, 119 S.W.2d 929, 938.

Negligence in law. "Actionable negligence" or "negligence in law" grows out of nonobservance of a duty prescribed by law. See also Negligence per se.

Negligence per se. Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes. See also Strict liability.

Negligent. See Negligence.

Negligent escape. Where prisoner escapes through officer's negligence. Hershey v. People, 91 Colo. 113, 12 P.2d 345, 347.

Negligent homicide. The criminal offense committed by one whose negligence is the direct and proximate cause of another's death. The crime of negligent homicide consists of three component elements: (1) death of human being (2) by instrumentality of motor vehicle (3) operated on highway in negligent manner State v. Colombo, 4 Conn.Cir. 671, 238 A.2d 806, 808 See also Homicide *(Vehicular homicide)*.

Negligentia /nèglajénsh(iy)ə/. Lat. In the civil law, carelessness; inattention; the omission of proper care or forethought. The term is not exactly equivalent to our "negligence," inasmuch as it was not any *negligentia*, but only a high or gross degree of it, that amounted to *culpa* (actionable or punishable fault).

Negligentia semper habet infortunium comitem nèglajénsh(iy)ə sémpər héybət inforchúwn(i)yəm kómədəm/. Negligence always has misfortune for a companion.

Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Model Penal Code, § 2.02. See also Negligence.

Negligently done. The doing of an act where ordinary care required that it should not have been done at all, or that it should have been done in some other way, and where the doing of the act was not consistent with the exercise of ordinary care under the circumstances. See Negligence.

Negligent manslaughter. A statutory crime in some jurisdictions consisting of an unlawful and unjustified killing of a person by negligence but without malice.

Negligent offense. One which ensues from a defective discharge of a duty, which defect could have been avoided by the exercise of that care which is usual, under similar circumstances, with prudent persons of the same class. People v. Gaydica, 122 Misc. 31, 203 N.Y.S. 243, 258.

Negligent violation of statute. One occasioned by or accompanied with negligent conduct.

Negoce /nagówz/. Fr. Business; trade; management of affairs.

Negotiability /nagówsh(iy)əbíladiy/. Legal character of being negotiable *(q.v.)*.

Negotiable /nagówsh(iy)əbəl/. Legally capable of being transferred by endorsement or delivery. Usually said of checks and notes and sometimes of stocks and bearer bonds. See Commercial paper; Negotiable instruments; Non-negotiable.

Negotiable bond. Type of bond which may be transferred by negotiation from original holder to another.

Negotiable document of title. A document is negotiable if by its terms the goods are to be delivered to "bearer", or to the order of a named party, or, where

"miscomputation" or "misaccompting," *i.e.*, false reckoning.

Misa /máyzə/. In old English law, the muse or issue in a writ of right; a compact or agreement; a form of compromise.

Misadventure. A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. Homicide "by misadventure" occurs where a man, doing a lawful act, without any intention of hurt, unfortunately kills another.

Misallege misəléj/. To cite falsely as a proof or argument.

Misapplication. Improper, illegal, wrongful, or corrupt use of application of funds, property, etc. See also **Misappropriation.**

Misappropriation. The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean peculation, although it may mean that. Term may also embrace the taking and use of another's property for sole purpose of capitalizing unfairly on good will and reputation of property owner. Pocket Books, Inc. v. Dell Pub. Co., 49 Misc 2d 252, 267 N.Y.S.2d 269, 272.

Misbehavior. Ill conduct; improper or unlawful behavior. So as to support contempt conviction is conduct inappropriate to particular role of actor, be he judge, juror, party, witness, counsel or spectator. U. S. v. Seale, C.A.Ill., 461 F.2d 345, 366.

Misbranding. False or misleading labeling. People v. Rosenbloom, 119 Cal.App. 759, 2 P.2d 228, 231. Such practices are prohibited by federal and state statutes; *e.g.* Fair Packaging and Labeling Act.

Miscarriage /maskárəj/miskárəj/. Poor management or administration; mismanagement.

Miscarriage of justice. Decision or outcome of legal proceeding that is prejudicial or inconsistent with substantial rights of party.

As used in constitutional standard of reversible error, "miscarriage of justice" means a reasonable probability of more favorable outcome for the defendant. People v. Lopez, 251 Cal.App.2d 918, 60 Cal. Rptr. 72, 76. A miscarriage of justice, warranting reversal, should be declared only when the court, after examination of entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to appealing party would have been reached in absence of the error. People v. Bernhardt, 222 C.A.2d 567, 35 Cal.Rptr. 401, 419.

Miscarriage of justice from erroneous charge to jury, under statute declaring that no judgment shall be set aside or new trial granted on basis of error which does not result in such miscarriage, results only when an erroneous charge is reasonably calculated to confuse or mislead. Marley v. Saunders, Fla., 249 So.2d 30, 35.

Miscegenation /məsèjənéyshən/misəjə°/. Mixture of races; marriage between persons of different races, as between a white person and a Negro.

Mischarge. An erroneous charge; a charge, given by a court to a jury, which involves error, for which the judgment may be reversed.

Mischief. In legislative parlance, the word is sometimes used to signify the evil or danger which a statute is intended to cure or avoid.

In the phrase "malicious mischief," *(q.v.)* it imports a wanton or reckless injury to persons or property.

A person is guilty of criminal mischief if he: (a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means, or (b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or (c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat. Model Penal Code, § 220.3.

Misconduct. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. People v. Sigal, 249 C.A.2d 299, 57 Cal.Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. Wilson v. Brown, La.App., 147 So.2d 27, 29. See also **Wanton misconduct.**

Misconduct in office. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. See also **Malfeasance; Misfeasance.**

Miscontinuance. In practice, an improper continuance; want of proper form in a continuance; the same with "discontinuance."

Miscreant /miskriyənt/. In old English law, an apostate; an unbeliever; one who totally renounced Christianity. 4 Bl.Comm. 44.

Misdate. A false or erroneous date affixed to a paper or document.

Misdelivery. Delivery of mail, freight, goods, or the like, to person other than authorized or specified recipient. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it.

Misdemeanant /misdəmiynənt/. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor.

Misdemeanor /misdəmiynər/. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. Under federal law, and most state laws, any offense other than a

the one hand, or inflicted, on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law. Wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard, are included. The remedy for such is commonly in the nature of injunctive relief. "Irreparable injury" justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money. Caffery v. Powell, La.App., 320 So.2d 223, 226. Contrast *Reparable injury*, infra.

Permanent injury. An injury that, according to every reasonable probability, will continue throughout the remainder of one's life.

Personal injury. In a narrow sense, a hurt or damage done to a man's *person*, such as a cut or bruise, a broken limb, or the like, as distinguished from an injury to his property or his reputation. The phrase is chiefly used in this connection with actions of tort for negligence and under worker's compensation statutes. But the term is also used (chiefly in statutes) in a much wider sense, and as including any injury which is an invasion of personal rights, and in this signification it may include such injuries to the person as libel or slander, criminal conversation, malicious prosecution, false imprisonment, and mental suffering. Gray v. Wallace, 319 S.W.2d 582.

In worker's compensation acts, "personal injury" means any harm or damage to the health of an employee, however caused, whether by accident, disease, or otherwise, which arises in the course of and out of his employment, and incapacitates him in whole or in part. The occurrence of disability or impairment. Such includes the aggravation of a preexisting injury.

Private injuries. Infringements of the private or civil rights belonging to individuals considered as individuals.

Public injuries. Breaches and violations of rights and duties which affect the whole community as a community.

Real injury. A *real injury* is inflicted by any act by which a person's honor or dignity is affected.

Relative injuries. Injuries to those rights which a person possesses in relation to the person who is immediately affected by the wrongful act done.

Reparable injury. The general principle is that an injury, the damage from which is merely in the nature of pecuniary loss, and can be exactly and fully repaired by compensation in money, is a "reparable injury". Contrast *Irreparable injury, supra*.

Verbal injury. See **Libel; Slander.**

Injustice. The withholding or denial of justice. In law, almost invariably applied to the act, fault, or omission of a court, as distinguished from that of an individual. "Fraud" is deception practiced by the party; "injustice" is the fault or error of the court. They are not equivalent words in substance, or in a statute authorizing a new trial on a showing of fraud or injustice. Fraud is always the result of contrivance and deception; injustice may be done by the negligence, mistake, or omission of the court itself. Silvey v. U. S., 7 Ct.Cl. 305, 324.

Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere /injástəm ést, náysay tówdə liyjiy inspéktə, diy yúwnə əlakwə iyjəs partík(y)ələ prəpózədə jùwdəkériy vél respondíriy/. It is unjust to decide or respond as to any particular part of a law without examining the whole of the law.

In jus vocare /in jəs vowkériy/. To call, cite, or summon to court. *In jus vocando*, summoning to court.

In kind. Of the same species or category. In the same kind, class, or genus. A loan is returned "in kind" when not the identical article, but one corresponding and equivalent to it, is given to the lender. See **Distribution in kind; In genere; Like-kind exchange.**

Inlagare /inlagériy/. In old English law, to restore to protection of law. To restore a man from the condition of outlawry. Opposed to *utlagare*.

Inlagation /inlagéyshən/. Restoration to the protection of law. Restoration from a condition of outlawry.

Inlagh /inlò/. A person within the law's protection; contrary to *utlagh*, an outlaw.

Inland. Within a country, state or territory; within the interior part of a land mass.

In old English law, inland was used for the demesne *(q.v.)* of a manor; that part which lay next or most convenient for the lord's mansion-house, as within the view thereof, and which, therefore, he kept in his own hands for support of his family and for hospitality; in distinction from outland or utland, which was the portion let out to tenants.

Inland bill of exchange. A bill of which both the drawer and drawee reside within the same state or country. Otherwise called a "domestic bill," and distinguished from a "foreign bill." See **Bill.**

Inland navigation. Within the meaning of the legislation of congress upon the subject, this phrase means navigation upon inland waters *(q.v.)*.

Inland trade. Trade wholly carried on at home, as distinguished from foreign commerce. See **Commerce.**

Inland waters. Such waters as canals, lakes, rivers, watercourses, inlets and bays, within, or partly within, the United States, exclusive of the open sea, though the water in question may open or empty into the ocean. United States v. Steam Vessels of War, 106 U.S. 607, 1 S.Ct. 539, 27 L.Ed. 286.

Inlantal, Inlantale /inlæntəl, inlæntéyliy/. Demesne or inland, opposed to *delantal*, or land tenanted.

Inlaughe /inlò/. Sax. In old English law, under the law *(sub lege)*, in a frank-pledge, or decennary.

Inlaw. To place under the protection of the law.

In law. In the intendment, contemplation, or inference of the law; implied or inferred by law; existing in law or by force of law. See **In fact.**

ATTACHMENT B

Marine Spill Response Corporation Announcement

MSRC
Marine Spill Response Corporation

Marine Spill Response Corporation:
A New Weapon for Cleaning Up Oil Spills

On September 6, 1990, PIRO (Petroleum Industry Response Organization) Implementation Inc., an oil-spill response planning group created after the 1989 spill in Prince William Sound in Alaska, announced the formation of the Marine Spill Response Corporation (MSRC). When it is fully operational, MSRC will have a response capability larger than any other response organization in the world. The MSRC will be funded by oil companies and others involved in the shipment or receipt of oil by tanker through another newly created organization, the Marine Preservation Association (MPA). However, MSRC will operate completely independently of the MPA and its members. The MSRC will consist of a Washington, D.C., headquarters and five response regions with regional centers located in the New York-New Jersey metropolitan area (Northeast region), Port Everglades in South Florida (Southeast region), Lake Charles, Louisiana (Gulf region), Port Hueneme, California (Southwest region), and Seattle, Washington (Northwest region).

Background on the New Spill Response Organization

On March 24, 1989, an oil tanker struck a reef in Alaska's Prince William Sound and caused the largest oil spill in U.S. history. Up to 10,000 workers, scores of vessels and aircraft and tons of equipment were employed in cleanup efforts through the spring and summer, until the onset of prohibitive weather conditions. Those efforts were resumed in the spring of 1990. Within several weeks of the spill, eight major oil companies, under the auspices of the American Petroleum Institute, created a task force to examine questions and issues raised by such catastrophic tanker spills. The task force studied and evaluated existing prevention and response programs. It concluded that neither the government nor the industry had the equipment or personnel ready to deal with catastrophic spills. It also identified a need for further spill prevention efforts.

Consequently, in June 1989 the task force recommended that the industry undertake a broad new program to expand its ability to prevent, contain and clean up major oil spills. The task force recommended that a response program be operated by a new, independent organization, originally called the Petroleum Industry Response Organization (PIRO), which would be funded voluntarily by participating oil companies.

PIRO was envisioned as a response company capable of providing a best-effort response to a catastrophic spill from a tanker in, or posing a threat to, U.S. coastal waters (out to the 200-mile Exclusive Economic Zone), harbors and river mouths. Since the seriousness of a spill depends on the type of oil spilled, the specific environmental risks involved and the prevailing weather and tidal conditions—in addition to the actual amount of oil spilled—the task force defined "catastrophic spill" simply as one beyond the capability of local response resources, as determined by the U.S. Coast Guard.

The task force recommended that PIRO have five regional response centers on the East, West and Gulf Coasts, each with several permanent staging areas along its coastline. Each region was to be capable of responding to a spill of up to 218,000 barrels. It envisioned the use of personnel, equipment and supplies from more than one region to respond to larger spills.

The task force also proposed new spill prevention initiatives and improvements in existing tanker safeguards and operating procedures. It also recommended broad-based research and development (R&D) and readiness auditing roles for PIRO.

The task force estimated PIRO's five-year operating, capital and R&D costs at $275 million.

One month later, in July, 1989 the original eight companies that joined in the task force's initial effort were

joined by a dozen more in forming a PIRO implementation group and steering committee to begin examining in detail what would be required to fulfill the task force's goals and recommendations.

Retired Vice Admiral John D. Costello, former commander of the U.S. Coast Guard's Pacific Area, was named to direct these efforts.

The detailed work of the steering committee was reflected in the names of its eight working subcommittees: finance and procurement, communications, operations, staff activities, facilities acquisition, legal, insurance and research. Some 75 executives from participating companies looked into the many conceptual, procedural, legal and organizational questions that had to be addressed in the actual formation of the new response organization.

As their detailed study and planning progressed, the original five-year cost estimates were revised upward substantially—initially to $400 million for the first five years and, most recently, to about $600 million.

As work proceeded, additional companies became interested in affiliating with PIRO, including non-oil companies such as shippers and facilities that handle oil. Ultimately, this broader interest led to renaming of the new oil spill response organization to the Marine Spill Response Corporation (MSRC).

Legislative Developments

Planning and development of MSRC were influenced by the oil spill legislation that evolved in Congress through the fall and winter of 1989 and the spring and summer of 1990—and was signed into law by President Bush on August 18, 1990.

This legislation contains several provisions of critical importance to MSRC. To ensure the most prompt and effective response, the legislation provides limited immunity for oil spill responders—but not for spillers. This national immunity standard ensures that responders will not delay response and cleanup actions while having to wait for advice about the liability exposure they might face. It also protects them from post-spill lawsuits by parties alleging damages, unless the responder acted with gross negligence or willful misconduct. Liability on a simple negligence basis would be assumed in cases of personal injury or wrongful death.

However, the legislation allows states to preempt federal law in this regard. This means that an uneven playing field may face the responder—on one side of a state line he may have reasonable limited immunity, while on the other side he may face possible uninsurable risks. This may pose serious problems in the future.

An additional provision of this legislation makes the President, through the U.S. Coast Guard, responsible for seeing that a spill is promptly cleaned up. Recent history has demonstrated that large-scale operations to clean up oil spills require a single decision-maker to resolve issues expeditiously. The legislation, while clearly putting the responsibility for cleanup on the spiller, also clearly makes the private sector the main source for the nation's cleanup capability, under the watchful, supervising eye of the Coast Guard.

Organization of MSRC

To assure the independence of MSRC, a second non-profit corporation was created—the Marine Preservation Association (MPA). The companies that participated in PIRO and in the development of MSRC are members of this association. MSRC has neither members nor shareholders. Its board of directors is self-perpetuating and wholly independent of MPA or its member companies. MPA will not be involved in the management of MSRC.

Initial capital contributions and dues paid to MPA are based on the quantities of oil handled in the waters in which MSRC will operate. MPA contributions and fees are being used to finance creation of MSRC and to fund its ongoing operations. However, they will not be used to cover expenses that MSRC incurs in responding to spills.

MSRC will maintain a contractual relationship with the members of MPA, obligating MSRC to make its services, manpower and equipment available in the event of a major spill involving a member's vessel or facility. The expenses incurred by MSRC in responding to a spill will be recovered directly from either the member-spiller or his insurer. If costs exceed this compensation, or if a spiller cannot be identified, then cleanup costs will be borne by the newly established Federal Oil Spill Compensation Fund.

All MPA members must meet the spill response capability certification requirements of the new federal law. These requirements could be satisfied by a member's contractual relationship with MSRC.

MSRC's Response Role

Spills to Which MSRC Will Respond.

MSRC is designed primarily to provide a best-effort response to catastrophic spills of persistent oil in United States offshore and tidal waters, including bays, harbors, and the mouths of rivers. (Persistent oil—for example, crude oil—lingers in the environment. Non-persistent oil

products like gasoline tend to evaporate or degrade quickly.)

Each of MSRC's five regional response centers (and its associated prepositioned equipment sites within the region) is being designed to manage a spill of up to 216,000 barrels, as originally proposed. If the resources of all five MSRC regions were combined, its capability would be nearly 1.1 million. MSRC is being designed primarily for catastrophic spills of the size of the accident at Prince William Sound, but it will respond to smaller spills when they are beyond the capability of the local spill response infrastructure. The Coast Guard will judge when local response efforts are not sufficient to satisfactorily contain and cleanup the spill.

MSRC Headquarters, Regional Centers and Prestaging Areas.

MSRC headquarters will be located in Washington, D.C. and is expected to have 43 employees when fully staffed. These personnel will establish operating policy and provide normal staff support. In addition, the corporation's operational audit and R&D programs will be directed from headquarters.

The regional centers will be in (1) the New York-New Jersey metropolitan area (Northeast region), (2) Port Everglades in South Florida (Southeast region), (3) Lake Charles, Louisiana, near the Texas border (Gulf region), (4) Port Hueneme, California, north of Los Angeles and (5) Seattle, Washington (Northwest region).

The regional centers will be nearly equal in size. Variations will reflect differences in the territory each regional center will be responsible for and in the amount and location of oil tanker traffic and lightering.

Despite small differences in size, the regional centers will possess equivalent response capabilities. Together, they will have approximately 350 employees.

Each regional center will have four to six prestaging areas (a total of 23 for all five regions) where equipment and sometimes vessels and personnel will be located.

The general locations of prestaging areas for each region are:

- Northeast Region: Portland, Maine; Boston, Massachusetts; Narragansett Bay, Rhode Island; Delaware Bay; Chesapeake Bay, Maryland; and Norfolk, Virginia.

- Southeast Region: Wilmington, North Carolina; Savannah, Georgia; Jacksonville, Florida; Tampa, Florida; and in the U.S. Virgin Islands.

- Gulf Region: Mobile, Alabama; Venice, Louisiana; Galveston, Texas; and Corpus Christi, Texas.

- Southwest Region: San Diego, Los Angeles/Long Beach, California; San Francisco, California; and Oahu, Hawaii.

- Northwest Region: Astoria, Oregon; Bellingham, Washington; Port Angeles, Washington; and Alaska.

The locations of the regional response centers and prestaging areas were selected to ensure the quickest, most effective response to possible spills, taking into account the volumes of oil that are shipped in various areas and the logistical problems of moving equipment from regional centers to a spill. Location of highways, airports, piers, navigable waterways and the availability of office and warehouse space were all factors considered in site-selection. Each location will have to be surveyed to assure that specific sites meeting MSRC operational requirements actually are available.

According to the API task force report, MSRC should play an appropriate response and cleanup role in Alaska. The definition of this role is not yet resolved. Primary response capabilities already in existence must be evaluated before it can be determined what else might be required. Discussions with industry and the state have not yet proceeded to the point where MSRC's role can be completely described.

The MSRC will not operate in the Great Lakes and other non-tidal waters. Historically, spills in the Great Lakes have been comparatively smaller and have involved "non-persistent" oil. The Oil Pollution Act of 1990 will require oil shippers on the Great Lakes to show how they could contain and cleanup a worst-case spill, most often through reliance on existing cooperatives and subcontractors.

Relationship of MSRC with Existing Co-ops and Subcontractors.

MSRC will coordinate its efforts with an estimated 150 existing oil-spill cooperatives and subcontractors. Over the years, such cooperatives and subcontractors have compiled a solid record of handling non-catastrophic, inshore spills—which account for some 99.9 percent of all spills. MSRC is designed to complement this existing capability—that is, to handle the infrequent, yet potentially devastating, catastrophic spills. Existing cooperatives and subcontractors would continue to handle smaller spills, except in instances in which MSRC's assistance might be required or when the Coast Guard requests MSRC's aid.

MSRC will employ about 350 people in the five regions. Existing cooperatives and subcontractors will also be called on or retained to provide additional manpower and equipment needed to deal with spills.

Identifying qualified subcontractors, arranging contractual agreements, reviewing contractor capabilities and training will be an ongoing function of MSRC's permanent staff.

The synergistic relationship between MSRC and existing, smaller responders is expected to result in joint training exercises, coordinated research, development and sharing of new oil spill response techniques and equipment and frequent exchanges of information and ideas.

MSRC Equipment.

MSRC will buy approximately $300 million worth of equipment. All MSRC equipment will be prepackaged to permit easy movement by air, truck, vessel or rail. This equipment will include vessels and barges, trucks, skimmers, booms, communications equipment, dispersants, wildlife and shoreline rehabilitation equipment and lightering equipment to remove oil from disabled vessels.

Booms are floating mechanical barriers that extend above and below the water surface to contain spilled oil for recovery and to move spilled oil into areas where recovery is easier. Since booms do not work well if currents are too swift and waves too high, deployment in rough weather can be a problem.

Skimmers are vessels that collect spilled oil from the surface of the water. Like booms, skimmers have trouble operating where currents are swift and waves high.

Chemical dispersants sprayed on oil can break it into small droplets, accelerating the removal of volatile hydrocarbons, facilitating the natural "decay" of the oil's components, and minimizing movement of the oil to shorelines. Dispersants can be rapidly and broadly applied by air over large areas and volumes of oil, even in adverse sea conditions.

MSRC's Research Program.

MSRC will conduct a five-year, $35 million research and development program to improve oil spill response technology. This program will be a key element in attempting to improve the corporation's effective future response to oil spills. Proposed research will cover techniques for minimizing oil losses in the event of a spill and keeping them close to the vessel; recovering and treating oil after it begins to spread but before it reaches shore; preventing and reducing shoreline impact, which includes studies on bioremediation; the fate and effects of oil in the environment; reducing the impact of a spill on wildlife; and investigating the health and safety of persons exposed to spills.

Timetable for MSRC to Become Operational.

MSRC must be fully operational within 30 months of enactment of the Oil Pollution Act of 1990, when the act will require shippers and others responsible for oil transportation and handling on offshore and tidal waters to show that they can contain and clean up an oil spill they might cause.

This federal timetable fits MSRC's schedule for implementation. There are myriad steps that must be taken to make a complex, large, wholly new organization operational. A detailed plan has been developed for MSRC, but most of the plan still must be implemented.

Equipment and vessels must be constructed and purchased. Personnel—including (subcontractors) who will actually do much of the work transporting equipment to spill sites, as well as operating it—must be hired and trained. Land and buildings must be purchased or leased to create the regional centers and equipment prestaging areas. Insurance must be procured.

For more information, contact:
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ATTACHMENT C
Legislative Research Memorandum 90.200

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
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March 12, 1990

MEMORANDUM

TO: Senator Mike Szymanski

FROM: Glenn T. Gray
Legislative Analyst

RE: **Effect of Increased Spill Liabilities on Tanker Operations**
Research Request 90.200

You requested information concerning the effects of 1989 Alaska legislation that increased liability for tankers carrying crude oil to $500 million. Specifically you want to know: 1) if the increased liability has or is likely to result in higher insurance rates; 2) if there will be a concomitant rise in tanker tariffs; 3) if independent oil tanker companies have had difficulty obtaining insurance; and 4) if the 1989 oil spill legislation caused a reluctance for oil companies to ship crude oil to Cook Inlet.

The first section of this memorandum summarizes the answers to these questions. The next section provides background information about insurance arrangements for the tanker industry. Each of the four questions are then answered in detail under separate sections.

Summary

Insurance rates and tanker tariffs have increased in the past year; however, it is uncertain whether these increases are a direct result of Alaska's 1989 changes to oil spill liability laws. Many other factors affect insurance rates and tanker tariffs. The Exxon Valdez accident and new oil spill liability laws have had some effect on operating costs for vessel owners although these added costs may not yet be reflected in tariffs. While it is possible that some of the smaller independent tanker companies may have difficulty obtaining insurance, most of the tanker companies likely to transport Alaska oil receive at least $500 million liability coverage through a protection and indemnity club.[1] One oil company representative revealed several factors that contribute to a general reluctance to ship crude oil to Cook Inlet: uncertainty concerning future oil spill clean-up equipment requirements; possible changes to state and federal oil spill legislation; possible liability for spills after

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[1]Shell Oil Company requires $700 million in liability coverage for transport of its oil (French 1990).

the oil is sold; and the view that selling crude oil to Cook Inlet is a low volume, low profit operation.

Background

Insurance for tanker companies operating in Alaska waters is provided through private insurance companies and through so-called protection and indemnity clubs (P&I clubs). Insurance provided by private companies generally involves a complex system of reinsurance. The coverage is eventually provided by the London insurance market through such syndicates as Lloyds of London or the Institute of London Underwriters (ILU). P&I clubs are mutuals made up of a number of tanker and oil companies. In the event of a damage claim, the P&I club reimburses the shipper. Fifteen P&I clubs throughout the world belong to the International Group of Protection and Indemnity Clubs (IGPIC) based in London. When a club member makes a claim, the club provides coverage for the first $1.6 million. Members of all of the clubs belonging to the IGPIC cover the next $10.4 million and the IGPIC provides coverage for the next $1.2 billion through reinsurance (Barker 1990).[2]

Under current Alaska state law, a person who causes an unpermitted discharge of crude oil in excess of 18,000 gallons is liable to the state for up to $500 million in civil penalties (AS 46.03.759).[3] P&I clubs provide the only available source for liability coverage as high as $500 million.[4] Companies

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[2]Reinsurance is obtained through groups of insurance companies in London. The IGPIC is able to obtain a high level of reinsurance only because many companies belong to its component clubs. Normally, up to $500 million dollars of the reinsurance covers pollution claims and the remainder covers other types of claims such as damage to other ships, cargo loss and personal injury. An option for additional coverage to $700 million for pollution is available to companies who are covered by P&I clubs.

[3]Total liability for a large oil spill would far exceed the maximum $500 million civil penalty. The company would also be liable for criminal penalties; civil claims by individuals for loss of wages; damage to the environment; and costs of containment and cleanup. In other words, in the event of a large oil spill, a tanker company would be liable for much more than what a P&I company would cover.

[4]Coverage through insurance companies, other than P&I clubs, rarely exceeds five to twenty million dollars in liability coverage and many brokers are unable to obtain $20 million in coverage (French 1990). P&I clubs provide ninety percent of protection and indemnity coverage for the world's marine transportation industry (Barker 1990).

transporting crude oil, however, only have to show proof of one to twenty million dollars in liability coverage.[5]

Some independent tanker companies must obtain coverage from a state-approved insurance company, in addition to P&I club coverage, in order to comply with state liability insurance requirements. Current state law requires tanker companies to prove financial responsibility through one of four means: self-insurance, insurance, surety, or guarantee [AS 46.04.050(e)].[6] P&I clubs may not be used for the purpose of proof of insurance because P&I clubs do not recognize state sovereignty and therefore do not provide certificates of insurance required by the state.[7] Companies unable to prove financial responsibility through other accepted means (i.e., self-insurance, surety or guarantee) must have coverage through an insurance company approved by the

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[5]AS 46.04.040 provides for several different levels of proof of financial liability for transporters of oil. Tank vessels or oil barges transporting trans-Alaska pipeline oil are required to prove that they have financial responsibility for $14 million as provided by 43 U.S.C. 1653(c)(3). Other oil barges must show financial responsibility for one million dollars and other tank vessels are required to prove financial responsibility for $20 million (unless the Clean Water Act requires a greater responsibility). SB 504 of the 16th Alaska State Legislature, if passed into law, would require a $500 million proof of financial responsibility for any tank vessel or barge carrying crude oil.

[6]SB 504 of the 16th Legislature would broaden the means for proof of financial responsibility to include other security approved by the Department of Environmental Conservation (DEC). This provision would permit the DEC to approve P&I club coverage (Mertz 1990).

[7]P&I clubs pay claims for accidents in state waters but only issue certificates of insurance to the U.S. Coast Guard. If the P&I clubs recognized state sovereignty, they could potentially have to award double claims for a single incident if it were to occur on a border between two different states (Barker 1990).

state of Alaska.[8] They also need P&I insurance to protect themselves in the event of a large oil spill.

P&I clubs do not reimburse claims for criminal penalties (Barker 1990). Civil penalties are generally covered but only if approved by the P&I club's claims committee after the claim is submitted (Willitzer 1990). Civil penalties are not covered if there was wilful misconduct leading to the incident.

Insurance Rates

Insurance rate hikes have resulted from the rising costs of claims from incidents such as the Exxon Valdez accident as well as from the recent increase in P&I club insurance coverage from $400 million to $500 million (Unsworth 1989). Since Exxon belongs to a P&I club, part of the costs related to the spill are shared by all members of P&I clubs and through IGPIC reinsurance. Thus insurance rates for all P&I club members will increase. The decision by the P&I companies to raise coverage to $500 million was not a result of Alaska oil spill legislation (French 1990; Barker 1990). The Exxon Valdez accident did, however, raise the perceived risk of operating in Alaska and this may be reflected in insurance rates.[9]

While Alaska oil spill legislation did not directly cause the rise in insurance rates, representatives of P&I clubs and Intertanko, the independent tanker industry's principal association, expressed grave concerns about effects of possible state and federal legislation. According to one P&I official, current legislation before the U.S. House of Representatives, if passed, will result in tankers becoming uninsurable and a possible boycott of tanker deliveries to the United States (Barker 1990). An official of Intertanko expressed concern

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[8]Insurance coverage for tankers is usually provided through reinsurance by London-based companies such as the multitude of companies belonging to Lloyds of London and/or the ILU. The American alternative, the Water Quality Insurance Syndicate, does not recognize state sovereignty and only insures up to five million dollars (French 1990). The state of Alaska considers Lloyds of London an approved insurance company because it guarantees each of its sub-companies. The ILU does not guarantee it member companies and therefore each company named in an ILU policy must be approved by the state before a tanker company's coverage is accepted. While some insurance policies provide coverage on a yearly basis, spot charters are often insured on a single voyage basis. A policy for a five-day trip through Alaska waters costs between ten and fifteen thousand dollars (French 1990; Willitzer 1990).

[9]Rates are determined by such factors as past claims records, perceived risks associated with the place of operation, type of cargo being hauled, and nationality of the crew (Barker 1990).

that some states might propose legislation with unlimited liability. Should such a provision become law, tankers would be uninsurable (Uglesang 1990).

Tanker Tariffs

Tanker tariffs are negotiated on a case-by-case basis, but reference rates are provided by the Worldscale Association. This company provides base rates which are used as a bench mark when negotiating contracts. Worldscale calculates a base rate considering such expenses as fuel costs, pilotage fees and tug charges. The base rate for Valdez has remained relatively stable except for a temporary increase in January 1990 due to an increase in pilotage fees. After it was determined that Alyeska Pipeline Company was paying the increased costs and not the vessel owners, the base rate was deflated (Isman 1990). Actual market prices may differ from the base rate due to considerations not addressed in the Worldscale formula.

Patrick Callahan, an expert on Alaska tanker tariffs, said that the Alaska market differs from other markets around the world. Alaska oil must be shipped using United States tankers.[10] While Alaska legislative action may affect operating costs for tankers, tariffs are also influenced by market forces of supply and demand. The decrease in Alaska oil production resulted in a lower demand for tankers during the past year. Additionally, California has received a greater portion of Alaska oil this year while Gulf refineries have received less, adding to a lower demand for tankers. The operating costs for tankers, however, have risen dramatically due to increased delays, higher insurance premiums and increased administrative costs. The combined result of these factors are detrimental to tanker operators in Alaska; their tariffs have remained relatively stable, yet their operating costs have increased (Callahan 1990).[11]

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[10]The Merchant Marine Act of 1920, also known as the Jones Act, requires shippers to use United States tankers to transport goods between two domestic ports. Even though Alaska oil is shipped to the Gulf of Mexico via a pipeline in Panama, the final destination is an American port and United States tankers must be used (Callahan 1990). The Jones Act results in higher tariffs than might occur elsewhere in the world (Barker 1990).

[11]Low tanker tariffs make it difficult for tanker owners to justify replacing existing vessels. Worldwide, a better market for tanker operators permit higher tariffs, but the rates are still too low to provide an incentive to replace aging tanker fleets (*Oil & Gas Journal* 1990a; *Oil & Gas Journal* 1990b; *Petroleum Intelligence Weekly* 1990; Uglesang 1990).

Availability of Insurance

Insurance appears to be available to most vessel owners (Barker 1990; Uglesang 1990). Some smaller companies may find it difficult to afford insurance, but most vessels likely to carry Alaska oil are insured by a P&I club (French 1990; Willitzer 1990). Brokers may contact many different P&I clubs to locate the best rates for their clients (Sullivan 1990).[12]

While most vessel companies are covered by P&I club insurance, they do not always have insurance through a company approved by the state of Alaska. Such vessel owners must either prove capability for self insurance, possess a surety or arrange a guarantor for insurance. For a fee, larger companies who charter independent tankers will occasionally guarantee coverage in Alaska waters for the purpose of fulfilling the state of Alaska proof of insurance requirement (Adams 1990).

Small landing craft operators carrying oil, however, may have difficulty obtaining insurance coverage. Because a tanker is considered to be any self-propelled vessel carrying bulk oil as cargo, small landing craft vessels must have the same coverage as a large tanker (Adams 1990).

Reluctance to Transport Oil to Cook Inlet

B.P. Exploration has terminated shipments of crude oil to Cook Inlet as of December 1989. According to an article in the *Anchorage Daily News*, B.P. America spokesperson Marcia Meermans, of the company's headquarters in Cleveland, stated that new Alaska oil spill legislation makes the risk of selling oil in Cook Inlet too high (Kizza 1990). Jim Palmer of B.P. Exploration, cited additional reasons for the company's reluctance to ship oil into Cook Inlet, including the view that this market was a low volume, low profit operation; a concern about possible Alaska Department of Environmental Conservation requirements for oil spill response equipment; and uncertainty about new limitations imposed by proposed state and federal oil spill legislation. B.P. Exploration is wary of even selling oil from the Valdez terminal destined for Cook Inlet because of the uncertainty of continued liability after the oil has been sold (Palmer 1990).

Gene Burden, vice-president for Administration and State Government Relations for Tesoro America, expressed concern that many factors inhibit construction of new tankers worldwide, and he fears added requirements by the state of Alaska could make it difficult for vessel owners to operate in Alaska waters. Mr. Burden notes two problems with proposed changes to state law contained in

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[12]Although most of the P&I clubs belong to the IGPIC and receive reinsurance from the same policy, rate quotes for a particular tanker company may vary from one club to another.

SB 504. First, provisions in this legislation would require $500 million proof of financial responsibilty for all vessels transporting crude oil regardless of the vessel's size. Mr. Burden thinks that proof of insurance requirements should be less for smaller tankers.[13] Tankers operating in Cook Inlet tend to be much smaller than those operating in Prince William Sound. Second, Mr. Burden states that a provision in SB 504 appears to require oil terminal operators to have proof of financial responsibility for $500 million for off-loading crude oil from vessels. He thinks that this provision would be an enormous increase from present requirements.

I hope this information is useful to you. If you have any questions, please contact this agency.

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[13]Judy Willitzer, an insurance broker for Frank B. Hall, suggested that insurance requirements for tankers be based on tonnage.

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Resource Development Council for Alaska, Inc.

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4/11/91

RDC Position Paper
HB 196-Liability of Response Action Contractors

The Resource Development Council for Alaska, Inc., supports the expeditious passage of HB 196 during the first session of the 17th Alaska Legislature.

Designed to re-order the priorities established under current law, the bill would enable oil spill response contractors to respond or attempt to respond to a spill - no matter how small or large - without fear of being sued unless they are grossly negligent. Legislation passed in 1990 reversed what RDC believes is the accurate order of priorities by preserving the right to sue before encouraging responsible clean-up efforts.

The proposed "good Samaritan" legislation would remove the onerous stipulations of the current law which hang over the heads of any who attempt to respond to a spill. RDC believes that HB 196 equitably addresses the problem and urges the Legislature to pass the bill prior to adjournment this year.

ATTACHMENT D
State Response Contractor Liability Statutes

SPONSOR: Sen. Hirner, Rep. Carey,
Sen. Vaughn, Rep. D. Ennis

DELAWARE STATE SENATE

136TH GENERAL ASSEMBLY

SENATE BILL NO. 6 JAN 9 1992

AN ACT TO AMEND TITLE 10, DELAWARE CODE, RELATING TO LIMITATION OF LIABILITY FOR OIL AND HAZARDOUS MATERIAL DISCHARGE CLEANUP.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by adding thereto a new Section to read as follows:

"§8135. Limitation on Liability of Third Parties Rendering Assistance in Oil or Hazardous Material Discharge Cleanup.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, wilful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of liability as set forth in Subsection (a) of this Section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under Subsection (a) of this Section.

(d) This Section shall not be construed to limit any liability of any person for personal injuries or wrongful death as a result of the acts or omissions of such person."

Section 2. Amend Chapter 81, Title 10 of the Delaware Code by striking §8134 in its entirety.

SD:WH:MJS
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This bill is proposed by the Delaware River and Bay Oversight Committee. The bill would limit liability for removal costs and damages (other than personal injury or wrongful death) of a third party who renders assistance in a clearup operation to those acts which amount to gross negligence or reckless, wilful, wanton, or intentional misconduct.

Author - Sen. Hinnar

SD:WH:HJS
80

CH 90-54 Laws of Florida

Fl.-Spill Response

ENROLLED

A bill to be entitled

An act relating to pollution; amending s. 206.9935, F.S., relating to taxes imposed for coastal protection; providing for certain offshore oil drilling activity; providing for catastrophic discharge; creating s. 253.035, F.S.; requiring commercial vessels to anchor in designated anchorage areas; amending s. 310.071, F.S.; providing for evaluation of certificated deputy pilots; amending s. 310.101, F.S.; providing additional grounds for disciplinary actions by the Board of Pilot Commissioners; providing certain accountability in directing foreign vessels; amending s. 310.111, F.S.; providing for report of certain marine incidents; amending s. 310.141, F.S.; providing that certain vessels are subject to pilotage, and reenacting s. 310.161, F.S., relating to penalties for piloting without a license, to incorporate said amendment in a reference thereto; creating ss. 313.21, 313.22, 313.23, and 313.24, F.S.; authorizing ports to regulate certain vessel movements and adopt certain guidelines for bottom clearance, vessel movements, and traffic communications; amending s. 376.031, F.S.; providing definitions; amending s. 376.051, F.S.; providing for issuance of spill prevention and response certificates; amending s. 376.06, F.S.; providing a penalty for operation of a terminal facility without a required registration

CODING: Words stricken are deletions; words underlined are additions.

certificate; increasing the maximum application fee; amending s. 376.065, F.S.; prohibiting operation of a terminal facility without a spill prevention and response certificate; providing requirements for application and operation; providing a penalty; amending s. 376.07, F.S.; providing for rules of the Department of Natural Resources; providing for spill prevention, abatement, and cleanup and for wildlife rescue and rehabilitation; requiring adequate booming in the transfer of pollutants; providing penalties; prohibiting use of certain lobster traps after a specified date; creating s. 376.071, F.S.; requiring certain vessels to maintain spill prevention and control contingency plans; providing requirements; providing penalties; amending s. 376.09, F.S.; providing certain immunity from liability for described persons; amending s. 376.11, F.S.; providing additional sources and uses for moneys in the Florida Coastal Protection Trust Fund; amending s. 376.12, F.S.; increasing certain maximum liabilities for pollutant cleanup costs and damages; specifying conditions for limits on liability; providing financial security requirements; providing penalties; providing liability of cargo owner; specifying conditions for use of certain defenses; providing an exemption from certain notification requirements; creating s. 376.121, F.S.; providing liability for damages

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guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, as required in s. 837.012 ~~or 837.06~~.

(h) Requirements that any registrant causing or permitting the discharge of a pollutant in violation of the provisions of ss. 376.011-376.21, and at other reasonable times, be subject to a complete and thorough inspection. If the department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(i) Such other rules and regulations as the exigencies of any condition may require or as may reasonably be necessary to carry out the intent of ss. 376.011-376.21.

(3) After July 31, 1990, no lobster trap or traps to be deposited into waters of the state shall be impregnated with a petroleum product that may be released from such trap or traps. After July 31, 1995, no person shall deposit into the waters of the state any lobster trap or traps that have been impregnated with a petroleum product that may be released from such trap or traps into the waters of the state.

Section 15. Section 376.071, Florida Statutes, is created to read:

376.071 Spill contingency plan.--After December 31, 1990, any vessel operating in state waters with a storage capacity to carry 10,000 gallons or more of pollutants as fuel and cargo shall maintain an adequate written ship-specific spill prevention and control contingency plan. Any such vessel shall have on-board a "spill officer," designated by the contingency plan, who is responsible for training crew

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members to carry out spill response efforts required in the contingency plan and coordinating all on-board response efforts in case of a spill. An adequate plan shall include provisions for on-board response, including notification, verification, pollutant incident assessment, vessel stabilization, discharge mitigation, and on-board discharge containment, in accordance with this chapter, department rules, and the Florida Coastal Pollutant Spill Contingency Plan. A plan in compliance with the federal requirement for a ship-specific spill contingency plan shall satisfy the requirements for an adequate ship-specific spill contingency plan required by this section. On or after January 1, 1991, the master of a vessel with a storage capacity to carry 10,000 gallons or more of pollutants as fuel and cargo, which vessel is operating in state waters without an adequate contingency plan, commits a noncriminal infraction. The master shall be cited by the department and shall appear before the county court for the county in which the violation occurred or the county court closest to the location at which the violation occurred. The civil penalty for such an infraction shall be up to $5,000. An adequate contingency plan must be submitted to the department prior to the vessel reentering a Florida port. Failure to submit the required plan shall result in a civil penalty of $10,000.

Section 16. Present subsections (5) and (6) of section 376.09, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to said section to read:

376.09 Removal of prohibited discharges.--

(5) Notwithstanding the provisions in subsection (4), any person who is authorized by the department or the federal

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government or the person alleged to be responsible for the discharge, or by a designee thereof, to render assistance in containing or removing pollutants shall not be liable for costs, expenses, and damages, unless such costs, expenses, and damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of such authorized person.

Section 17. Subsections (2) and (6) and paragraph (c) of subsection (4) of section 376.11, Florida Statutes, are amended to read:

376.11 Florida Coastal Protection Trust Fund.--

(2) The Florida Coastal Protection Trust Fund is established, to be used by the department as a nonlapsing revolving fund for carrying out the purposes of ss. 376.011-376.21. To this fund shall be credited all registration fees, penalties, judgments, damages recovered pursuant to s. 376.121, other fees and charges related to ss. 376.011-376.21, and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(1) and 206.9945(1)(a). Charges against the fund shall be in accordance with this section.

(4) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

(c) All costs and expenses of the cleanup, restoration, and rehabilitation of waterfowl, wildlife, and all other natural resources damaged by the discharge of pollutants, including the costs of assessing and recovering damages to natural resources, whether performed or authorized by the department or any other state or local agency.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge or from

the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.12(6)(3), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the Florida Coastal Protection Trust Fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

Section 18. Effective October 1, 1990, section 376.12, Florida Statutes, is amended to read:

376.12 Liabilities and defenses of terminal facilities and vessels.--

(1) Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize cleanup costs and damages, any vessel, or its agents or servants, who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of cleanup or abatement, up to an amount not to exceed $50 $14 million or $625 $188 per gross registered ton of such vessel, whichever is the lesser. When the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator or agent thereof, such owner or operator shall be liable to the fund for the full amount of such sums expended. When a discharge of pollutants occurs from a terminal facility, recovery of costs of abatement and cleanup shall be limited to an amount not to exceed $25 $8 million,

...ced or methods designed to remove or filter out con-...ination from the water supply, and the term "replace-...r" means replacement of a well or well field or con-...ion to an alternative source of safe, potable water.

For the purposes of the Inland Protection Trust ...d, such restoration or replacement shall take prece-...ce over other uses of the unobligated moneys within ...e fund.

c. Funding for activities described in this subpara-...graph shall not exceed $10 million for any one county for ...any one year, other than for the provision of bottled wa-...er.

d. Funding for activities described in this subpara-...graph shall not be available to fund any increase in the ...capacity of a potable water system or potable private ...ell over the capacity which existed prior to such resto-...ration or replacement, unless such increase is the result ...of the use of a more cost-effective alternative than other ...alternatives available.

2. Provide for the inspection and supervision of ac-...tivities described in this subsection, and

3. Guarantee the prompt payment of reasonable ...costs resulting therefrom, including those administrative ...costs incurred by the Department of Health and Rehabil-...itative Services in providing field and laboratory ser-...vices, toxicological risk assessment, and other services ...to the department in the investigation of drinking water ...contamination complaints.

(4) The Legislature further finds and declares that ...the preservation of the quality of surface and ground wa-...ters is of prime public interest and concern to the state ...in promoting its general welfare, preventing disease, ...protecting health, and providing for the public safety ...and that the interest of the state in such preservation ...outweighs any burdens of liability imposed by the Legis-...lature upon those persons engaged in storing pollutants ...and related activities.

(5) The Legislature further declares that it is the in-...tent of ss. 376.30-376.319 to support and complement ...applicable provisions of the Federal Water Pollution ...Control Act, as amended, specifically those provisions ...relating to the national contingency plan for removal of ...pollutants.

History.—s. 94, ch. 83-310; s. 5, ch. 84-338; s. 10, ch. 86-159; s. 1, ch. 89-188.

376.301 Definitions of terms used in ss. 376.30-376.319.—When used in ss. 376.30-376.319, unless the context clearly requires otherwise, the term:

(1) "Barrel" means 42 U.S. gallons at 60 °Fahrenheit.

(2) "Department" means the Department of Environmental Regulation.

(3) "Discharge" includes, but is not limited to, any ...ing, leaking, seeping, pouring, misapplying, emit-...ing, emptying, or dumping of any pollutant which oc-...curs and which affects lands and the surface and ...ground waters of the state not regulated by ss. 376.011-...376.21.

(4) "Facility" means a nonresidential location con-...taining any underground stationary tank or tanks which ...contain hazardous substances or pollutants and have in-...dividual storage capacities greater than 110 gallons, or ...any aboveground stationary tank or tanks which contain ...pollutants which are liquids at standard ambient temper-...ature and pressure and have individual storage capaci-...ties greater than 550 gallons. This definition shall not in-...clude facilities covered by ss. 376.011-376.21 except for ...marine fueling facilities with underground or above-...ground tanks where the facility has no one tank with a ...capacity greater than 30,000 gallons, facilities covered ...by chapter 377 or containers storing solid or gaseous ...pollutants and agricultural tanks having storage capaci-...ties of less than 550 gallons.

(5) "Operator" means any person operating a facility, ...whether by lease, contract, or other form of agreement.

(6) "Owner" means any person owning a facility.

(7) "Person" means any individual, partner, joint ven-...ture, or corporation, any group of the foregoing, orga-...nized or united for a business purpose, or any govern-...mental entity.

(8) "Person in charge" means the person on the ...scene who is in direct, responsible charge of a facility ...from which pollutants are discharged, when the dis-...charge occurs.

(9) "Petroleum" includes:

(a) Oil, including crude petroleum oil and other hy-...drocarbons, regardless of gravity, which are produced ...at the well in liquid form by ordinary methods and which ...are not the result of condensation of gas after it leaves ...the reservoir; and

(b) All natural gas, including casinghead gas, and all ...other hydrocarbons not defined as oil in paragraph (a).

(10) "Petroleum product" means any liquid fuel com-...modity made from petroleum, including, but not limited ...to, all forms of fuel known or sold as diesel fuel, kero-...sene, all forms of fuel known or sold as gasoline and ...fuels containing a mixture of gasoline and other prod-...ucts, excluding liquefied petroleum gas and American ...Society for Testing and Materials (ASTM) grades no. 5 ...and no. 6 residual oils, bunker C residual oils, interme-...diate fuel oils (IFO) used for marine bunkering with a vis-...cosity of 30 and higher, asphalt oils, and petrochemical ...feedstocks.

(11) "Petroleum storage system" means a stationary ...tank not covered under the provisions of chapter 377 ...together with any onsite integral piping or dispensing ...system associated therewith, which is used, or intended ...to be used, for the storage or supply of any petroleum ...product as defined herein, and which:

(a) Is registered with the Department of Environmen-...tal Regulation under this chapter or any rule promulgat-...ed pursuant hereto;

(b) Is located in a terminal facility registered with the ...Department of Natural Resources under this chapter or ...any rule promulgated pursuant hereto;

(c) Is located in a storage facility licensed with the ...Department of Revenue under s. 206.022 or s. ...206.9930, excluding offsite pipelines;

(d) Is a system with respect to which notification has ...been submitted to the Department of Environmental ...Regulation under s. 376.303; or

(e) Is a system with respect to which notification has ...been submitted to the appropriate state agency under ...Subtitle I of the Resource Conservation and Recovery ...Act.

(12) "Pollutants" includes any "product" as defined in s. 377.19(11), pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(13) "Pollution" means the presence on the land or in the waters of the state of pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(14) "Response action" means any activity, including evaluation, planning, design, engineering, construction, and ancillary services, which is carried out in response to any discharge, release, or threatened release of a hazardous substance, pollutant, or other contaminant from a facility or site identified by the department under the provisions of ss. 376.30-376.319.

(15) "Response action contractor" means a person who is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(16) "Secretary" means the Secretary of the Department of Environmental Regulation.

(17) "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767.

(18) "Person responsible for conducting site rehabilitation" means the site owner, operator, or the person designated by the site owner or operator on the reimbursement application.

(19) "Marine fueling facilities" means a commercial or recreational facility providing fuel to vessels, excluding bulk product handling terminals.

(20) "Bulk product handling terminal" means a coastal waterfront location where pollutants are received by tank vessel, pipeline, tank car or tank vehicle and are stored or blended in aboveground bulk tanks with individual capacities greater than 30,000 gallons, for the purpose of distributing such pollutants by tank vessel, pipeline, tank vehicle, or container.

History.—s. 34, ch. 83-310; s. 5, ch. 84-338; s. 11, ch. 86-159; s. 2, ch. 89-188.
¹Note.—Section 3, ch. 88-331, provides that "the Department of Professional Regulation shall, by January 1, 1989, adopt rules providing standards for the certification of response action contractors as defined in section 376.301, Florida Statutes, provided, however, that no certification shall be required for a professional engineer licensed under chapter 471, Florida Statutes. The Department of Environmental Regulation shall cooperate with the Department of Professional Regulation in the adoption of such rules and shall review and comment upon such rules prior to their adoption."
²Note.—The word "includes" was substituted by the editors for the word "means."
³Note.—Section 206.9930 does not exist.

376.302 Discharge of pollutants prohibited.—The discharge of pollutants into or upon any waters of the state or lands, which discharge violates any departmental "standard" as defined in s. 403.803(13), is prohibited.

History.—s. 34, ch. 83-310; s. 6, ch. 84-338.

¹376.303 Powers and duties of the Department of Environmental Regulation.—

(1) The department has the power and the duty to:

(a) Establish rules, including, but not limited to, construction standards, permitting or registration of tanks, maintenance and installation standards, and removal or disposal standards, to ... aboveground facilities and their onsite integral piping systems. Such rules may establish standards for underground facilities which store hazardous substances and pollutants, and marine fueling facilities and aboveground facilities which store pollutants not covered by ss. 376.011-376.21 or by chapter 377. Requirements for facilities with underground storage tanks having storage capacities over 110 gallons that store hazardous substances shall not be effective until January 1, 1991. The department shall maintain a compliance verification program for this section, which may include investigations or inspections to locate improperly abandoned tanks and which shall be implemented upon termination of the Early Detection Incentive Program established under s. 376.3071(9) or December 31, 1987, whichever is earlier. The department may contract with other governmental agencies or private consultants to perform compliance verification activities. The contracts may provide for an advance of working capital to local governments to expedite the implementation of the compliance verification program. Counties with permit or registration fees for storage tanks or storage tank systems are not eligible for advance funding for the compliance verification program.

(b) For each tank registered with the department under this section, issue a registration placard listing all registered tanks at a facility, to be displayed in plain view in the office, kiosk, or other suitable location at the facility where the tanks are located. For new facilities, an initial registration fee of $50 per tank is due and payable within 30 days after receipt of notification by the department. Owners or operators that upgrade their facilities by replacing their existing tanks are required to pay a tank replacement registration fee of $25 per tank within 30 days after receipt of notification by the department. Owners and operators of new facilities and those with existing facilities replacing their tanks are required to notify the department 10 days prior to installation of any tanks, using approved department forms. An annual renewal fee in the amount of $25 per tank shall be imposed upon the tank owner, to be due and payable by July 1 of each year, except that stationary tanks of 110 gallons or less at nonresidential locations and agricultural tanks of 550 gallons or less shall not be required to pay a registration fee. The department shall notify each registrant of the annual renewal fee requirement no later than June 1 of each year. Any payment over 30 days past due shall be deemed delinquent, and the registrant shall be required to pay an additional $20 late fee for each tank with respect to which payment is delinquent. After January 1, 1990, marine fueling facilities are required to pay all registration fees specified in this section in lieu of the annual registration fees required under ss. 376.061 and 376.06. Any existing unregistered facility that fails to register by October 1, 1989, shall pay all previous registration fees that should have been paid in accordance with this section beginning on July 1, 1986, and which were avoided through noncompliance. Revenues derived from fees imposed upon tanks storing petroleum products ...

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used or that is part of a subdivision or development of a size that would according to the department be more effectively served by a water supply system if such subdivision or development received its development order after January 1, 1989.

2. Subsidies to persons developing new water supply systems to be permitted and constructed after January 1, 1989, in accordance with standards adopted pursuant to s. 373.309(5) because of actual or potential contamination of potable water wells, provided that no such subsidy shall exceed one-half of the present worth of the 10-year cost of providing and maintaining filters for the residents to be served by said system.

3. The most cost-effective remedy, as determined by the department, for wells drilled prior to January 1, 1989.

(5) Except as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(6) Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.30-376.319 shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between this trust fund and the Inland Protection Trust Fund, in the discretion of the department.

(7) Except as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement in accordance with the provisions of this section, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

History.—s. 94, ch. 83-310; s. 3, ch. 83-353; s. 10, ch. 84-338; ss. 3, 14, 34, ch. 86-159; s. 92, ch. 86-163; s. 4, ch. 88-393; s. 9, ch. 89-171.

Note.—The reference to "s. 376.11(4)(f)" was substituted by the editors for a reference to "s. 376.11(5)(g)" in consequence of the renumbering of s. 376.11(5) as a result of ss. 3, 8, and 34, ch. 86-159.

Note.—Section 14, ch. 89-171, provides that "[t]he Executive Director of the Department of Revenue is hereby authorized to adopt emergency rules pursuant to s. 120.54(9), Florida Statutes, for purposes of implementing the applicable provisions of this act. Rules of the Department of Revenue related to and in furtherance of the orderly implementation of the applicable provisions of this act shall not be subject to s. 120.54(17), Florida Statutes, drawout proceeding, but, once adopted, shall be subject to s. 120.56, Florida Statutes [illegible] adopted by the Governor and Cabinet and shall become effective [illegible] Department of State notwithstanding the provisions of s. 120.54(13), Florida Statutes."

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of petroleum and petroleum products are being stored in underground storage systems in this state, which storage is a hazardous undertaking;

(b) That spills, leaks, and other discharges from such storage systems have occurred, are occurring, and will continue to occur and that such discharges pose a significant threat to the quality of the groundwaters and inland surface waters of this state;

(c) That where contamination of the ground or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare, in greater damage to the environment, and in significantly higher costs to contain and remove the contamination; and

(d) That adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(2) INTENT AND PURPOSE.—It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.

(3) CREATION.—There is hereby created the Inland Protection Trust Fund, hereinafter referred to as the "fund," to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made in accordance with the provisions of this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites;

(b) Expeditious restoration or replacement of potable water supplies as provided in s. 376.30(3)(c)1.;

(11) VOLUNTARY CLEANUP.—Nothing in chapter 86-159, Laws of Florida, shall be deemed to prohibit a person from conducting site rehabilitation either through his own personnel or through responsible response action contractors or subcontractors.

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.

(a) *Legislative findings.*—The Legislature finds and declares that, in order to provide for rehabilitation of as many contamination sites as possible as soon as possible, voluntary rehabilitation of contamination sites should be encouraged, provided that such rehabilitation is conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.

(b) *Entitlement; conditions.*—To accomplish this purpose, for sites initially reported on or prior to midnight on December 31, 1988, any person conducting site rehabilitation under this subsection, either through his own personnel or through responsible response action contractors or subcontractors, shall be entitled to reimbursement from the fund at reasonable rates for allowable costs incurred on or after January 1, 1985, in connection with such site rehabilitation, subject to the following conditions:

1. Nothing in this subsection shall be construed to authorize reimbursement of any person or for any site excluded from participation in the Early Detection Incentive Program under subparagraph 1. or subparagraph 3. of paragraph (9)(b) or paragraph (9)(d).

2. The provisions of this subsection shall not apply to any site initially reported prior to July 1, 1986, where the department has initiated an administrative or civil enforcement action with respect to such site, unless the responsible party has, prior to July 1, 1986, undertaken, and made a reasonable effort to carry out, one or more of the following remedial actions at the site:

a. Product recovery.
b. Groundwater restoration, or
c. Soil removal.

3. Reimbursement under this subsection shall not be considered a state contract and shall not be subject to the provisions of chapter 287.

4. Site rehabilitation shall be completed in accordance with cleanup criteria established by the department pursuant to paragraph (5)(b).

5. Procedural requirements of this subsection shall have been met.

(c) *Procedure to initiate and conduct site rehabilitation.*—Any person initiating site rehabilitation pursuant to this section between January 1, 1985, and December 31, 1988, who intends to file for reimbursement shall submit written notice of such intent to the department prior to midnight on December 31, 1988, together with documentation of site conditions prior to initiation of cleanup. Within 60 days after receipt of such notice and sufficient documentation of site conditions prior to initiation of cleanup, the department shall determine whether the person is eligible to apply for reimbursement under subparagraph (b)1. or subparagraph (b)2. and shall notify the applicant as to his eligibility in writing.

(d) *Records.*—The person responsible for conducting site rehabilitation, or his agent, shall keep and preserve suitable records of hydrological and other site investigations and assessments, site rehabilitation plans, contracts and contract negotiations, and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department. In addition, the department may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred for cleanup shall be certified by affidavit to the department as being true and correct.

(e) *Application for reimbursement.*—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water, soil treatment or removal; or any other tasks identified by department rule developed pursuant to paragraph (5)(b), may apply for reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to paragraph (5)(b), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with generally accepted accounting principles. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement may not be approved for site rehabilitation program tasks which have not been completed, except for the task of groundwater cleanup.

(f) *Review.*—

1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to s. 120.57.

(g) *Schedule for reimbursement.*—Upon approval of an application for reimbursement, reimbursement to

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reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be due and payable within 90 days of approval of the application, provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund. Payment shall be made in the order in which the department receives completed applications. Reimbursement payment for a site rehabilitation program or program tasks shall be made for activities completed in accordance with department rule developed pursuant to paragraph (5)(b), except that a person who undertakes the program task of groundwater cleanup and is working toward meeting the applicable cleanup criteria for completion shall be allowed to receive upon request, interim reimbursement annually while the cleanup is taking place.

(h) *Obligated funds.*—Any funds obligated for reimbursement of expenditures for a site rehabilitation program task prior to July 1, 1989, shall remain obligated until July 1, 1990. If completed applications for such program tasks are not received by that date, the obligated amount will revert to the unobligated balance of the Inland Protection Trust Fund.

(i) *Liberal construction.*—With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or the giving of certain notice, the department may accept as compliance action by a person which meets the intent of the requirements set forth in this subsection.

"(13) FINANCIAL AND TECHNICAL ADVISORY COMMITTEE.—

(a) *Creation; duties.*—There is created the Financial and Technical Advisory Committee, hereinafter referred to as the "committee," to review, at its discretion or upon request of the secretary, site rehabilitation projects or water restoration or replacement projects which the department, a local government, or any other person undertakes pursuant to the provisions of this section for the purpose of providing the department with constructive comments relating to technical and accounting procedures which may be employed and for the purpose of keeping the department abreast of the latest available technologies and potential improvements in management and cost control practices. In addition, the committee shall advise the department, any local government undertaking a project under contract with the department pursuant to s. 376.3073, or any other person undertaking site rehabilitation under subsection (12) with respect to any site rehabilitation project or water restoration or replacement project which the department, local government, or other person, as appropriate, reasonably anticipates will involve expenditures or actions which may obligate the fund in excess of $500,000 for that one project, exclusive of related investigation and assessment costs.

(b) *Membership.*—The committee shall be composed of nine persons to be appointed by the Governor, as follows:

1. One hydrologist;
2. One hydrogeologist;
3. One toxicologist;
4. One community water supply expert;
5. One response action contractor;
6. One certified public accountant;
7. One person representing petroleum refiners;
8. One person representing petroleum marketers; and
9. One person representing the public's environmental interests.

No person who is a public official or public employee other than a member of the teaching or research faculty, or other person holding an administrative or professional position within the State University System, shall be eligible for appointment under this paragraph.

(c) *Organization and terms; expenses; meetings.*—

1. All members of the committee shall serve for 2-year terms, except that, in order to achieve staggered terms, two of the members appointed under subparagraphs (b)1.-5. and two of the members appointed under subparagraphs (b)6.-9. shall be initially appointed for 1-year terms.

2. A vacancy shall be filled for the remainder of the unexpired term by appointment in the same manner as provided for an original appointment.

3. The Governor shall designate one member of the committee to serve as chairman.

4. Members of the committee shall serve without compensation, but shall be entitled to travel and per diem expenses pursuant to s. 112.061.

5. The committee shall meet on a regular basis at the call of the chairman.

(d) *Departmental support.*—The department shall supply such information, assistance, and facilities as are deemed necessary for the committee to carry out its duties under this subsection and shall provide two staff members for the performance of required clerical and administrative functions of the committee. Departmental costs to comply with the provisions of this paragraph shall be considered administrative costs to be paid by the fund, except that no more than $75,000 per year may be charged to the fund to cover these costs.

(e) *Review of certain projects required.*—

1. Whenever the department, a local government acting pursuant to a contract with the department under s. 376.3073, or other person undertaking a site rehabilitation under subsection (12), after conducting an investigation and assessment, has a reasonable expectation that a site rehabilitation project or water restoration or replacement project undertaken thereby will involve expenditures or actions which may require obligation of funds in excess of $500,000, exclusive of investigation and assessment costs, the department, local government, or other person shall submit to the committee a request for review of the project, together with documentation of past and proposed expenditures and a proposed plan of action relative to such project, other than documentation of expenditures relating to investigation and assessment. Copies of such request, together with all associated documentation, shall be transmitted forthwith to every member of the committee.

2. Within a reasonable time after receipt of a request for review, the committee shall meet at the call of

the chairman for the purpose of reviewing the project. Such review shall address, but need not be limited to, the financial and technical feasibility of the proposed plan of action and its anticipated costs and whether other, more cost-effective alternatives are available which would protect the public health, safety, and welfare and minimize damage to the environment.

3. The committee shall report its findings and recommendations to the secretary, and to the local government in the case of a project undertaken pursuant to a contract with the department under s. 376.3073 or to the other person conducting a site rehabilitation project pursuant to subsection (12), which findings and recommendations shall be constructive in nature and shall be limited to the financial and technical feasibility of the proposed plan and its anticipated costs and whether other, more cost-effective alternatives are available which would protect the public health, safety, and welfare and minimize damage to the environment. Such findings and recommendations shall be advisory only and shall not be binding upon any party.

(f) *Subsequent review.*—With respect to any project which was previously reported to and reviewed by the committee as provided in paragraph (e), whenever it appears that costs, exclusive of investigation and assessment costs, for such project will exceed 150 percent of the costs originally anticipated and reported to the committee, or that a significant change in the plan of action for such project is called for, the department, local government, or other person, as appropriate, shall report the proposed additional expenditures or proposed change to the committee, and the committee may, in its discretion, review same as provided in subparagraphs (e)2. and 3.

(g) *Construction.*—Nothing in this subsection shall be construed to restrict the department, a local government acting pursuant to a contract with the department under s. 376.3073, or other person undertaking site rehabilitation pursuant to subsection (12) from making expenditures or taking those actions deemed necessary to protect the public health, safety, or welfare or to minimize damage to the environment. The department or local government may submit to the committee for its review documentation regarding such expenditures or actions after the fact.

History.—ss. 15, 16, ch. 86-159; s. 3, ch. 87-374; s. 2, ch. 88-331; s. 4, ch. 89-188.

[1]Note.—The reference to "s. 376.303(1)(a)" was substituted by the editors for a reference to "s. 376.303(1)(a)1." pursuant to s. 3, ch. 89-188.

[2]Note.—The reference to "s. 376.11(4)(e)" was substituted by the editors for a reference to "s. 376.11(5)(f)" in consequence of the renumbering of s. 376.11(5) as a result of ss. 2, 8, and 34, ch. 86-159.

[3]Note.—The word "Fund" was inserted by the editors.

[4]Note.—Expires October 1, 1996, pursuant to s. 16, ch. 86-159, and is scheduled for review pursuant to s. 11.611.

[4]376.3072 Florida Petroleum Liability Insurance and Restoration Program.—

(1) PROGRAM OF INSURANCE.—There is hereby created the Florida Petroleum Liability Insurance and Restoration Program to be administered by the Department of Environmental Regulation. The department shall establish the Florida Liability Insurance and Restoration Program on or before January 1, 1989. Department rules shall provide that the restoration program is retroactive to January 1, 1989, for qualified sites that apply for the program before September 1, 1989. The program must provide third-party liability insurance to qualified participants for incidents of inland contamination related to the storage of petroleum products regulated by department rules pertaining to storage tanks adopted pursuant to s. 376.303, and must provide restoration for eligible sites in the liability insurance program or for sites which are eligible for self-insurance under the provisions of this section. The program may not participate in the Florida Insurance Guaranty Association. Chapter 624 does not apply to the program. The program shall not be prohibited from recovering indemnities and expenses which are covered by the Florida Insurance Guaranty Association pursuant to coverage purchased by the program from a participating insurer.

(2) SCOPE AND TYPE OF COVERAGE.—The Florida Petroleum Liability Insurance and Restoration Program must provide up to $1 million of liability insurance for each incident of inland contamination related to the storage of petroleum products. A site upon which a discharge was discovered prior to January 1, 1989, shall not be eligible to participate in the third-party insurance program until such time as the site shall be restored as required by the department or until the department determines that the site does not require restoration or the department's insurance carrier agrees to assume the risk for a new incident at the site. The third-party liability program shall provide up to $1 million per incident with an annual aggregate of $1 million of third-party liability insurance for owners or operators who have 100 or fewer petroleum storage tanks, and the program shall provide up to $1 million per incident of third-party liability insurance coverage with an annual aggregate of $2 million of liability insurance for owners or operators who have more than 100 storage tanks. The department may provide storage tank owners or operators who do not market petroleum products and whose output of petroleum products is less than 10,000 gallons per month with reduced third-party liability insurance of $500,000 per incident with an annual aggregate of $1 million for owners and operators with less than 100 tanks and $2 million for owners and operators with more than 100 tanks. The program shall have a deductible of $500 per incident and may offer higher deductibles for third-party insurance to be paid by the insured for the first two premium years. The department shall adopt a deductible schedule for the remainder of the program that shall not exceed $100,000 per year to be paid by the insured. The department shall issue policies to eligible owners and operators. The policies shall be in compliance with the federal underground storage tank financial responsibility requirement contained in 40 C.F.R. 280.97. In order to implement the restoration program, the department may contract with an insurance company, a reinsurance company, or an insurance consultant to issue policies, to verify compliance with this section, to determine reasonable rates for allowable costs, and to manage response action contractors. The department must approve any insurance company, self-insurance, or any other mechanism used to achieve the third-party liability insurance requirements of the Florida Petroleum Liability Insurance and Restoration Program. In order to be approved by the department, an insurance company

self-insurance or other mechanism must meet the minimum criteria established by the Environmental Protection Agency for financial responsibility and, if required, shall be registered or licensed by the Department of Insurance. The purchase of the insurance services is not subject to chapter 287. A site at which an incident has occurred shall be eligible for restoration if the owner or operator of the site is a participant in the third-party liability insurance program or meets the self-insurance requirements of this section. A site which had a discharge reported prior to January 1, 1989, for which notice was given pursuant to s. 376.3071(9) or (12), and which is ineligible for the third-party liability insurance program solely due to that discharge shall be eligible for participation in the restoration program for any incident occurring on or after January 1, 1989, provided the facility is in compliance with the rules of the department pertaining to storage tanks adopted pursuant to s. 376.303, and the owner or operator submits a completed affidavit and all pertinent application forms for the program. A site which had a discharge prior to January 1, 1989, and which is eligible for the third-party liability insurance program is also eligible for participation in the restoration program for any new incident occurring on or after January 1, 1989. Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration. A site where a discharge was reported between January 1, 1989, and September 1, 1989, and which is in compliance with the rules of the department pertaining to storage tanks adopted pursuant to s. 376.303, may participate in the restoration program for said discharge with or without participation in the third-party liability insurance program or self-insurance. The cost of restoration shall be paid through the Inland Protection Trust Fund. In order for an eligible owner or operator to participate in the restoration program, the owner or operator must, upon discovery of evidence of a discharge of petroleum product at a facility, drain and remove from service the suspected petroleum storage system, if necessary, and complete initial remedial action as defined by department rules. The cost of restoration will be paid through the Inland Protection Trust Fund. The restoration must be conducted using the criteria and procedures established pursuant to s. 376.3071. The Florida Petroleum Liability Insurance and Restoration Program must provide up to $1 million of restoration for each incidence of inland contamination related to the storage of petroleum products regulated by department rules pertaining to storage tanks adopted pursuant to section 376.303. The restoration program shall have an annual aggregate limit of $2 million of restoration per facility. The restoration program shall have a $500 deductible per incident until January 1, 1991. The department shall adopt a deductible schedule for the remainder of the restoration program that shall not exceed $25,000 per year to be paid by the participants in the restoration program. The $1 million amount is a limitation and is meant to apply in the aggregate for all restoration costs or third-party claims arising from any one incident. For purposes of this section, the term:

(a) "Restoration" means remediation of contaminated sites both on and off the property of the owner or operator of the petroleum storage system and shall consist of investigation and assessment, cleanup of affected soil, groundwater and surface water in accordance with the site selection and cleanup criteria established by the department pursuant to s. 376.3071(5), and maintenance and monitoring of the contaminated sites. The term "restoration" also means the department's expeditious rehabilitation or replacement of potable water supplies as provided in s. 376.30(3)(c)1. In the event the department does not provide bottled water or a replacement water supply within 3 days, the owner, operator or their designee may provide bottled water to an affected third party, and that cost shall be reimbursable. The term "restoration" does not mean cost which may be associated with site rehabilitation such as the cost of compliance with rules relating to stationary tanks adopted pursuant to s. 376.303.

(b) "Third-party liability" means the insured's liability, other than for restoration costs, for bodily injury or property damage caused by an incident of inland contamination related to the storage of petroleum product.

(c) "Incident" means the reporting of any sudden or gradual discharge of petroleum product arising from operating a storage system containing petroleum product that results in a need for restoration or results in bodily injury or property damage neither expected nor intended by the petroleum storage system owner or operator.

(d) "Petroleum products" means petroleum products as defined by s. 376.301(10).

(3)(a) ELIGIBILITY FOR PARTICIPATION.—Any owner or operator of a petroleum storage system, as defined in s. 376.301, who is subject to and in compliance with this chapter and the rules relating to stationary tanks adopted pursuant to s. 376.303 with respect to a particular location, as determined by the department, is eligible to participate in the Florida Petroleum Liability Insurance and Restoration Program for that location. For purposes of this section, any owner or operator of a stationary storage tank that has a storage capacity of 550 gallons or less, or any facility owner or operator who stores petroleum products and who is required to demonstrate financial responsibility under the Federal Financial Responsibility Requirements contained in 40 C.F.R. s. 280, who otherwise meets the requirements adopted by the department under the rules relating to stationary tanks adopted pursuant to s. 376.303 is eligible to participate in the program. In order to participate in the insurance and restoration program, an owner or operator must file an affidavit with the department, which affidavit states that the owner or operator has read and is familiar with this chapter and the rules relating to stationary tanks adopted pursuant to s. 376.303 and that his facility is in compliance with this chapter and the rules adopted pursuant to s. 376.303. The owner or operator must file the affidavit upon enrollment in the program and must file an affidavit each year upon the scheduled date of payment of the annual registration fee assessed pursuant to s. 376.303; or, upon the date of installation of the facility or enrollment in the program and each year thereafter, if the facility is a petroleum storage system that is not subject to the registration fee. The department may re-

376 3073. The department may not disapprove an application due to the population size of a county and may delegate compliance verification and enforcement to those local governments who agree to enforce the state's program jointly.

(5) The department is authorized to adopt rules that permit any county government to establish, in accordance with s. 403.182, a program regulating underground storage tanks, which program is more stringent or extensive than that established by any state law or rule regulating underground storage tanks. The department shall approve or deny a request by a county for approval of an ordinance establishing such a program according to the procedures and time limits of s. 120.60. When adopting the rules, the department shall consider local conditions that warrant such more stringent or extensive regulation of underground storage tanks, including, but not limited to, the proximity of the county to a sole or single-source aquifer, the potential threat to the public water supply because of the proximity of underground storage tanks to public wells or groundwater, or the detection of petroleum products in public or private water supplies.

(6) A county government may adopt an ordinance regulating underground storage tanks that is the same as any state law or rule regulating such tanks upon approval by the department of a completed application.

History.—s. 13, ch. 84-338; s. 23, ch. 86-159; s. 5, ch. 87-374; s. 18, ch. 88-156; s. 5, ch. 88-331; s. 7, ch. 89-188.

*Note.—The reference to "subsection (5)" was substituted by the editors for a reference to "subsection (4)" to conform to the renumbering of subsections by s. 7, ch. 89-188.

376.319 Response action contractors; indemnification.—

(1) The department may agree to hold harmless and indemnify a response action contractor who has a written contract with the department or who has a written contract with a local government which has contracted with the department to administer a program pursuant to chapter 86-159, Laws of Florida, for any civil damages to third parties:

(a) That result from the acts or omissions of the response action contractor in carrying out a response action; and

(b) That are caused by a discharge or release of a hazardous substance, pollutant, or other contaminant from a site upon which the response action is being carried out.

(2) The departme determining whether or not to enter into hold-har s and indemnification agreements, shall consider:

(a) The availability of cost-effective insurance;

(b) The immediate need for the response action;

(c) The availability of qualified response action contractors; and

(d) Restricting the applicability of such agreements to exclude gross negligence or intentional conduct.

(3) Any payment or cost, including the cost of defending such actions, which is incurred as a result of an agreement by the department to hold harmless or indemnify shall be payable from the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund, whichever is appropriate, based upon the nature of the discharge or release.

(4) No state employee or employee of a political division who provides services relating to a respons tion while acting within the scope of his authority governmental employee shall be personally liable for actions undertaken by the department, the political division, or a response action contractor pursuant to act. However, nothing in this section shall affect the bility of any other person.

(5) This section is repealed effective October 1, 1997, and shall be reviewed by the Legislature during the 1997 regular legislative session.

History.—s. 24, ch. 86-159; s. 7, ch. 88-331.

376.40 Petroleum Exploration and Production Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—The Legislature declares that nancial resources of the state in the form of a bond fund, the limits of which are in excess of limits av to most operators, should be available to provide partment of Natural Resources the surety for any up and remedial action for operations which are not ducted in a safe and environmentally compatible ner.

(2) INTENT AND PURPOSE.—It is the intent of Legislature to establish the Petroleum Exploration Production Bond Trust Fund to serve as a reposito funds which will enable the Department of Natural sources to respond without delay to incidents wh fect safety or threaten to cause environmental d or contamination as a result of incidents involving leum exploration and production activities and wh not otherwise handled in a timely manner by the tor or permittee. The useful life of facilities used duce oil and natural gas in the state can be from 40 years and it is the Legislature's intent that environmentally compatible operations be cond for the economic life of any well, field, or producti ity. It is the further intent of the Legislature that fund make available immediately to the depa funds sufficient to correct violations such as an tor's failure to adequately plug, abandon, or re duction sites or other test sites and facilities after tions cease, if the permittee or operator cannot not correct the violations within a reasonable time thermore, it is the Legislature's intent that if an in excess of the funds on deposit in the trust needed for remedial action, money from the Coa tection Trust Fund be made available in the fo temporary transfer of funds. The temporary t shall be repaid as soon as possible after the depa obtains penalties, judgments, recoveries, or re ments.

(3) CREATION.—There is hereby created in leum Exploration and Production Bond Trust which shall be administered by the Department ral Resources. This trust fund shall be used by partment as a nonlapsing, revolving fund for ca the purposes of this section and s. 377.2425. All lected from permittees under ss. 377.24 377.24(1), and 377.2408(1), and all penalties, recoveries, reimbursements, loans, and other charges related to the implementation of th shall be deposited in the trust fund.

376 3073. The department may not disapprove an application due to the population size of a county and may delegate compliance verification and enforcement to those local governments who agree to enforce the state's program jointly.

(5) The department is authorized to adopt rules that permit any county government to establish, in accordance with s. 403.182, a program regulating underground storage tanks, which program is more stringent or extensive than that established by any state law or rule regulating underground storage tanks. The department shall approve or deny a request by a county for approval of an ordinance establishing such a program according to the procedures and time limits of s. 120.60. When adopting the rules, the department shall consider local conditions that warrant such more stringent or extensive regulation of underground storage tanks, including, but not limited to, the proximity of the county to a sole or single-source aquifer, the potential threat to the public water supply because of the proximity of underground storage tanks to public wells or groundwater, or the detection of petroleum products in public or private water supplies.

(6) A county government may adopt an ordinance regulating underground storage tanks that is the same as any state law or rule regulating such tanks upon approval by the department of a completed application.

History.—s. 13, ch. 84-338; s. 23, ch. 86-159; s. 5, ch. 87-374; s. 19, ch. 88-156; s. 5, ch. 88-331; s. 7, ch. 89-188.

*Note.—The reference to "subsection (5)" was substituted by the editors for a reference to "subsection (4)" to conform to the renumbering of subsections by s. 7, ch. 89-188.

376.319 Response action contractors; indemnification.—

(1) The department may agree to hold harmless and indemnify a response action contractor who has a written contract with the department or who has a written contract with a local government which has contracted with the department to administer a program pursuant to chapter 86-159, Laws of Florida, for any civil damages to third parties:

(a) That result from the acts or omissions of the response action contractor in carrying out a response action, and

(b) That are caused by a discharge or release of a hazardous substance, pollutant, or other contaminant from a site upon which the response action is being carried out.

(2) The department, in determining whether or not to enter into hold-harmless and indemnification agreements, shall consider:

(a) The availability of cost-effective insurance;

(b) The immediate need for the response action;

(c) The availability of qualified response action contractors; and

(d) Restricting the applicability of such agreements to exclude gross negligence or intentional conduct.

(3) Any payment or cost, including the cost of defending such actions, which is incurred as a result of an agreement by the department to hold harmless or indemnify shall be payable from the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund, whichever is appropriate, based upon the nature of the discharge or release.

(4) No state employee or employee of a political subdivision who provides services relating to a response action while acting within the scope of his authority as a governmental employee shall be personally liable for any actions undertaken by the department, the political subdivision, or a response action contractor pursuant to this act. However, nothing in this section shall affect the liability of any other person.

(5) This section is repealed effective October 1, 1997, and shall be reviewed by the Legislature during the 1997 regular legislative session.

History.—s. 24, ch. 86-159; s. 7, ch. 88-331.

376.40 Petroleum Exploration and Production Bond Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—The Legislature declares that the financial resources of the state in the form of a bond trust fund, the limits of which are in excess of limits available to most operators, should be available to provide the Department of Natural Resources the surety for any clean-up and remedial action for operations which are not conducted in a safe and environmentally compatible manner.

(2) INTENT AND PURPOSE.—It is the intent of the Legislature to establish the Petroleum Exploration and Production Bond Trust Fund to serve as a repository for funds which will enable the Department of Natural Resources to respond without delay to incidents which affect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities and which are not otherwise handled in a timely manner by the operator or permittee. The useful life of facilities used to produce oil and natural gas in the state can be from 15 to 40 years and it is the Legislature's intent that safe and environmentally compatible operations be conducted for the economic life of any well, field, or production facility. It is the further intent of the Legislature that this trust fund make available immediately to the department funds sufficient to correct violations such as an operator's failure to adequately plug, abandon, or restore production sites or other test sites and facilities after operations cease, if the permittee or operator cannot or will not correct the violations within a reasonable time. Furthermore, it is the Legislature's intent that if an amount in excess of the funds on deposit in the trust fund is needed for remedial action, money from the Coastal Protection Trust Fund be made available in the form of a temporary transfer of funds. The temporary transfer shall be repaid as soon as possible after the department obtains penalties, judgments, recoveries, or reimbursements.

(3) CREATION.—There is hereby created the Petroleum Exploration and Production Bond Trust Fund, which shall be administered by the Department of Natural Resources. This trust fund shall be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this section and s. 377.2425. All fees collected from permittees under ss. 377.2425(1), 377.24(1), and 377.2408(1), and all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section shall be deposited in the trust fund.

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Petroleum Liability Insurance Program is unable to pay its obligations, policyholders will be required to contribute on a pro rata earned premium basis the money necessary to meet any unfilled obligations."

(c) The Florida Petroleum Liability Insurance Program may assess from time to time policyholders, covered for third-party liability, liable therefor under the terms of their policies and pursuant to this section, or the department may assess the policyholders in the event of liquidation of the Florida Petroleum Liability Insurance Program.

(d) Each policyholder's share of a deficiency for which an assessment is made shall be computed by applying to the premium earned on the participant's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment. In the event one or more policyholders fail to pay an assessment, the other policyholders are liable on a proportionate basis for an additional assessment. The Florida Petroleum Liability Insurance Program, acting on behalf of all policyholders who paid the additional assessment, shall institute legal action when necessary and appropriate to recover the assessment from policyholders who failed to pay it.

(e) In computing the earned premiums for the purposes of this section, the gross premium received by the Florida Petroleum Liability Insurance and Restoration Program for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy. This subsection does not apply if the department contracts for liabilities pursuant to subsection (8).

(f) No policyholder shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable.

(6) SELF-INSURANCE.—Any owner or operator of a petroleum storage system may elect not to participate in the Florida Petroleum Liability Insurance Program for third-party liability coverage if he demonstrates to the satisfaction of the department or its designee sufficient financial responsibility for such liabilities or if he meets United States Environmental Protection Agency tests for financial responsibility. An owner or operator who elects not to participate in the third-party liability coverage of the program is eligible for restoration insurance coverage under the program, if, prior to the occurrence of a discharge, a demonstration is made that the owner or operator is otherwise qualified.

(7) DISPOSITION OF PREMIUMS.—

(a) All premiums collected by the department or its designee from participating owners and operators pursuant to this section must be deposited into the Liability Insurance Account of the Inland Protection Trust Fund to be used for the Florida Petroleum Liability Insurance Program. However, if the department contracts for services pursuant to subsection (8), the department shall use the premiums to pay contract fees and deposit the remainder of the premiums into the Liability Insurance Account of the Inland Protection Trust Fund.

(b) The Liability Insurance Account of the Inland Protection Trust Fund must be maintained separately from the portion of the fund used for the purposes established in s. 376.3071(4) [illegible]. The Liability Insurance Account may not be included as a part of the obligated or unobligated balance of the Inland Protection Trust Fund and must in all respects remain separate from that portion of the fund. A person may not execute against any portion of the Inland Protection Trust Fund or against the department, if the program has insufficient funds to pay any claim.

(8) PURCHASE OF SERVICES AND REINSURING LIABILITIES.—The department is authorized to purchase from an insurance company, a reinsurance company, or an insurance consultant such insurance management or underwriting services, including, but not limited to, risk and claims control and legal defense investigation and adjustment services, as may be required to establish and maintain the third-party liability coverage of the Florida Petroleum Liability Insurance Program. The department may reinsure liabilities arising from third-party coverage with an insurance company, reinsurance company, or through a reinsurance broker. This transaction is subject to approval by the Department of Insurance. The purchase of such insurance and management services is not subject to chapter 287.

(9) REPORTING OF THIRD-PARTY LIABILITY CLAIMS.—All third-party liability claims related to a discharge of petroleum products by a qualified participant in the program must be filed with the secretary of the department or his designee.

(10) RULES.—

(a) The department shall adopt rules for the proper management and maintenance of the Florida Petroleum Liability Insurance Program. In setting premium rates, the department shall receive the approval of the Department of Insurance.

(b) The Department of Insurance shall offer assistance as requested by the Department of Environmental Regulation in the development of necessary rules to implement the program.

(c) The department shall establish criteria for stationary storage tanks that have storage capacities of 550 gallons or less, that are required to be registered pursuant to s. 376.303, and that are not agricultural tanks. Compliance with such criteria is not required except for participation in the Florida Petroleum Liability Insurance Program. On and after September 1, 1989, an underground tank having a storage capacity of 550 gallons or less may not be installed unless it is required by the State Fire Marshal or it is protected against corrosion.

(11) DIVIDENDS.—The Florida Petroleum Liability Insurance Program shall obtain the approval of the Department of Insurance prior to paying any dividend or refund to its policyholders. No such dividend or refund may be approved until 12 months after the last day of the fiscal year for which the dividend or refund is payable or such later time as the insurance department may require in accordance with sound actuarial principles.

History.—ss. 3, 13, ch. 88-331; s. 5, ch. 89-188.

[1]Note.—Expires July 1, 1993, pursuant to s. 13, ch. 88-331.

376.3073 Local programs for control of contamination.—

quire an owner or operator to submit documentation that is certified as true and correct to verify compliance with this section.

(b) The failure of any owner or operator of a storage system containing petroleum products to maintain compliance with this chapter and rules relating to stationary tanks adopted pursuant to s. 376.303 at any location will result in the cancellation of liability insurance provided through the program and eligibility for the restoration program for that location. Any owner or operator of a facility that receives a notice of cancellation for the liability insurance or restoration program that seeks reinstatement for that facility shall pay a reinstatement inspection fee of $200 per facility to be deposited in the Inland Protection Trust Fund. For purposes of this paragraph, the department may, in its discretion, waive minor violations of this chapter or of rules adopted pursuant to s. 376.303, including, without limitation, violations of provisions relating to the form of inventory or reconciliation records or violations of registration requirements.

(c) The following are not eligible to participate in the restoration program or the liability insurance program:

1. Sites owned or operated by the Federal Government;

2. The owner or operator of a facility where the department has been denied site access.

(d) Any third-party claims relating to damages caused by discharges discovered prior to January 1, 1989, or before coverage under a policy issued pursuant to subsection (2) are not eligible under the liability insurance program.

(e) Any incidents discovered prior to January 1, 1989, are not eligible to participate in the restoration program. However, this exclusion shall not be construed to prevent a new incident at the same location from participation in the restoration program if the owner or operator is otherwise eligible. This exclusion shall not effect eligibility for participation in the EDI program or the reimbursement program.

(4) PREMIUMS FOR PARTICIPATION.—

(a) The department, or, in the event the department purchases insurance and management services for the third-party liability insurance program, the contractor, may collect premiums for funding the Petroleum Liability Insurance Account of the Inland Protection Trust Fund from the owner or operator of any petroleum storage system participating in the program.

(b) The premium for each tank, for an owner or operator of a petroleum storage system at a location at which the requirements of rules relating to stationary tanks adopted pursuant to s. 376.303 have been fully implemented and which is in compliance with all monitoring, control, and reporting requirements, will be in an amount determined by the department and approved by the Department of Insurance.

(c) The premium for each tank, for an owner or operator at any location where the replacement or retrofit requirements of chapter 17-61 of the Florida Administrative Code are being met within the schedules established therein and all monitoring and reporting requirements are being complied with to the satisfaction of the department, will be in an amount determined by the department and approved by the Department of Insurance.

(d) The premium for each tank, for an owner or operator of a storage tank having a storage capacity of 550 gallons or less who is required to register the tank pursuant to s. 376.303, will be in an amount determined by the department and approved by the Department of Insurance if the owner or operator is in compliance with the criteria established by the department for such tanks.

(e) The department may establish reduced premiums as approved by the Department of Insurance for owners or operators of storage tanks who operate many facilities each of which are in compliance with this chapter and the rules relating to stationary tanks adopted pursuant to s. 376.303.

(f) The department may establish reduced premiums as approved by the Department of Insurance for owners or operators of storage tanks based upon the relative degree of effectiveness of the storage tanks for protecting the environment.

(g) The department shall use the revenues derived from collection of the excise tax imposed pursuant to s. 206.9935(3) and the revenues derived from collection of the tank registration fees imposed pursuant to s. 376.303(1)(b) in order to provide the restoration provided under the Florida Petroleum Liability Insurance Program. An owner or operator of a petroleum storage system who elects to conduct site restoration is eligible for reimbursement at a reasonable rate for allowable expenses in accordance with the rule relating to reimbursement adopted pursuant to s. 376.303 and s. 376.3071. The payment of reimbursement claims must be in accordance with the rule relating to the priority of the payment of reimbursement adopted pursuant to s. 376.3071.

(h) The department shall use the premiums charged pursuant to this section and collected from the owners or operators of petroleum storage systems in order to provide, in an actuarially sound manner, pursuant to s. 627.062, the third-party liability insurance coverage under the Florida Petroleum Liability Insurance Program to assure that owners and operators who are in compliance with state environmental requirements have the opportunity to obtain petroleum liability insurance.

(i) If the department purchases insurance and management services for the third-party liability insurance program pursuant to subsection (8), the premiums charged pursuant to this section for third-party liability insurance may, with the approval of the department, be paid directly to the contractor.

(5) PARTICIPANT'S LIABILITY FOR THIRD-PARTY LIABILITY INSURANCE COVERAGE.—

(a) The liability of each participant for the obligations of the Florida Petroleum Liability Insurance Program emanating from third-party liability shall be individual, several, and proportionate, but not joint, except as provided in this section.

(b) Each policy issued by the Florida Petroleum Liability Insurance Program shall contain a statement of the contingent liability. Both the application for insurance and the policy shall contain, in contrasting color and in not less than 10-point type, the following statement: "This is a fully assessable policy. In the event the Florida

THE SENATE
FIFTEENTH LEGISLATURE, 1990
STATE OF HAWAII

ACT 298 S.B. NO. 3109 S.D. 1 H.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL STATUTES.

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

SECTION 1. Section 342B-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If the director determines that [the] any person has violated an accepted schedule[,] or an order issued under this section, [any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter,] the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity."

SECTION 2. Section 342D-1, Hawaii Revised Statutes, is amended by deleting the definition "individual wastewater system". [""Individual wastewater system" means a facility which disposes of treated or untreated domestic wastewater generated from dwelling units or other sources generating domestic wastewater of similar volume and strength such as: (1) developments of a density not greater than one dwelling unit per 5,000 square feet of ultimate development; (2) developments with buildings other than dwellings but involving the generation of

pollutant or contaminant concerned, taking into consideration the characteristics of such hazardous substance[,] or pollutant or contaminant, in light of all relevant facts and circumstances; and precautions were taken against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of the foregoing paragraphs.

[(c)] (d) No person shall be liable under this chapter or otherwise under the laws of the State or any of the counties, including the common law to any government or private parties for costs, damages, or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with this chapter or at the direction of an on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or pollutant or contaminant or the threat thereof. This subsection shall not preclude liability for costs, damages, or penalties as the result of gross negligence or intentional misconduct on the part of such person.

(e) No county or local government shall be liable under this chapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened

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of St.1986, c. 554, provides:

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requirements of this chapter, or
the environment, the court may

award costs, including reasonable attorney and expert witness fees, to any party other than the commonwealth who advances the purposes of this chapter.

Added by St.1986, c. 554, § 3.

Historical Note

1986 Enactment

St.1986, c. 554, § 3, was approved by the People at the State Election held on Nov. 4, 1986, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, as amended by Article LXXIV of said Amendments.

Section 4 of St.1986, c. 554, provides:

"The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions or other applications thereof."

§ 16. Response action contractor liability

(a) A response action contractor with respect to any release or threatened release of oil or hazardous material shall not be strictly liable under this chapter nor under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to real or personal property or economic loss which results from such release or threatened release.

(b) The limitation of liability provided under subsection (a) shall apply only to response action contractor liability arising out of a release or threatened release of oil or hazardous material resulting from response actions conducted by the response action contractor.

(c) Any response action contractor who is otherwise liable under subsection (a) of section five for a release or threatened release of oil or hazardous material at a site shall not be entitled to any limitation of liability under this section by virtue of becoming a response action contractor at that site.

Added by St.1987, c. 642, § 2B.

Historical Note

1987 Legislation

St.1987, c. 642, § 2B, was approved Dec. 31, 1987. Emergency declaration by the Governor was filed on the same date.

§ 17. Indemnification agreement to hold harmless response action contractor

(a) The commonwealth may enter into an indemnification agreement to indemnify and hold harmless any response action contractor who meets the requirements of this section against any liability for negligence, including legal fees and costs, if any, in an amount not to exceed a figure established by the indemnification agreement pursuant to the terms of this section. In no event shall the amount of indemnification to be provided under an indemnification agreement exceed two million dollars for a single occurrence involving the release or threatened release of oil or hazardous material. No indemnification shall be provided pursuant to an indemnification agreement under this section if the response action contractor acted in a grossly negligent, willful or malicious manner or if the act or omission which gives rise to a claim was not within the scope of the response action contract.

(b) The indemnification provided by subsection (a) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Nothing in this section shall affect the liability under this chapter or under any state or federal law of any potentially responsible party.

(c) Indemnification under this section shall apply only to response action contractor liability arising out of a release or threatened release of oil or hazardous material resulting from response actions conducted by the response action contractor pursuant to its response action contract.

(d) Indemnification may be provided under this section only if the response action contractor and the commonwealth or an agency thereof enter into an indemnification agreement. An indemnification agreement may be entered into by the commonwealth or any of its agencies only if the following requirements are met:

(1) The liability covered by the indemnification agreement exceeds or is not covered by insurance available to the response action contractor at a fair and reasonable price when entering into the response action contract, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(2) The response action contractor has made diligent efforts to obtain insurance coverage for such liability from sources other than the commonwealth including diligent efforts to self-insure.

(3) In the case of a response action contract covering more than one site, the response action contractor agrees to make such diligent efforts to obtain insurance coverage each time the contractor begins to work under the contract at a new site.

(e) Any indemnification agreement entered into under subsection (d) shall include specific terms and conditions under which the commonwealth will indemnify the contractor, such as the establishment of premiums, deductibles and limitations on available indemnification, and the provision of notice to the commonwealth in the event that a claim is asserted against the response action contractor.

(f) The commissioner of insurance shall provide information necessary to make the determination specified in clause (1) of subsection (d) through the publishing of an annual report on the availability of insurance for response action contractors generally, and by providing guidance to agencies of the commonwealth on an ongoing basis. The first of such reports shall be published within thirty days of the effective date of this section.

(g) Amounts expended pursuant to this section for indemnification of any person who is a response action contractor with respect to any release or threatened release, shall be considered a cost of response incurred by the commonwealth with respect to such release, and the commonwealth may seek recovery of such costs from other parties liable under section five.

Added by St.1987, c. 642, § 2B.

Historical Note

1987 Legislation

St.1987, c. 642, § 2B, was approved Dec. 31, 1987. Emergency declaration by the Governor was filed on the same date.

§ 18. Promulgation of regulations

Any agency of the commonwealth is authorized to promulgate regulations as it deems necessary for the implementation and administration of sections sixteen and seventeen subject to the approval of the executive office of administration and finance. Failure to promulgate such regulations shall not affect any agency's right to enter into indemnification agreements under said sections sixteen and seventeen nor the validity or enforceability of said sections or agreements.

Nothing in sections sixteen or seventeen shall affect the liability of any person under any warranty, nor the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision relating to workers' compensation.

Added by St.1987, c. 642, § 2B.

Historical No

1987 Legislation

St.1987, c. 642, § 2B, was 1987. Emergency declaration was filed on the same date.

CHAPTER 21F

Section
1. Purposes.
2. Definitions.
3. Designation of coastal city
4. Harbor or waterfront impr application for assistance

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Chapter 21F of the

Code of Massachusetts Regulat

Executive office of environ coastal facilities,

§ 1. Purposes

The purposes of this chapt

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(*b*) to provide flexible and coastal cities and towns so t improve public coastal facilit

(*c*) to improve planning for office of environmental affair

(*d*) to encourage greater co financed with public funds.

Added by St.1983, c. 589, § 19.

Historical Note

1983 Enactment. St.1983, emergency act, adding this chapt this section and §§ 2 to 7, was a 1983.

For provisions of §§ 33 to 36 relating to civil service status the division of water resources

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designated par (a) and amd, L 1985, ch 38,

stituted "commissioner" for "commissioners".
16 deleted "the fund" and added italic matter.
4, eff Apr 16, 1985; amd, L 1986, ch 512, § 5,
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mending act referred to the other.

ICE AIDS:
d Remedies §§ 116, 117.

:use Law Review p. 249.

:b A § 1020-q; CLS St Fin § 97-b.

NOTES

the Department of Transportation (Navigation Law, § 174, subds 1, 2, 3), and pay a license fee of 1 cent per barrel transferred until the balance in the New York Environmental and Spill Compensation Fund equals or exceeds $25 million (Navigation Law, § 174, subd 4), which fund provides a source of payment for expenses incurred by the state for cleanup and removal of petroleum and property damage caused by oil discharges (Navigation Law, § 176), is not unconstitutional in that the fee is an impost and duty on imports in violation of clause 2 of section 10 of article I of the United States Constitution, since the license fee is imposed on the transfer of petroleum and not on the petroleum itself, and the license fee does not discriminate against interstate commerce, since the fee is not imposed only on those New York transfers where petroleum enters the State, but rather, the statute focuses on New York major facility transfers without reference to where the petroleum was produced; accordingly, in an action for a judgment declaring that article 12 is unconstitutional and to enjoin the enforcement of the provisions of article 12, plaintiff, a trade association whose members own and operate oil storage terminals, has failed to establish a clear right to ultimate success or that article 12 is unconstitutional beyond a reasonable doubt, and a motion for a preliminary injunction was properly denied. Long Island Oil Terminals Asso. v Commissioner of New York State Dept. of Transp. (1979, 3d Dept) 70 AD2d 303, 421 NYS2d 405.

Department of Environmental conservation lacks authority under 1983 Control of Bulk Storage of Petroleum Act (CLS ECL 17-1001 et seq.) to promulgate regulations subjecting existing major facilities licensed under Oil Spill Prevention, Control and Compensation Act of 1977 (CLS Navigation Article 12) to new regulations and new petroleum bulk storage code, since 1983 act requires department to establish code applicable only to "new and substantially modified facilities", specifically excluding facilities licensed under 1977 act. Consolidated Edison Co. v Department of Environmental Conservation (1986) 132 Misc 2d 790, 505 NYS2d 766.

§ 175. Notification by persons responsible for discharge

Any person responsible for causing a discharge shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the discharge. Failure to so notify shall make persons liable to the penalty provisions of section 192 of this article.[1] Notwithstanding the provisions of any other law, such notification to the department shall be deemed to fulfill the notification requirements of any other state or local law.

HISTORY:
Add, L 1977, ch 845, eff April 1, 1978; amd, L 1985, ch 35, § 4, eff Oct 13, 1985.
The 1985 act deleted at fig 1 "The department shall immediately inform the department of environmental conservation of such notification.".

RESEARCH REFERENCES AND PRACTICE AIDS:
55 NY Jur 2d, Environmental Rights and Remedies §§ 116, 118.

§ 176. Removal of prohibited discharges

1. Any person discharging petroleum in the manner prohibited by section one hundred seventy-three of this article shall immediately undertake to contain such discharge. Notwithstanding the above requirement, the department may undertake the removal of such discharge and may retain agents and contractors who shall operate under the direction of such department for such purposes. The commissioner shall develop a system of immediate response type contracts with appropriate agents and contractors. Such contracts shall be subject to the approval of the state comptroller in accordance with section one hundred twelve of the state finance law, however, such approval shall not obligate to any particular contract any specific amount of monies from the fund but shall obligate from the fund on an individual basis as such contracts are utilized the actual amount required to effectuate any contract or any portion thereof. Any necessary approvals of availability of funds for a particular project in accordance with any provision of the state finance law shall be undertaken as soon as practical after clean up and removal procedures are undertaken, or such procedures are ordered by the commissioner.

2. *(a)* Upon the occurrence of a discharge of petroleum, the department shall respond promptly and proceed to cleanup and remove the discharge in accord with environmental priorities. The department shall be responsible for cleanup and

removal or as the case may be, for retaining agents and contractors who shall operate under the direction of that department for such purposes. Implementation of cleanup and removal procedures after each discharge shall be conducted in accordance with environmental priorities and procedures established by the department.

(Added, L 1987)

(b) Section eight of the court of claims act or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the discharge of the department's responsibility pursuant to this article; provided, however, that this subdivision shall not limit any liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or their officers, employees or agents or for a discharge in violation of section one hundred seventy-three of this article.

3. Any unexplained discharge of petroleum within state jurisdiction or discharge of petroleum occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the department. Except for those expenses incurred by the party causing such discharge, any expenses incurred in the removal of discharges shall be paid promptly from the New York environmental protection and spill compensation fund pursuant to section one hundred and eighty-six of this article and any reimbursements due such fund shall be collected in accordance with the provisions of section one hundred and eighty-seven of this article.

4. Cleanup and removal of petroleum and actions to minimize damage from discharges shall be, to the greatest extent possible, in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500, 33 U.S.C. 1251 et seq.)

5. The department[1] in consultation with the attorney general shall develop a standard contract form to be used when contracting services for the cleanup and removal of a discharge.

6. Whenever the department acts to remove a discharge or contracts to secure prospective removal services, it is authorized to draw upon the money available in the fund. Such moneys shall be used to pay promptly for all cleanup and removal costs incurred by the department.

7. *(a)* Nothing in this section is intended to preclude cleanup and removal by any person threatened by such discharges,[1] *who,* as soon as is reasonably possible,[2] *coordinates and obtains* approval for such actions with ongoing state or federal operations *and appropriate state and federal authorities. Notwithstanding any other provision of law to the contrary, the liability of any contractor for such person, where such person obtains approval from appropriate state and federal authorities for such cleanup and removal, and the liability of any person providing services related to the cleanup or removal of a discharge, under contract with the department, for any injury to a person or property caused by or related to such services shall be limited to acts or omissions of the person during the course of performing such services which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct. Notwithstanding any other provisions of law, when (i) a verdict or decision in an action or claim for injury to a person or property caused by or related to such services is determined in favor of a claimant in an action involving a person performing such services and any other person or persons jointly liable, and (ii) the liability of the person performing such services is found to be fifty percent or less of the total liability*

assigned to all persons liable, and (iii) services is not based on a finding of r intentional misconduct, then the liabili the claimant for loss relating to inju relating to injury to a person shall n performing such services determined i each person causing or contributing to however, that the culpable conduct of be considered in determining any equi with due diligence the claimant was u in said action. As used in this section, not limited to, pain and suffering, damages for non-economic loss. Ho deemed to alter, modify or abrogate services for breach of any express wa implied warranty under the uniform person pursuant to the workers' com any person who is responsible for a seventy-four of this article.

(b) No action taken by any person construed as an admission of liabili *itously* renders assistance in containin any civil damages to third parties re person in rendering such assistance e or willful misconduct. In the cours discharge any detergent into the wate the commissioner of environmental co

(Added, L 1989)

(c) A person may, without admissio leum and with the consent of the con the discharge and upon the recommer the consent of the fund undertake the of petroleum. Upon determination by the discharge, the person shall be necessary expenses incurred.

(Added, L 1989)

8. Notwithstanding any other provis limited to section 15-108 of the ge cleanup, removal of discharge of pet section shall be entitled to contributi

HISTORY:

Add, L 1977, ch 845, eff April 1, 19
Sub 2, amd, L 1985, ch 35, § 5, eff
Sub 2, par (a), formerly entire sub. 30, 1987 (see 1987 note below).
Sub 2, par (b), add, L 1987, ch 536
Sub 5, amd, L 1985, ch 35, § 5, eff
The 1985 act deleted at fig 1 "and jointly".
Sub 7, par (a), formerly first sente ch 536, § 7, eff July 30, 198[illegible] (see
The 1987 act deleted at fig 1 "pro obtain".

retaining agents and contractors who shall partment for such purposes. Implementation after each discharge shall be conducted in es and procedures established by the depart-

s act or any other provision of law to the l be immune from liability and action with he discharge of the department's responsibil- owever, that this subdivision shall not limit for unlawful, willful or malicious acts or te agencies, or their officers, employees or f section one hundred seventy-three of this

um within state jurisdiction or discharge of state jurisdiction that for any reason pene- removed by or under the direction of the curred by the party causing such discharge. discharges shall be paid promptly from the nd spill compensation fund pursuant to s article and any reimbursements due such ith the provisions of section one hundred

and actions to minimize damage from possible, in accordance with the National hazardous substances established pursuant r Pollution Control Act Amendments of

h the attorney general shall develop a contracting services for the cleanup and

nove a discharge or contracts to secure ed to draw upon the money available in ay promptly for all cleanup and removal

to preclude cleanup and removal by any *ho*, as soon as is reasonably possible,[2] h actions with ongoing state or federal *authorities. Notwithstanding any other ity of any contractor for such person, ppropriate state and federal authorities bility of any person providing services harge, under contract with the depart- y caused by or related to such services person during the course of performing been the result of negligence, gross nal misconduct. Notwithstanding any or decision in an action or claim for related to such services is determined in a person performing such services and , and (ii) the liability of the person y percent or less of the total liability assigned to all persons liable, and (iii) the liability of the person performing such services is not based on a finding of reckless disregard for the safety of others, or intentional misconduct, then the liability of the person performing such services to the claimant for loss relating to injury to property and for non-economic loss relating to injury to a person shall not exceed the equitable share of the person performing such services determined in accordance with the relative culpability of each person causing or contributing to the total liability for such losses; provided, however, that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence the claimant was unable to obtain jurisdiction over such person in said action. As used in this section, the term "non-economic loss" includes, but is not limited to, pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss. However, nothing in this subdivision shall be deemed to alter, modify or abrogate the liability of any person performing such services for breach of any express warranty, limited or otherwise, or an express or implied warranty under the uniform commercial code, or to an employee of such person pursuant to the workers' compensation law, or to relieve from any liability any person who is responsible for a discharge in violation of section one hundred seventy-four of this article.*

(b) No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. No person who *gratuitously* renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup and removal, no person shall discharge any detergent into the waters of this state without prior authorization of the commissioner of environmental conservation.

(Added, L 1989)

(c) A person may, without admission of responsibility for the discharge of petroleum and with the consent of the commissioner, commence clean up and removal of the discharge and upon the recommendation of the commissioner of health and with the consent of the fund undertake the relocation of persons affected by the discharge of petroleum. Upon determination by the fund that the person is not responsible for the discharge, the person shall be reimbursed by the fund for the actual and necessary expenses incurred.

(Added, L 1989)

8. Notwithstanding any other provision of law to the contrary, including but not limited to section 15-108 of the general obligations law, every person providing cleanup, removal of discharge of petroleum or relocation of persons pursuant to this section shall be entitled to contribution from any other responsible party.

HISTORY:

Add, L 1977, ch 845, eff April 1, 1978.
Sub 2, amd, L 1985, ch 35, § 5, eff Oct 13, 1985.
Sub 2, par (a), formerly entire sub, designated par (a), L 1987, ch 536, § 6, eff July 30, 1987 (see 1987 note below).
Sub 2, par (b), add, L 1987, ch 536, § 6, eff July 30, 1987 (see 1987 note below).
Sub 5, amd, L 1985, ch 35, § 5, eff Oct 13, 1985.
The 1985 act deleted at fig 1 "and the department of environmental conservation jointly".
Sub 7, par (a), formerly first sentence of sub, so designated and amended, L 1987, ch 536, § 7, eff July 30, 1987 (see 1987 note below).
The 1987 act deleted at fig 1 "provided such persons" and at fig 2 "coordinate and obtain".

Sub 7, par (b), formerly second sentence of sub, so designated and amended, L 1987, ch 536, § 7, eff July 30, 1987 (see 1987 note below).
Sub 7, par (c), add, L 1989, ch 712, § 2, eff Nov 21, 1989.
Sub 8, add, L 1989, ch 712, § 3, eff Nov 21, 1989.

NOTES:

Laws 1987, ch 536, § 10, eff July 30, 1987, provides as follows:
§ 10. This act shall take effect immediately, and shall apply to causes of action arising out of services performed on or after the effective date of this act.

CROSS REFERENCES:

This section referred to in § 186.
Accounting systems; approval of contracts, CLS St Fin Law § 112.

RESEARCH REFERENCES AND PRACTICE AIDS:

55 NY Jur 2d, Environmental Rights and Remedies §§ 116, 118.

CASE NOTES

Article 12 of the Navigation Law, the Oil Spill Prevention, Control and Compensation Act, which requires each operator of a major facility (Navigation Law, § 172, subd 11) to obtain a license from the Department of Transportation (Navigation Law, § 174, subds 1, 2, 3), and pay a license fee of 1 cent per barrel transferred until the balance in the New York Environmental and Spill Compensation Fund equals or exceeds $25 million (Navigation Law, § 174, subd 4), which fund provides a source of payment for expenses incurred by the State for cleanup and removal of petroleum and property damage caused by oil discharges (Navigation Law, § 176), is not unconstitutional in that the fee is an impost and duty on imports in violation of clause 2 of section 10 of article I of the United States Constitution, since the license fee is imposed on the transfer of petroleum and not on the petroleum itself, and the license fee does not discriminate against interstate commerce, since the fee is not imposed only on those New York transfers where petroleum enters the State, but rather, the statute focuses on New York major facility transfers without reference to where the petroleum was produced; accordingly, in an action for a judgment declaring that article 12 is unconstitutional and to enjoin the enforcement of the provisions of article 12, plaintiff, a trade association whose members own and operate oil storage terminals, has failed to establish a clear right to ultimate success or that article 12 is unconstitutional beyond a reasonable doubt, and a motion for a preliminary injunction was properly denied. Long Island Oil Terminals Asso v Commissioner of New York State Dept. of T: sp. (1979, 3d Dept) 70 AD2d 303, 421 NYS2d 405.

An operator of a petroleum storage facility acted responsibly when he hired a tank cleaning corporation to clean-up a spill of several thousand gallons of gasoline which would have flowed into Lake Erie, since the operator was strictly liable to undertake clean-up efforts, even though not at fault under Article 12 of the Navigation Law. Furthermore, the spill was "sudden and accidental" within the meaning of the operator's Comprehensive General Liability Policy and the insurer could not therefore validly deny coverage for the clean-up work under the terms of the policy. Evans v Aetna Casualty & Surety Co. (1981) 107 Misc 2d 710, 435 NYS2d 933.

An insurer would be required to indemnify its insured and the state under a comprehensive general liability policy that afforded coverage for "property damage . . . caused by an occurrence" for the costs of cleaning up an oil spill, which initially occurred on the insured's premises, in a nearby swamp, since such costs constituted "property damage" within the meaning of the policy in light of the fact that the insured was strictly liable for the cleanup under Nav Law §§ 170 et seq., which statutory liability is not punitive in nature but rather reflects an exercise of the state's power to preserve public resources, since the insurer was precluded from disclaiming coverage due to its unexplained three month delay prior to issuing its disclaimer, and since the insurer was precluded from disclaiming coverage on the ground that the insured failed to give timely notice of its claim in that the insurer's attempted disclaimer on the ground that the cleanup costs were not "property damage" constituted a waiver of its right to disclaim coverage on other grounds; furthermore, the insurer would be required to defend its insured with respect to any statutory fines or penalties that the state might seek to impose, since any such fines or penalties could ultimately result in whole or in part from the insurer's dilatory or bad faith disclaimer or from its noncooperation. Kutsher's Country Club Corp. v Lincoln Ins. Co. (1983) 119 Misc 2d 889, 465 NYS2d 136.

§ 177. Emergency oil spill control network

1. The commissioner shall establish an emergency oil spill control network which

shall be comprised of available equ highway departments. Such netwo response to a discharge on any network shall be employed in conju or operator, the department and an

2. The commissioner shall make an state highway departments that w clean-up operations.

3. The commissioner shall have the in a discharge cleanup operation a county, and state highway departme

4. The commissioner may request such assistance and data as will enab to this section.

HISTORY:

Add, L 1977, ch 845, eff April 1, 1
Sub 1, amd, L 1985, ch 35, § 6, eff
The 1985 act deleted at fig 1 "the de
Sub 4, amd, L 1985, ch 35, § 6, eff
The 1985 act deleted at fig 1 "the de

CROSS REFERENCES:

This section referred to in CLS High

RESEARCH REFERENCES AND PRA

55 NY Jur 2d, Environmental Right

§ 177-a. Emergency oil spill relocatio

1. The commissioner shall establish a shall be headed by the commissione services from county and state health

2. Such network shall be employed to in any area of the state where the network shall be employed in conjunc or operator, the department or any fe

3. The commissioner of health shall made for emergency oil spill relocatio

4. The commissioner of health shall h discretion to the state and local heal possible health risks to persons residin

5. The commissioner of health shall d relocation of individuals who, in his o of the discharge and certify the amo certification by the commissioner of h exceeding thirty days, provided that t the possible health risks in the area o successive thirty day periods. The cer not be admissible in any civil action damages to the individuals certified for

6. Notwithstanding any provision o individuals for relocation and its ass consideration as cleanup cost and shal

transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 9-6.14:11, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated. (1990, c. 917.)

Editor's note. — Acts 1990, c. 919, cl. 2 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective on July 1, 1992. Clause 3 of this act also stated that the Board should regard certain considerations in adopting such regulations.

§ 62.1-44.34:16. Financial responsibility. — A. (For effective date see Editor's note) The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of $500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Underground Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator whose financial responsibility is accepted by the Board under this

subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

D. Acceptance of proof of financial responsibility shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

E. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

F. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or the operator of the tank vessel had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board. (1990, c. 917.)

Editor's note. — Acts 1990, c. 917, cl. 4 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective 90 days after the effective date of such regulations. Clause 4 also provides that in promulgating such regulations, the Board shall provide that, if evidence of financial responsibility provided to the federal government or any other state meets the requirements of subsection C of this section, comments shall be accepted by the Board in full or partial satisfaction requirements of subsection A of this section as appropriate.

§ 62.1-44.34:17. Exemptions. — Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil. (1990, c. 917.)

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge. — A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat

of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:16 or $10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section. (1973, c. 417; 1976, c. 51; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acts 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:19. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1978, c. 816; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend § 62.1-44.34:4, which was repealed by Acts 1990, c. 917. The effect of this amendment was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, this amendment has been effectuated in this corresponding new Code section.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SECOND SUBSTITUTE HOUSE BILL NO. 2494

Passed the House February 13, 1990 as amended
Yeas 98 Nays 0

Passed the Senate March 1, 1990 as amended
Yeas 47 Nays 1

March 6, 1990: The House concurred in the Senate amendments and passed the bill as amended by the Senate.

Yeas: 96 Nays: 0

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SECOND SUBSTITUTE HOUSE BILL NO. 2494 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON, Chief Clerk

carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(((12))) (21) "Waters of the state" shall include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(22) "Worst case spill" means a spill of the entire cargo of a tank vessel complicated by adverse weather conditions.

NEW SECTION. Sec. 3. (1) Each facility and covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the facility or covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The department shall by rule adopt standards for the preparation of contingency plans. The rules for facilities and, except as otherwise provided in this subsection, for covered vessels shall be adopted not later than July 1, 1991. The department shall exclude from the rules to be adopted by July 1, 1991, standards for tank vessels of less than twenty thousand deadweight tons, cargo vessels, and passenger vessels operating on the portion of the Columbia river for which the department determines that Washington and Oregon should cooperate in the adoption of standards for contingency plans. The department, after consultation with the appropriate state agencies in Oregon, shall adopt the rules for standards for contingency plans for this portion of the Columbia river at the earliest possible time, but not later than July 1, 1992. The department shall require contingency plans, at a minimum, to meet the following standards:

[illegible] method of response to spills of

various sizes from any vessel, ship, or facility which is covered by the plan:

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department:

(i) Removing oil and minimizing any damage to the environment resulting from a maximum probable spill; and

(ii) Removing oil and minimizing any damage to the environment resulting from a worst case spill:

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan:

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(h) Provide a detailed description of equipment and procedures to be used by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and the vessel/safety is assured, contain and clean up the spilled oil:

(i) Provide arrangements for the prepositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) State the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel or facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) Contingency plans for facilities capable of storing one million gallons or more of oil and for tank vessels of twenty thousand deadweight tons or more shall be submitted to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Except as otherwise provided in (c) of this subsection, contingency plans for all other facilities and covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(c) Contingency plans for covered vessels which are not required to submit plans within the six month period prescribed in (a) of this subsection and which operate on the portion of the Columbia river for which the department must adopt rules not later than July 1, 1992, shall be submitted to the department not later than January 1, 1993.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that

will be unloading cargo at the facility.

(c) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel or by the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(d) A person who has contracted with a facility or covered vessel to provide containment and cleanup services and who meets the standards established pursuant to section 4 of this act, may submit the plan for any facility or covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility or covered vessel.

(4) A contingency plan prepared for an agency of the federal government that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil and hazardous substance spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil or hazardous substances being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

and hazardous substances within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil or hazardous substances promptly and properly and minimizing any damage to the environment.

(7) Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a vessel, ship, or facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

NEW SECTION. Sec. 4. The department shall by rule establish standards for persons who contract to provide cleanup and containment services under contingency plans approved under section 3 of this act.

((department-at-its-office-in-Olympia,-or-a-regional-office--thereof, of--such--discharge--or--entry)) coast guard and the division of emergency management. The notice to the division of emergency management within the department of community development shall be made to the division's twenty-four hour state-wide toll-free number established for reporting emergencies.

NEW SECTION. Sec. 25. (1) The following persons shall not be liable for necessary expenses or property damage caused by an act or omission of that person during the cleanup of oil spilled into the navigable waters of the state, unless the act or omission was performed in bad faith or with gross negligence:

(a) The state or any unit of local government;

(b) A person who volunteers to assist in the cleanup of the spilled oil; and

(c) A person meeting the standards of section 4 of this act.

(2) This section shall not affect the liability of any person responsible for the spilled oil or responsible for the facility or covered vessel from which the oil was spilled.

NEW SECTION. Sec. 26. A new section is added to chapter 88.16 RCW to read as follows:

An oil tanker under escort of a tug or tugs pursuant to the provisions of RCW 88.16.190 shall not exceed the service speed of the tug or tugs that are escorting the oil tanker.

Sec. 27. Section 8, chapter 18, Laws of 1935 as last amended by section 2, chapter 264, Laws of 1987 and RCW 88.16.090 are each amended to read as follows:

(1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and purauant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government licenae as a master of freight

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To HOUSE JUDICIARY COMMITTEE	From Jack Brown KPB ASSEMBLY
Co.	Co.
Dept. RE: BILL #196	Phone #
Fax # 465-2299	Fax #

HB 196

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:

Theresa Hudson
Acting Borough Clerk

lyeska blasted for billion-dollar bond

ATHY BROWN
nsula Clarion

orough Mayor Don Gilman Wednesday ted Alyeska Pipeline Service Co. for t be calls an "unreasonable" demand threatens to shut down Tesoro-Alaska oleum Corp.'s Nikiski refinery.
lyeska is requiring Tesoro to come up a $1 billion bond to continue shipping from the Alyeska pipeline terminal in lez to Cook Inlet.

Tesoro officials say they can't possibly meet the requirement. And since they get 90 percent of the crude oil for their Nikiski refinery from Valdez, the refinery would be in serious trouble if it was no longer able to ship from there, said Tesoro vice president Gene Burden.

Gilman said the major member companies of Alyeska — Exxon, British Petroleum and ARCO — are using Tesoro as a pawn in order to pressure the Legislature to pass a bill restricting Alyeska's liability in the event of a spill.

"They're using Tesoro," Gilman said. "They're being unreasonable."

But Alyeska spokesperson Mamie Isaacs said the $1 billion requirement is necessary because of the liability Alyeska could be subject to if it responds to a spill from Tesoro or another shipper in Prince William Sound.

"Alyeska serves as the initial response action contractor for those vessels calling at the terminal in Valdez," she said. "Because of the state's liability requirements, Alyeska ... asked the owner-operator or charter of the vessels to pledge a billion dollar bond, which, simply put, indicates they would have access to funds to manage the claims arising from a spill."

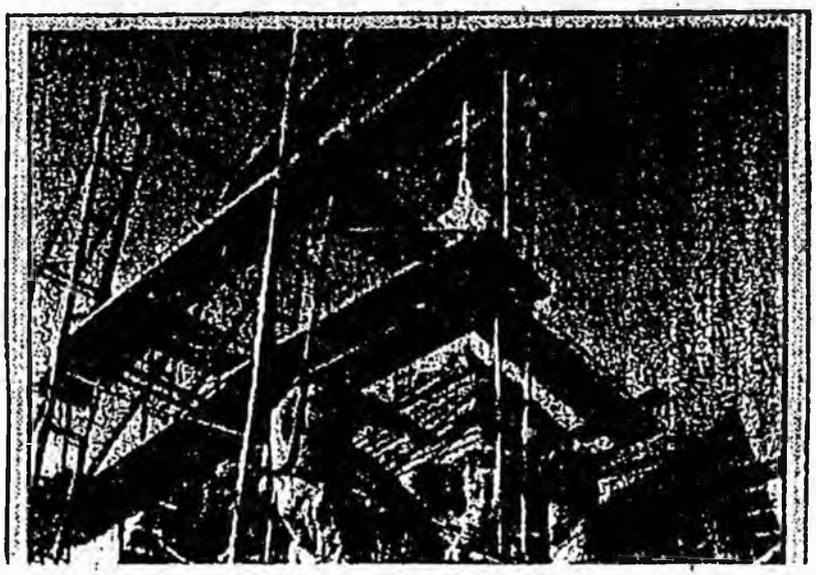
The other five companies operating vessels in Prince William Sound — Exxon, BP, ARCO, Shell and Chevron— have been able to comply with the $1 billion requirement, mainly by pledging $1 billion in

See ALYESKA, back page

rea guard nit may be xpanding

IENNIFER SMITH
Insula Clarion

The Kenai Armory may soon ome headquarters for the "A" mpany of the Army National ard, meaning 19 additional rd openings, two more full- e staff positions and a possible pansion of the armory grounds.



Area real estate market rebounds

By TONY LEWIS
Peninsula Clarion

Slowly but surely, the peninsula's real estate market is recovering from the depressed conditions of the late 1980s, industry officials said Tuesday.

"The real estate economy is moving. Things are improving," Bob Schaafsma, an appraiser for

rule of economics — supply and demand.

In 1988, the market was flooded with houses for sale with no buyers. That drove the price of housing down, which in turn is now spurring buyers.

As more houses are bought, leaving fewer on the market, prices will increase again. Higher housing prices will make vacant

lyeska: Company says state's liability laws are to blame

ntinued from page 1

porate assets.
But Tesoro can't do that, Bur- said.
"All five of those other compa- are very, very large compa-," he said. "Our whole compa- only worth $200 million. To me up with a bond of a billion llars is just not possible."
He thinks Tesoro should not be quired to put up as large an nount as the other companies cause Tesoro transports only a all percentage of the oil com- g from the terminal, its tanker ds are much smaller, and it has en many preventive measures, cluding the recent introduction a double-bottomed tanker.
Alyeska and Tesoro have orked out a temporary agree- ent that allows Tesoro to contin- operating in the Sound until ne 1 with $1 billion in insur- ce, rather than a bond.
Alyeska says it may lower its quirements if the Legislature passes a bill limiting Alyeska's liability in case problems occur when it responds to a spill.

"The core of the problem rests with the state's current liability laws," Isaacs said.

The way the law stands now, the standard of liability is "simple negligence," which Isaacs said could mean if Alyeska responds according to its plan with the state, but inadvertently loses some oil from a boom, it could be held liable.

Alyeska wants the standard of liability for a spill responder to be "gross negligence," which is harder to prove in court than simple negligence.

Tesoro also favors such a bill because it would limit the liability for the Cook Inlet spill response cooperative of which Tesoro is a member.

But fishing and environmental groups are opposed to the idea because they believe it would lessen the incentive for spill responders to be prepared.

A compromise bill, which sought to limits liability but only for the first 15 days after a spill and only if a company does not "substantially deviate" from its contingency plan, was passed out of the House Resources Committee Tuesday.

But Alyeska is not satisfied with the language in the bill, Isaacs said. "The bill is helpful, but it doesn't go quite far enough," she said. "We feel present language does not allow us to relax our liability standards."

Mayor Gilman also favors legislation limiting spill responders' liability because the Kenai Peninsula Borough is a member of the Cook Inlet response cooperative and taxpayers could also be held liable for problems resulting from the cooperative's response to a spill.

But Gilman, a former state senator, does not believe the legislation will pass. He says the bill has to get through two more House committees and the full House and the Senate, and he doesn't believe that will happen in the remaining 34 days of the legislative session.

He believes Alyeska is being inflexible about the bill.

"They don't want anything less than gross negligence," he said. "What I think is happening is Alyeska is trying to get the gross negligence standard, and they're doing it on the backs of Tesoro."

"The big three (Exxon, BP and ARCO) are using this thing unmercifully and unnecessarily," Gilman said.

Isaacs says that Alyeska is "very sympathetic to Tesoro's situation."

"We would like to find a way to accommodate Tesoro's needs and still protect the company's (Alyeska's) liability," she said.

Some of Tesoro's supporters in borough and state government have suggested the Alyeska owner companies are trying to put Tesoro out of business, but Isaacs denies that and Gilman says he does not believe that's the case, either.

"But if that's the fallout, they could care less," he said. "The big guys just don't care. They could care less if this refinery closed down."

The Kenai Peninsula Borough Assembly cares a great deal, however.

Tesoro employs about 150 people on the borough, according to Burden. The company provides a good chunk of borough tax revenues.

The Borough Assembly unanimously passed a resolution Tuesday night, which was supported even by fishing groups, urging the Legislature to intervene on Tesoro's behalf.

Burden says if Tesoro and Alyeska can't come to an agreement, Tesoro will file suit against the pipeline company, which would include seeking an injunction to allow the company to continue shipping out of Prince William Sound after June 1.

Guard: Headquarters may move

Continued from page 1

moving twice. The headquarters on the peninsula would centrally locate the unit and improve its effectiveness, Mosley said.

Kenai's guard, Detachment 1, "A" Company of the fifth battalion, 297th Infantry, is a combat unit with 31 members. It is charged with protecting the state's road network should an enemy invasion occur and provide a backup for pipeline security, Mosley said.

Gallery: Business in historic area scrutinized

Continued from page 1

split between opponents and backers of Peloza's plan before it voted to stick to its original approval of a gallery, a white picket fence around the .68 acre property and landscaping. The approved plan also calls for arts and crafts classes and displays, some of which will be outside the building.

During the meeting the commission cautioned Peloza, that he had to get the approval of the commission before any changes were made to his business.

In other business the council:

• Awarded a construction bid to Soldotna-based G&S Construction to build the Kenai Bicentennial Visitors and Cultural Center for $1,362 million.

• Approved transferring $244,000 money from the city's general fund into the city's Airport Land System.

• Approved supporting the boroughwide upgrade of the present 911 emergency service number and the borough's funding request as a capital improvement program.

Kenai Peninsula Borough
Recycling Programs

NYE RV CENTER
Ford

Kenneth J. Gaylord
P.O. Box 100262
Anchorage, Alaska 99510-0262
April 22, 1991

Representative Terry Martin
Rm. 600, Capitol
P.O. Box V
Juneau, Alaska 99811

Dear Representative Martin:

Upon re-reading my letter of 4-19, I noticed some errors. Please substitute this page for the first page of that letter.

In my opinion it is in the interest of the people of Alaska to continue to have Tesoro operate their refinery located on the Kenai Peninsula as they produce a lot of products used in Alaska and employ several hundred people in Alaska. It is my understanding that Tesoro's supply of north slope crude may be curtailed by Alyeska due their concern about being held liable for simple negligence claims as a response contractor.

I am writing to express my opinion about [redacted]. It is my understanding that a hearing will be held April 23, 1991 in the House Judiciary Committee, of which you are a member. to consider the bill. As this bill would provide some immunity as long as the response provider does not substantially vary from the terms of their contingency plan, I believe the it should be approved. Passing the bill should satisfy Alyeska's lawyers and still provide the cleanup response necessary to respond promptly to any oil spill.

In closing I would like to point out that a catastrophic spill from Tesoro's contracted ship the Overseas Washington is unlikely due to the following:

a. The size of the cargo;

b. The fact that Tesoro's vessel is hydrostatically loaded;

c. The fact that Tesoro's vessel is double bottomed;

d. The vessel operates with additional watch crew;

e. The vessel uses state of the art satellite navigation systems.

Alyeska's obligation is for the initial response (minimum of 72 hours) and due to Tesoro's cargo size, Alyeska has 1/6 of the oil removal responsibility during this initial period as required for vessels with over 500,000 bbls. oil, are used my Alyeska's owner companies.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

P.O. Box V
State Capitol
Juneau, Alaska 99811

April 24, 1991

To: House Judiciary Members

From: Representative Bill Hudson
Chairman, House Special Committee on Oil and Gas

Re: CSHB 196(Jud)

ISSUE DEFINITION

At the beginning of this session Tesoro and Conoco came to me with a problem they were experiencing which threatens the very existence of their respective companies which in turns threatens the royalty share of the state of Alaska for Milne Point oil and most importantly the jobs of over 500 Alaskans in the Kenai Peninsula. As the Chairman of the House Special Committee on Oil and Gas, I felt this was an appropriate area of concern for the committee and legislation was later introduced in an attempt to find a resolution to the problem. Several hearings have been held and as is often the case in the formulation of public policy, this legislation has been substantially modified.

Simply put, under current law oil spill response action contractors (RAC) in Alaska are experiencing a severe legal problem: specifically a RAC could be sued for its actions taken to clean up an oil spill, despite the fact that the RAC did not have any involvement in spilling the oil. Furthermore, a RAC could be held strictly liable for cleanup damages for a spill which they did not cause -- a dangerous standard to hold someone responding in a crisis atmosphere to.

In response to this situation, some RACs have sought to protect themselves from possible lawsuits by requiring that those companies contracting with them for clean up services be able to meet standards of financial responsibility. In the case of Tesoro and Conoco, they must provide $ 1 billion dollars in direct action insurance before Alyeska, the RAC for PWS, will guarantee cleanup services for tankers under contract to these companies.

Tesoro and Conoco are unable to obtain the $ 1 billion dollars in financial responsibility and unless the legislature acts this session are in danger of going under.

Although this matter will in all likelihood eventually be solved in court, the legislature, through passage of CSHB 196 (JUD) can remove any legitimate reason for a RAC's excessive insurance requirements.

Two companies have already withdrawn from the TAPs tanker trade as a result of Alyeska's provisions. This is a critical situation requiring immediate attention.

The United States Congress, California, Washington, Hawaii, Florida, Texas, Virginia, Delaware, Mississippi and Georgia have limited oil spill clean up contractors to a gross negligence standard. This is a nationally recognized problem. What CSHB 196 (JUD) proposes to do is to shift, not reduce, for 15 days, the liability for acts of simple negligence during an oil spill cleanup from the RAC to the party responsible for the spill so long as the RAC's act or omission is not contrary to the orders of the state or federal on scene coordinator or substantially deviates from the oil spill contingency plan. This change will keep Alaska's liability law as strong as any in the nation.

Passage of this legislation helps Tesoro and Conoco by removing any legitimate justification for the $ 1 billion financial responsibility that Alyeska is requiring. Alyeska is not supporting this legislation; despite that fact that this bill gives Alyeska the federal standard it seeks with the one exception being that a RAC loses the federal standard of gross negligence if it substantially deviates from the contingency plan. Alyeska has no direct economic interest in seeing this problem solved this year -- it is Tesoro, Conoco and others that will pay the price of our inaction. Alyeska has stated that it will not continue a response services agreement beyond June 30, 1991 absent some change in the current situation.

CSHB 196 (JUD) will directly help both Tesoro and Conoco and both companies have strongly urged its immediate passage. This legislation will also help other RACs throughout the state, for example CISPRI in Cook Inlet. During the last legislature, legislation was passed requiring substantial improvements in contingency planning, which often includes the use of cooperatives or contracts for cleanup services. Shippers in Cook Inlet have demonstrated a reluctance to join CISPRI because of their possible exposure to liabilities in responding to spills that are not their own. Passage of CSHB 196 (JUD) will specifically address that concern.

I urge you to carefully consider this legislation and hope you will join with me in endorsing its swift passage.

7-LS0797\J
Ford
4/23/91

CS FOR HOUSE BILL NO. 196 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"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 definitions of 'response action' and 'response action contractor'; relating to a report by the Citizens Oversight Council on Oil and Other Hazardous Substances; providing for the repeal of changes made by this Act in one year; and providing for an effective date."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. 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 the response action services were performed.

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

(a) A person who is a response action contractor with respect to a release or threatened release of a hazardous substance whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release unless the release or threatened release is caused by an act or omission of the response action contractor that is negligent or grossly negligent or constitutes intentional misconduct. 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 the response action services were performed.

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

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

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

(g) In this section,

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

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

(A) the department;

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

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

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

(3) "response action contractor" means

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

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

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

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

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

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

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

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

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

(1) an action for personal injury or death;

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

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

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

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

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

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

(A) the department;

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

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

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

(15) "response action contractor" means

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

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

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

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

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

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

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

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

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) 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.

[redacted] HOUSE COMMITTEE REPORT [redacted]

(7)

Date Referred: March 6, 1991 FURTHER REFERRALS: Resources, Judiciary, Finance

Date of Committee Action: 3/11/91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS 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 [ ] the same title [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[X] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[X] zero fiscal note ADEC

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Bill Hudson		Mike Navarre		X	
[illegible]	X	Kay Brown		X	
[illegible]	X				
Gail Phillips		[illegible]		✓	

Bill Hudson

CHAIRMAN'S SIGNATURE

7-LS0797\A.1
Ford
03/11/91

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

TO: HB 196

Page 1, line 3:

Delete "definition"

Insert "definitions"

Page 1, line 3, following "'response action'":

Insert "and 'response action contractor'"

Page 5, line 11:

Delete "and"

Page 5, line 14, following "contract":

Insert "; and

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

7-LS0797\A.2
Ford
03/11/91

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

TO: HB 196

Page 2, lines 21 - 23:

Delete all material and insert:

"(b) It is the purpose of this Act to

(1) define the liability of oil spill response action contractors in light of the crisis atmosphere in which they operate, and the uniquely severe consequences to the state of inadequate locally available oil spill cleanup capability;

(2) remove the existing deterrent to prompt and sufficient oil spill cleanup in this state;

(3) place this state on an equal competitive footing with other states in attracting oil spill cleanup capability to this state; and

(4) place the liability for good faith response action on the person responsible for the spill, rather than the response action contractor."

7-LS0797\A.3
Ford
03/11/91

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

TO: HB 196

Page 4, line 10:

Delete "a response plan or"

Insert "an"

Page 4, line 20, following "apply to":

Insert "(1)"

Page 4, line 21, following "death":

Insert "; or

(2) an act or omission contrary to a representation of the response action contractor asserting limited liability under (a) of this section, if

(A) the representation was incorporated into a contingency plan approved under AS 46.04.030 of a person responsible for the release or threatened release under AS 46.03.822; and

(B) the act or omission was the result of gross negligence or intentional misrepresentation"

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 196

Revision Date: _____ Department Affected: DEC

Title: Limited Liability for oil spill response action acontractors BRU: Environmental Quality

Component: SPPM

Sponsor: House Oil & Gas

Requestor: House Oil & Gas **COMPONENT SERIAL NO.** 1 0 1 6

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						
REVENUE						

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 A. Sanders

Agency: ADEC Date: 3/11/91

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

DIVISION OF LEGAL SERVICES

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM March 7, 1991

SUBJECT: Response action contractor civil liability - (HB 196)

TO: Representative Bill Hudson

FROM: Michael F. Ford
Legislative Counsel

The following is a section by section analysis of HB 196:

Section 1 - Findings and Purpose.

Section 2 - Deletes provisions concerning the types of damages for which a person will be strictly liable. These provisions are reinserted in section 3.

Section 3 - Adds a definition of "damages." Provides that damages includes acts or omissions of a response action contractor for which the response action contractor is not liable, under the provisions of AS 46.03.823 or 46.03.825.

Section 4 - Excludes an oil spill response action contractor from the provisions of this section.

Section 5 - Provides that an oil spill response action contractor is not liable for damages resulting from the release or threatened release of oil, unless the liability would exist if the contractor had not responded to the release or threatened release, or the contractor acted with gross negligence or intentional misconduct. Also provides that in the event of a lawsuit to recover for personal injury or death, this section would not apply.

Section 6 - Adds definitions of "response action", "response action contract", and "response action contractor."

Section 7 - Repealer.

Section 8 - Effective date.

MFF:mi
91-047.mai

Oil spill Pollution Act of 1990

"(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—

PACIFIC FISHERIES LEGISLATIVE TASK FORCE

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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 recognised 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

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

February 26, 1991

MEMORANDUM

TO: Representative Bill Hudson

FROM: Glenn T. Gray GTG
Legislative Analyst

RE: **Oil Spill Response Contractor Liability Laws in Other States**
Research Request 91.144

You asked about liability laws in other states concerning oil spill response contractors. Specifically, you requested information about states which have limited liability for contractors and their reasons for doing it. You also asked about states that have considered but rejected such legislation.

We contacted staff attorneys, resource agency officials or legislative staff in 16 states to obtain the information for this memorandum. An attempt was made to contact more than one person from each state to confirm information. For some states it was difficult to locate anyone who had a thorough understanding of the implications of response contractor liability statutes. We also contacted staff from several national organizations: the Coastal States Organization, the National Conference of State Legislatures, and the Marine Spill Response Corporation (MSRC).

This memorandum begins with background information about the effort to limit the liability of response action contractors. A brief description of how various states have dealt with contractor liability follows. The memorandum concludes with a summary of national trends regarding liability regimes for oil spill clean up contractors.

Background

Since the federal Oil Pollution Act of 1990 passed in August, many states report that the Marine Spill Response Corporation (formerly the Petroleum Institute Response Organization) and oil spill response contractors have lobbied them to limit the liability of response action contractors. The federal law limits liability for persons who respond to an oil spill in federal waters as long as they act consistently with the National Contingency Plan [33 U.S.C. 1321 (c)(4)]. Responders are still liable, however, for personal injury and wrongful death, and if they are grossly negligent or engage in wilful

misconduct. The act does not preempt states from enacting more stringent liability regimes [33 U.S.C. 1321(o)(2)].[1]

Laws which limit liability for persons who respond to spills of oil or hazardous materials are commonly referred to as good samaritan laws. While some states exempt only people who are not compensated, other states have changed their laws to be consistent with federal law. Rather than holding contractors strictly liable, or liable for simple negligence, such states limit contractor liability to gross negligence, wilful misconduct, personal injury or wrongful death. Definitions of these different standards of liability may be found in Attachment A.

The federal Oil Pollution Act of 1990 requires that owners or operators of tank vessels and oil facilities develop response plans. These plans must show that owners or operators have personnel and equipment to "remove to the maximum extent practicable a worst case discharge . . ." [33 USC 321(j)(5)]. For many facilities and tankers, the MSRC provides the only feasible means to comply with this provision. The MSRC is a nonprofit organization funded by the Marine Preservation Association (MPA), a group of oil industry companies. According to David Larkin, director of government affairs for the MSRC, the organization operates independently from the MPA. The MSRC plans to have five regional response centers and 23 pre-staging areas where equipment will be stored. Mr. Larkin says that because an oil spill can spread across the jurisdictions of many states, it is important to have consistent liability standards. Otherwise, in the event of a spill, contractors would have to respond to different rules in each state. Mr. Larkin also says that insurance costs for unlimited liability are prohibitive, and if a state does not have adequate immunity for the responders, the MSRC will have to consider what its role will be in that state.

The MSRC's involvement in Alaska is unclear. According to Mr. Larkin, the MSRC has no plans to locate a pre-staging area in Alaska, and current liability standards do not provide an incentive to consider this option. The MSRC document in Attachment B does, however, refer to a planned pre-staging area in Alaska. Alyeska Pipeline Service Company currently provides spill response assistance for tankers transporting oil from the TransAlaska Pipeline. According to Gene Burden, a vice-president for Tesoro, Alyeska requires Tesoro to obtain one billion dollars of direct action insurance for it to transport oil in Prince William Sound. Such insurance is difficult, if not impossible to obtain (see Attachment C, Legislative Research Memorandum 90.200). Mr. Burden says that coverage through a Protection and Indemnity (P&I) club would

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[1]After an oil spill, state and federal authorities may bring separate actions against a contractor based on their individual standards.

not provide direct action and would be cost prohibitive for Tesoro.[2] Mr. Burden believes that insurance requirements would be reduced if Alaska limits the liability for response action contractors. He also says that frivolous litigation would be reduced by changing the current law.

Arkansas

According to Steve Weaver, chief legal council for the Department of Pollution Control and Ecology, Arkansas holds oil spill response contractors responsible for simple negligence. He says that in 1985 legislation was passed that held contractors responsible for gross negligence, but that the oil industry supported a law passed in 1989 making contractors liable for simple negligence. Mr. Weaver said that Arkansas wants to keep response contractors to as high a standard as possible.

California

The California General Assembly passed a bill last year that includes a provision to limit liability for people who respond to oil spills (other than for gross negligence, wilful misconduct, personal injury, or wrongful death). The law limits liability for people who act in good faith and in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the on-site coordinator or the United States Coast Guard. The act restricts the limitation of liability for response action contractors for 60 days after they begin cleanup with a possible extension of 30 days.

According to Dr. Jim Rote, principal consultant for the California General Assembly Office of Research, the provision limiting a response contractor's liability to 60 days resulted from a compromise between lobbying efforts of the California trial lawyers and response contractors. Dr. Rote believes that the limitation of liability for response contractors is justified because they respond to emergencies and may be compared to other emergency responders such as ambulance drivers and fire fighters. The 60-day limit encourages contractors not to become careless.

Connecticut

According to Charles Zieminski, principal emergency response coordinator for the Department of Environmental Protection, Connecticut has no cap on liability for negligence. Other than during a few oil spills in the early 1970s, Connecticut has not had much recent experience with response contractors. Mr.

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[2]Direct action means that a claimant could recover costs directly from the insurer without going through Tesoro.

Zieminski says that he is not aware of efforts to change current liability laws for oil spill clean up contractors.

Delaware

The Delaware General Assembly recently passed legislation consistent with federal law concerning liability of response contractors. The legislation is awaiting the governor's signature. According to Shari Wilson, staff attorney for the Attorney General's Office, contractors may be liable for simple negligence if they significantly increase the damage resulting from an oil spill. Contractors may get around this provision if they subcontract with a party who does not receive compensation for spill clean up, such as the MSRC.

Florida

Legislation passed last year by the Florida legislature limits the liability of persons responding to an oil spill as long as they are not grossly negligent (FS 376.09). This provision appears to include response action contractors, although a separate provision (FS 376.319) provides indemnification for response contractors for simple negligence if they have a written contract with the state. Several state officials with whom we spoke were unable to explain why the state would need to indemnify a contractor for simple negligence if the contractor were only liable for gross negligence and wilful misconduct.

Hawaii

The Hawaii legislature passed legislation during 1990 that apparently limits the liability of response action contractors. The law states that no person shall be liable "as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with this chapter or at the direction of an on-scene coordinator," unless the actions resulted from gross negligence or intentional misconduct. There is a question whether the legislature intended to limit the liability of contractors because the language modifies section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) instead of section 119 of that act (section 119 exempts response action contractors from strict liability for the clean up of hazardous substances).

Louisiana

Louisiana law currently holds response contractors strictly liable for their clean up efforts. MSRC has reportedly said that if Louisiana does not limit liability for response action contractors, the MSRC would reconsider its plans to locate one of its five regional centers in Louisiana.

Maine

Maine's good samaritan law currently limits the liability of people who respond to oil spills as long as they do not receive compensation. Response contractors receiving payment are liable for simple negligence. According to Barbara Foster of the National Conference of State Legislatures, the MSRC said that it would not provide an office in Maine if liability for response action contractors was not limited. The legislature is currently considering a bill to limit liability to gross negligence. Perry Cogburn, an oil and hazardous materials specialist for the Maine Department of Environmental Protection, says that there has not been a problem with response contractors and if the laws are too strict contractors may not respond to spills.

Maryland

Maryland currently does not limit the liability of response action contractors. The legislature is expected to consider a bill this session that has provisions similar to those of the federal government.

Last week during a regional response team drill in Chesapeake Bay, contractors refused to respond to the spill because of Maryland's liability regime.[3] The drill proceeded under the assumption that an oil tanker had collided with a container ship carrying hazardous waste. The United States Coast Guard (USCG) took control of the "spill" but could not convince the contractors to respond. The USCG received verbal approval from the Governor of Maryland and written approval from the state's director of the Department of Environment to exempt contractors from liability during the drill. There were, however, concerns about the legality of such an exemption. According to Lt. Commander Shultz, coordinator for the National Response Team, the USCG considered towing the boats into Virginia waters much to the alarm of Virginia authorities. The drill will continue on March 12, with the beginning of the second day of the imaginary spill.

Mississippi

Mr. Charles Chism, director of the Office of Pollution Control, says that Mississippi does not limit the liability for response action contractors. A bill currently being considered by the state legislature would limit contractor liability. Mr Chism says he does not object to such a liability limitation.

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[3]Although there was actually no accident or oil spill, authorities proceeded throughout the drill as if it was real.

New York

Sherry Chrimes, assistant counsel for the Department of Environmental Conservation, says that New York has resisted attempts by the oil industry to limit the liability of response action contractors. The current law holds contractors liable for simple negligence. Ms. Chrimes said that the state often uses response contractors and that the current law is adequate. She says that response contractors should be held to the same standard of liability as other contractors.

North Carolina

Ed Gavin, of the Office of General Council for the Department of Natural Resources and Community Development, says that North Carolina has no limitation for liability for contractors who clean up oil spills. He says that there has not been much effort to change the current law, and that North Carolina has only a few oil terminals, a pipeline and a small oil refinery.

Oregon

Contractors responding to an oil spill currently have unlimited liability. The legislature, however, is considering limiting the liability of response contractors. Bruce Southerland, of the Department of Environmental Quality, said that because Oregon borders the Columbia River with Washington, the states usually try to have compatible oil spill legislation. (Washington currently limits the liability of contractors.)

Pennsylvania

Fred Osman, director of Environmental Emergency Response, says that the Pennsylvania legislature passed an act during November 1990 limiting response action contractor liability to wilful misconduct or gross negligence. He thinks that simple negligence is not a good standard for response action contractors because they respond to emergencies in an effort to prevent damage to the environment and property.

Virginia

David Orms, an environmental program manager for the Department of Environment, says that Virginia has patterned its contractor liability law after the federal Oil Pollution Act of 1990. He does not think that limiting contractor liability to gross negligence poses a problem.

Mr. Orms says that during a regional response team drill he attended last week in Chesapeake Bay, response action contractors refused to respond to the oil

spill in Maryland waters because that state does not limit liability for contractors. The contractors, however, said they would respond to the imaginary spill when it reached Virginia waters.

Washington

Washington limits the liability of response action contractors to a standard of gross negligence and wilful misconduct. The state is currently developing contractor standards for uncompleted work. According to Don Reif of the Department of Ecology, contractors will have to prove that they have a certain amount of insurance to pay for clean up work that they have not completed. Harry Reinart, legislative counsel for the House Environment Committee, says that because spillers have strict liability, it is not necessary to hold contractors to such a high standard. Mr. Reinart believes that it may be difficult to obtain contractors if they are held to too high of a standard.

Conclusion

Opinions differ concerning the extent a response contractor should be held liable for damage resulting from its actions. Some officials from other states believe that contractors should be held accountable for their actions during an oil spill clean up. They are concerned that a contractor may use cheaper, less efficient equipment if their liability is limited. They also express concern that a contractor may not be as careful when their liability is limited. One state official thought that in cases where the identity of a spiller cannot be determined or if a spiller were to go bankrupt, there would be no way to recover costs for damages resulting from the actions of a contractor if that contractor, was not liable and insured for simple negligence

Several states have passed legislation that resembles liability standards found in the Oil Pollution Act of 1990, and additional state legislatures are considering such legislation. Some states have modified the federal legislation to require contractors to comply with state oil spill contingency plans or the direction of an on-scene coordinator. California limits the liability of contractors for 60 days with a possible 30-day extension while providing no time limit for volunteers. Officials from these states feel that response contracts should have limited liability similar to other emergency response personnel such as policemen and fire fighters. Many of these officials express concern that contractors would not be available if liability standards were too rigid.[4] The high cost of insurance for simple negligence

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[4]Lt. Commander Shultz, coordinator for the National Response Team, is not aware of any instances where contractors have refused to respond to a spill other than the regional response drill which occurred in Maryland waters last week.

was also cited as a reason for limited liability. The MSRC supports state legislation resembling federal law so that there will be consistency during oil spills that reach the waters of more than one state.

The Federal Oil Pollution Act of 1990, however, permits states to require higher standards. David Slade, general council for the Coastal States Organization, says that while his organization does not recommend how states should respond to the liability question, one option available would be to keep the simple negligence liability standard but to place a cap on the amount of liability. This option would reduce the liability of response action contractors and give them some incentive to operate carefully. The Coastal States Organization expects to release a white paper next month about how states have responded to a number of issues relating to the Federal Oil Pollution Control Act of 1990. A copy of this paper will be forwarded to your office as soon as we receive it.

I hope this information is helpful. Please contact this office if we may be of additional assistance.

Attachments

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM January 28, 1991

SUBJECT: Response action contractor liability (Work Order 7LS-0552)

TO: Representative Bill Hudson

FROM: Michael F. Ford M.F.
Legislative Counsel

You have asked for our opinion on legislation proposed by Tesoro Alaska Petroleum Company, regarding the liability of oil spill response action contractors. The proposed legislation would narrow the potential liability of a response action contractor with respect to a release or threatened release of oil, by eliminating liability for negligence in most instances.

Under AS 46.03.823, the potential liability of a response action contractor is generally limited to negligence, gross negligence and acts of intentional misconduct. This section also establishes a negligence standard that a claimant must show was violated in order to prove liability, and contains several exceptions to the general rule of liability. The exceptions are specific instances in which the legislature has decided that the general rule on liability should not apply.

The proposed legislation would narrow the liability of a response action contractor who responds to a release or threatened release of oil by limiting the liability to (1) gross negligence, (2) intentional misconduct, and (3) acts or omissions that would result in liability, even if the contractor had not carried out a response action. Therefore acts of negligence would not result in liability, unless the act or omission would be negligent even if the contractor had not carried out a response action. Finally, you should note that the proposed new section on oil spill response action contractors does not contain the exceptions to the general rule of liability written into law as AS 46.03.823(b)(2), (c), (d), (e), and (f).

The proposed legislation also raises a constitutional equal protection issue. If the exception for oil spill response contractors was enacted, there would be two different rules of liability, one for oil spill response contractors and one for all other response contractors. While this type of distinction does not always offend the constitutional equal protection clause, there must be a rational reason to distinguish between similar

groups in this manner. This may be the kind of distinction that would not survive a court challenge based on the equal protection clause. See Turner Construction Co. v. Scales, 752 P.2d 467 (Alaska 1988).

Please contact me if you have further questions.

MFF:gc
91-039.glc

conoco

Interoffice Communication

To D. L. Bowler

From J. S. Haley

Date February 26, 1991

Subject Increased Cost to Milne Point Unit due to Alyeska's Oil Spill Response Service Agreement

Pursuant to a request from your office we have attempted to develop the additional costs to Conoco, the Overriding Royalty Interest Owners and the State of Alaska for Milne Point Unit production as a result of Alyeska's Oil Spill Response Agreement. The weighted average additional costs (which reduces the net-back value by an equal amount) are estimated as follows:

	Increased costs/ (Reduced Net Back to Unit)
February 1991	$3.69/Bbl
March 1991	$0.39/Bbl
April 1991	$0.10/Bbl*

*This number is not expected to continue in the future as it reflects a cycle in the markets that may not often be repeated. We expect this number to be higher in May and thereafter even under existing sales arrangements.

The above figures represent the volume weighted increased costs. These numbers represent our best estimate of the increased costs based on current contracts, some of which are tenuous at best, given the circumstances. We have been fortunate in selling our March and April production under terms that closely approximate pre-November 1990 sales. However, if we lost our best surviving market the cost per barrel could increase $4.00 to $5.00 per barrel or more over pre-November sales contracts. Our current market is very precarious and may be viewed as only a 30 day arrangement. Thus, it is imperative that we get some relief from the Alaska legislature to have any assurances that net-backs for Milne Point Unit crude are not significantly reduced because of implementation of Alyeska's Oil Spill Response Service Agreement.

The State of Alaska stands to share improved net-backs by the passage of the "Good Samaritan" law for companies shipping oil through Prince William Sound.

John S. Haley

JSH:ft

cc: J. R. Svenvold
D. R. Heinzer

FINANCIAL LOSS - STATE OF ALASKA

MILNE POINT ROYALTY - CURRENT STATUTE

Month	Loss M$
1	0
2	317
3	37
4	10
5	43
6	422
7	436
8	450
9	424
10	432
11	427
12	450
TOTAL	3,448

U.S. Department of Transportation
United States Coast Guard

Commander
Eleventh Coast Guard District

Union Bank Bldg.
400 Oceangate
Long Beach, CA 90822-5399
Staff Symbol: (d)
Ph: (213) 499-5201

5090

AUG 28 1990

The Honorable Willis L. Brown Jr.
Speaker, California State Assembly
State Capitol
Sacramento, California 95814

Dear Mr. Brown:

I am writing to you to express concern about legislation that is important to the interests of the United States Coast Guard and the State of California. The legislation, currently being debated in the Assembly, is Senate Bill 2040.

In particular, I support the need for limited immunity for all oil spill responders other than liable parties, to the extent that it may be necessary to encourage such persons to take action promptly. Prompt action after a spill is essential to protect the marine environment of California from oil pollution.

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders. The Coast Guard did not object to that provision because we believe that the issue is related to the national interest in promoting quick, effective responses to oil spills and their threats. Effective response requires resources from both the public and private sectors.

A law that does not address responders's concerns about liability exposure, causing them to hesitate in responding to spills, would be counterproductive.

Oil spill response is not an exact science. Decisions often must be made with incomplete and sometimes conflicting information. Moreover, the operational environment is unpredictable. Liability standards must take these factors into account if effective programs are to be put in place.

I urge you to give full consideration to limited immunity provisions for all oil spill responders other than liable parties in your deliberations on SB 2040.

Sincerely,

M. E. GILBERT
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

San Francisco Examiner

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Oil spill groups need legal assist

CONSIDER WHAT might occur if a fire department responding to a blaze could be sued for damages resulting from its firefighting. A lawyer might ride on every truck. And a no-fault contract might have to be negotiated before a hose was unrolled.

Of course this would be silly, not to mention counterproductive. Yet such is the problem being confronted by organizations formed to respond to oil spills. Cleanup consortiums such as Clean Bay in the Bay Area and Clean Seas in Southern California remain under the threat of lawsuits. In Sacramento, legislators now are debating proposals that would add so-called Good Samaritan language to protect oil-cleanup groups from litigation except in situations of overt misconduct or negligence.

This dispute pits the oil industry, and environmental groups such as the International Bird Research and Rescue Center and the Coast Guard, against the California Trial Lawyers Association. There are two major oil spill bills now moving toward passage, AB 2603 authored by Assemblyman Ted Lempert, D-San Mateo, and SB 2040 by State Senator Barry Keene, D-Mendocino. Neither addresses this issue. It is essential that "Good Samaritan" sections be added.

The trial lawyers contend that the distinction between spillers and responders is not so clean as portrayed, since the responding organizations often are nonprofit entities created by the oil shippers. It has been charged that laxness on the part of Alyeska, an oil company-owned cleanup company, contributed to damage caused by the grounding of the Exxon Valdez in Alaska.

That may sound legally sensible, but it is not a practical argument from the public's point of view. Rapid response is one of the keys to successful response. Time will cause the spill to worsen. Yet the threat of lawsuits may cause delay by cleanup crews until responsibility is made clear.

But while some are oil company-owned, other groups are not. The Ventura County Commercial Fishermen's Association created FORT — the Fisherman's Oil Response Team — to protect the sensitive Channel Islands and nearby coastal communities. Through FORT, fishermen on their own boats can be called upon by clean-up coordinators during an emergency. And they can be on the scene immediately, *not* days later. But FORT and its fisherman cannot place themselves in a position to accept unlimited liability.

Cleanup firms are willing to accept legal responsibility for willful misconduct, personal injury or wrongful death. They need protection from simple negligence because they must make quick decisions under difficult circumstances. Sometimes they may guess wrong. In most cases, they are not acting on their own, but under Coast Guard authority. The federal government, however, is protected in such circumstances from those seeking targets from which to recoup losses. Cleanup groups are not. They should be.

SPILL RESPONSE CONTRACTOR
LIMITED LIABILITY PROPOSAL

RESPONSE ACTION CONTRACTOR CURRENT LIABILITY EXPOSURE	PROPOSED LEGISLATION EFFECT

GROSS NEGLIGENCE

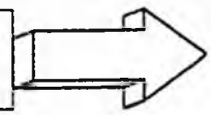
INTENTIONAL ACTS

SIMPLE NEGLIGENCE

PERSONAL INJURY

DEATH

—



REMOVES:

SIMPLE NEGLIGENCE

And clarifies that the spiller is STRICTLY LIABLE for damages that are the result of the limited immunity granted the response action contractor

STATES WITH ACTION SINCE 1990

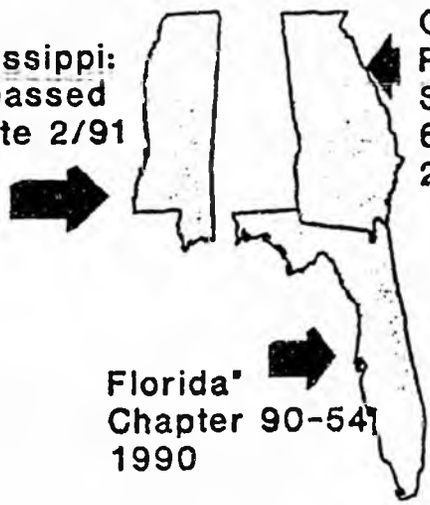
LIMITING THE SPILL RESPONDER FROM SIMPLE NEGLIGENCE LIABILITY

California:
Provides immunity for first 60, 90 days after the spill.
"Lempert-Keene Oil Spill Prevention & Response Act" of 1990 (Cal. Code 8670.56.6)

Delaware:
Senate Bill 6
Enacted 2/91

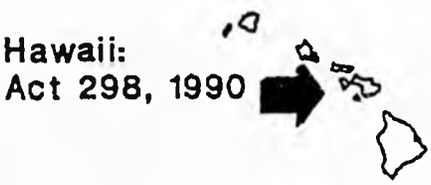
Virginia:
Sec.62.1-44.34:18 D.
1990

Mississippi:
Bill passed Senate 2/91

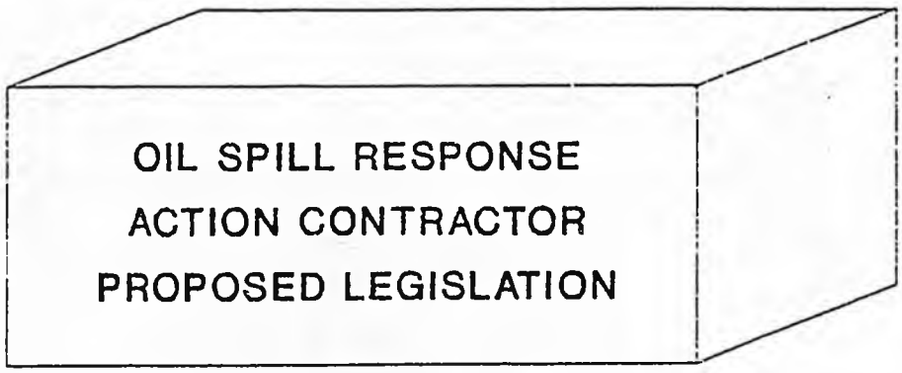


Georgia:
Passed Senate 61-0
2/91

Florida"
Chapter 90-54
1990

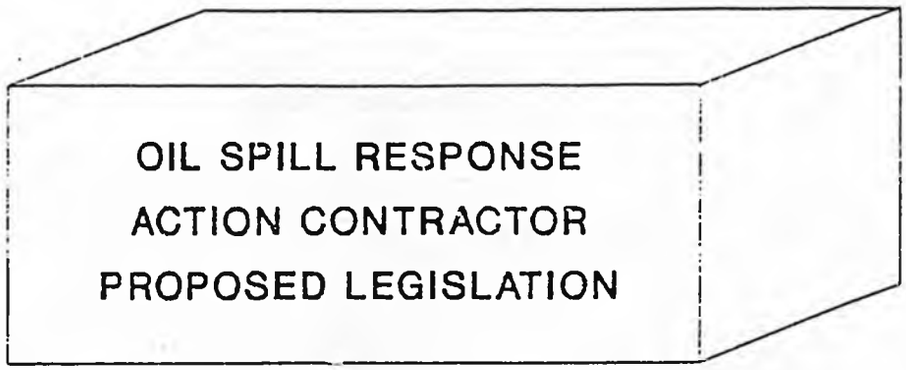


Hawaii:
Act 298, 1990



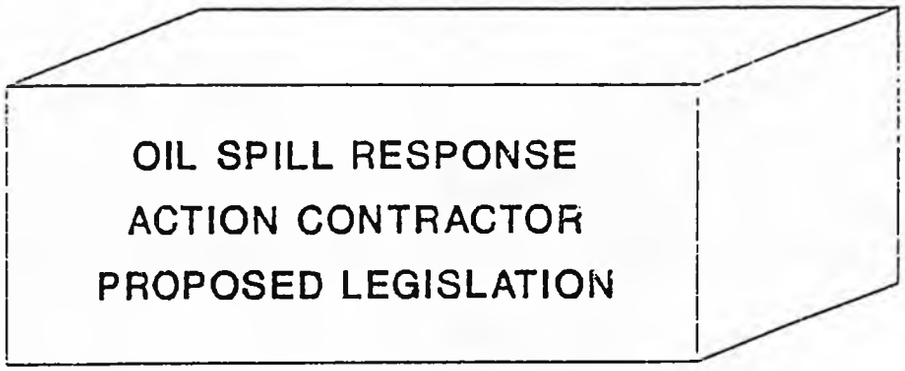
WHO DOES THE BILL APPLY TO?

The bill applies only to innocent cleanup contractors -- those who had no involvement in the spill itself.



DOES THE BILL SOMEHOW LESSEN THE SPILLER'S LIABILITY?

No! The bill makes it absolutely clear that the spiller's liability for damages includes any damages caused by the cleanup contractor's action for which liability is limited under the bill.



DOES THE BILL AFFECT A CONTINGENCY PLAN HOLDER'S RESPONSIBILITIES TO MAINTAIN CLEANUP EQUIPMENT?

No. Alaska law on spill contingency plans is unaffected. The plan holder remains liable for penalties and damages if it does not respond to a spill in accordance with the promises made in that plan.

SPILL RESPONSE CONTRACTOR
LIMITED LIABILITY PROPOSAL

RESPONSE ACTION CONTRACTOR CURRENT LIABILITY EXPOSURE	PROPOSED LEGISLATION EFFECT
GROSS NEGLIGENCE	REMOVES:
INTENTIONAL ACTS	SIMPLE NEGLIGENCE
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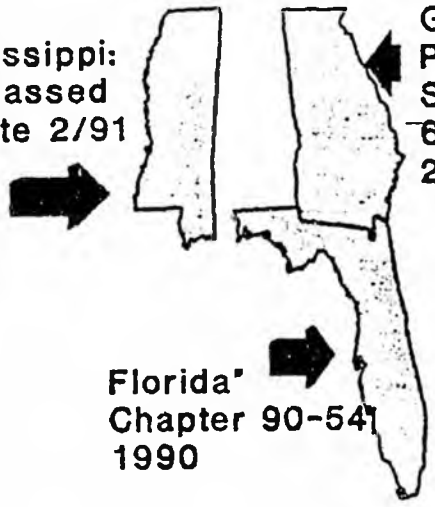

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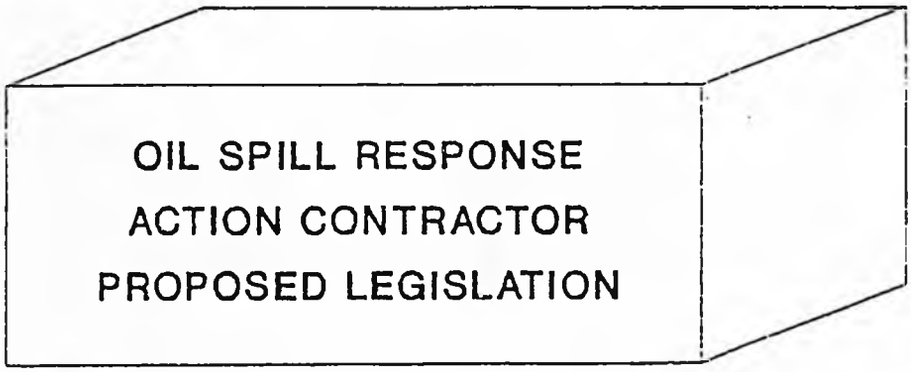
1990



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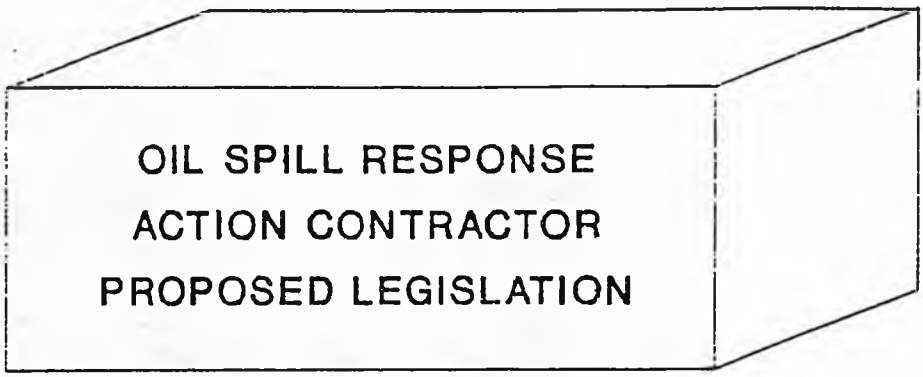

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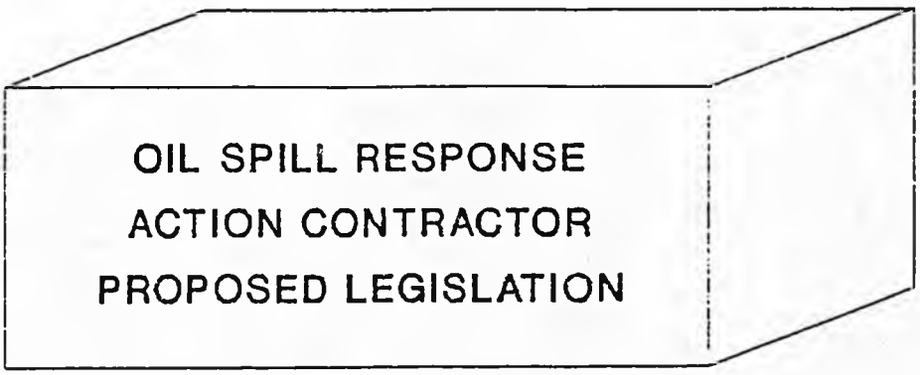

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