HB
540
File 2

Alyeska pipeline SERVICE COMPANY

240 MAIN STREET. SUITE 800. JUNEAU. ALASKA 99801. TELEPHONE (907) 586-3340. TELEX 090-25-127

March 9, 1992

The Honorable Bill Hudson
Chairman, House Special Committee on Oil and Gas
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

RE: CSHB 540 Providing for Limited Responder Immunity

Dear Chairman Hudson:

Alyeska Pipeline Service Company ("Alyeska"), strongly supports Good Samaritan immunity for oil spill response in Alaska. Without limited liability, financial risks and liability exposures will deter cleanup contractors and others from prompt, aggressive action when spills occur.

As you know, the federal Oil Pollution Act of 1990 ("OPA '90"), and Alaska's HB 196 last session adopted responder immunity laws to encourage immediate and effective oil spill response action. However, without legislative action this session, HB 196's provision for limited immunity against certain claims under state law will "sunset" in July. To help insure that effective and substantial resources are readily available to contain and cleanup oil spills, the state's response action contractor immunity law should be improved and made permanent.

Although its scope is also limited, the response action immunity provision in OPA '90 [33 USC & 1321 (b) (11) (c) (4)] is the best model. To date, the Virgin Islands and 18 of 24 coastal states (75%) have adopted substantially similar laws.

OPA '90 limits liability under federal law for response action if it is consistent with the National Contingency Plan or directions of federal officials. Responders are still liable for personal injuries and wrongful deaths, or if they are grossly negligent or engage in willful misconduct. Importantly, the responsible vessel owner or operator is liable for any removal costs or damages that response contractors are relieved of. We believe that the federal law draws the right balance between encouraging prompt, aggressive action by <u>all</u> potential response contractors, and

providing for recovery of property damages from the spiller if a response contractor has negligently caused them.

The United States Coast Guard has best described the important contribution limited immunity for response contractors made to the nation's comprehensive scheme for oil spill response and recovery under OPA '90. All response contractors must be encouraged to take action when spills occur, and to stay involved until an oil spill response is completed.

We urge the Committee's consideration of this important proposal to supplement the state's oil spill response laws. Alyeska Pipeline Service Company supports the adoption of Good Samaritan immunity for oil spill response action contractors on a state level, as presently stated in CSHB 540.

Very truly yours,

ALYESKA PIPELINE SERVICE COMPANY

By: Paul M. Richards

Paul M. Richards
Manager, Government Relations

PMR:ph

Alyeska pipeline
SERVICE COMPANY

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278-1611, TELEX 090 25-127

March 6, 1992

The Honorable Bill Hudson
Chairman, House Special Committee on Oil and Gas
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

RE: **Prince William Sound Oil Spill Response Services**

Dear Chairman Hudson:

Alyeska Pipeline Service Company ("Alyeska") is an oil spill response action contractor for spills in Prince William Sound on behalf of companies that own, operate or charter tank vessels in the TAPS trade. We refer to those companies as "Contracting Vessels." The scope of services to be provided by Alyeska to those companies is described in Oil Spill Response Services Agreements between Alyeska and the Contracting Vessels. The Agreements incorporate the Prince William Sound Tanker Spill Prevention and Response Plan to describe Alyeska's response plans. Exhibit A of each Agreement lists the vessels covered by that Agreement.

Under these arrangements, for large spills, Alyeska is obligated to respond for up to 72 hours to spills in Prince William Sound, while the Contracting Vessel is mobilizing its resources to take over management of the spill response. The Plan and the Agreements describe how the management transition from Alyeska to the appropriate Contracting Vessel should occur. After the transition, Alyeska's resources, including the on-water-response equipment, will be available for use by the Contracting Vessel for as long as needed and until they can be replaced by other equipment. The Contracting Vessel is contractually obligated to replace Alyeska's core equipment as rapidly as possible so that normal terminal operations may resume as soon as the Coast Guard allows it.

If the Contracting Vessel fails to assume management of the spill response in the 72 hour period, Alyeska anticipates that the Coast Guard will federalize the response, directing and paying for the effort. Alyeska has recently reiterated its verbal understanding with the Valdez Captain of the Port that Alyeska will make its resources available to the Coast Guard under a federalized response. We have written to Admiral Ciancaglini asking for an opportunity to describe this arrangement in writing.

Please contact me if you would like any other information on these matters.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY

M. F. G. Williams
Vice President-Environment & Contingencies

MFGW/RIS/md

Alyeska pipeline SERVICE COMPANY

1835 SOUTH BRAGAW STREET ANCHORAGE, ALASKA 99512 TELEPHONE (907) 278-1611, TELEX 090 25 127

March 2, 1992 Letter No. 92-9411-G

David E. Ciancaglini
Rear Admiral
U.S. Coast Guard
P.O. Box 25517
Juneau, Alaska 99802

Re: Coast Guard Directed Oil Spill Responses
in Prince William Sound

Dear Admiral Ciancaglini:

Alyeska Pipeline Service Company ("Alyeska") is an oil spill response action contractor for spills from TAPS trade tankers in Prince William Sound. To provide this service, Alyeska has entered into Oil Spill Response Services Agreements with five companies that either own, charter or operate tank vessels that call at Valdez. Those companies, which we refer to as Contracting Vessels, are ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Chevron U.S.A., Inc., Exxon Shipping Company, and Tesoro Alaska Petroleum Company. Exhibit A of each Agreement lists the tank vessels covered by the Agreement.

In the Agreements, Alyeska promises to manage the initial response to an oil spill for as long as 72 hours following a spill, in accordance with the Prince William Sound Tanker Spill Prevention and Response Plan. The Contracting Vessels agree to assume management of the spill response within 72 hours after notification by Alyeska. Under this arrangement, Alyeska will continue to assist the Contracting Vessel's on water response until the Alyeska resources are not needed or can be replaced. For small spills, under 1,000 barrels, Alyeska may elect to complete the entire response on behalf of the contracting vessel.

We believe that each of these companies is prepared to respond to a spill from the vessels it utilizes in Prince William Sound. The Alaska Department of Environmental Conservation has arrived at the same conclusion and has approved the contingency plans for the tank vessels covered by these Agreements. Alyeska has held major response drills with ARCO, BP, Exxon Shipping and Chevron and plan a similar exercise with Tesoro. Moreover, the Agreements and the PWS Plan anticipate that if the Contracting Vessel or other acceptable representative of the responsible party does not assume management of the spill

response as required, Alyeska will ask the Coast Guard to federalize the response and assist in whatever way is appropriate, at the direction of the Federal On Scene Coordinator.

Based on discussions with Commander Ed Thompson, Captain of the Port in Valdez, there is an understanding between Alyeska and the Coast Guard that Alyeska will assist the Coast Guard if a spill response is federalized. We believe that it would useful to have a formal procedure in place to guide transition from Alyeska management of spill response to federal control in the event such transition becomes necessary. Preparation for this contingency might be enhanced if there is a contract or Memorandum of Understanding between Alyeska and the Coast Guard describing the Coast Guard's expectations of Alyeska and establishing a management and reimbursement procedure.

It is our understanding that the Oil Pollution Act of 1990 and the National Contingency Plan (NCP) provide the Coast Guard with the authority and mission to direct a spill response when the responsible party does not take proper removal action or is unknown and the spill poses a substantial threat to the public health or welfare. 33 U.S.C. 1321(c) and National Contingency Plan 300.300. Section 300 of the NCP and Subpart H also describe how the Coast Guard can use private resources to fulfill this responsibility.

I would like to meet with you to discuss these issues and if you agree, begin the process of developing a procedure and an agreement tailored to meet the unique circumstances found in Prince William Sound.

There are two other issues we should address. Alyeska will respond to a discovery of crude oil on the waters of Prince William Sound even if the origin is not known. Under those circumstances, if the spiller is not quickly identified, we believe the response should be federalized.

Concerned citizens have asked about Alyeska's role in responding to phantom spills of refined petroleum products in Prince William Sound. In the past, Alyeska has responded voluntarily to such spills at the request of the Coast Guard, without seeking compensation. We will continue to be available to voluntarily assist the Coast Guard under these circumstances, with no actual duty to respond. These limitations are necessary because our resources cannot be dedicated to any effort other than our primary responsibilities to the TAPS trade vessels. We would be willing to discuss Alyeska's role in assisting the Coast

Guard's response to phantom spills. In the case of potential spills from cruise ships, fishing support vessels or fuel barges, Alyeska should only have a voluntary support role to assist the primary plan of the spiller. The responsible parties and the Coast Guard should enter into binding contracts with other Response Action Contractors to provide response capability for these types of spills.

I will contact you soon to discuss these issues.

Very truly yours,

M.F.G Williams
Vice-President
Environment & Contingencies

cc: Representative Bill Hudson
Senator Sam Cotten

Alyeska pipeline SERVICE COMPANY

1835 SOUTH BRAGAW STREET. ANCHORAGE. ALASKA 99512. TELEPHONE (907) 278-1611. TELEX 090 25 127

February 20, 1992

ALYESKA PIPELINE SERVICE COMPANY
Prevention and Initial Response Services

- *Why are oil discharge prevention and contingency plans necessary?*

Under federal and state law, a vessel owner is responsible for the discharge of oil from its vessel. Crude oil tankers transiting Prince William Sound must have oil spill contingency plans, contract for various spill response resources, and post evidence of financial responsibility. Contingency plans allow the state to determine whether plan holders have access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil spills from tankers. The state also requires plan holders to demonstrate their ability to carry out contingency plans, including periodic training, exercises, and verification of ready access to equipment, supplies, and personnel. A tank vessel may not be operated within state waters without an approved contingency plan.

- *Who are the plan holders for crude oil tankers operating in Prince William Sound?*

As required by state law, tank vessel oil discharge prevention and contingency plans are held by tanker owners or operators. Alyeska operates the Trans Alaska Pipeline System on behalf of seven pipeline companies which own it. None of these own, operate, or charter tankers.

- *What are Alyeska's prevention and initial response services?*

Alyeska has developed an initial response plan (the Prince William Sound Tanker Spill Prevention and Response Plan or "Plan") which describes the services it offers to tanker vessels as an initial response contractor. The state has approved the Plan's incorporation into individual tanker contingency plans. Under the terms of the Plan and Oil Spill Response Services Agreements signed with tanker owners, operators, and charterers ("Contracting Vessels"), Alyeska provides response vessels, equipment, personnel, and training described in the Plan for as long as 72 hours following an oil spill. The initial response plan and the tanker contingency plans anticipate that, during the first 72 hours after a spill, the management of the response will transfer from Alyeska either to the appropriate Contracting Vessel or to the federal on-scene coordinator.

- *What resources has Alyeska developed to support these services?*

Alyeska has chartered escort response vessels, tugs, barges, and an oil spill recovery vessel. It has also purchased ocean and rapid deployment boom, seaskimmers, and related response equipment. In addition, Alyeska has developed area response centers, placed fishing vessels on contract to supplement response efforts, and prestaged equipment to protect hatcheries and other sensitive areas. Escort/response vessels are used for day-to-day escort of loaded tankers in Prince

William Sound as a prevention measure. Vessel crews are drilled in responding to large spills and in employing multi-vessel and multi-boom configurations. Storage capacity for recovered oil and water is unprecedented: five large barges, each ranging in true volume from 70,000 to 120,000 barrels, are part of the plan to receive collected oil and water. This capacity is also augmented by smaller barges. The selection of equipment has been balanced between using high-volume recovery equipment in the early stages of a spill, and to adjust response strategies and equipment as the oil becomes viscous and aged.

- *During the first 72 hours of an oil spill response, how will management of the response be transitioned from Alyeska to a Contracting Vessel?*

When Alyeska discovers or is advised that an oil spill from a covered vessel has occurred, it will provide the initial response, employing its response equipment and personnel. Alyeska will also notify the Contracting Vessel. Unless otherwise directed by the Contracting Vessel, or the U.S. Coast Guard, Alyeska may elect to manage and control the response to an oil spill of 1,000 barrels or less which can be contained and cleaned up by local Alyeska resources in accordance with the Plan. For larger spills, the company which has contracted for Alyeska's initial response services will assume management and control of the oil spill response either itself or through a third party approved by ADEC. The transfer of command and management of spill response operations from Alyeska must occur in a smooth and efficient manner satisfactory to the U.S. Coast Guard and ADEC. In addition, transition of spill response management could be from Alyeska to the U.S. Coast Guard in the event a spill response is federalized.

- *Following transition of the management of an oil spill response, will Alyeska resources exit the response?*

One of the requirements for transfer of command and management of spill response operations is agreement on present and future resources of people and equipment, including Alyeska resources. It is expected that Alyeska resources will remain fully engaged in a response following transition of management of spill response operations. As soon as reasonably practical, Alyeska's core equipment and personnel should be replaced in an orderly fashion with the Contracting Vessel's response organization and equipment so that Alyeska can resume normal operations at the Terminal, when tanker operations can be restored.

- *What will happen if a Contracting Vessel fails to assume management and control of an oil spill response within 72 hours?*

Under the terms of the response services agreement, Alyeska may tender management of the oil spill response directly to the U.S. Coast Guard, and acquire additional equipment and personnel, all at the Contracting Vessel's expense. When the spill management is federalized, Alyeska resources will be placed as directed by the U.S. Coast Guard.

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United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510–6025

February 3, 1992

The Honorable Bill Hudson
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Bill:

Thanks for the copy of your letter to Commandant Kime and your suggestion that the Coast Guard Auxiliary be expanded to include marine oil spill response. Certainly the work done by the commercial fishermen during the *Exxon Valdez* oil spill proved to be invaluable in preventing that disaster from reaching even greater heights.

I have contacted the Coast Guard to inquire as to their response to you on this concept. You may also be interested to know that I helped draft provisions that were included in the Oil Pollution Act of 1990 (OPA) to help address the concern that you are raising.

Under section 4202 of the OPA (33 U.S.C. 1321(j)) tank vessels will not be able to operate off the coast of the United States or call on U.S. ports after August 18, 1993, without having onboard a vessel response plan approved by the Coast Guard. In order to approve a vessel response plan, the Coast Guard must determine that the vessel operator has, or has enforceable contracts for, sufficient personnel and equipment to respond to the maximum extent practicable to the loss of the vessel's entire cargo in adverse weather conditions. In addition, the Coast Guard must ensure that the region has available to it sufficient personnel and equipment to effectively supplement the vessel owner's resources to in fact handle the loss of the vessel's entire cargo.

If you have any questions concerning the provisions of the OPA, please contact Earl Comstock of my staff at (202) 224-3004.

With best wishes,

Cordially,

TED STEVENS

UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

May 4, 1992

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's Marketing Association
Alaska Longline Fisherman's Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative Marketing Association
Area K Seiners Association

The Honorable Dave Donley
Chair, House Judiciary Committee
Post Office Box V
Juneau, Alaska 99811

RE: House Bill 540

Dear Representative Donley:

As you are aware, the United Fishermen of Alaska (UFA) represents commercial fishing groups from throughout the state of Alaska.

UFA asks that the Judiciary Committee incorporate the following four points into HB 540.

1. A liability standard of simple negligence for response action contractors.

2. Requirement that response action contractors listed in the State Contingency Plans must register with the Department of Environmental Conservation and agree in writing to be subject to the direction of the federal or state on-scene coordinator during implementation of the Contingency Plan under which the contractor is listed.

3. Registered response action contractors must also agree in writing to respond under the direction of and reimbursement by the federal or state on-scene coordinator to spills in which the responsible party is unknown or insolvent.

4. Alyeska must have a statutory duty to respond to TAPS tanker spills within the state of Alaska including state waters as clarified by Congress in the Oil Pollution Act of 1990.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Greg Seider

Greg Seider
Executive Director

MSRC
Marine Spill Response Corporation

John D. Costello
President

July 26, 1991

Mr. John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box O
Juneau, AK 99811-1800

Dear Commissioner Sandor:

Thank you for your letter of July 2, 1991. As you know and reference in your correspondence, I wrote to your predecessor in March of 1990 requesting a meeting with appropriate state officials to discuss what role, if any, our organization might have in Alaska. We welcome the opportunity to begin this direct dialog and I have asked our Vice President for Readiness and External Affairs, Mr. G. Stephen Duca, to make the necessary arrangements.

Your letter indicated that the impediment for MSRC establishing a presence in Alaska was the nature of the state's responder liability statutes. This is really only one of our concerns. Several events have occurred in the intervening time since our letter to you that directly bear on answering the question of what role is an appropriate one for MSRC in Alaska. Since our last correspondence we have been incorporated as MSRC with a charter and by-laws that specifies our response and cleanup activities. It states in part, that we are to establish programs to render a best effort response to contain and cleanup catastrophic oil spills in coastal zone or tidal waters of the U. S., in particular open sea spills estimated to be in excess of 25,000 barrels and protected water spills estimated to be in excess of 40,000 barrels. We are specifically precluded from responding to spills of less than 1200 barrels unless certain conditions are met. This limitation was inserted into our by-laws for several reasons, one of which was to insure that we do not compete with the existing oil spill response and cleanup infrastructure. The existing infrastructure is generally recognized as having the capability to respond to the vast majority of the nations spills; i.e., small spills under 1200 barrels. In addition, you may recall that PIRO (now MSRC) was created to specifically fill a national response/cleanup capability void at the high end of the spill spectrum; i.e., the catastrophic spill.

In the aftermath of the Valdez spill and due in large part to the leadership of the Legislature and other state officials, Alyeska spill response capabilities have significantly increased in size and scope. My understanding is that current Alyeska capability is probably

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equal or greater to the size of a planned MSRC regional response center. A similar response and cleanup improvement process is underway in Cook Inlet and, presumably, will result in a capability there to meet the requirements of OPA-90; i.e., the capability to respond to a "worst case discharge". It is our understanding that between the resources of Prince William Sound and Cook Inlet well over 95% of the persistent oil transported in Alaska's marine environment will be covered. In the light of this considerable capability the question must be asked "Is there really any role or indeed need for MSRC in Alaska?".

As a responder, we have carefully followed the development of Alaska's comprehensive oil spill legislation. We fully support state legislation that enhances oil spill response and clean up capability, however you should know that here are certain portions of your existing statutes that we feel could be improved. For example, requiring a capability to remove 300,000 barrels of oil in 72 hours is an unrealistic planning standard given today's technology and the average weather conditions responders must face in your state. Although the statute attempts to provide for technical relief from this standard, we believe that a very false expectation of capability has been created. Moreover, such a standard invites litigation -- a chief element in discouraging prompt responder action.

We are of course, vitally concerned with state responder immunity legislation. We were happy to see that HB 196 recognized this as a critical element in promoting an effective oil spill response system. We note however, that it falls significantly short of the national standard of immunity provided for responders in OPA-90. Some of the major concerns we have with this law include:

o **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place. Moreover, there is less likelihood for prompt responder action in cases where there is only the threat of a spill.

o **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

o **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a quandary if conflicting orders are received from the state and federal governments.

o **Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans.** Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are

sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

o Damages to Property not Caused by Oil. Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling affect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

These are some of the issues we feel need improvement in the current statute. We believe, and parenthetically so do the legislatures of 17 other states that have enacted the federal standard over the past 18 months, that the provisions of Section 4202 of OPA-90 are sound public policy. It balances the issues of how to provide incentives for bold and decisive action with assuring that appropriate damages are allocated to the appropriate parties. The gross negligence willful misconduct standard of responder conduct is appropriate for emergency operations. Responder actions that cause personal injury and wrong death are not specially protected. Only acts that are consistent with the NCP or the directions of appropriate federal and state officials are protected. Enacting a statute that provides an immunity at least as protective as the federal standard would eliminate a major disincentive for responders in Alaska. Since the responder immunity law is subject to review including a report to the Legislature, MSRC would welcome the opportunity to work closely with you. Our role in Alaska notwithstanding, we want to ensure that your responder immunity legislation provides reasonable protection for responders. By doing so it will simultaneously facilitate a swift and effective response to help mitigate harm to your environment.

The foregoing provides you the major issues we see in Alaska in advance of our meeting so that you can have some insight into our perspective. We look forward to working up an agenda and meeting with you in the very near future.

Sincerely,

John D. Costello
President

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Research Project: Response Action Contractor Activity in Alaska

Pg. 2 Statement: "The report concludes that the independent operators are the class of responders most suitable for liability limits."

Rebuttal: It is not clear why independent operators are "most suitable"? For that purpose, OPA-90 does not differentiate between responders -- all responders are covered.

Pg. 2 Statement: "The report asks whether it is appropriate for a response organization created by those with a duty to respond, (i.e., oil terminal and tanker owners) to be afforded that same degree of immunity."

Rebuttal: We believe that different degrees of immunity for different categories of responders would be counter productive. Such action misses the fundamental reason for providing the limited immunity for responders: To promote the most bold and aggressive response for the protection of the environment. OPA-90 requires that a responsible party cite private spill response resources in their contingency plans to respond to a worst case discharge in adverse weather conditions. Industry and other business interests have responded by upgrading existing spill response organizations. All responders (co-ops, for-profit and not-for profit contractors, fisherman, volunteers) work for the spiller during a spill. One type of responder should not be afforded certain privileges that others are denied. The spiller is still responsible for all removal costs and damages regardless of the actions of a fisherman, their own response organization, etc. unless of course the conditions for immunity are not present.

Pg. 2 Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages bolder response rather than a potential delay while lawyers of responders attempt to determine who may be liable for a spill and the risks to be assessed by responders under the current conditions and for every action

during a response and cleanup. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is part of the approval process. state and federal coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to $25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Research Project: Risk of litigation and liability exposure for response action contractors:

Pg. 2 Statement: "Research indicated that there were no cases in the U.S. where response action contractors were sued or held liable for damages from an oil spill by virtue of their response activities."

Rebuttal: While true, the statement refers to pre-Valdez conditions. Valdez created an entirely new arena for litigation due to the adoption of OPA-90. Liability on removal costs and damages now associated with a spill the size of the Valdez can be in the billions of dollars. It should be noted that the Report Summary stated that the Alaska Department of Environmental Conservation was aware that responders are concerned about this potential liability. New categories of damages are created; i.e., natural resource damage, loss of subsistence use of natural resources, real or personal property damage, net loss of tax and other revenues, loss of profits or earning capability and costs of additional public services provided during or after removal actions. It is the chilling affect of potential liability of this magnitude that responders seek protection from.

Research Project: Contractual relationships among response action contractors, contingency plan holders, and the state:

Pg. 3 Statement: "The result is that private parties may be unable to recover damages for harmscaused by response action contractors if there is no other financially solvent responsible party."

Rebuttal: This statement is not factually correct. Private and public parties are fully protected because there is always a source of funds! If a response action contractor responds to a spill or threat of a spill, all damages and removal costs

associated with that spill are the responsibility of the spiller under OPA-90. A responsible party also is liable for any removal costs and damages that another person (a responder) is relieved of. Responders are fully liable in cases of personal injury or wrongful death. To insure a source of funds, the spiller must provide the U.S. Coast Guard with a Certificate of Financial Responsibility before transporting petroleum/petroleum products in U.S. waters and in the case of a spill where the responsible party cannot be determined or his liability ceiling is reached, the U.S. Coast Guard has a $1 billion per incident fund available from a tax on the transporters oil that pays removal costs and damages associated with the spill. There is universal agreement that OPA-90 reasonably protects injured parties by insuring the availability of funds first from the responsible party, then from the Oil Spill Liability Trust Fund.

Pg. 3 Statement: "Response action contractors and contingency plan holders also allocate liability for damages between each other through private contractual relationships."

Rebuttal: The research project well documents the complexity of these relationships. It is a lawyer's playground and because it is difficult for responders to understand the risks associated with sole and joint actions, and disagreements can only be resolved by litigation responders will not act with the boldness and decisiveness needed to quickly and effectively remove the oil out of the marine environment. On the other hand OPA-90's provisions encourage response by having all acts for which a responder is liable transferred back to the responsible party. This provides a twofold benefit: (1) There is no incentive for a responsible party to attempt to lay liability on responders because such liability will be assumed by him and (2) responders freed from the chilling affect of a simple negligence standard, can act boldly to promote the most effective response.

Pg. 3 Statement: "This means that the state has no way to force a response action contractor to comply with its contractual obligations. The report concludes that the state should take some action to ensure state control over response action contractors to avoid the risk that the response action contractor designated in a contingency plan could fail to perform."

Rebuttal: The state (and the federal government) have a variety of controls over response action contractors. OPA-90 requires that a response action contractor ". . . act in accordance with the National Contingency Plan or at the direction of the Federal On-Scene Coordinator . . ." to be immune from removal costs or damages associated with rendering care, assistance or advice, etc. This is a strong incentive for responders to act with due care. The state is a party to drafting the requirements for response plans in the Local Area Planning Process and thus a party to the process of defining the response capabilities responsible parties must cite in response plans. OPA-90 requires

the Coast Guard to conduct periodic inspections of response equipment. OPA-90 requires proof of responder capability by holding unannounced drills. Also see penalty provisions previously mentioned for failure of a responsible party to comply with a removal order.

Pg. 3 Statement: "The report also concludes that because the legal standard for negligence includes full consideration of the emergency atmosphere in which response action contractors operate, response action contractors are protected from the consequences of crisis decision making and do not face an undue burden by being held to a standard of reasonable care under the circumstances."

Rebuttal: This issue of an emergency atmosphere will be determined as a matter of fact in court. Responders explicitly fear this potential litigation in that it provides an opportunity for the spiller to attempt to shift liability to the responder. This fear would have a chilling affect on response. The risks associated with good faith errors of the responder should fall on the spiller and not the responder reacting in an emergency situation. OPA-90 shifts the risk (for simple negligent acts) to the spiller, where it belongs.

Pg. 4 Statement: "On the other hand, the only way to ensure that injured parties will be compensated is to require that response action contractors exercise due care or face liability."

Rebuttal: <u>The statement is factually incorrect</u>. A punitive atmosphere for those responding under un-controlled circumstances; i.e., rain, wind, uncertain information defeats the purpose of initiating and sustaining a bold response. OPA-90 makes the responsible party liable for all removal costs and damages unless the responder acts with gross negligence, willful misconduct or in cases of personal injury or wrongful death. Moreover, only "approved" performance; i.e., within the National Contingency Plan or Federal On-Scene Coordinator/state officials receive immunity. If a responder acts <u>outside</u> these parameters then he is liable for damages. A state provision using fear of liability for responders will be directly counter to the main purpose of the federal standard. It will provide an opportunity for the responsible party to shift liability to responders. Moreover, OPA-90 provides the means to insure that injured parties will be promptly compensated. In a worst case scenario where the spiller is not identified, or the responsible party reaches his liability limit the Oil Spill Liability Trust Fund will pay removal costs and damages up to $1 billion per incident.

<u>Research Project: The relationship between a response action contractor and a contingency plan holder under the Oil Pollution Act of 1990:</u>

Pg. 7 Statement: "The federal government will require a contingency plan holder to demonstrate that it has a contract with a response action contractor, but it is as yet unclear

what the precise requirements will be."

Rebuttal: This is correct, but the new OPA-90 planning standard for response plans is a very high one (See Section 4202 National Response System). Response plans must demonstrate, in detail, how a vessel owner/operator using private resources alone, would cleanup a worst case discharge (loss of all cargo) in adverse weather conditions to the maximum extent practicable. Initial indications are that federal rules will require a substantial response capability to meet Congressional intent.

Pg. 7 Statement: "Currently, the Oil Pollution Act does not grant the federal government any direct authority over response action contractor activities; the government's only leverage is to give directives to the contingency plan holder who, in turn, presumably would direct the response action contractor to implement the federal order."

Rebuttal: This is factually incorrect and misleading. The Coast Guard approves (with state input into the process) response plans that are consistent with the National Contingency Plan and Area Contingency Plans for all vessels/facilities and those response plans describe the actions to be followed for a worst case spill. The capabilities of responders must be consistent with the response plan and the area plan. OPA-90 requires the U.S. Coast Guard to conduct unannounced drills, and an inventory inspection of response assets (OPA-90 §4202) as part of the means to insure that the performance of responders will be as stated in response plans. In addition, if a response is not taking place to the satisfaction of the U.S. Coast Guard, the federal government can take over full control at any time.

Pg. 8 Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A $1 billion per incident Oil Spill Liability Trust Fund has been established for occasions when a spillers liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure that what is submitted can be executed.

Research Project: Insurance coverage availability:

Pg. 8 Statement: "Costs are based upon the following factors: (1) revenues and/or payroll size; (2) historical loss experience; (3) contractual indemnities and their value; (4) statutory immunities; and (5) the general state of the insurance market."

Rebuttal: Item (2) will reflect all pre-Valdez experience. OPA-90 substantially increased liability limits and importantly, the categories of items for which damages can be paid. This item represents a new and very large potential exposure for responders. Therefore, insurance costs considering this formula are likely to be understated.

Research Project: Response action contractor provision in the Oil Pollution Act of 1990:

Pg. 9 Statement: "The conference committee explained that it wanted to avoid possible deterrence of prompt spill response because of liability fears."

Rebuttal: A major purpose of the liability standard of OPA-90 is to provide the fastest and most complete cleanup of the environment. One way it accomplishes this is by returning liability where it belongs . . . to the spiller. Moreover, there was considerable debate and further discussion on the issue inside the executive branch. For the provision to remain in the bill and for the bill to be unanimously passed by both houses of Congress, it had to receive the concurrence of the U.S. Coast Guard, Environmental Protection Agency, Department of Justice and Office of Management and Budget.

Citizens' Oversight Council
on Oil and Other Hazardous Substances
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March 9, 1992

Representative Kay Brown
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Brown:

The Citizens' Oversight Council has received your letter of March 4, 1992. Specifically, you asked the Council whether it had considered the issue of potential state liability if the state conducts a certification program for oil spill response action contractors, and whether the state could protect itself from liability.

In general, the potential for state liability through certifying oil spill response action contractors is speculative and not substantiated in court decisions. However, if the legislature wants to further minimize that speculative risk, it could specifically limit the state's potential liability in any legislation the legislature chooses to enact on this subject.

State liability is established by AS 9.50.250 and as that provision has been interpreted by courts. The general rule is that the state is not liable in tort when a state employee exercises due care in the execution of a statute or regulation, or performs or fails to perform a discretionary act.

This rule is known as "sovereign immunity". This rule is intended to prevent another branch of government (i.e., the judicial) from interfering with the policy decisions of the executive branch. This rule protects the discretionary decisionmaking of an agency. However, once a decision is made, that decision must be implemented using due care. In the context of emergency response, this means that the agency's decision whether and how to respond may be protected from tort liability, but once the decision to respond is made, it must be carried out with reasonable care or liability could

result. This distinction is why it is not entirely accurate, as continuously represented during the debate on this topic, that all other types of emergency responders are automatically fully immunized.

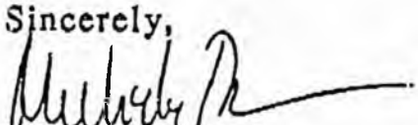
In any case, there does not appear to be precedent in state court caselaw finding the state liable for its actions in certifying, licensing, approving, or otherwise regulating conduct by professionals. Considering the considerable number of professions and individuals that the state licenses and certifies, that fact is significant in itself. However, there have been lawsuits brought on the the theory that if the state licenses someone, the state is somehow "in the loop" for liability if the licensee causes compensable damage.

The state does not guarantee performance or even a certain level of performance by virtue of the state merely certifying or licensing someone. In order to find state liability, the claimant would have to prove that the state employee acted negligently in licensing or certifying the person causing the harm. In the case of oil spill response action contractors, this would mean that the state employee certifying the response action contractor did not use reasonable care in determining that the response action contractor met the standards for certification. The state should not face exposure for wrongful actions or the failure to perform by a response action contractor.

In summary, the potential for state liability is not significant. However, lawsuits could be brought. Therefore, the legislature could provide for additional protection against state liability by specifically including language that the state or state employee is not liable for acts or omissions related to the review of oil spill contingency plans and the certification of oil spill response action contractors.

The Council hopes that this information is helpful to you. Please contact us if we can be of any further assistance.

Sincerely,



Michele Brown
Executive Director

UCIDA
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April 24, 1992

Honorable Walter J. Hickel
Governor, State of Alaska
State Capitol
Juneau, Alaska 99801

Subject: CS for [redacted]

Dear Governor Hickel,

UCIDA would like to express our appreciation for the policy decision recently made by your administration which holds Alyeska responsible to respond to TAPS oil spills.

This policy is clearly in the public's interest and holds the pipeline operators to their past commitments to use the best available technology to contain and clean up TAPS oil spills in exchange for their right to profit from the sale of TAPS oil.

Alaska must continue to insist on a sure and rapid response. Your support in this matter is most appreciated.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

cc: Attorney General Cole
House and Senate Resources Committees
House and Senate Judiciary Committees
Sen. Fischer
Sen. Kertulla
Rep. Navarre
Rep. Phillips
Rep. Zawacki
Oil Reform Alliance
Citizens Oversight Council
KPFA
CIRCAC
UFA
CDFU

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March 26, 1992 Sent by telefax - hard copy to follow

Rep. Cliff Davidson
Chair, House Resources Committee

Subject: CS FOR SPONSOR SUBSTITUTE FOR HB 540 (O & G)

Dear Rep. Davidson,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

UCIDA opposed HB 196 which was passed with a one year sunset provision last year. CS for HB 540 is even a lesser standard of liability than HB 196 and, arguably, even a lesser standard than that found in Federal law. Both HB 196 and CS for HB 540 represent poor public policy. I've enclosed our comments from last year on HB 196. These comments are fully applicable to CS for HB 540.

HB 196 should be allowed to sunset and we should return to the standard of "negligence".

As an active member of the Oil Reform Alliance (ORA), UCIDA is in agreement with the stand ORA has taken on this issue. It could be inferred from some of our comments on HB 196 that UCIDA feels that Alyeska is a RAC. We feel that studies undertaken by the Citizens Oversight Council, make it clear that Alyeska is required to respond to TAPS spills and that Alyeska is NOT a "voluntary" RAC. Furthermore, UCIDA feels that if Alyeska continues to claim to be a RAC and that, therefore, it is not required to respond to all TAPS spills, then the legislature must protect the public interest and require the Pipeline operators to create a response organization that will respond.

UCIDA represents fishermen who were severely impacted by two TAPS spills in three years - Glacier Bay (1987) and Exxon Valdez (1989).The issues of responce and liability, therefore, are of vital interest to our members.

As a final comment, I would like to note that the Cook Inlet Regional

Citizens Advisory Council created by OPA 90 is also opposed to this legislation.

I would appreciate it if you would distribute a copy of this letter and our comments on HB 196 to the members of your committee.

Sincerely,

Theo Matthews
Administrative Assistant

cc: House Sponsors, CS FOR HB 540
Senate Special Committee on Oil and Gas
Citizens Oversight Council
CIRCAC
Oil Reform Allianace
UFA

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November 14, 1991

Mr. Larry Smith, Chair
CIRCAC PROPS Committee
Kenai, Alaska 99611

Dear Mr. Smith,

I have reviewed the 10/28/91 DRAFT Report prepared for your committee by Mr. Mertz.

This report and others currently underway are a result of the passage last legislative session of HB 196 which effectively reduced the standard of liability from simple to gross negligence for RACs. UCIDA continues to oppose this reduced standard as bad public policy. Rather than detail our concerns in this letter, I have attached our comments to the 1990-91 Legislature for your Committee's information.

As noted in our letter of April 10, 1991, to Rep. Davidson, UCIDA feels that the passage of HB 196 relates not to good public policy but to what we feel was a temporarily successful attempt by Alyeska to blackmail Tesoro into spearheading a drive to reduce Alyeska's liability exposure as a RAC. Further, UCIDA recognizes the economic importance of Tesoro to the residents of Kenai Peninsula.

Two major issues drove and continue to drive the Alyeska/Tesoro issue:

1) The "direct action" bond originally demanded, i.e. the type of bond required, and the dollar amount of the bond required by Alyeska, and

2) Tesoro's natural desire to continue operations and the hope that passage of HB 196 would lead Alyeska to change its demands.

In the Specific Proposal Analysis of the RFP for the Mertz study:

- #1(b) addresses bonding requirements.

- #4 asks for an analysis of the effect of granting limited or complete immunity to RAC's.

It is with respect ot these two requests that I would like to address the majority of my comments.

Bonding Requirements; Type and Amount

Type

The **Draft** discusses the amount of "financial responsibility" requirements in several places but does not mention the various "forms or types" these requirements may take. Given the importance of this issue to Tesoro and Kenai Peninsula residents, I recommend that Mr. Mertz:

1) Analyze the difference between a "direct action bond" and "a combination of general business liability coverage" found in the Draft on p. 19.

2) Analyze whether or not a "direct action" demand by an RAC is even "reasonable" in light of the fact that all claims must be adjudicated and no insurance monies will be distributed to anyone prior to some final judgement.

3) Investigate the maximum amount of "direct action" coverage that is currently available.

4) Analyze what, if any, options are available for the State to require in statute that RAC's accept "a combination of general business liability coverage, ..." as noted in the Draft on p. 19.

5) Analzye whether or not a demand for a "direct action" bond in amounts that a RAC is aware are not available would constitute a criminal or civil offense - e.g. anti-trust or similiar statutes.

Amount

As noted above, we feel that Tesoro clearly hoped that the passage of HB 196 would lead to Alyeska changing both the type - direct action- and amount - $1 billion - of financial responsibility required of Tesoro. Apparently, Alyeska did drop the direct action requirement but, as noted by Mr. Mertz on p. 19, **Alyeska raised rather than lowered its financial responsibility requirements for Tesoro.**

In his Summary of Insurance Requirements on p. 19, Mr. Mertz merely notes that **"the amount of financial responsibility required by Alyeska, however, appears unique."** Mr. Mertz noted on p. 19 that "this requirement has caused a considerable amount of difficulty... and was the prime motivating factor behind passage of the bill which became AS 46.03.825, limiting RAC liability". Therefore, I feel that the public - whose interests CIRCAC should represent - should expect an in depth analysis of this requirement.

As noted in our correspondence with the legislature, given the current state of affairs, UCIDA can see nothing to theoretically prevent Alyeska next year from raising its financial responsibility requirements for Tesoro to $10

billion unless the legislature passes a bill exempting Alyeska from liability even in cases of gross negligence.

I would suggest the following be investigated by Mr. Mertz:

1) Can the state legally limit the demands place by one sector of private industry on another sector of private industry. If so, for what reasons?

2) Can the State require that an RAC adjust its financial responsibility requirements based on the capacity of a tanker - e.g. If Exxon must provide $1 billion for a super-tanker could the maximum demand for "1/2 a super-tanker" be limited to $500 million?

3) How have other states addressed this issue?

4) Are anti-trust or other civil offenses issues potenially at play?

The Draft by Mr. Mertz, covers a wide range of issues very well - but in broad strokes. UCIDA hopes there is time and adequate funding available for Mr. Mertz to provide a more in depth analysis of the two bonding issues we have raised. Further, UCIDA is aware of Mr. Mertz's past work in this field as Assistant Attorney General and would therefore hope that recommendations accompany his analysis.

Effects of Granting Limited Immunity to RACs

As noted in my introduction, UCIDA feels that the current statute AS 46.03.825 was not necessary and represents a bad public policy that resulted from the demands of one sector of private industry on another sector of private industry. The ultimate irony of the situation is that this further limitation of RAC liability did not even really produce the desired results for Tesoro.

Section #4 of the Specific Proposal Analysis ask "What is or would be the effect of granting limited or complete immunity to response action contractors?" Throughout the Draft Mr. Mertz makes references to concerns the public should note. I would reccomend:

1) A more detailed analysis of the changes made by the legislature in 1989 and 1990 and the resulting status of RAC liability prior to the passage of AS 46.03.825 in 1991.

2) The "upside" benefits from the passage of AS 46.03.825 from the perspective of a RAC is clear in the DRAFT. Mr. Mertz lists some questions which clearly require answers on p. 11 and also discusses the concerns the public should have **IN THE ABSENCE OF A RESPONSIBLE PARTY**, p.22-23. I would suggest the FINAL MANUSCRIPT should include a section listing all

of the identified "downside effects" for the public that have resulted from the passage of AS 46.03.825 as it is currently worded and any recommendations that Mr. Mertz has to offer. In this regard, I hope our comments to the legislature in 1991 may be of some service.

UCIDA appreciates the opportunity to comment. The DRAF represents a good initial effort effort and I hope my comments can be of some use to your Committee.

Sincerely,

Theo Matthews
Administrative Assistant

cjd
cc: Senator Lloyd Jones, Chair, Senate Resource Committee
Senator Paul Fischer
Rep. Cliff Davidson, Chair, House Resource Committee
Rep. Mike Navarre, Co-chair, House Finance Committee
Rep. Gail Phillips
Rep. Jim Zawacki
Kenai Borough Assembly
Gene Burden, Tesoro
Oil Reform Alliance
UFA

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April 23, 1991

Representative Dave Donley
House Judiciary Chair

Dear Rep. Donley,

United Cook Inlet Drift Association (UCIDA) represents some 400 of the 585 Cook Inlet salmon drift permit holders. UCIDA would like to express our continued opposition to CS for House Bill No. 196 which was reported out of House Resources.

You have already received two presentations we made to House Resources on April 10 and April 16, 1991. Rather than repeat our positions we will try and breifly summarize:

1) **Current liability statutes for RACs in fact do comprise Good Samaritan concepts.** In 1989 and again in 1990, the legislature limited RAC liability. RACs are currently liable only for their own acts or omissions which cause damages if those acts or omissions "were not in accordance with generally accepted professional standards and practices at the time their response action services were performed. "(AS 46.03.823(a)).

2) **Current liability statutes constitute good public policy in balancing the public's interests and the legitimate concern of RACs.** Under current legislation, damaged parties are not covered under all possible scenarios. This fact is outweighed, in part, by the public good that is served by a prompt response by RACs doing their best - i.e. "performing in accordance with generally accepted professional standards ... etc."

3) **CS for HB 196 does not address the issue that is driving this legislation - bonding requirements by Alyeska - the "Seven Sisters" (B.P., Exxon, ARCO, Unocal, Mobil, Amarada, Hess, & Phillips) - that Tesoro cannot meet.** No one should be under any illusion that this is anything other than strong arm tactics by Alyeska aimed at lowering its own liability standards.

Recently, RACs other than Alyeska have jumped on the band wagon. It is only natural for any private enterprise to seek to insulate itself as much as possible from any liability for its actions. We would remind the committee that there has never been a spill in Alaska for which a RAC could not be found. Indeed, RACs fell all over themselves to get a piece of the action after

the Exxon Valdez spill. Finally, in this regard, to the best of our knowledge the only RAC alleged to have acted negligently during the Exxon Valdez was Alyeska.

Alyeska has made statements referring to the "simple negligence" standard and how if it responds according to its plan with the state, but loses some oil from a boom, it could be held liable (Clarion 4/18/91, enclosed). This leads us to conclude that Alyeska either has not read AS 46.03.823(a) or that they are not prepared to fully inform the public about current state statutes.

It is obvious who stands to benefit from the lowering of RAC liability standards. The other side of the coin is that the cost of damages will shift to someone else.

Who may suffer? Since "strict liability" for an RAC's own acts or omissions has been already removed by current legislation for most instances, injured parties currently must show negligence - i.e. currently litigation is necessary to show that the RAC did not act "in accordance with generally accepted professional standards ...etc."

CS for HB 196 purports to place liability for the acts or omissions of a RAC for which the RAC is not liable under AS 46.03.823 (gross negligence) on the party strictly liable for the spill as defined in AS 46.03.823(a).

UCIDA has some doubt about the responsible party being forced to assume liability for damages caused by a RAC not directly under its control, let alone the actions of 2nd & 3rd party RACs or volunteers. Indeed, it is somewhat surprising that attorneys for those owners who might be held strictly liable for the release are not very actively opposing this shift of liability on to their clients.

However, if we concede that it may be possible to shift this legal liability to "responsible parties strictly liable" for the release, UCIDA contends that for negligent acts by RACs, victims will often have no practicle or legal resource for compensation for the following reasons:

A) The responsible party may be unknown.
B) The responsible party may have few if any assets.
C) Under AS 46.03.758 3(h), the responsible party is not liable for civil penalties if the discharge occurred solely as a result of:
   1) An act of God,
   2) An act of a third party with whom the person charged has not been made jointly & severally liable,
   3) A negligent or intentional act of the state of Alaska or the United States, or
   4) An act of war

Finally, UCIDA understands the provisions found in the Federal Oil

Pollution Act of 1990 (Sec. 4201) are being cited as precedents for the present legislation. Federal legislation of this type represents the lowest common denominator in terms of liability standards. Alaska and many of its fishing organizations, including UCIDA, fought long and hard to maintain the state's rights to craft legislation and set liability standards higher than the federal standards. The House Senate Conference Committee which drafted this legislation was not receptive to input from the public with repect to limiting industry liability.

In conclusion:

1) Tesoro has a legitimate concern with its bonding requirements, and UCIDA requests that to the extent possible this legislation be recrafted to address the bonding issue.

2) Legislation probably cannot be expected to resolve this dispute between members of the private sector.

3) Current liability standards represent good public policy and does not cover damages for all instances.

4) By using the gross negligence standard, the State will greatly increase the instances where damages from negligence cannot be recovered. Further, 2nd and 3rd party RACs subject only to a gross negligence standard pose a great risk to the public.

5) CS for HB 196 will add another layer of legal protection for RACS and reponsible parties and added expense for victims. Even if liablility can be legally shifted from RACs, victims will first have to go to court to attempt to show that the RAC was grossly negligent. Failing this, no responsible party would accept that liability.

UCIDA appreciates this opportunity to address your committee.

Sincerely,

Theo Matthews

Theo Matthews, Administrative Assistant

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

Pe arion

UCIDA
PO BOX
KENAI AK 9961

Vol. 21, Issue 142 THURSDAY, APRIL 18, 1991 Kenai, Alaska 50 Cents

Kenai's Merit Inn scheduled to reopen
Page 8

Alyeska blasted for billion-dollar bond

CATHY BROWN
Peninsula Clarion

Borough Mayor Don Gilman Wednesday ...ted Alyeska Pipeline Service Co. for ...t he 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 ...dez 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

See ALYESKA, back page

Alyeska: Company says state's liability laws are to blame

Continued from page 1

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 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.

UCIDA

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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

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
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(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 actionalble. 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

COOK INLET
RCAC

"The mission of the Council is to ensure the safe operation of the oil terminals, tankers, and facilities in Cook Inlet so that environmental impacts associated with the oil industry are minimized."

March 20, 1992

The Honorable Cliff Davidson
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

The Cook Inlet Regional Citizens Advisory Council (Cook Inlet RCAC) is a non-profit corporation organized exclusively for charitable, scientific, literary or educational purposes, within the meaning of *Section 501 (C)(3)* of the *Internal Revenue Code of 1986* as amended, including without limitation the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of *Section 5002* of the *Oil Pollution Act of 1990.*

On March 14, 1992, the Board of Directors voted to endorse a statutory simple negligence standard for response action contractors and expressed support for the introduction of legislation which provides for limited statutory immunity for "vessels of opportunity" that are not provided with indemnification pursuant to a contractual agreement. It is the position of Cook Inlet RCAC that the State of Alaska should do all within its powers to protect the environment and natural resources of this state, including its people. The Board believes enactment of a statutory simple negligence standard will provide the state with the necessary protection and ensure rapid response to an oil spill.

In addition to taking action on this issue the Board also took action in expressing opposition to the enactment of sponsor substitute for House Bill 540 (SSHB 540). Since the Council meeting of March 13-14, 1992 further modifications have been made to this proposed legislation. Cook Inlet RCAC respectfully requests the Council be kept informed of hearings and provided copies of any new language or legislation which are introduced and/or acted upon prior to the end of the legislative session.

In considering these issues Cook Inlet RCAC also discussed HB 196 which was enacted during the 1991 legislative session. The Board of Directors voted in favor of allowing HB 196 to sunset in June 1992.

Cook Inlet Regional Citizens Advisory Council
11355 Frontage Rd. • Suite 228 • Kenai, Alaska 99611 • (907) 283-7222 • FAX (907) 283-6102

As mentioned, Cook Inlet RCAC would appreciate being kept informed on these issues. Should you have any questions regarding the Council's position please do not hesitate to contact me either through our office (283-7222) or home (235-8252).

Sincerely,

Ken Castner

Ken Castner
Cook Inlet RCAC
Board of Directors

cc: Cook Inlet RCAC Directors
Prince William Sound RCAC
Citizens Oversight Council on Oil
and Other Hazardous Substances

RCAC
Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 / FAX (907) 277-4523

March 6, 1992

Representative Kay Brown
P.O. Box V
Juneau, AK 99811

Dear Representative Brown;

While Mr. Hudson is correct that the United States Coast Guard is developing a certification system for response resources, it is my opinion that the State of Alaska would be wise to pursue a parallel course by making response action contractor certification a condition to the relief of liability immunity. If an industry is to be given an immunity to promote an increased response capability then that industry should be required to demonstrate that response capability does exist, is available, and is reasonably capable of mounting a credible performance in any future oil spills.

The following are answers to your questions.

1. What is the status of the federal RAC certification program?
Response action contractor certification is an issue being considered by the negotiated rulemaking committee for vessel response plan regulations. This is a supplement to the normal rulemaking process. While the Reg Neg committee may issue a recommendation for response action contractor certification, the final decision will not be made by the United States Coast Guard until the proposed rule undergoes a 45-day public review and a review by the Office of Management and Budget and the President's Council on Competitiveness. There are those that do not want response action contractor certification and they will have opportunity to be heard before the rule is published.

Has a decision definitely been made to proceed with a federal certification? No.

2. To what kind of RACs would a federal certification program apply? The envisioned program would apply to RACs desiring to be listed as a primary response resource in a vessel response plan.

Would the federal certification process being discussed fully address the concerns about competency and preparedness of RACs responding to oil and hazardous substance spills other than those by vessels? The proposed program would not apply to hazardous substance spills. The EPA has been charged with writing regulations for facility response plans, and MMS is charged with writing response plan regulations for offshore platforms. I understand both agencies are watching the USCG process closely, but they have not yet developed regulations.

3. Has the regulatory negotiating committee examined the possibility of complementary state and federal certification programs? Yes, it is part of the concept. The Reg Neg working group recognized the fact that states may want to have RAC certification programs for any number of reasons. There was participation from the states of Washington and California, which both have forms of RAC certification. We should strive for a program which is compatible with the proposed federal program.

4. In your view is the federal certification process that is under consideration by the committee fully responsive to Alaska's needs or do you feel that the state should develop a complementary certification program of its own? The federal program is designed to meet the needs of OPA 90. As you know the state has its own needs under the stronger statutes our legislature has passed. My personal advice is that you should require those RACs listed as responders in a state contingency plan to attest to the resources they offer, allow inspection of those resources, participate in drills necessary to assess the capability of the contractor, and submit that they are willing to work for the state under the same terms and conditions for which they are willing to offer themselves to contingency plan holders. I believe that it is time for the state to assure its citizens that the resources listed in contingency plans are actually available and can be employed rapidly by a trained crew. I think the state on-scene coordinator needs access to those resources when he or she finds themselves incident commander at a spill. I think the state deserves verification of the response capability they are trying a achieve by giving liability immunity.

Thank you for considering my views on this matter. If I can answer any question please call me at 277-7222.

Sincerely,

Tim Robertson by WB
Tim Robertson
Regional Citizens' Advisory Council

cc: Scott Sterling/PWS RCAC
Michele Brown/Citizens' Oversight Council

going discussions at the federal level concerning the question of RAC certification I would appreciate your comment on the following questions:

1. What is the status of the federal RAC certification program? Has a decision definitely been made to proceed with a federal certification program?

2. In Representative Hudson's letter he notes that the proposed federal certification process "will apply to all tank vessels" (emphasis added) defined under section 2101 of Title 46 USC, operating in navigable waters if the United States. To what kind of RACs would a federal certification program apply? Would the federal certification process being discussed fully address the concerns about competency and preparedness of RACs responding to oil or hazardous substance spills other than those by vessels (ie, a refinery or terminal spill not directly a result of vessel activities)?

3. Has the regulation negotiation committee examined the possibility of complementary state and federal certification programs?

4. It is my understanding that the regulation negotiation committee has been operating on the basis of consensus and that industry representatives make up a large majority of the committee. In your view is the federal certification process that is under consideration by the committee fully responsive to Alaska's needs or do you feel that the state should develop a complementary certification program of its own?

As you are probably aware, the House Oil and Gas Committee will be holding a hearing on House Bill 540 on Monday, March 9, at 3:00. This hearing will be teleconferenced. Any comment you could provide prior to that meeting would be of particular value.

Sincerely,

Representative Kay Brown

cc: Scott Sterling/PWS RCAC
Michelle Brown/Citizens' Oversight Council

RCAC
Regional Citizens' Advisory Council • 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 FAX (907) 277-4523

FAX COVER SHEET

DELIVER TO: Representative Bill Hudson

FROM: Tim Robertson

REGARDING: _____

DESCRIPTION

_____

_____

_____

DATE: 3/5/92 TIME: 11:00 # OF PAGES: 16
(including this cover sheet)

THESE ITEMS ARE BEING SENT:

_____ FOR YOUR IMMEDIATE ACTION, KEEP US ADVISED OF ACTION.
_____ FOR YOU TO PROCESS.
_____ FOR YOUR REVIEW AND APPROVAL
_____ FOR YOUR GENERAL INFORMATION
_____ FOR YOUR APPROVAL AND CORRECTION.
_____ FOR YOUR SIGNATURE.

REMARKS:

_____

_____

_____

DRAFT February 27, 1992

[Preamble Language]

Contractor Certification Program

a. Purpose and Scope

This regulation establishes a response contractor certification program. It has two major purposes.

First, many spill responders are expected to be named in multiple vessel and facility response plans, and the preparers of those plans need a common basis by which the responders will be measured and credited. Spill contractors' response services must be matched to the plan holder's requirements. Certification allows plan preparers to know in advance the value the plan reviewer will give for a particular contractor's capabilities. Plan preparers must assemble a sufficient number and mix of contractors to satisfy their response planning responsibilities. In addition, certification will allow contractors to know what credit their capabilities will be given, so they can better present or market their services. Contractor certification also will allow the contractor's capabilities to be evaluated and credited on a fair, consistent and efficient basis.

A second major purpose of certification is to verify that response resources do in fact exist and are available from that contractor. The plan holder has a responsibility to verify a contractor's capability and claims, because the plan holder is responsible for performance under the response plan. The public purpose of certification is to better assure that the increased response capability required by OPA to help protect the environment from the threat of oil spills does, in fact, come about.

Contractor certification does not in any way relieve the plan holder of the plan holder's responsibility to carefully evaluate and select competent contractors. Certification is not a generalized "seal of approval" or guarantee of performance. Contractor certification is not intended to establish professional standards or provide a judgment of the many important but unquantifiable factors that would be necessary to establish an overall evaluation of a contractor's competence and skill.

Certification is simply a process by which the President's designee (e.g., the Coast Guard) will verify the existence of certain "facts" -- i.e., management structure, personnel, and the inventory of response equipment, -- and, where possible, assign a particular "quantitative value" to that inventory for purposes of relating specific contractor's response services to a plan holder's particular spill size. Certification must be based whenever possible on objective and quantifiable measures. However, certain important subjective factors must be identified by the contractor in the contractor's application to provide a clearer understanding of a contractor's capabilities.

The proposed regulation reflects this intent in the definition of the term "certification". One key element of that definition is that certification is a process. Response contractors, to be cited in vessel response plans, must first file an application with the Coast Guard, identifying the service being offered, the type, quantity and location of equipment, number, training and qualifications of personnel, including corporate and individual spill response experience, management structure and certain other information about associated support. This information is factual in nature, and therefore subject to straightforward verification.

The certification definition also recognizes that certification is fundamentally the responsibility of the President under OPA-90. The President has delegated this responsibility to the Coast Guard. The Coast Guard may use other organizations to assist it in the certification process. However, the responsibility for certification remains a governmental one, because certification derives from the President's responsibility to review and approve vessel and facility response plans.

The definition of "certification" refers to the assignment of one or more "Response Values," where possible, for each of the contractor's designated response services. The translation of the type, location and quantity of equipment and personnel into a quantified capability for response is inherently a matter of judgment, particularly given the recognized limitations in spill response technology and variability in the types and conditions of any particular spill.

Each oil spill, particularly any large spill, is unique. The capability needed in a particular response will vary, involving dozens of factors, some of which cannot be accurately measured or predicted. For evaluation and quantification purposes, assumptions must be made regarding these factors. Many of these assumptions may not prove accurate or valid in any particular spill response. Many assumptions also are beyond the control of a particular responder, just as in the analogous case of response to a fire. Accordingly, this proposed regulation carefully avoids any intimation that various planning assumptions are or ever should be viewed as performance standards.

Although a contractor's capabilities must be related to a certain size spill, the assignment of individual Response Values is necessarily artificial and somewhat arbitrary. The term "Response Value" is used in this proposed rule to reflect this reality.

Although a contractor may wish to suggest a "Response Value" for each of a contractor's designated response services, the federal government retains the ultimate responsibility for the assignment of that factor.

b. Application for Certification

To obtain certification, a response contractor must first submit a certification application. The application must identify basic information about the contractor, as well as specific details regarding the contractor's available equipment, personnel, management structure and support. The type of information required, and the detail of that information, depends on the level and type of service that the contractor intends to offer. The application is intended to provided sufficient specific factual information to permit the application reviewer to assign one or more "Response Values" to each of the contractor's response services.

In addition to this quantifiable factual information, the response contractor also must provide descriptive information on certain important factors that bear on whether the contractor should be allowed to be cited in a spill response plan. For example, the application must list all notices of violation issued by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and the Coast Guard related to oil spill response operations for the last five years, and a description of the disposition of those notices. In addition, the contractor may, as supplemental information, submit information that describes the contractor's experience.

The contractor must attest that the required factual information is true and correct to the best of the contractor's information and belief as of the date of attestation. Because the application is made to a federal agency for purposes of obtaining a governmental approval, knowing false statements would be subject to enforcement action under federal law. The contractor also is obligated to notify the COTP of significant changes in response capability (see below).

As a supplement to these factual matters, the response contractor may apply for and propose one or more "Response Values" to be assigned to the contractor's capabilities, by designated geographic area for each specific type of response service. (see below). The response contractor can supply supporting analysis or argument to support its proposal. The contractor may also submit supplemental information describing the contractor's experience, regulatory awareness or other factors which the contractor believes may be relevant to an understanding of the contractor's response capabilities.

The contractor may submit the application to the reviewer any time after the rule goes into effect. [*note: the Coast Guard will need to define who will act as reviewer of contractor applications. If the Coast Guard does not want to centralize all review of contractors, then it is recommended that a teired approach such as follows be used:*] The reviewer, in the case of a contractor who requests certification only in a single Captain of the Port (COTP) zone, will be the COTP. If the contractor requests certification in more than one COTP zone, but not more than

(26)

one Coast Guard District, then the reviewer will be the District Commander. In the case of a contractor seeking certification in more than one District, the review shall be the Chief, Office of Marine Safety, Security and Environmental Protection.

c. Certification Process

Once a certification application is received, the reviewer must make an initial review of the application to determine if it is complete. If not, the application should be immediately returned to the applicant with an explanation of the additional information needed to process the application. Once a complete application is filed, the reviewer has 45 days to assign an initial "Response Value" to the contractor, based on the representations in the application. This determination is only interim, because it is subject to subsequent verification of the factual information in the application, as well as a more refined evaluation once the agency has the opportunity for in-depth review.

The process described above is expected to result in an "interim status letter." The "Response Value" in the interim status letter may be used by plan preparers until final review and certification is complete. It is expected, given the workload of contractor and plan reviewers, that the Response Values contained in interim status letters likely will be the basis for the initial submission of response plans that are required by February of 1993. If the Response Value established by certification varies from the value used in the interim status letter, plan holders relying on that interim status will be allowed a reasonable time to supplement their resources. This may be accomplished through upgrade of the contractor capabilities or by supplementing or replacing that contractor's resources with other certified contractors.

d. Certification Criteria

The reviewer must certify any contractor who submits a true and complete application demonstrating response resources that satisfy the approval criteria. Certification may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services. An important part of contractor certification is the assignment of a Response Value or Values to the contractor's response resources for purposes of preparation of vessel or facility response plans. The reviewer will assign Response Values based on a best judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values. A contractor whose capability does not match these presumptive norms may submit information demonstrating the equivalency of its own resources. Planning assumptions used to arrive at the Response Value may also be adjusted based upon a demonstration that other planning assumptions are more accurate for the contractor's specific equipment or personnel.

27

The certification of a contractor also includes the concept of the credit due a contractor given the contractor's combination of mobilization time and location. Contractors, for a given response service for a given Port Area, would be assigned a classification. Class I for a given service for a given contractor requires a mobilization time of less than [2] hours and location of the resources associated with the service within the COTP Port Area. A Class II contractor service would be located within the Port Area, and mobilization within [12] hours, or a contractor with a combination of mobilization time and location that would allow the resource to be moving within the Port Area within the [12-hour] period. Similarly, Class III would be within [24] hours, Class IV within [48] hours, and Class V within [72] hours.

The Response Value would therefore be specific to a certain geographic area for a specific class of service. For example, XYZ Response Contractor could be certified for Class II on-water oil removal services for the offshore environment in a specified COTP port area in an amount of 10,000 barrels. The same contractor also may be certified for Class II on-water removal service for the nearshore harbor environment of 15,000 barrels.

Part of the certification process requires that contractors define their mobilization time. The primary goal is that equipment and/or personnel will be available and ready to deploy, upon notice, with prompt dispatch. The intent of this requirement is to ensure that first crews are dispatched and someone is working to fill any special requirements.

c. Denial of Approval and Appeals

If the reviewer finds that the contractor does not qualify, the contractor can be denied approval. The letter of denial must state why approval was denied, and explain any deficiencies, and explain the process for appeals and resubmittal. The reviewer also may approve a different Response Value for some or all of the contractor's designated services.

If the reviewer denies certification, or selects a "Response Value" less than what the contractor applied for, the contractor may appeal the decision to ... *[note: appeal process to be specified by the USCG, but with the recommendation of at least one level of internal appeal, and with at least one appeal to Washington before going to the courts].*

f. Notification of Significant Changes in Response Capability

Once a contractor has been certified, certification is valid for a period of [5] years. However, contractors are required to notify the COTP of a significant reduction of capability, as specifically identified in the certification. The proposed regulation requires this notification to be in advance, if the significant reduction is

(28)

planned, or no later than 24 hours after the contractor becomes aware of the significant change, if unplanned. The COTP can then determine whether to require plan holders to secure additional capability, or make other practicable arrangements to compensate for the reduced capability.

g. Effect on State Certification

The contractor certification established in this rule is designed to implement the requirements of OPA. Some states may have similar contractor certification requirements under individual state laws. Nothing in this rule is intended to preclude reliance on these certification rules or the federal certification process by states where it is appropriate to do so. In fact, States are encouraged to rely on the federal certification process, to the maximum extent practicable, taking into account any differences in the purposes and value of the federal certification process and the specific requirements of state law.

[REGULATORY LANGUAGE]

[NOTE: The regulations describing the contents of vessel and facility response plans will establish the types of services for which the response plan holder must rely only on certified primary response contractors]

Sec. XXX.00 Contractor Approval

(a) This section defines the process for certification of response contractor services to be cited in individual response plans.

(b) *Definitions.* For purposes of sections XXX.01-.05, the terms below shall have the following meanings:

(i) *"Certification"* is the process by which the President's designee will verify a primary oil spill response contractor's inventory of available spill response equipment, personnel, management structure, and support, and assign a Response Value for those resources within a standardized classification of designated response services, for a specific geographic area, for purposes of preparation of spill response plans.

(ii) *"Certificate"* is the final document issued following verification, inspection and final review by the reviewer.

(iii) *"Interim status letter"* means the letter sent by the reviewer to the contractor describing the initial Response Value assigned to the contractor pending verification of the factual information contained in the application and an in-depth review of the contractor's application for purposes of certification.

(iv) *President's designee"* means the federal official delegated responsibility by the President under OPA-90 for approval of response plans. Pursuant to Executive Order 12777 the President has delegated responsibility for approval of vessel response plans and transportation-related onshore facilities to the Commandant of the Coast Guard. The Commandant has delegated responsibility for certification of primary response contractors to various "reviewers" under this rule.

(v) *"Response contractor"* is any person who provides designated response equipment or services under contract or other means approved by the President directly to an owner or operator of a tank vessel or facility required to have a response plan under 33 U.S.C. 1321(j)(5), which designated equipment or services are required to be available and identified in such plan.

(vi) *"Reviewer"* means: (1) in the case of a response contractor seeking certification in a single COTP zone, the COTP; (2) in the case of a response contractor seeking certification in more than one COTP zone, but only one Coast Guard District, the District Commander; and (3) in the case of a response contractor seeking certification in more than one Coast Guard District, the Chief of the Office of Marine Safety, Security and Environmental Protection.

(vii) *"Response Value"* means the value, in terms of barrels of oil for a particular defined service in a defined geographic area, that is assigned to a primary response contractor for purposes of being identified as response capability in a vessel or facility response plan.

(viii) *"Mobilization time"* means the time in which initial personnel are able to begin movement of response resources to the spill scene.

Sec. XXX.01 Contractor Certification Application Content

(a) *Required Information.* A person desiring to be a primary response contractor must file an application that contains at least the following information:

(i) Contractor's name, mailing address and phone number;
(ii) The specific response services being offered for certification;
(iii) The specific location of all spill response resources, and the areas in which spill response services using each resource is being offered;
(v) A list of all Occupation Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) notices of violation related to oil spill response operations and disposition of those notices for the last five years. Any applicant with less than five years under their current business name or organization shall provide the same information for any oil spill activities or businesses participated in by the principals in the new company within the last five years;
(vi) an organizational diagram depicting the chain of command;
(vii) a call-out list for the contractor's resources, and a description of the call-out procedure;
(viii) For each type of service, the types of oil to which the contractor is willing and able to respond;
(ix) For each type of service, the planned mobilization time for that resource.

(b) *Equipment.* For each type of service, the specific significant equipment available to be applied to that service, including:

(i) type, quantity, age, and location;

(ii) whether the equipment is owned or under contract;
(iii) If the equipment is contracted from another party, the application must identify:
(A) the name, address and telephone number of the owner of the equipment;
(B) the equipment's storage location and area of operation;
(C) the contractual terms regarding availability of the equipment to the contractor;
(iv) a statement of the maintenance program for such equipment, together with a description of records of such maintenance;
(v) identification of the number of operators necessary to operate the equipment over a sustained response (i.e., 30 days);
(vi) for each piece of equipment, a description of: the make, model, type, and applicable design limits (e.g., suitability for different types of oils and operating environments, as related to adverse weather);
(vii) a description of contractor's communications equipment, including the amount and frequencies, and identification of certified operators;
(viii) for any equipment not located in the COTP zone for which certification is sought, a description of the transportation capabilities available for use in a response;
(ix) a description of the readiness for mobilization of response resources and the means of mobilization.

Equipment shall be listed only if it is in a fully operable condition. Future equipment, ordered but not yet delivered and fully operable, may be listed, but it must be listed separately and so identified.

(c) *Personnel.* For each category of personnel identified as a spill response resource, the application shall, for each location:
(1) list by job category;
(2) match to the equipment list and scope of service, including the plan for how the equipment and people necessary to provide the service will be brought to bear in an incident from what source; and
(3) list training and qualifications, including OSHA Hazardous Operations training and how additional personnel are planned to be trained within what timeframe if they will be required to meet the service listed.

The application shall also list the total personnel available.

(d) *Management Structure.* The application shall identify the management structure associated with the service(s) offered.

DRAFT February 27, 1992

(c) *Service-specific information.* In addition to the general information described above, the applicant must submit the following service-specific information, as applicable to the service offered:

(i) *Boom control/containment/protective booming services*
(A) Describe the platforms for deployment (number/type); and,
(B) Amount and condition (e.g., 2000' of offshore boom/vessel).

(ii) *On-water recovery services*
(A) recovery platform (for owned vessel and vessel of opportunity recovery systems):
(1) name of vessel;
(2) size/class;
(3) location; and,
(4) contract terms of availability.
(B) skimming system:
(1) make;
(2) model;
(3) manufacturer's nameplate capacity; and
(4) applicable design limits (e.g., suitability for different types of oil and different operating environments, as related to adverse weather).
(C) personnel trained to operate the equipment:
(1) name;
(2) position description; and,
(3) training or experience.

(iii) *Shoreline remediation services*
(A) number of persons available for beach cleanup
(B) description of supplies/support for beach cleanup

(iv) *Transfer/storage services*
(A) type and capacity of storage/transfer facilities

[Services considered for certification but not included at this time are source control, non-mechanical removal, wildlife treatment, lightering, salvage, fire fighting, logistic support, disposal, analysis and testing]

33

DRAFT February 27, 1992

See proposal for
Spill Response
management

(f) *Attestation.* A responsible corporate official of the contractor shall sign the application, affirming that the factual information contained in the application regarding the capabilities described in paragraphs (a)-(e) is, to the best of his knowledge and belief, true and accurate as of the time of signing.

(g) *Agreement for Inspection and Participation in Drills.* The contractor shall state that the contractor agrees to submit to inspection and verification

of the designated capability cited in the application. The contractor also agrees to make itself available to participate in drills as reasonably necessary to verify the contractor's application.

(h) *Self assessment.* A primary response contractor may submit with the contractor's application a suggested Response Value for each of the contractor's response services for each geographic area to be served. The applicant should provide an explanation and analysis to support the suggested Response Value, based on standardized planning factors identified by the reviewer, or such other planning factors as the contractor shall demonstrate more accurately reflects the contractor's response capabilities. The applicant may also include other information that may bear on an applicant's capabilities, including a description of the applicant's experience and regulatory awareness and compliance.

(i) *Mobilization.* The contractor shall state the time for initial mobilization of its resources. Equipment readiness shall include being available and able to be promptly dispatched to a spill site, not counting normal maintenance and repairs.

Section XXX.02 Contractor Certification Application Procedure.

(a) *Filing address.* Applications must be filed with the appropriate reviewer. The addresses are as follows:

[provide filing addresses]

(b) *Time for Filing.* Applications may be submitted at any time after adoption of this paragraph.

Section XXX.03 Contractor Application Review

(a) *Review for completeness.* Upon receipt of a response contractor certification application, the reviewer shall promptly evaluate the application for completeness. If the application is not complete, the reviewer shall return the application promptly, identifying the deficiencies in the application.

(b) *Review for interim status.* An application shall be reviewed within 45 days of receipt of a complete application. The reviewer shall send an interim status letter within 5 days of completion of a review. If, at a later time, the reviewing agency determines that the terms of the interim status letter should be limited, it shall so notify the contractor, who shall be given a reasonable time to provide acceptable numbers or types of response resources.

(c) *Review for certification.* Following inspection and review of any drills or exercises, or information from other sources as necessary to verify the application and complete a detailed review of the application, the reviewer shall either issue or deny a certificate, in accordance with the standards in paragraph (d). A certificate may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services.

(d) *Standards for review.* Certificates shall be issued to primary response contractors subject to the following conditions:

(1) Equipment, equipment maintenance, and equipment and personnel deployment readiness must be verifiable by inspection by the office. Any resources not on site at the time of an inspection must be accounted for by company records;

(2) Response personnel must comply with all appropriate safety and training requirements of OSHA Hazardous Operations. Training records may be audited for verification;

(3) Determination of an acceptable safety history by review of pertinent records on a case-by-case, best-professional-judgment basis. Lack of a safety history will not be grounds for denying approval;

(4) For each COTP zone, the reviewer will assign a Response Value for each Response Service for each response area (e.g., offshore, nearshore, inland) on a best engineering judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values.

[note: a policy issue is whether the presumptive planning criteria are described in the rule, incorporated by reference in the rule, or left to guidance. We also need to decide what the criteria is and how it would be applied.]

Section XXX.04 Appeals and Notices

(a) *Appeals.* If the reviewer denies certification, or assigns a Response Value less than the amount requested in the application, the applicant may appeal the decision:

[some appeal to centralized authority recommended].

[note: some favor a review in Headquarters of all appeals]

(b) *Notice of Significant Reduction in Capability.* The reviewer shall identify specific reductions in equipment personnel, or management structure that require notification to the COTP where the equipment or personnel are located. A certified response contractor must provide notice to the COTP of such reductions in advance, if planned, or within 24 hours of becoming aware of such change, if unplanned. This notice may be oral, followed by writing within a reasonable time, or in writing, by facsimile or letter. The reviewer will maintain and make available to the contractors and plan holders detailed guidance on the types of changes that require notification.

Section XXX.05 Renewal and Recovation

(a) *Renewal.* Certification shall be for a period of [5] years. A contractor must file an application for renewal prior to the expiration of the certificate. The contractor shall remain certified until the reviewer acts on the application.

(b) *Revocation.* [note: Coast Guard will establish some process for revocation or adjustment of certification for cause.]

Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 / FAX (907) 277-4523

MEMORANDUM: Regional Citizens' Advisory Council
Oil Spill Prevention and Response Committee

92-1

TO: Representative Bill Hudson
ATTN: Landa Holton
RE: Review of Draft ACCC Study
DATE: 1/14/92

The RCAC's OSPR Committee is requesting final comments on this draft Alaska Coastal Comunities Cooperative Study (ACCC) by February 15, 1992.

Pursuant to a request from the Nearshore Working Group, RCAC undertook a feasibility study of the concept of a coastal communities oil spill cooperative. This co-op would provide the means for local involvement in spill response, with particular focus on shoreline protection and nearshore response, which are the major remaining gaps in the spill protection scheme for Prince William Sound and other coastal areas.

The OSPR Committee has already gone through one phase of soliciting comments on the concept; and these comments have been addressed in this draft of the study. We are forwarding a copy of this most recent draft of the feasibility study for your comments.

The RCAC endorsed the concept of a coastal communities cooperative at its December 1991 meeting. We will continue to refine the technical issues involved in creating such an organization. From those of you who cannot support this co-op concept, we invite suggestions for alternative methods to achieve our common goal.

DRAFT

A COASTAL COMMUNITIES OIL SPILL COOPERATIVE FOR ALASKA

A F E A S I B I L I T Y S T U D Y

Oil Spill Response
By Alaskans, for Alaska.

X

13. Environmental Organizations. Naturally enough, groups concerned about natural resources, wildlife and pollution have been and continue to be interested in assuring compliance with state and federal requirements for oil spill response. In addition to the enhancement of response capability that the ACCC would provide, these groups are likely to see the consolidation of response activities with ACCC as a plus from another standpoint: consolidation of local involvement in one organization will decrease the complexity of overseeing that local resources are being fully incorporated into contingency plans.

14. The Fishing Industry. Fishermen are concerned about protecting the fishing resources and the effective use of the fishing fleet's ability to protect those resources. The fishing industry is also the source of a significant number of small spills, and as such may find itself in need of the ACCC's services.

15. Local residents, businesses, charter vessel operators, and contractors. Many of these people depend on coastal resources for their livelihoods and recreation, and thus have a heightened interest in participating in the activities of the ACCC. Moreover, spill response is a growth industry in Alaska, and it is not unreasonable for those communities that suffer the most from oil spills to be able to offset their risk of loss somewhat by participating in a professional response organization.

16. Recreational Users and Providers. Tourism and recreation is an increasingly important part of the Alaskan economy. Indeed, many small businesses in coastal Alaska depend for their survival on income from recreational users. The interests and concerns of both the tourist industry and individual recreational users must be considered when making decisions about protection of coastal resources.

17. Academic and Research Institutions. These entities are potential participants in the planning, engineering and scientific support of the ACCC.

These groups fall into four basic categories: government, sponsoring and user entities, potential participants in the ACCC's planning and response activities, and interested parties. Some groups may belong in more than one category, for instance Native corporations may be participants and are obviously interested parties. The ACCC will be successful if:

1. The state is willing to assign the state agency depots and response corps role to the ACCC for coastal spills.

2. The coastal spill response needs of the entire state are met by the ACCC.

3. The state accepts the feasibility of creating a joint industry/government solution to the identified needs. The Corpus Christi Area Spill Control Association demonstrates that such a joint effort can succeed. It is a modest sized and simply organized cooperative compared to the large West Coast cooperatives. Nevertheless, it is highly successful in its geographic and environmental setting. Local government rather than industry provides its personnel reserve. Its local government orientation has led to very low response costs, even when contractors are used. Exorbitant rates are not tolerated by the cooperative's manager, who doubles as the City of Corpus Christi's Petroleum Director.

4. The Legislature is able to craft an acceptable, long-term solution to the issue of responder immunity from tort liability during the 1992 session.

SPACE RESOURCES

Space, particularly near the shoreline, will be of considerable importance to the ACCC. Shoreline operating space appears to be at a premium in Alaska. The ACCC will need one or more bases of operation with substantial indoor space (on the order of 50,000 to 80,000 square feet). This indoor space will be used for offices, response centers, classroom training, hands-on equipment training, communications, warehousing of materials and equipment, parts inventory and repair operations.

The ACCC will need substantial dock footage to service and equip barges, contract vessels, and first strike vessels. The large number of small barges and vessels will likely necessitate the availability of its own small dry-dock capability. Cranes, forklifts and other equipment will be needed for deployment and loading of vessels.

Tankage and flat storage areas will be necessary for interim storage of recovered oil. Open storage will be needed for bulky items and Conex storage units.

Similar but smaller scale space needs will exist at remote storage depots. Consideration is being given to deploying and docking self-contained, barge-based response depots at remote locations. These could periodically be rotated back to ACCC bases for maintenance and repair.

The availability of space is unknown at this time and would be the subject of a detailed search in subsequent studies or during early stages of the cooperative's implementation. Special leasing terms or donation of state, local, native corporation or industrial sites may well influence base location.

LEGAL FEASIBILITY

The first issue is the proper form of charter. MSRC has chosen to pursue the status of a not-for-profit corporation. Other cooperatives have chosen to remain partnerships of member companies.

The ultimate solution for the ACCC will likely hinge on issues such as state participation in a non-profit entity, the extent of tort liability, borrowing and purchasing policies, and whether a quasi-state entity has the flexibility to respond effectively under the pressure and timetables required by response scenarios.

The primary question appears to be whether to seek tax-exempt status. Doing so would severely restrict the cooperative from having a separate pricing structure for members and non-members. A not-for-profit corporation could be implemented as a quasi-government entity like the Alaska Housing Authority. This approach could make state participation easier.

Responder immunity is necessary for the ACCC to avoid tremendous liability exposure. It is anticipated that the state legislature will take up the issue of immunity for spill responders again during the upcoming session.

If the not-for-profit form is implemented, the most important contract will be to implement state funding. Discussion of a possible format will await agency decisions and specific legal advice. A contract covering professional service and placement of major equipment items could be negotiated with comparative fiscal and legal ease.

A host of other contracts would be needed with industrial members, other users of ACCC services, support vessel

and operators, as well as for facility acquisition and response contractors employed by the ACCC.

The issue of insurance will require much attention in this age of litigation. Six major areas are identified for later attention. The insurance topic has been subdivided into routine operations and spill response periods. Separate rates and perhaps even policies will apply. Indemnification clauses in contracts must also be considered.

In its contingency plan, Alyeska listed some 152 permits considered necessary to respond to an oil spill. The ACCC will need to proceed carefully to ensure that all regulatory obligations are met.

Discussions with the Clean Coastal Waters and Clean Sound Cooperatives indicate legal and insurance issues are significant, current problems; but these problems can be overcome for a reasonable cost.

Thus, although not without obstacles, the ACCC is legally feasible. (N.B. The overall concept of legal feasibility is being addressed by a professional maritime lawyer, and will be discussed in a separate document.)

TABLE 4: MAJOR LEGAL ISSUES FOR THE ACCC

1. Form of charter and management structure.
   - A. Not for profit
   - B. Not for profit - tax exempt
   - C. Quasi-government entity (similar to Alaska Housing Authority)
   - D. For profit corporation

2. Responder immunity: Extension of HB 196

3. Contracts with:
   - A. State of Alaska
   - B. Organizations contracting with the ACCC for its services
   - C. Vessel operators
   - D. Facility acquisition
   - E. Contractors and suppliers

4. Insurance during non-spill periods:
   - A. Director liability
   - B. Business liability
   - C. Payroll, including Jones Act
   - D. Vessel
   - E. Equipment and facilities
   - F. Employee health, life and disability

5. Insurance during spill response

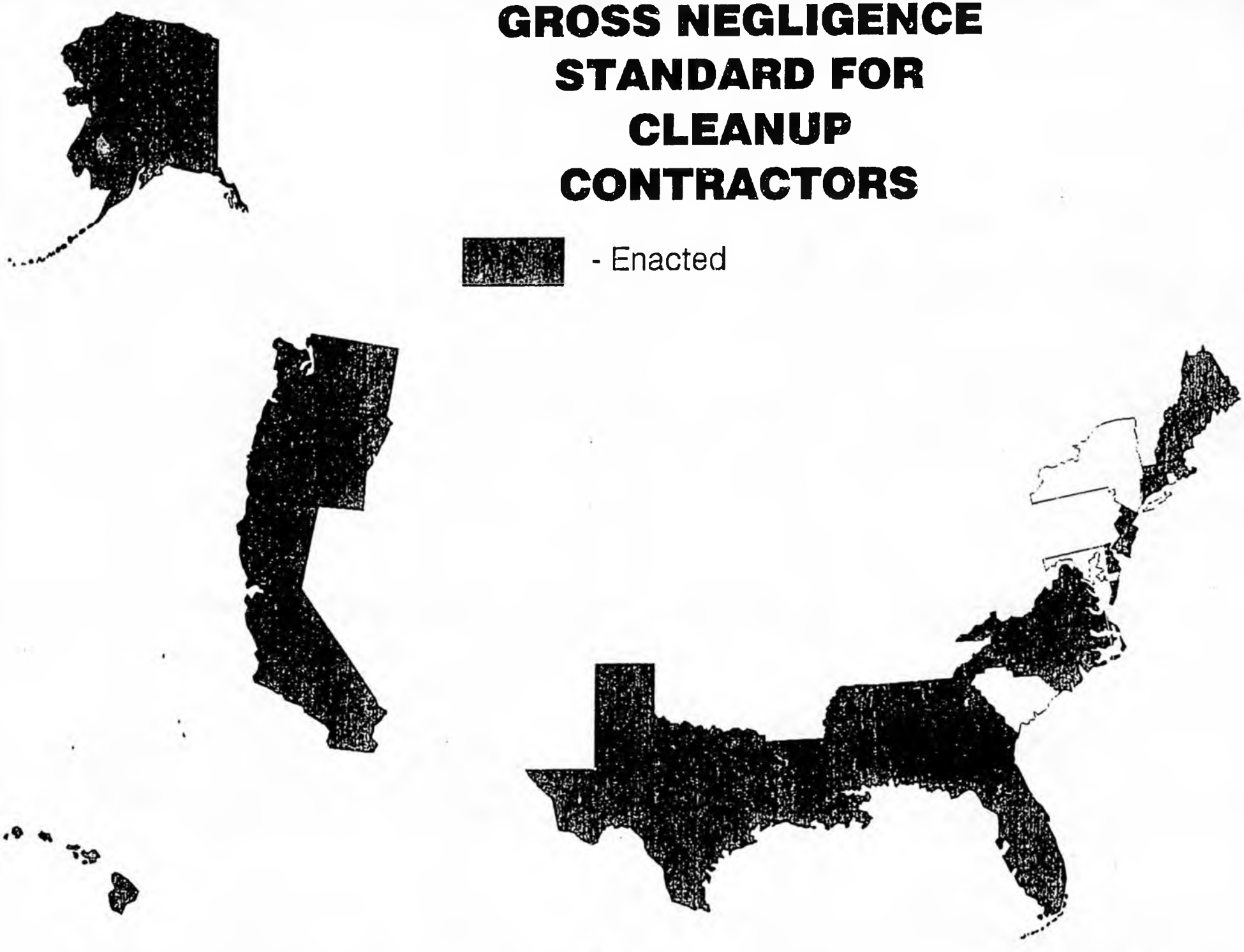
6. Indemnity agreements

7. Permits

8. Funding guarantees for expenses during spill response operations

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS

- Enacted



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MEMORANDUM

TO: Senate and House Oil and Gas Committees

DATE: February 10, 1992

FROM: Ray Gillespie, for **Crowley Maritime, Delta Western** and **Petro Marine**

RE: Marine Pollution Insurance Problems

This will outline three problems non-crude carriers and operators are experiencing in obtaining marine pollution insurance to satisfy the financial responsibility and "direct action" provisions of Alaska law.

Briefly, these problems are:

1. Confusion created by apparent inconsistencies between statute and regulations concerning insurer liability/exposure when issuing a policy meeting the specific requirements of financial responsibilities statutes.

2. P&I club and insurance coverage with "direct action" endorsement is virtually unavailable to most Alaska operators in the present commercial insurance or P&I club market.

3. Whether D.E.C. has statutory authority to grant conditional operating permits to operators who have met the financial responsibility requirement dollar amounts, but can not satisfy the "direct action" endorsement due to its unavailability.

I.

LIABILITY LIMIT/EXPOSURE OF INSURERS OR GUARANTORS.

Environmental Conservation Regulation, 18 AAC 75.230 (b), requires a policy of insurance certificate or binder to carry an endorsement which reads in part as follows:

> "Any other provision of this policy notwithstanding: (1) this policy insures against any liability the insured may incur under Alaska Statute 46.04.040 (i), or any provision cited in it as a result of an unlawful discharge of oil within or affecting Alaska lands or waters within the territorial jurisdiction of the State of Alaska; however, the insurer's liability does not exceed the limits of coverage set out in Section_____ of this policy...." (emphasis added)

Alaska Statute 46.04.040 (i) reads as follows:

> "Financial responsibility under this section extends to loss compensable under AS 46.03.760 (e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760 (a) or 46.04.030 (g)."

This statute in combination with 18 AAC 75.230 (b) has led P&I clubs and insurance underwriters to conclude that their exposure under a policy may not be limited to the face amount of the policy even though it meets the other monetary requirements for financial responsibility (AS 46.04.030 (k)). In other words, because statutes generally supersede any inconsistent regulation, insurers have advised operators that the potential for unlimited liability and the uncertainty of a judicial interpretation of these statutes and regulations prevents insurance underwriters and P&I clubs from writing the insurance with the required endorsement.

II.

"DIRECT ACTION" PROBLEM

AS 46.04.040 (e) reads in part as follows:

> "An action brought under AS 46.03.758, 46.03.759, 46.03.760 (a) or (e), 46.03.822, or AS 46.04.030 (g) may be brought in a state court directly against the insurer, the group, or any person providing evidence of financial responsibility. The applicant, and insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent or service of process in the state...." (emphasis added)

This provision requires that any insurer or P&I club submit directly to the Alaska jurisdiction and be subject directly to legal action against it in Alaska courts without first proceeding against the spilling operator. The State of Alaska or private party can, under this provision, proceed directly in Alaska courts against the insurer. Typically, P&I club coverage is an indemnity policy, which first requires a provable loss against the operator before the P&I club pays that loss. This is the so-called "direct action" provision which prevents many operators from securing coverage meeting the requirements of Alaska Statutes.

In the States of Washington and California recently enacted financial responsibility statutes do not require the "direct action" endorsement. In essence, California and Washington simply allow for P&I club and insurance coverage which meets the monetary financial responsibility requirements and requires no other showing of a "direct action" endorsement.

III.

UNCERTAINTY OF D.E.C. AUTHORITY TO ISSUE CONDITIONAL OPERATING PERMITS WHERE DIRECT ACTION ENDORSEMENTS ARE NOT AVAILABLE.

AS 46.04.040 (l) provides that under certain circumstances DEC may issue permits to an operator who has proof of financial

responsibility without the "direct action" endorsement. This provision has been interpreted as authority to issue conditional permits only upon proof of at least $50 million in insurance or other financial responsibility which has the direct action endorsement. Since the maximum financial responsibility coverage for a non-crude operator (tank vessel and barges) is $35 million under AS 46.04.040 (c) (2), the waiver or conditional permit provisions of subsection (1) is not available to them.

The D.E.C. has, however, been issuing conditional permits to non-crude operators which have complied with the monetary financial responsibility requirements, but are unable to get such coverage with the "direct action" endorsement. The "direct action" endorsement is unavailable in the market place to some, if not most, non-crude operators. Due to the commercial unavailability of financial responsibility with the required endorsement, the DEC is in the unpleasant predicament of denying operating permits to established responsible carriers who have been doing business in Alaska for years. Denial of such operating permits because of commercial unavailability of "direct action" endorsement is potentially devastating and would likely eliminate most non-crude refined product delivery to many Alaskan communities.

This provision should be revisited by the Legislature to reflect the realities of the insurance market and availability of coverage. As of last week, D.E.C. has suspended any Conditional Permits.

IV.

SUGGESTED SOLUTIONS

Legislation which:

1. Places explicit language in statute which limits the exposure of an insurer or P&I club to the face amount of the policy;

2. Eliminates the "direct action" requirement;

3. Provides a substitute mechanism to "direct action" which satisfies the State of Alaska and yet recognizes the realities of the available insurance or P&I club coverage;

4. Clarifies D.E.C. authority to grant conditional operating permits to non-crude operators who have otherwise complied with the monetary requirements for financial responsibility; or

5. Combination of the above.

W. Gene Burden
Vice President
Environmental Affairs & Government Relations

February 6, 1992

Representative Bill Hudson
Alaska State Capital
Room 114
P.O. Box V
Juneau, Alaska 99801

Subject: Response Action Contractor Liability

Dear Representative Hudson:

The legislature passed HB 196 last year (Ch. 92, SLA 1991) which provided limited immunity to oil spill response action contractors (RACs) while maintaining liability in cases involving gross negligence, intentional misconduct, and where the RAC was involved in the spill itself. This bill has a one-year sunset and will expire on June 30, 1992 unless action is taken during this session. As you are aware, Tesoro Alaska put a lot of effort in the bill's passage as we viewed it as necessary to encourage RACs to provide immediate needed cleanup services following an oil spill.

The legislation was particularly critical to Tesoro as our continued operation was actually dependent on the bill's passage. The legislation was necessary to assure our continued access to spill response services provided by Alyeska in Prince William Sound. As a result of the bill's enactment, Tesoro was able to reach an interim agreement for obtaining these services following last year's legislature with the agreement's expiration coinciding with the present expiration of HB 196 on June 30, 1992. Unfortunately, unless the legislation is made permanent, Tesoro will again face the prospects of a loss of Alaska North Slope crude oil which threatens our ability to continue operations. This is of obvious concern to each of the 575 Tesoro employees in Alaska as well as their families. It also represents a potential significant negative to the economy of Southcentral Alaska, and particularly to the Kenai Peninsula.

During last year's debates on HB 196, we sought to communicate that while Tesoro's situation may have been the catalyst for the legislation, the bill also represents good public policy. The possibility of becoming embroiled in negligence litigation is a strong deterrent to agreeing to assist in any emergency situation - including the chaotic and time consuming circumstances of an oil spill response. The fact is that the threat of becoming involved in very costly litigation is, in and of itself, a powerful disincentive whether or not the lawsuit might be won. These facts have now been recognized in 19 coastal states where RAC immunity

legislation has been enacted that coincides closely with the legislation passed in the federal Oil Pollution Act of 1990. In each case the immunity granted by these states is broader than the limited immunity provided by Alaska's HB 196. Those states and the dates of passage of their immunity laws are as follows:

Alabama.....7/29/91	Louisiana.....4/23/91	Texas.....3/28/91
California..9/22/90	Maine.....6/20/91	Virginia....4/18/90
Connecticut.6/24/91	Mississippi....4/12/91	Virgin Is...12/9/90
Delaware....1/31/91	New Hampshire..5/13/91	Washington...5/15/91
Florida.....6/11/90	New Jersey.....8/13/91	
Georgia.....4/17/91	North Carolina.6/27/91	
Hawaii.....6/90	Oregon.....7/17/91	

*Source: Oil Spill U.S.Law Report, Vol.2, No. 1, 1/92, p.15

The recognition of the need for responder immunity in Alaska is reflected in the recently released draft proposal by the Prince William Sound Regional Citizen's Advisory Council's entitled "A Coastal Communities Oil Spill Cooperative for Alaska", January 1992 prepared by International Spill Technology Corporation, College Station, Texas. The proposal introduces an organizational structure and concept that is intended to improve the response against a major oil spill in the areas of shoreline protection, nearshore response, training, coordination of fishing vessels, and protection against non-crude spills. On page 19 of their proposal a number of conditions are described as required if the co-op is to be successful. Item No. 4 is for

> "[T]he Legislature is able to craft an acceptable, long-term solution to the issue of responder immunity from tort liability during the 1992 session."

This position is further clarified on page 24 of the same report under the heading "LEGAL FEASIBILITY" as

> "[R]esponder immunity is necessary for the ACCC to avoid tremendous liability exposure (emphasis added). It is anticipated that the state legislature will take up the issue of immunity for spill responders again during the upcoming session."

This is also identified as a "Major Legal Issue for the ACCC" in Table 4 on page 25 of the proposal.

Alaska has shared other states' recognition of the value of responder immunity for many years, as evidenced by AS 9.65.091 which shields people who respond to declared disaster emergencies from negligence liability. Unfortunately, that statute may not

apply to RACs, since before the enactment of HB 196 the legislature had passed a statute extending liability to RACs for simple negligence (See AS 46.03.823). Moreover, AS 9.65.091 applies only to declared disasters, and only those persons whose services are requested by the state which would exclude most oil spill situations as well as many volunteer responders.

We all spent a lot of time on HB 196 last year due in part because the issue was new to Alaska. Now, it is clear that the issue is not particularly controversial in the United States and is certainly not a revolutionary concept. As illustrated above it has become settled national and state policy that:

1. A negligence standard threatens to unfairly embroil RACs in costly post-spill litigation. The crisis atmosphere and potential consequences of oil spills combined with the unacceptably high risk and cost of litigation is not offset at all by the promise of limiting jury instructions;

2. The threat of litigation deters RACs from freely entering a jurisdiction without limited liability which interferes with the formation of effective spill co-ops;

3. The enactment of the new federal liability fund as well as the State clean-up fund; unlimited strict liability on the discharger (including strict liability for any damages caused by the RAC); and federal and state requirements for proof of financial responsibility combine to make the possibility of leaving victims uncompensated for damages caused by the simple negligence of a RAC very, very remote.

Tesoro suggests that in view of the above that the legislature's debate on this issue can be considerably shorter than last year and that the legislature should act to implement a continuation of HB 196 which will address the needs of spill responders in this state, improve our capabilities to respond, and solve a critical issue for our company. Thank you for your interest in this issue. If we may be of any assistance please contact me.

Sincerely,

Gene Burden

BEFORE THE JOINT HOUSE RESOURCES COMMITTEE
AND HOUSE SPECIAL SUBCOMMITTEE
ON OIL AND GAS

Comments on Summary of Research Project Reports
Prepared by the Citizens' Oversight Council
As Part of the Council's Report to the Legislature Under
Section 11 of HB 196 (Ch. 92 SLA 1991)

Presented by:
Jim Meitner
Spill Prevention & Response Coordinator
Tesoro Alaska Petroleum Company

February 12, 1992

On behalf of Tesoro Alaska, I want to thank the staff and Board members of the Citizens' Oversight Commission ("COC") for the effort and consideration that went into their recently released report and recommendations. Tesoro and its 575 plus Alaska employees were pleased to see that the Citizen's Oversight Commission's first recommendation favorably recognizes the concept of limited immunity for response action contractors that Tesoro sought during the last legislative session.

Tesoro's interest in this matter was discussed in detail last year; and in summary relates to 1) our interest in the Cook Inlet Spill Prevention and Response, Inc. ("CISPRI"); and 2) our reliance on continued access to Alyeska's spill response services in order to pick up our crude oil which is essential to our ability to stay in business. Tesoro is presently responsible for over 50% of the funding of CISPRI and has great reservations about CISPRI's deployment to a spill from a non-CISPRI members in the absence of

a state spill responder immunity law. The exposure to risk of costly litigation over alleged damages arising from simple negligence is viewed as a significant detractor from making CISPRI available beyond its own members needs. This need is reflected in the COC study and in recommendation number 1.

Tesoro also has an interest in having a final resolution of this matter due to our need to access the Port of Valdez in order to stay in business and continue employment of over 575 Alaskans. Alyeska has the only available initial spill response service in Prince William Sound and has placed a very high level of demonstrated financial responsibility on parties wanting access to that service. Last year's passage of HB 196 prevented a possible interruption to our ability to transport feedstock crude oil since we were unable to meet the Alyeska financial responsibility requirements in effect before the passage of HB 196.

Tesoro is willing to work with the Citizen's Oversight Council, other interested groups, and the legislature to address the other recommendations contained in the Council's report. We believe the report provides the legislature with sufficient information to meet the COC responsibilities under HB 196, and in so doing, should facilitate the legislature's prompt resolution of this matter by passing legislation that includes limited immunity for response action contractors in Alaska. Thank you for the opportunity to comment.

EVALUATION, PREQUALIFICATION AND CERTIFICATION OF OIL SPILL RESPONSE CONTRACTORS

NEGOTIATED RULEMAKING ISSUES: The following issues are submitted for discussion and/or resolution by the Negotiated Rulemaking Committee:

* why oil spill response contractor certification is being considered;

* the provisions of OPA 90 which provide for certification of prequalified response contractors;

* the criteria and factors to be used in evaluating a response contractor's overall capability to respond;

* the standard(s) to which contractors can be prequalified and the mechanisms for certification, inspection, validation and enforcement; and,

* the benefits and costs expected from prequalification and certification of oil spill response contractors.

BACKGROUND DISCUSSION:

A requirement of the Oil Pollution Act of 1990 (OPA 90) amendments to the Federal Water Pollution Control Act (§311(j)(5)), is that the owner or operator of a tank vessel prepare and submit a comprehensive, spill response plan for U.S. Coast Guard approval. Paragraph (C)(iii) of that section, requires that owners/operators "identify, and ensure by contract or other means approved by the President the availability of private personnel and equipment necessary to remove...a worst case discharge" from the environment. For a tank vessel, "worst case discharge" is defined as a total loss of cargo in adverse weather. For the purposes of this rulemaking, and in accordance with the provisions of Section 311(C)(2), the USCG will address all spills in U.S. waters, not just those of "worst case" volume.

The intent of these requirements is to compel forward planning and to ensure that necessary <u>existing</u> resources - trained personnel, vital equipment, communications, finances, etc. - are available, operable and adequate for a <u>future</u> incident.

Developing response plans to meet regulatory requirements and to facilitate the rapid and effective cleanup of a major oil spill requires that there be some established standards of performance for equipment and contractor selection. <u>Without such standards, and some means of certifying those contractors who meet them, there is no way for a tank vessel owner or operator to identify appropriate resources, or to select those contractual resources with whom he is required, by OPA 90, to establish a contractual relationship.</u>

From a regulatory point of view, Coast Guard authority to approve or disapprove response plans carries a great responsibility to make that determination objectively. Establishing response requirements and defining standards of adequacy must be consistent throughout the United States. It cannot be determined locally. In the current regulatory and contractual environment, neither the USCG, nor the vessel owners can meet the intent of the law.

The provisions of Section 311(j)(5)(C)(iii), when implemented, can have important benefits to oil transportation interests and to the contracting industry. First, requiring owners/operators to have contractual relationships with oil spill response resources creates a demand for qualified contractors and provides an incentive to vessel owners to contract with the best value. It may involve both the vessel owners and the response industry in a symbiotic pursuit of better response capabilities. Second, by requiring contractual relationships with prequalified resources only for response plan approval the regulations can effectively limit the supply of acceptable contractors. While it is not necessary for there to be financial consideration in a contractual relationship, altering the supply-demand relationship makes it likely and may provide a means of funding contractor capitalization of response resources in exchange for guaranteed response to an oil spill.

Congress statutorily required that adequate resources reside in the private sector, not the public sector. Existing private resources in the United States include contractors ranging from small, established, waste-oil contractors and waterfront services to major hazardous waste contractors, marine spill contractors and OPA 90-inspired ventures such as NRC and a major industry cooperative, MSRC. Funding for private resources comes from subsidies by member organizations, as is the case with oil spill cooperatives, or from for-profit business activity. Ultimately, all funding comes from revenues and profits.

The existing state of the response industry (generally pre-OPA-90) is one that has developed to take advantage of profitable, routine-spill opportunities without risking the financial future of the enterprise by capitalizing for the unpredictable anomaly of a large spill. Without the requirements for (1) contractual relationships between owners and response contractors or cooperatives, (2) identifying means (i.e. certification) for selecting adequate resources and (3) a mechanism for profiting from response capability improvement there is no incentive for the private sector to improve beyond its existing status. If there were it would have already have done so.

The two most important resources in a contractor/cooperative's inventory are response equipment and trained people. Standardization of response equipment has been undertaken by Committee F20 of the American Society of Testing and Materials (ASTM). ASTM's charter includes the standardization of services, as well as products, and may include contractor performance standards. Because ASTM is a voluntary, consensus organization, however, it works slowly and will require 1-3 years to publish final standards for reference by the regulations. Any standards which develop in response to OPA 90 initiatives have scant chance of adoption in time to assist owners/operators or the USCG in meeting the response plan deadlines.

ISSUES FOR DISCUSSION/RESOLUTION:

Issue 3 - Contractor Prequalification and Certification

* Standards. The most useful standards for contractor/cooperative selection and reliability are performance related - i.e. how much oil recovery/dispersal/disposal/etc. capacity does the organization have.

  Which contractor/cooperative capabilities can be measured and standardized?

  On what should those standards be based?

  How can they be developed in time to meet the statutory deadline, particularly given the time required by ASTM, or any other consensus organization, to issue standards?

* Certification or licensing. Licensing of marine spill response contractors requires a bureaucratic organization to set standards, monitor compliance and enforce regulations. It requires direct government action to prequalify and approve contractors. Of necessity, it establishes a new bureaucratic process to accept applications and fees, amend rules, and process and enforce the conditions of the license. A disadvantage of licensing is that once bureaucracy establishes licensing standards they may become inflexible and fail to keep pace with the development of technology. Eventually, inflexible licensing standards could serve to inhibit the industry whose very development we wish to stimulate.

Certification to consensus standards, on the other hand, is encouraged by the Federal Government (OMB Circular 119 and USCG instructions) and provides flexibility by involving already existing, private sector organizations with charters which call for mandatory, periodic review of standards to maintain currency.

Issue questions include:

Who should certify contractual resources?

Should there be several levels of certification to address different spill volumes and requirements and to consider the variety of contractors and cooperatives already in existence? If so, how many certification levels should there be and on what capabilities/requirements should they be based?

How should the following be weighted in certifying contractors: spill and exercise performance, inventory ownership, financial capacity, managerial skills, previous history of operational performance, (others?)?

Must a contractor/cooperative own necessary equipment in order to be certified or may an enforceable, contractual guarantee of resource availability suffice for certification?

Given that certification is not instantaneous, what can be done to facilitate prequalification and identification of appropriate and acceptable response resources until there is a workable certification system?

If certification of contractors is partially based on standardized equipment how can existing, non-standardized resources be "grandfathered" to consider its existing and continued value and usefulness but also promote the adoption of better, more capable equipment?

* Certification validation and enforcement: OFFICE OF MERCHANT MARINE SAFETY INSTRUCTION 16703.1 provides guidance on self-certification/attestation and other innovative regulatory techniques. Underwriters Laboratories and American Bureau of Shipping are both pursuing registration as "agents" of the International Standards Organization and provide quality and reliability services for a fee.

Either of the two bodies above, Federal and state agencies or a combination could be used for inspection, verification of inspection and/or validation of continued certification. The least expensive and most effective means is probably one which requires government oversight but not routine inspection by the Coast Guard at the contractor level.

Should the response industry be permitted or encouraged to measure itself with regular oversight and enforcement?

If not, how should the inspection, verification and validation process be managed?

Who should be responsible for what portions?

Given the requirement for a national standard, what role should State governments play?

What should the contractor/cooperative community's role be?

If we allow self inspection/attestation how should the Federal government manage quality assurance?

How should the process be funded?

Issue 2G - Overall capabilities of response resources identified in response plan

- OPA 90 amendments require the vessel owner to identify, and ensure by contract or other means approved by the Coast Guard, the availability of private personnel and equipment sufficient to respond to a worst case discharge to the maximum extent practicable.

- Meeting this will require either:

  - a written contractual agreement with a response contractor guaranteeing personnel and equipment availability and stipulating response times within specified geographic areas;

  - certification that the required personnel and equipment resources are owned and/or operated by the vessel owner/operator and are available within stipulated response times within specified geographic areas; or

  - active membership in a local or regional oil spill removal organization that has identified personnel and equipment available within stipulated response times over specified geographic areas.

- The contractor's overall capability to respond, both existing and projected, must be considered when setting the "maximum extent practicable" planning standard.

- Equipment and personnel availability varies between for-profit contractors, not-for-profit cooperatives, or other organizations such as Marine Spill Response Corporation or the National Response Corporation. No one organization has the capability to respond on their own to a worst case discharge.

- Response resource capability assessment needs to account for relationships between commercial resources. These relationships need to be contractual to be acceptable for inclusion in a response plan.

- Contractor/co-op response overall capability is based on a number of factors. These include the availability of containment and recovery equipment, both in inventory and through cooperative or contracting arrangements; required support services such as aircraft, temporary oil storage devices, vehicles, boats, etc; and the availability of personnel trained to OSHA HAZWOPER standards in 29 CFR 1910.120.

Each factor has to taken into account when evaluating resource capability.

- Issue 3 related to contractor certification discusses this in more detail.

Statement

of

Mr. G. Stephen Duca

Vice President

Readiness and External Affairs

Marine Spill Response Corporation

before the

State of Alaska

Joint Hearing of the

House Special Committee on Oil and Gas

and

House Committee on Resources

February 12, 1992

Good morning Mr. Chairmen and members of the Committee. My name is G. Stephen Duca, I am the Vice President for Readiness and External Affairs at the Marine Spill Response Corporation. I welcome the opportunity to comment on the Citizens' Oversight Council recommendations and responder immunity.

Mr. Chairmen, MSRC is pleased to have been asked to participate in the public debate on Section 11 of H.B. 196 (Ch.92 SLA 1991). We have been part of this dialogue for some time, beginning with an appearance before Alaska's distinguished Oil Spill Commission in 1989 chaired by Mr. Parker and ending just last week with a statement via teleconference

presented to the Citizens' Oversight Council on Oil and Other Hazardous Substances. Our position on the issue of Responder Immunity in Alaska is therefore a matter of long public record. Attached is pertinent correspondence which specifically addresses our concerns with H.B. 196 -- a statute which places liability on a responder rather than the responsible party where it belongs. Such a condition violates a fundamental principle of the Oil Pollution Act of 1990 (OPA-90) -- "the polluter pays". I will not comment further on the particulars of H.B. 196 since our previous remarks and letters are available for your review.

However, I would like to underscore a couple of key points for the Committees' consideration. At the end of all the discussion related to H.B. 196, Alaska needs to enact a responder immunity provision at least as protective for a responder as Section 4201 of OPA-90. This is sound public policy -- which nineteen other coastal states have enacted as law. It is plain common sense that Alaskan law should be consistent with the federal liability regime that exists three miles off its coast. Oil moves swiftly from jurisdiction to jurisdiction and a responder should not be slowed in his cleanup by having to take valuable time to consider the legalities and risks associated with each action taken in Alaska's jurisdiction.

Please remember that the overarching purpose of this limited immunity is to insure a bold and vigorous response during uncertain and/or emergency operating conditions. Some would have you believe that this standard was trying to get someone "off-the-hook." This is not the case, rather it places the liability on the spiller, again in accordance with the maxim of: "the polluter pays". Working in concert with the other provisions of the Oil Pollution Act of 1990, this limited responder immunity if enacted in Alaska would:

1) Promote a bold and vigorous response by persons whose sole purpose is to remove as much oil from the environment as is possible, since responders (all categories of responders) are protected from liability for good faith errors (simple negligence) under very limited circumstances.

2) By riveting liability to the responsible party it doubly insures a bold response by encouraging his prompt action. Since any liability another person (responder) is relieved of is passed on to the responsible party, there is little incentive for the responsible party to attempt to deflect liability to a responder in the first place. His best course of action is to get as much response and cleanup capability to the scene and begin operations as soon as possible.

Mr. Chairman, one cannot be part of this debate without soon confronting the central argument made against providing this limited immunity. The issue has, unfortunately taken on the mantle of a canard. The story goes like this -- 'the only way to insure that responders will act responsibly is to make sure they are punished (incur liability) if they don't act in a prescribed way (by a contract)'. This approach to providing emergency response services of any kind, not just oil spills, is absolutely wrongheaded. It defeats the main purpose of the immunity -- the encouragement of a bold and vigorous response -- in several ways. First, the contract would have to cover all of the circumstances likely to be faced in a spill. The larger the spill the larger the number of circumstances and the larger the contract. Can you imagine a bold and vigorous response to an oil spill occurring under a contract the dimension of an encyclopedia? Can Alaska's fishermen (who proved to be so vital a force during the Valdez spill) reasonably be expected to perform in every circumstance in a way prescribed by a

contract? What about tug and barge owners, operators and lessors? Every action they took could be subject to a lawsuit to determine if their actions were in accordance with the contract and therefore, was in fact covered or not covered by the immunity. Fishermen, tug and barge owners and other responders would need to rush to their lawyers to determine risk/exposure before rushing to the scene of a spill to begin the cleanup. It would be a lawyer's playground and have a chilling if not killing affect on a response effort.

Furthermore, such a condition defeats the cardinal rule of OPA-90 that "the polluter pays". Any liability that can be transferred from the spiller to other parties will be seen as an opportunity to defeat the responsibility for performance that a spiller should be held liable for. Having immunity flow to responders by way of a contract would shift the responsibility for response and cleanup performance during a spill to responders, not the spiller. OPA-90 lays the requirement for the execution of response plans on the spiller. The spiller must use private resources to cleanup, to the maximum extent practicable, a worst case spill. To enact a provision laying the responsibility for cleanup on responders would be a serious mistake, especially since there are already many protective provisions of OPA-90 that insure satisfactory performance of responders.

In your letter to MSRC President, Admiral Jack Costello you requested that I address two specific issues today: 1) MSRC's decision not to locate any of our corporation's national centers in Alaska and 2) Any disagreements that we may have with the report of the Citizen's Oversight Council.

As to the first Mr. Chairmen, I must take you back to the days just after the Valdez

spill. The industry recommended the creation of what it determined the nation did not have -- the capability to make a best effort response to catastrophic spills of persistent oils in the offshore environment. Most agree that the capability of the existing oil spill response infrastructure is sufficient to deal with the thousands of small releases that occur in the nation each year. What Valdez demonstrated was a lack of capability to deal with the catastrophic spill. MSRC closely analyzed the oil transportation patterns of persistent oils and made decisions on its operating sites based upon the threat posed by these patterns. Our analysis indicated that Alaska had two areas of likely threat - Cook Inlet and the TAPS terminus. When we reviewed the capability at these locations we found that Valdez had (and at the time was programmed to increase) a large capability to a considerable degree.

In fact, due in large measure to the work of the Alaska Legislature and Executive and Regional Citizens' Advisory Councils, Alyeska has a capability that would exceed one of MSRC's Regions and the capability of the Cook Inlet Cooperative is being upgraded. This led MSRC to conclude that there was not a need for MSRC capability in Alaska.

Although we had not received the full Citizens' Oversight Council Report by the time we had to depart for Juneau, the recommendations appear to be an outstanding example of good government at work. MSRC is pleased that the Council, in recommendation # 1, has acknowledged the essential need for the "gross negligence and willful misconduct" standard. Because with it comes the real foundation for assuring a bold and vigorous response to oil spills in Alaska, since responders will not unreasonably fear responding in the face of the risks and uncertainties surrounding oil spill response and cleanup. Adoption of this standard will create comity between the state and federal government. This is one of the things MSRC

has advocated for some time. MSRC wishes to commend the Council for its insight into recognizing the heart of a very complex problem. MSRC strongly urges this committee to enact this standard into any revision of H.B. 196.

The Council's recommendations then focused on conditions to assure response action contractor performance. We will speak to this below, but I want to underscore some key points with respect to the implementation of this limited immunity standard to ensure consistency with the federal standard.

1. It should apply to all responders, regardless of the category; i.e. volunteer, not-for-profit organization or for-profit organization,

2. It should only apply to acts or omissions taken in the course of rendering care, assistance or advice that are consistent with the NCP, or as otherwise directed by the President (USCG) or appropriate state officials,

3. It should <u>not</u> apply to the responsible party, or for acts under CERCLA,

4. It should <u>not</u> apply to acts that cause personal injury or wrongful death

5. And of ***critical importance***, a responsible party should be held liable for any removal costs or damages that another person is relieved of.

We noted that the Council was silent about a time limit to accompany any immunity.

We take this lack of a positive statement on this critical issue as a recommendation to eliminate this feature from future Alaskan law. We concur with this position.

Council recommendations two (2) through six (6) focus on the need for, and how, the state should assure that response action contractors satisfactorily perform. MSRC has no disagreement with the basic goal or the need for response action contractors to do a good job. We also do not object to a reasonable certification program and have supported certification in the Coast Guard's process to establish vessel response plan rules under OPA-90. We do however, believe that some of the recommendations may go too far. If certification establishes standards and requirements that are too burdensome, certification could severely limit the number of persons willing or able to be responders. These types of requirements also can serve to shift responsibility away from the spiller and on to the responder or even the state. Certification should not serve to advertently or inadvertently undermine or even negate the responder's immunity. The imposition of performance standards is problematical and any certification program must be implemented so that federal/state and local requirements are integrated into an effective and efficient whole consistent with OPA-90.

Recommendation two (2) asserts that the state "...currently has no (underlining supplied) means to verify the capability and the capacity of these contractors to perform...." While we do not believe this statement is technically accurate, the ability to verify the capability and capacity of responders certainly exists under OPA-90. Section 4202 of OPA-90 requires that the President, "...shall require- (A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges and ... periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency

Plans are required...The drills may include participation by Federal, State and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drill, including assessments of the effectiveness of the plans and a list of amendments made to improve plans...."(Underlining supplied.) We believe that OPA-90 provides an excellent starting point to implement this recommendation and we urge the legislature to carefully consider if additional state requirements are really needed. We do not believe that tieing responder immunity to responder certification is good public policy. MSRC believes that all responders require the limited immunity of OPA-90, and so long as they act consistent with the NCP or as directed by federal and state officials that their limited immunity should be left intact. We urge the legislature not to adopt this portion of the recommendation.

Recommendation three (3) would provide for the design of "minimum professional standards" for responders. In theory this is laudable, but MSRC believes there are major hurdles to be overcome, not the least which is the creation of a bureaucratic nightmare. The Council's recommendation itself recognizes that such standards do not presently exist. Unless the program was very basic in its construct, identifying operational and logistics support performance standards and then attempting to come to some agreement on how to measure performance to these standards, while a worthy goal, will be an exceedingly arduous task for the state. One needs to ask the question, "and to what real benefit?", since there are existing provisions for the state (as well as federal and local agencies) to be a party to drills and exercises where shortfalls in performance will be identified and action plans generated to eliminate discrepancies. Returning back to our original statement - a certification program should only be implemented if federal/state and local requirements are integrated into a single

and effective whole.

We have no disagreement with the purpose of Recommendation four (4). We believe however, that this purpose can be achieved through the federally mandated Local Area Planning process found in Section 4202 of OPA-90. ADEC will be a full and active participant, among other interests in the state, in this process and therefore we urge that the need for any legislation in this area be the result of a complete review of the protection provided by the federal planning process.

Recommendation five (5) is problematical. It is assumed that the financial implication of giving direct orders to a responder, such as in the case of a mystery spill, can be worked out, but that notwithstanding, given the overarching structure of OPA-90 it is difficult to identify a real problem that needs to be solved. MSRC believes that implementation of this recommendation will create serious problems.

Section 4201 of OPA-90 states that the President "... shall ...ensure (underlining supplied) effective and immediate removal of a discharge...." It further states that in those cases where there is a substantial threat to public health or welfare that he "...shall direct all (underlining supplied) Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge...." All now agree that decision-making during a spill response cannot be diffused but must attach to a single professional. The citations above demonstrate that the President will be in charge. We believe that this responsibility is being taken very seriously by the federal government. The state is a partner in the direction of these response efforts as a member of the federal Regional Response Team and Area

Committees that will be developed. The way that OPA-90 insures response and cleanup performance is by placing the burden where it belongs - on the spiller. The spiller must demonstrate to government that his plan is a reasonable one to remove, to the maximum extent practicable, a worst case spill. We see no clear and present danger that equipment and personnel will not, in the words of Recommendation five (5),"... indeed be deployed...." Please also consider that under OPA-90:

A. The state is intimately involved with the planning for the resources needed for a worst case spill; the federal government assures that response resources are inspected and

B. That unannounced drills are conducted to assure that what has been written in the plans, (1) actually exists and (2) will perform as agreed upon in the plans and

C. That Title V provides for the establishment of Regional Citizens Advisory Councils for special areas that have among their many advisory roles ones to:

1. provide advice and recommendations...on the policies...and regulations relating to operation of...terminal facilities and tankers which may affect the environment

2. monitor...the environmental impacts of the operation of the terminal facilities and crude oil tankers

3. review...the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers...

There are considerably more of these types of advisory duties, but the sum of (A) (B) and (C) above is a very high level of inspection and verification of response capability by a variety of organizations. This appears to be adequate to insure that if Alaska wants to get

something done during a response that it has a more than reasonable assurance that the resources will be there to execute the orders.

There is one more important point to consider. The recommendation speaks to a responders duty to perform. We believe that this inadvertently may deflect duty to cleanup the spill from polluters to responders. As stated above, we believe that responder performance will be demonstrated in a variety of ways; through drills and exercises - some to be unannounced, because acts must be consistent with the NCP, etc.. Likewise, inspections and inventories of equipment are part of federal law, enacted precisely for the purpose of insuring that what has been warranted in a plan can actually be delivered by the responsible party.

We believe that practically speaking, a problem does not exist in terms of the state gaining assurance that what is in a plan will be delivered and a limited responder immunity must not be held hostage to the orders of state on-scene coordinators.

Recommendation six (6) provides that certified response action contractors respond when directed by the state. Private responders have a tradition of responding if needed, however, they are not governmental resources. If the state wants to hire a contractor to perform response services it should do so as a matter of negotiated contract irrespective of responder immunity or certification.

In closing Mr. Chairmen, I want to again thank this committee for the opportunity to comment on the Citizens' Oversight Council recommendations and responder immunity in

Alaska. You know our reasons for asking you to enact legislation at least as protective as Section 4202 of OPA-90. We are encouraged by our discussions with many members of the legislature and the administration. We are encouraged by the report of your Citizens' Oversight Council. We urge you to join with the 19 other states and adopt Section 4201 of OPA-90. It is sound public policy. I would be happy to answer any questions which you may have.

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12350 Industry Way, Suite 200
P O Box 196010
Anchorage, Alaska 99519-6010

March 9, 1992

Alaska State Legislature
House Special Committee on Oil & Gas

Re: **Position Statement - House Bill 540**

Thank you for the opportunity to provide written comments to the House Special Committee on Oil & Gas regarding an Act to limit the liability for oil spill response action contractors. Alaska Clean Seas supports House Bill 540 and believes this legislation is urgently needed to maintain the high level of response capability presently available within Alaska.

A key element for success in any spill action is swift and effective response. It is imperative that the response not be inhibited or delayed by the issue of liability. To ensure that additional manpower and equipment can be brought to bear quickly on a spill response, ACS and CISPRI have implemented a mutual aid agreement for assisting one another in the event of a spill. This agreement incorporates indemnity provisions to transfer all liability arising out of a response to the spilling party, regardless of fault. The agreement was tested during the recent East Forelands spill. Upon receipt of a request for assistance from CISPRI, Alaska Clean Seas had personnel on site within four hours and fourteen responders on site with a complement of equipment within eight hours of notification of the spill. Without an effective indemnity agreement, such immediate mutual aid would not have occurred.

Oil spill cooperatives within the State (ACS, CISPRI and SERVS) represent the bulk of spill equipment available within Alaska. Collectively this is the largest supply of spill equipment in the world. By organization, these cooperatives are not for profit. They have no interest in weighing risk vs reward. If these cooperatives are not provided protection from liability they will <u>not</u> respond to spills outside of their membership or geographic area of coverage. It would be a tragedy to have the resources of the cooperatives made unavailable because of issues of liability. Equally important, this would have implications for the availability of personnel and equipment from other sources both nationally and internationally.

Under OPA 90, liability is clearly placed in the hands of the spiller. The notable exceptions are for the case of gross negligence, willful misconduct or violation of the law. House Bill 540 is consistent with this federal standard. Alaska has the right to differences to the federal standard. However, these differences should be

improvements and not detractions. Alaska Clean Seas views this Bill as making those improvements.

Alaska is presently in the fortunate position to have a cadre of well trained, experienced and professional spill response contractors operating within the State. This capability was obviously increased significantly as a result of the Exxon Valdez response and these organizations are now recognized throughout the United States and the world. They are actively involved in spill response, contingency planning, prevention and training. Without the provision of protection from liability it is questionable if this capability would continue to operate within the State of Alaska

In summary, the largest supply of spill equipment in the world is located in Alaska. Additionally some of the best trained and most experienced responders are located within the State, working either in the oil spill cooperatives or the private response contracting community. Unless House Bill 540 is made law, a significant portion of the personnel and equipment within the cooperatives would be unavailable for response to spills outside their defined jurisdiction. Additionally, a significant percentage of the expertise and equipment presently in existence through the contracting community will be lost from the State. The effort and work that has been expended over the last 3 years by the State of Alaska, the oil industry, citizens groups and the private contractor community to provide the best spill response capability in the world will have been for naught.

Sincerely,

Per Norman Ingram
General Manager

North Peninsula Chamber of Commerce

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

NORTH PENINSULA CHAMBER OF COMMERCE
A RESOLUTIOON SUPPORTING HB 540 AND TESORO ALASKA

WHEREAS, HB 540 provides Response Action Contractors (RACs) limited liability unless the RACs acts with gross negligence, willful misconduct, causes personal injury, wrongful death or acts contrary to the direction of the state or federal on scene coordination; and

WHEREAS, it is imperative to have uniform liability standards to attract RACs to establish in Alaska; and

WHEREAS, not to provide limited liability for RACs will result in the failure of RACs to establish in Alaska. Shippers will then either be unable to ship heating fuel, gas, diesel fuel for electrical generation and other hazardous materials, or to keep home heating fuel, gasoline and crude and noncrude delivery, waivers will need to be granted to shippers, owners and handlers; and

WHEREAS, eighteen other coastal states have passed similar limited liability RAC laws; and

WHEREAS, Tesoro Alaska's ability to operate would be greatly jeopardized without the passage of HB 540 and the subsequent sunset of HB 196, and

WHEREAS, Tesoro Alaska contributes substantially to the economy and tax base of the Kenai Peninsual and Alaska; and

FROM : TIMCO ENVIRONMENTAL SERVICES

North Peninsula Chamber of Commerce

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

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS of the NORTH PENINSULA CHAMBER of COMMERCE;

Section 1: That the North Peninsula Chamber of Commerce Board of Directors urges the Alaska State Legislature to pass HB 540.

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

ADOPTED BY THE BOARD OF DIRECTORS OF THE NORTH PENINSULA CHAMBER OF COMMERCE ON THIS 26th DAY fo MARCH, 1992

Marie Becker

Marie Becker, President

ATTEST:

Audrey Hodgins

Secretary

COOK INLET SPILL PREVENTION & RESPONSE INC.

CISPRI POSITION PAPER

OIL SPILL RESPONSE ACTION CONTRACTOR LIABILITY

MARCH 6, 1992

CISPRI supports the liability relief language in OPA'90. We believe the Response Action Contractor should be relieved of liability except for gross negligence.

Currently, CISPRI By-Laws allow CISPRI to respond to any spill in Cook Inlet, whether or not the responsible party is a member of the cooperative or not. Without contractor liability relief, CISPRI members are reluctant to respond if there is not a clearly identified responsible party. Delays will occur while a contract is negotiated.

OPA '90 grants the Response Action Contractor relief but transfers that relief to the responsible party. If there were an orphan spill, no Response Action Contractor would ever respond for fear of being made liable for simply trying to correct someone else's responsibility.

The Kenai Peninsula Borough sits on CISPRI's Board of Directors. If there is not liability relief for CISPRI as a Response Action Contractor, they (Kenai Peninsula Borough) have been legally advised to withdraw from CISPRI.

CISPRI uses the Incident Command System and CISPRI responds to all decisions made as a result of the Unified Command meetings. If liability relief is not granted, are all members of the Unified Command responsible for CISPRI actions?

If the Response Action Contractor is made liable for damages, what happens to the lower level response contractors? Are the fishing vessels, vessels of opportunity and other response contractors liable?

The argument has been made that no Response Action Contractor has been sued. That is completely untrue. Cook Inlet Resource Organization (CIRO), is still involved in legal proceedings of the Glacier Bay Spill.

The 15 day liability relief granted in HB196 bill is not enough. During the small East Forelands Spill CISPRI had used nine days before all equipment was demobilized.

CISPRI supports HB 540 and requests that the legislature enact this legislation so CISPRI can continue rapid response to any spill in Cook Inlet.

P.O. Box 49 • Kenai, Alaska 99611 • (907)283-5129 • FAX 283-2087 • Emergency 283-SPIL (7745)

seapro

Southeast Alaska Petroleum Resource Organization
540 Water Street Suite 202
(907) 225-7002
Ketchikan, Alaska 99901
Fax (907) 247-1117

February 27, 1992

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

Dear Representative Hudson,

In support of your bill HB 540, which limits response action contractor liability, I am enclosing our recently approved position paper on this subject. Also, since our organization is still rather new and little known, I have included a map which shows the major locations of our network, and a map which shows the eligible facilities which have chosen not to join our network.

As you will note in our position paper, we do not believe that all of the recommendations of the Citizen's Oversight Council on this subject are in the best interest of our region. We do believe, however, that HB 540 provides exactly the conditions we think will provide the best climate for further developing environmental protection capabilities in our region.

I will, of course, provide you with any information or other assistance you may need relative to environmental protection in Southeast, the remainder of the state, and the North Pacific region.

Respectfully,

R. M. Mullen
Manager

seapro

Southeast Alaska Petroleum Resource Organization
540 Water Street Suite 202
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Ketchikan, Alaska 99901
Fax (907) 247-1117

POSITION PAPER

OIL SPILL RESPONSE ACTION CONTRACTOR LIABILITY

February 25, 1992

SEAPRO and its nineteen member companies wish to record our observations and concerns about response action contractor liability, and its likely impacts on the current and future state of environmental response capability in Southeast Alaska. We are particularly concerned by the failure of the Citizen's Oversight Council to adequately investigate the state of environmental response in rural Alaska generally, and Southeast Alaska specifically, in reaching the conclusions and recommendations contained in their report to the legislature on this subject.

Overview of Response Action Contractors in Southeast Alaska

There is only one business in the Southeast Alaska region which holds itself out as a response action contractor. That firm has very minimal capabilities which are almost totally restricted to the immediate areas around Juneau. Our region has always had to rely on existing business organizations within the region to provide response to pollution incidents and other emergencies. In addition to oil transporters and terminals, these businesses have included logging companies, construction companies, float plane and helicopter operators, tug and barge companies, fishing vessels, and many others. All of these are therefore "Response Action Contractors" as defined by state law when they enter into agreements to help respond to spills.

The services of companies like VRCA, VECO, Burlington Environmental, Foss Environmental, etc., have rarely if ever been used to respond to environmental emergencies in our region. The reason for this is the typical small size of spills, the nature of the products involved, and the logistic difficulties of deploying to the region in time to be effective. One of the primary motivations our members felt for formation of SEAPRO was the lack of response action contractors within the region.

SEAPRO is not currently a response action contractor. We are a cooperative sharing organization of predominantly local small businesses who make up the fuel and lubricating oil transportation and distribution network for all of Southeast Alaska. We also include several local companies who consume or handle large quantities of oil in support of their business activities, but who are not in the "oil business". Our organization was originally formed to act as a sharing network only in Ketchikan, but rapidly expanded to cover the entire region. We have now reached the point in our evolution where we must consider purchasing pollution response equipment in the near future and becoming some form of response entity.

All of our collective experience, along with our judgment of operating conditions within the region, forces us to conclude that there will likely never be a response action contractor of any significant ability in Southeast. We have no expectation that this situation will change any time soon because there is insufficient financial justification for bona-fide environmental or emergency contractors to capitalize a response capability which would only be profitably employed on our historical average of once a decade.

Potential Impact of Liability to Southeast Alaska Spill Response Capability

With the exception of SEAPRO member companies, almost none of the companies who have previously participated in environmental response activities in this region are aware of their potential liabilities when current state law sunsets in a few months. Additionally, since none of these companies consider themselves to be "response action contractors", it is unlikely that they will make themselves aware of their liability exposures in advance of being asked to respond to an environmental emergency. It is equally unlikely that they would submit to a "certification" process recommended by the Citizen's Oversight Council, or to the verification/inspection process which would be necessitated by such certification.

If these companies were to discover the potential extent of their liability exposure for participating in a clean up action after the current limitations sunset, it is unlikely that they will respond in a timely manner, if at all, when they are needed. The worse possible situation will be for one or more of these companies to become the target of an opportunistic law suit allowed by a lack of liability limitation. Such a situation would guarantee that it would be difficult, if not impossible, to convince local companies to respond to future emergencies, even if action were subsequently taken to limit liabilities. Given the ever increasing propensity for opportunistic law suits in our nation, and the sensitivity of regional businesses to this phenomenon, we believe that merely the possibility of such a situation will have a chilling effect on the regions environmental response capability.

Any reasonable person responding to an oil spill assumes that all liability for damages and costs resulting from the clean up will flow to the responsible party. This is as it should be. It makes no sense to imperil a contractor acting in good faith, and within the boundaries of state or federally approved contingency plans, to bear any responsibility for damages which could result from someone else's spill. Except for gross negligence, willful misconduct, or violation of law by a contractor, all damages from a hazardous substance release are the rightful responsibility of the spiller, not the third party people cleaning it up. This principle has been codified in federal law and the laws of at least 18 other coastal states. Acceptance of this principle is a condition of membership in SEAPRO and most other cooperatives.

As stated earlier, SEAPRO has evolved to the point that it must consider becoming a response entity in some form. Currently, Southeast is the only region of the state, outside the crude oil producing regions, which has taken any tangible steps to improve its environmental response capability. The steps that have been taken to date, have been entirely on the initiative of the regions businesses. In spite of some initial skepticism on the part of state and federal agencies, we have forged ahead with investment in our organization, greatly enhancing the effectiveness of the response equipment, material, and personnel in the region. We have proposed to both the state and federal agencies, cooperative steps which can be taken to provide our region and the rest of the state with marked improvement in our mutual ability to combat environmental emergencies. We want to begin taking these steps this year with or without agency participation.

However, the prospect of facing clean up costs and other damages for actions the co-op may take to mitigate environmental damage will surely weigh heavily on our decision making when considering how we may use SEAPRO to further improve the regions total response capability.

Response Action Contractor Certification in Southeast Alaska

The Citizen's Oversight Council has recommended that response action contractor liability limitation be linked to an, as yet undeveloped, certification program. While SEAPRO does not object to compliance standards for environmental response organizations, whether private companies, cooperatives or some other form, we fail to see the practicality or necessity of "certifying" entities in Southeast Alaska which meet the definition of response action under current law.

The current legal definition of response action contractor is:

(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) to provide services to the response action contract; and

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

Looking at the history of spill response in Southeast, and the probable future response actions in the region, certifying the response action contractors defined above would mean establishing the standards and processes for certifying virtually every business, and many individuals in our region. This is a monumental task by any standards, and in our view, a nonsensical one.

The Citizen's Oversight Council made some very narrow assumptions of what constitutes a response action contractor, and even what constitutes a cooperative. It is our opinion that the Council did not consider the broad range of response actions that have taken place throughout this state, nor did they evaluate the complex mix of organizations and individuals who have participated, and are likely to be asked to participate in environmental response actions.

There could be some benefit to establishing certification criteria for certain categories of response action contractors, were those categories to be properly defined in the broader context of the entire state. But in any context, some agency will have to develop professional standards to measure contractor capability; will have to apply these standards through some sort of an inspection or verification process; will have to verify the continuity of certification levels, will have to measure actual contractor performance against certification standards; and will have to administer this entire process. In our view, the cost of the simplest of such a bureaucracy would be excessive for the benefit gained, especially in Southeast and other areas outside the crude oil producing regions. The time necessary to create such a system would be extreme, with no possibility that such a system could be in place before the current liability limitations sunset. And finally, it makes no sense to us to waste scarce state resources on creating such a system and supporting bureaucracy when the federal government is already in the process of doing exactly the same thing.

Summary

At no time prior to publishing its report did the Citizen's Oversight Council seek information about conditions in Southeast Alaska from either SEAPRO, its member companies, nonmember companies, or other organizations with whom we network. During their teleconferenced meetings on this subject, our representatives noted that Southeast Alaska was never discussed or even mentioned by the Council members. Additionally, it was our observation that the Council focused almost all of their attention on operations in the crude oil producing regions of the state, on one or two companies who are in the business of environmental response, on Alyeska Pipeline Company, on the Cook Inlet cooperative CISPRI, and infrequently on the Alaska Clean Seas cooperative.

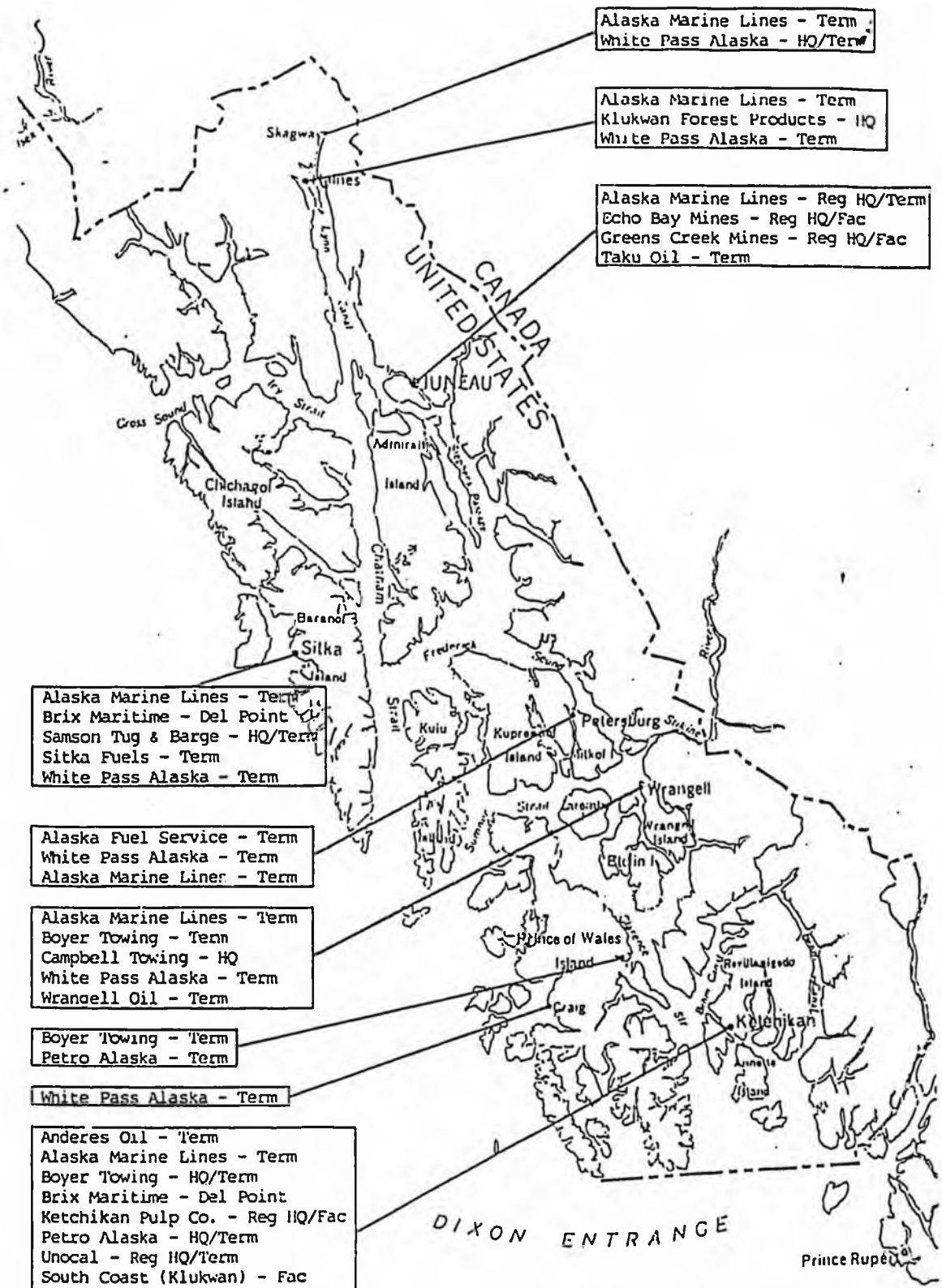
We find that their report seems to be strictly and narrowly aimed at perceived conditions in Prince William Sound, and to a lesser degree, Cook Inlet. It certainly does not accurately reflect environmental response conditions in our region, and we suspect that it does not accurately reflect conditions in other regions of the state. Consequently, this basic flaw places us in the position of not concurring with much of their rationale or their proposed solutions.

We believe that the state, like the federal government, should fix all obligations for clean up costs and damages resulting from a hazardous substance release on the responsible party, where it rightfully belongs.

We are concerned that failure to adopt liability limitations for environmental emergency responders, other than the responsible party, would negatively impact our regions ability to seek rapid and effective response actions from service providers outside the SEAPRO response network. Additionally, failure to provide this type of liability limitation would seriously threaten SEAPRO's ability to continue making further improvements in the total response capability of the region.

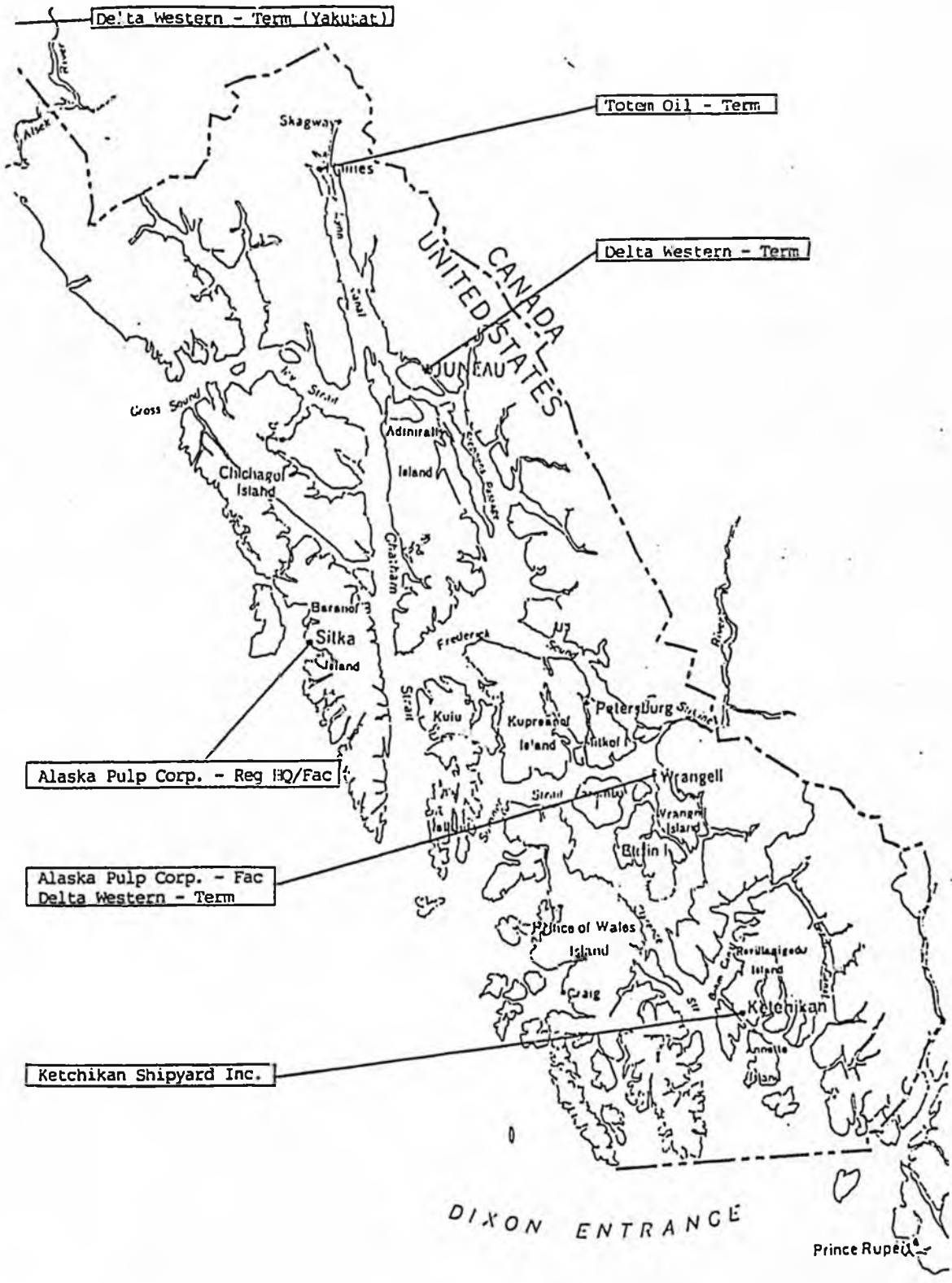
We cannot see substantial value to be gained within our region by creating a response action contractor certification process independent of that which will be created by the federal government. We also see no value in either waiting until a certification process is developed before granting liability limitation, or in tying liability limitations to any condition other than performance in accordance with federal and state contingency plans.

We believe that limiting the potential liability of responders, whether environmental contractors, cooperatives, other commercial entities, or volunteers is essential to improving the response capabilities of our region. This limitation should be similar, if not identical to that contained in the federal Oil Pollution Act of 1990.



IMPORTANT EXTERNAL OPERATIONS

Alaska Marine Lines - Seattle
Boyer Towing - Seattle
Brix Maritime - Seattle/Portland
Foss Maritime - Seattle
Klukwan Forest Products - Seattle
Samson Tug & Barge - Seattle
West Coast Shipping - Los Angeles
White Pass Transportation - Vancouver BC



Significant Facilities Which Have Declined Membership
February 1992

Municipality of Anchorage

OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

March 27, 1992

Representative Cliff Davidson, Chairman
House Resources Committee
P.O. Box V
Juneau, Alaska 99811

Re: HB 540, Civil Liability for Oil Spills

Dear Representative Davidson:

The Municipality of Anchorage supports HB 540, Civil Liability for Oil Spills, and encourages the House Resources Committee to act expediently on this legislation.

If this legislation does not pass, the financial impact on the Municipality could be significant. HB 540 relieves certain civil liabilities to consultants who are hired to clean up an oil spill. If the bill is not moved forward, a scenario could develop in which consultants would not be willing to work on oil spills, and the only recourse would be to hire people as municipal employees to clean up spills.

HB 540 solves a problem that could be significant if lawsuits put clean-up consultants out of business. If this happens, the impacts will be major and will impede our ability to react to spill events.

I urge your support for this legislation.

Very truly yours,

Tom Fink

Tom Fink

cc: Representative Bill Hudson

1791-1991
CITY OF KENAI
"Oil Capital of Alaska"
210 FIDALGO KENAI, ALASKA 99611
TELEPHONE 283-7535
FAX 907-283-3014

MEMORANDUM

TO: Governor Walter J. Hickel
Senator Sam Cotten
Senator Lloyd Jones
Representative Mike Navarre
Representative Bill Hudson
Representative Cliff Davidson
Representative Jim Zawacki

FROM: Carol L. Freas, City Clerk
City of Kenai

DATE: April 2, 1992

RE: *HOUSE BILL 540*

Attached please find a copy of the City of Kenai's Resolution No. 92-18 concerning oil spill responder's limited immunity and House Bill 540.

If you have any questions, please contact Mayor John J. Williams, City of Kenai.

Thank you.

clf

SUGGESTED BY: Mayor Williams

City of Kenai

RESOLUTION NO. 92-18

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, CONCERNING OIL SPILL RESPONDER'S LIMITED IMMUNITY AND HOUSE BILL 540.

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 without hesitance 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 int he course of their response activities; and,

WHEREAS, twenty-one members of the House co-sponsored HB 540 which provides for limited immunity to oil spill response action contractors.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that it supports and encourages Alaska State legislation, such as HB 540, 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 J. 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 COUNCIL OF THE CITY OF KENAI, ALASKA, this first day of April, 1992.

John J. Williams

John J. Williams, Mayor

ATTEST:

Carol L. Freas

Carol L. Freas, City Clerk

(3/26/92)
clf

Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611
(907) 283-7989

April 8, 1992

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99811-1182

Reference: House Bill 540

Dear Mr. Hudson,

Enclosed, please find a resolution from the Kenai Chamber of Commerce in support of House Bill 540.

The Kenai Chamber of Commerce is in strong support of House Bill 540. Without a limit of liability for oil spill responders, Tesoro Alaska Petroleum would have to post a bond of $1 billion to counter the effect of litigation due to any oil spillage occurring during transportation between Valdez to the Kenai refinery. This huge burden on Tesoro's cash flow could put their ability to operate in Alaska in jeopardy.

Tesoro Alaska Petroleum is a major employer in the Kenai area, and a major contributor to Alaska's economy. Their lack of presence in the Kenai area would have a major negative impact state wide, as well as locally.

The Kenai Chamber of Commerce is asking that your support of this bill be strongly considered.

Thanking you in this matter.

Sincerely,

Jeff Belluomini
President

Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611
(907) 283-7989

RESOLUTION 92-3

RESOLUTION SUPPORTING TESORO ALASKA

WHEREAS, the continued operation of the Tesoro Refinery is being threatened by the unreasonable demand by Alyeska Pipe Line Service Co. management; and

WHEREAS, Alyeska Pipe Line Service Co. is demanding Tesoro to secure a billion dollars insurance bond: and

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

WHEREAS, Tesoro contributes substantially to the tax base of the Kenai Peninsula Borough; and

WHEREAS, The Alaska State Legislature is currently considering CSHB 540 which provides limited immunity for responders and a permanent solution to the issue:

NOW THEREFORE, BE IT RESOLVED BY THE GREATER KENAI CHAMBER OF COMMERCE:

Section 1: That the Greater Kenai Chamber of Commerce 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, Members of the House Resources Committee, Tesoro Alaska and Alyeska Pipe Line Service Co.

ADOPTED BY THE BOARD OF DIRECTORS OF THE GREATER KENAI CHAMBER OF COMMERCE ON THIS 3RD DAY OF APRIL, 1992

Jeff Belluomini
President
Kenai Chamber of Commerce

ATTEST:
Eleanor Thomson
Eleanor Thomson

CITY OF KODIAK
RESOLUTION NUMBER 08-92

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK SUPPORTING THE PASSAGE OF HOUSE BILL 540, LIMITING THE LIABILITY OF AN OIL SPILL RESPONSE ACTION CONTRACTOR

WHEREAS, the House Special Committee an Oil and Gas filed House Bill 540 which limits the liability of an oil spill Response Action Contractor (RAC) for release or threatened release of hazardous substances, and for an act or omission that is not contrary to a state or national oil spill contingency plan; and

WHEREAS, House Bill 540 also relates to the liability of an RAC for an act or omission that is not contrary to the state or national plan or an order of an on-scene coordinator; and

WHEREAS, House Bill 540 repeals the requirements that liability is not limited in an action for damages to personal property not caused by oil and is only limited if the act or omission occurs within 15 days after the release of oil; and

WHEREAS, House Bill 540 is supported by Pacific Fisheries Legislative Task Force, California Sierra Club, International Bird Rescue Center, Citizens' Oversight Council on Oil and Other Hazardous Substances, Ventura County Fishermen Association, and Alaska Coastal Community Cooperative; and

WHEREAS, RAC's do not create the risk of a spill; and

WHEREAS, it is imperative to have uniform liability standards to attract RACs to establish in Alaska; and

WHEREAS, certification standards must be consistent with other states in the event of a spill, and RACs would be wanted to respond in Alaska from other states; and

WHEREAS, Alaska must attract response action contractors as no business will willingly assume the strict liability for another's actions that result in oil spill damages,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, supports the passage of House Bill 540, and urges the Legislature to pass the bill.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the members of the House Resources and Judiciary Committees, the Kodiak delegation, and the City's Juneau lobbyist.

PASSI

ATTEST:

PASSED AND APPROVED this 9th day of April, 1992.

CITY OF KODIAK

Walter E Johnson
MAYOR

ATTEST:

Marcella Walker
CITY CLERK

Homer Electric Association, Inc.

CENTRAL OFFICE: 3977 LAKE STREET • HOMER, ALASKA 99603 • (907) 235-8167

March 31, 1992

The Honorable Bill Hudson, Member
House Resources Committee
Room 124, Capitol Building
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

REF: HOUSE BILL #540 (RESPONDER IMMUNITY)

Homer Electric Association supports HB #540, Responder Immunity.

Tesoro Alaska Petroleum Company operates a large refinery in Kenai, Alaska. Tesoro's operations support 575 jobs in Alaska. In addition to investing in a $20 million payroll in Alaska, Tesoro contributes approximately 55% of the cost of the Cook Inlet Spill Prevention and Response, Inc. (CISPRI).

Tesoro is the third largest borough taxpayer and supports the Kenai Peninsula community through charitable organizations, donating large sums of money and staff time. Tesoro is Homer Electric Association's largest consumer, purchasing in excess of 75 million kilowatt hours of electric energy each year. HEA is very committed to the support of Tesoro and the continuation of its enterprise on the Kenai Peninsula.

We urge you to support House Bill #540 and pass it out of the House Resources Committee.

Sincerely,

HOMER ELECTRIC ASSOCIATION, INC.

N. L. Story
General Manager

NLS:em

cc: RF - NLS
Rep. Mike Navarre
Rep. Gail Phillips
Sen. Paul Fischer
Sen. Jay Kerttula
Sen. Sam Cotten
HEA Board of Directors
Mark Necessary, Tesoro
Dave Hutchens, ARECA
Rep. B. Hudson
Rep. R. Taylor
Rep. B. Grussendorf
Rep. C. Davis
Rep. P. Parnell
Rep. R. Foster
Rep. L. Baker
Rep. D. Choquette
Rep. J. Gonzales
Rep. T. Martin
Rep. Mary Miller
Rep. Mike Miller
Rep. R. Phillips
Rep. B. Sharp
Rep. M. Hanley

Resource Development Council
for Alaska, Inc.

FOUNDED 1975

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
Phone 907/276-0700 Fax 276-3887

Resource Development Council
Position Paper - HB 540
2/21/92

The Resource Development Council for Alaska, Inc., strongly supports HB 540 and urges the Alaska Legislature to carefully review and approve this legislation. RDC is a non-profit, pro-economic and resource development organization with a statewide board and membership.

RDC's primary concern with HB 540 is that it corrects prior legislation which wrongly placed the emphasis on preserving an avenue for future litigation that could result from an oil spill, as opposed to placing the emphasis on a good faith response. RDC believes the response action contractor (RAC) provisions contained in the Oil Pollution Act of 1990, which provide for simple negligence, are the appropriate approach in Alaska.

To increase the negligence standard to levels higher than those required by the federal government is not only unnecessary, but has threatened to shut down at least one major employer on the Kenai Peninsula, involving hundreds of jobs in that region. HB 540 addresses several concerns expressed by response action contractors, as well as those involved in the business of shipping oil.

RDC notes that 19 other coastal states have enacted legislation as protective as OPA-90 over the last 18 months, pointing to the integrity of the federal policy.

RDC firmly believes that response action contractors involved in controlling the release or threatened release of a substance should be held to the federal standard of simple negligence as outlined under OPA 90 and urges passage of HB 540.

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

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 c 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

TO: Bill Hudson

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

DATE: 3-28-92

FROM: Micheal & Claudia Ussery
1508 Cara Loop
Anchorage, Alaska 99515

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

I am employed by Tesoro Petroleum. Tesoro contributes approximately 55% of the costs of the Cook Inlet Spill Prevention & Response, Inc. ("CISPRI"); has a total payroll of approximately $20 million; is the third largest taxpayer in the Kenai Peninsula Borough; and has contributed a large amount of money and employee time over the years to charitable organizations and public concerns. It was the first refiner to process a barrel of Alaska North Slope Crude on August 8, 1977. A shut down in crude supply last year was avoided by the passage of HB 196, which was passed for one year. HB 196 expires June 30, 1992.

Thank you for your attention and support of HB 540.

FAX MEMO

TO: House of Representatives Resource Committee
Cliff Davidson, Georgianna Lincoln, Pat Carney, David Finkelstein, Bill Hudson, Ivan Ivan and Tom Moyer
FAX (907)465-3444

FROM: Tiny Schasteen
Unalaska, Alaska

DATE: March 27, 1992

SUBJECT: House Bill 540

The purpose of this memo is to request your help in protecting the environment of Unalaska and the entire State.

As I understand HB 540 it's goal is to prevent a spill responder who responds to an oil spill from being held liable for the entire spill.

Currently if You or I attempt to cleanup a spill we will be held responsible for that spill even if we had nothing to do causing the spill. This makes it impossible for anyone, including a "Good Samaritan", from cleaning up any oil spill not caused by them.

Three months ago there was a 12,000 gallon spill in Unalaska to which I dispatched men and equipment. The company I manage has born all the costs for this cleanup even we had nothing to do with causing the spill. In fact the spill was all the way across town, in a different bay. The owners of my company didn't have a problem with the costs incurred, however due to the fact that when we responded to this spill we accepted FULL RESPONSIBILITY for this spill, I have been instructed not to respond to any spill not caused by our company.

This is totally unacceptable! If HB 540 does not pass, it will prevent people with good intent, like myself, from trying to clean up spills they are not responsible for.

IF HB 540 DOES NOT PASS IT WILL BE AN ENVIRONMENTAL DISASTER TO RIVAL THE EXXON VALDEZ!

TO: Bill Hudson DATE: 3 April '92

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

FROM: Christie L. Fleming
HC02 Box 7545
Palmer Alaska 99645

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

[redacted] We don't need a State Tax

TO: Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

DATE: 4-6-92

FROM: John M. Reed
6471 Ashland Dr.
Anchorage AK 99507

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

TO: Bill Hudson DATE: 4-8-92

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

FROM: Curt Rudd
Box 111483
ANC 99511

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

Curt Rudd

TO: Bill Hudson Jr. DATE: 4-6-92

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

FROM: DALE GRETH
2411 SENTRY # 1105
ANC 99504

SUBJECT: House Bill 540 - Responder Immunity

I support HB 540, which was introduced in February, as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency responders in Alaska. I urge you to work for a scheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540.

Dale Greth

To: Bill Hudson

Date: 4-5-92

Alaska State Legislature
State capitol
Juneau, Alaska 99801

From: Bill Fallacaro
1402 Nunaka Dr
Anc 99504

Subject: House Bill 540-Responder Immunity

I support HB 540, which was introduced in February as a means to solve the issue of responder immunity. I believe the legislation is appropriate and that the responders in the state (such as CISPRI) should be granted immunity similar to that already provided other emergency respondes in Alaska. I urge you to work for ascheduled hearing of this bill, if it has not already been scheduled, and for passage of HB 540. In these very troubled times we're experiencing, what we do not need at this time is to run a prospering company such as Tesoro, out of business. Tesoro employs approximately 575 people in Alaska. I am fortunate to be one of the 575. Tesoro contributes approximately 55% of the costs of the Cook Inlet Spill Prevention and Response Inc., Is the third largest taxpayer in the Kenai Penninsula Borough, and has contributed a large amount of money and employee time over the years to charitable organizations and public concerns. I appreciate your immediate attention concerning HB 540. Thankyou.

William Fallacaro

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: VICTORIA ASKIN
TITLE:
ADDRESS: PO BOX 178
CITY: KENAI ZIP: 99611
PHONE: 283-5129
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I STRONGLY SUPPORT THE PASSAGE OF HB540 FOR THE ECONOMY OF THE KENAI PENINSULA. THE FAILURE OF THIS BILL COULD RESULT IN LOSING A LARGE PORTION OF OUR TAX BASE WITH AN ADDITIONAL DRAIN PUT ON THE UNEMPLOYMENT AND WELFARE SYSTEM. AGAIN, I STRONGLY URGE YOU TO VOTE YES ON HB540.

POMID: 13154526
DATE: 92/03/26
TIME: 15:45:26
LIONAME: SOLDOTNA LIO

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	LINCOLN	MOYER	
	ZAWACKI	BAKER	
	C.DAVIS	FOSTER	
	NAVARRE	G.PHILLIPS	
	TAYLOR		

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: CHERYLE KENT
TITLE:
ADDRESS: BOX 636
CITY: KENAI ZIP: 99611
PHONE: 283-5129
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: PLEASE VOTE YES FOR THIS IMPORTANT ISSUE. I SUPPORT IT WHOLEHEARTEDLY

POMID: 13155526
DATE: 92/03/26
TIME: 15:55:26
LIONAME: SOLDOTNA LIO

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	TAYLOR	KUBINA	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: LINDA WHITE
TITLE:
ADDRESS: PO BOX 7453
CITY: NIKISKI ZIP: 99635
PHONE: 283-5129
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I AM IN SUPPORT OF HB540. BY NOT EXTENDING THIS BILL, UNDUE AND UNNECESSARY HARDSHIPS TO MANY ENTITIES WILL OCCUR. HARDSHIPS TO NOT ONLY INDUSTRY BUT TO GOOD SAMARITAN VOLUNTEER ORGANIZATIONS WILL OCCUR. TRAINED, KNOWLEDGEABLE VOLUNTEERS ARE A NECESSITY TO A VIABLE RESPONSE, AS ARE RESPONSE ACTION CONTRACTS THEMSELVES.

POMID: 13160232
DATE: 92/03/26
TIME: 16:02:32
LIONAME: SOLDOTNA LIO

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	ZAWACKI	BAKER	
	C.DAVIS	NAVARRE	
	G.PHILLIPS	TAYLOR	
	FOSTER		

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: GEORGIA POYNER
TITLE:
ADDRESS: BOX 7397
CITY: NIKISKI ZIP: 99635
PHONE: 283-4304
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I SUPPORT THE PASSAGE OF HB540. COMPANIES LIKE TESORO ARE THE BACKBO OF THE KENAI PENINSULA. LET'S NOT FINANCIALLY BURDEN THEM ANY FURTHER.

POMID: 13162122
DATE: 92/03/26
TIME: 16:21:22
LIONAME: SOLDOTNA LIO

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PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: JACKIE ANSOTEGUI
TITLE:
ADDRESS: BOX 3315
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-8405
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL. THANK YOU.

POMID: 13092708
DATE: 92/03/27
TIME: 09:27:08
LIONAME: SOLDOTNA LIO

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PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SHEILA WEST
TITLE:
ADDRESS: PO BOX 82882
CITY: FAIRBANKS ZIP: 99708
PHONE: 474-8073
BILL NO:
SUBJECT: CHILD CARE GRANTS
MESSAGE: FULL FUNDING OF THE CHILD CARE GRANTS IS URGENTLY NEEDED. NO CUTS T
CHILDRENS PROGRAMS ARE ACCEPTABLE, WHILE OTHER AREAS SUCH AS TOURISM ARE GETTI
MILLION DOLLAR INCREASES. PLEASE SHOW US WITH YOUR BUDGET - WHO'S FOR KIDS A
WHO'S JUST KIDDING. EOM

POMID: 07092158
DATE: 92/03/27
TIME: 09:21:58
LIONAME: FAIRBANKS LIO

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R.PHILLIPS	SHARP	STURGULEWSKI
TAYLOR	ULMER	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SUSAN CASWELL
TITLE:
ADDRESS: BOX 3238
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-9554
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL.

POMID: 13092423
DATE: 92/03/27
TIME: 09:24:23
LIONAME: SOLDOTNA LIO

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MOYER
ZAWACKI

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: CAROLYN PRINCE
TITLE:
ADDRESS: BOX 1087
CITY: SOLDOTNA ZIP: 99669
PHONE: 262-4214
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL

POMID: 13092607
DATE: 92/03/27
TIME: 09:26:07
LIONAME: SOLDOTNA LIO

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CARNEY
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MOYER
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PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: JANNA PRESTON
TITLE:
ADDRESS: 2700 WEST 34TH AVENUE
CITY: ANCHORAGE ZIP: 99517
PHONE: 248-5399
BILL NO: SB 157
SUBJECT: OPTOMETRISTS: AUTHORIZED PRACTICES
MESSAGE: HB 336: PLEASE SUPPORT THE OPTOMETRY BILL. /JSM

POMID: 03085620
DATE: 92/03/27
TIME: 08:56:20
LIONAME: ANCHORAGE LIO

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	R.PHILLIPS	SHARP	STURGULEWSKI
	TAYLOR	ULMER	UEHLING
	ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SHARON LOOSLI
TITLE:
ADDRESS: BOX 935
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-4052
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I URGE YOU TO SUPPORT THIS BILL.

POMID: 13091426
DATE: 92/03/27
TIME: 09:14:26
LIONAME: SOLDOTNA LIO

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	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: SUSAN LACEY
TITLE:
ADDRESS: BOX 1005
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-9256
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I SUPPORT HB540 AND I WOULD LIKE YOU TO DISTRIBUTE THE LIABILITY EVENLY.

POMID: 13082144
DATE: 92/03/27
TIME: 08:21:44
LIONAME: SOLDOTNA LIO

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MOYER	NAVARRE
PARNELL	G.PHILLIPS
R.PHILLIPS	SHARP
TAYLOR	ULMER
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HUDSON

NAME: VAL ISCHI
TITLE:
ADDRESS: 604 LAUREL DRIVE
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-3835
BILL NO: HB 540
SUBJECT: CIVIL LIABILITY FOR OIL SPILLS
MESSAGE: I AM IN SUPPORT OF HB540.

POMID: 13085213
DATE: 92/03/27
TIME: 08:52:13
LIONAME: SOLDOTNA LIO

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FORUM / LETTERS

Alyeska has got to know: A deal is a deal

By WALTER B. PARKER, ESTHER WUNNICKE and ERNIE PIPER

COMPASS
POINTS OF VIEW FROM OUR COMMUNITY

If a supertanker hits Bligh Reef tonight, we're going to need more than a volunteer response organization that's willing to work for a few days.

Yet that's exactly what Alyeska Pipeline Service Company and its oil company parents are proposing. Despite more than two decades of legal precedent and company promises, Alyeska now says that it is only a "volunteer" spill responder, and that it will serve as a Good Samaritan for no more than 72 hours.

This claim is contrary to what Congress agreed to when it approved pipeline construction, contrary to what Alyeska promised, and an insult to Alaskans who lived through and worked on the Exxon Valdez oil spill.

The state and federal governments have a chance to clear up this confusing and potentially disastrous claim with separate measures now before the Alaska Legislature and the U.S. House of Representatives. The state measures, HB540 and SB270, contain language that would spell out in law Alyeska's responsibilities to respond. Good as that effort is, even the state bill falls into Alyeska's claim that it is responsible for no more than the "initial" response.

A quick look at the record should prompt our legislators to pass HB540 and SB270 — without letting Alyeska off the hook by limiting its responsibility to 72 hours. There are three good reasons why we shouldn't buy into Alyeska's claim.

First, that's not what the U.S. Congress said when it approved the construction of the pipeline. Throughout the entire debate about construction of the pipeline — and then again in the Oil Pollution Act of 1990 — the Congress made its intent clear: The people who hold the permits to operate the pipeline are responsible for controlling and cleaning up oil spills, from start to finish. There was no time limit, no 72-hour clock.

Second, Alyeska's new claim ignores its own promises. In 1973, under congressional questioning that was directed at just the kind of "who's in charge" confusion Alyeska is now proposing, an Alyeska lawyer said his company was the agent of the owners and that Alyeska would accept "full responsibility" on behalf of the owners.

"Our actions are their actions," said Alyeska general counsel John Knodell. So, said an inquisitive congressman, Alyeska won't be used by an owner company as some kind of corporate shield from liability? "That is correct," said the Alyeska lawyer.

Of course, that's exactly the opposite of what Alyeska is claiming two decades later. Instead of a one-stop response headquarters — Alyeska — now there could be many, increasing the potential for confusion and finger-pointing when oil is on the water.

Here's the third reason why Alaskans should hold Alyeska to the terms of the deal: We're paying for it. Through a variety of complex formulas, the owner companies deduct part of their spill prevention and response costs from what they pay us in royalties on the money they make from the North Slope oilfields we own.

It's not an insignificant sum. The state is foregoing as much as $150 million in potential royalty payments through the end of the decade in exchange for better Alyeska preparedness in Prince William Sound.

We're not paying Alyeska millions of dollars a year to volunteer on terms they dictate to us. We're paying them to protect us — and not just for 72 hours. That's been the deal since the pipeline was built, and the deal should stick.

We should spell this deal out in law, right now, before people in Cordova and Chenega are watching oil wash up on their beaches, and wondering where the heck the responders are.

□ Walter Parker was chairman of the Alaska oil spill commission; Esther Wunnicke was vice chair of the oil spill commission; Ernie Piper was state oil spill co-ordinator during much of the cleanup.

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.

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 to your name in your State Assembly member.

Call Toll Free.

1-800-325-6000.

Ask for Operator 9752.

This is a call from Western Union Service.

Write Us.

Fill out this coupon and mail it to us.

YES! I support Senate Bill 2040 (Keene) and your efforts for California oil spill recovery and cleanup. Please add my name to the list of people who support us on this environmental issue.

Name

Address

City State Zip

Return to: International Bird Rescue Research Center at 699 5th Street, Suite 200 Fairfield, CA 94533

Or, Tell 'Em Yourself.

Please Mr. Speaker:

Don't let the trial lawyers block oil recovery efforts off the coast. Please pass the U.S. Congress and the California State Senate by enacting Senate Bill 2040 (Keene).

Name

Address

City State Zip

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

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