

HPB

196

Introduced by: Brown

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

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

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

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

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

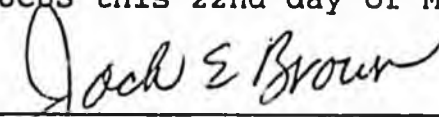
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and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

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

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

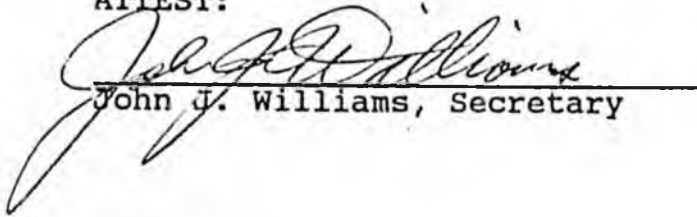
COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

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



Jack Brown, President

ATTEST:



John J. Williams, Secretary

(3/8/91)



Alaska State Legislature

Please enter into the record my testimony to the Resource
 committee name
 committee on H.R. 170, dated 4-1-71
 bill/subject

SIR:

FROM LISTENING TO JUNEAU (Tel/comm 4-10-71)
 THE LAWYERS WANT TO CRIPPLE OR OUTRIGHT KILL
 THE OIL INDUSTRY, AND THE OIL INDUSTRY
 SUPPORT COMPANYS WITH THE INSURANCE LIABILITY
 BONDING ECT.

THE FISH INDUSTRY AND OIL INDUSTRY HAVE
 WORKED IN THE SAME BODY OF WATER FOR THE
 LAST 23 YEARS I KNOW OF
 WHY KILL ONE AND SAVE THE OTHER - WHY CAN'T
WE HAVE BOTH

Signed: Eric King
 Testifier

FISHERMAN / CONSTRUCTION
 Representing (Optional)

BOX 8569 NIKISKI ALASKA 99635
 Address

(907) 776-8254
 Phone No.

**UNITED COOK INLET DRIFT ASSOCIATION**

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600

FAX (907) 283-3306

April 10, 1991

Representative Cliff Davidson
Chairman, House Resource Committee

Dear Representative Davidson,

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

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

Presently

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

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

3. In 1989, legislature stated that:

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

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

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

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

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

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


We would like to suggest two possible options:

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

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

In conclusion, UCIDA does not support changing current state liability statutes. Even the concept of a sunset provision and a 30 day window is poor public policy. Alyeska and other similarly situated RACs will turn over spill response 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, 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



Oil Reform Alliance



ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

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

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

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

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

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

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

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

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

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

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

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



UNITED FISHERMEN OF ALASKA

Greg Selder
Executive Director

211 4th Street, Suite 112 (907) 586-2820
Juneau, AK 99801 Within Alaska 1-800-478-FISH
Fax# (907) 463 2545

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

WILLIAM C KITTO
Vice President
Crude Oil Supply

18 March 1991

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

Dear Representative Davidson:

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

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

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

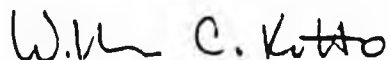
Representative Cliff Davidson
18 March 1991
Page 2

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

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

Very truly yours,

U.S. OIL & REFINING CO.



W.C. Kitto
Vice President

TELECOPY COVER SHEET

Kenai Peninsula Legislative Information Office

Phone - (907) 262-9364.

Fax - (907) 262-1881.

TO: Ken L.L.O. Please deliver to H. Rep. Committee

ATTR: Alana Rossman FAX: _____ PHONE: _____

FROM: _____ PHONE: _____

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

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

DATE: 4/11/91 TIME: 12:05 pm
DISCARD ORIGINALS _____ HOLD FOR PICKUP _____

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

TRANSMITTED BY: - AS



Alaska State Legislature

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

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

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

*Thank you
Marie Seiler -*

Signed: Marie Seiler
Testifier

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

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

907 776 - 8369
Phone No.



Alaska State Legislature

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

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

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

Signed: Mari Beeler
Testifier

Public
Representing (Optional)

P.O. Box 8005
Address

Nikiski, Alaska 99635
Phone No.



Alaska State Legislature

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

committee on HR 196, dated 4-10-91
bill/subject

I HAVE LIVED IN ALASKA FOR 24 YEARS. AND HAVE WORKED IN THE ROFINERIES, AS WORK AS OFF SHORE & NEAR SHORE. AS A HAND, DRENNAL, AND SUPERVISOR. I AM RESPONSIBLE FOR UPWARDS OF 40 PEOPLE. TESCO HAS PROVIDED A SORT OF LIVING FOR A GOOD PART OF THESE PEOPLE AS WELL AS COMMITTEE SERVICES THAT GO ABOVE & BEYOND ANYTHING EXPECTED FROM ANY COMPANY. I DO NOT BELIEVE IN THIS BILLION DOLLAR DAILY. I THINK IT SHOULD BE TREATED AS AN EMERGENCY RESPONSE, WITH IT LOOKS BEL ORR HAVE THE STATE SUBSIDIZE IT I ALSO COMM. FISH. AND WAS INVOLVED IN THE GLACIER BAY SPILL, AND VALDEZ SPILL AS WELL. I HAVE 3.5 CHILDREN WHO LOVE THE OUT DOORS. I JUST THINK THAT THIS BILLION DOLLARS FARE AUGHTO BE STOPPED. !!!

Signed: [Signature] MICHAEL A. WICKER PROJ. "

Testifier
AKCO
 Representing (Optional)
P.O. Box 2186 NIKESHKA AK 99645
 Address
726-5305 / 726-8739
 Phone No.

North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99635
NORTH PENINSULA CHAMBER OF COMMERCE

(907) 776-8348

RESOLUTION

A RESOLUTION SUPPORTING OIL SPILL RESPONDER'S LIMITED IMMUNITY

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

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

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

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

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

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



North Peninsula Chamber of Commerce

P.O. Box 8053

Nikiski, Alaska 99835

(907) 776-

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

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

Marie Becker, President of THE
NORTH PENINSULA CHAMBER OF COMMERCE



April 10, 1991

CITY OF KENAI

"Oil Capital of Alaska"

210 Fidalgo Avenue
Kenai, Alaska 99611

TELEPHONE 283-7535
FAX 907-283-3014

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

RE: **HOUSE BILL 196 - LIABILITY LIMITS FOR OIL CLEAN-UP
CONTRACTORS**

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

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

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

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

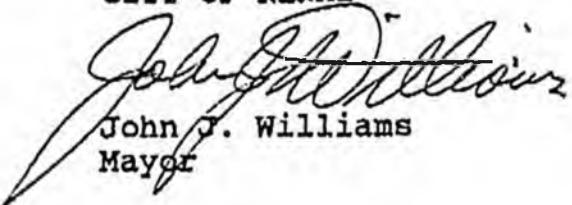
Representative Bill Hudson
April 10, 1991
Page 2

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

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

Sincerely,

CITY OF KENAI



John J. Williams
Mayor

JJW/clf

12 April 1991
PO Box 2397
Homer, Alaska 99603

RECEIVED APR 12 1991

Legislators
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

Dear Representative Davidson:

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

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

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

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

Thank you for your hard work.

Sincerely,

Gail Parsons
Gail Parsons

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

RAC Liability: Summary of Recent Legislation

State	No Liability for Negligence	Time Limit for Limited Liability	Liability for Gross Negligence	Liability for Intentional Misconduct	Liability for Personal Injury or Wrongful Death	Liability for Not Following Nat. Contingency Plan or Lawful Authority	Responsible Party Liable for RAC Negligence
HB 196	X		X	X	X	X	X
Federal	X		X§	X	X	X	X
California	X†*	X	X	X	X	X	X
Delaware	X		X	X	X		X
Florida	X		X	X	X#	X	X
Georgia	X		X	X	X	X	X
Hawaii	X		X	X	X#	X	
Miss.	X		X	X	X	X	X
Texas	X		X	X	X#	X	
Virginia	X		X§	X	X	X	X
Wash.	X†		X	X	X#		

† Good faith requirement.

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

* Must be certified by State.

Personal Injury and wrongful death not specifically mentioned.

HOUSE AMENDMENT TO SENATE BILL NO. 2987

To the Secretary of the Senate:

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

AMENDMENT NO. 1

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

8. SECTION 1. This act may be cited as the Mississippi
9. Liability of Persons Responding to Oil Spills Act.
10. SECTION 2. For the purposes of this act the term:
11. (a) "Damages" means damages of any kind for which
12. liability may exist under the laws of this state resulting from,
13. arising out of, or related to the discharge or threatened
14. discharge of oil;
15. (b) "Discharge" means any emission (other than natural
16. seepage), intentional or unintentional, and includes, but is not
17. limited to, spilling, leaking, pumping, pouring, emitting,
18. emptying or dumping;
19. (c) "Federal on-scene coordinator" means the federal
20. official predesignated by the U.S. Environmental Protection Agency
21. or the U.S. Coast Guard to coordinate and direct federal responses
22. under subpart D, or the official designated by the lead agency to
23. coordinate and direct removal under subpart E, of the National
24. Contingency Plan;
25. (d) "National Contingency Plan" means the National
26. Contingency Plan prepared and published under Section 311(d) of
27. the Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as

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

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

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

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

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

50. SECTION 3. (1) Notwithstanding any other provision of law,
51. a person is not liable for removal costs or damages which result
52. from actions taken or omitted to be taken in the course of
53. rendering care, assistance or advice consistent with the National
54. Contingency Plan or as otherwise directed by the federal on-scene
55. coordinator or by the state official with responsibility for oil
56. spill response.

57. (2) Subsection (1) does not apply:

58. (a) To a responsible party;

59. (b) To personal injury or wrongful death; or

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

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

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

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

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

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

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

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

By: Senators Bilbo, Hall

To: Environment Prot, Cons
and Water Res

SENATE BILL NO. 2987
(As Passed the Senate)

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

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

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

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

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

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

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

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

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

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

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

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

48. SECTION 3. (1) Notwithstanding any other provision of law,
49. a person is not liable for removal costs or damages which result
50. from actions taken or omitted to be taken in the course of
51. rendering care, assistance or advice consistent with the National
52. Contingency Plan or as otherwise directed by the federal on-scene
53. coordinator or by the state official with responsibility for oil
54. spill response.

55. (2) Subsection (1) does not apply:

56. (a) To a responsible party;

57. (b) To personal injury or wrongful death; or

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

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

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

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

Citation
DE LEGIS 5 (1991)
1991 Delaware Laws Ch. 5 (S.B. 5)

Rank(R)
R 1 OF 1

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

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

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

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

Section 1. Amend Chapter 31, Title 10 of the Delaware Code by adding thereto a new Section to read as follows:

<< DE ST TI 10 s 8135 >>

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

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

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

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

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

<< DE ST TI 10 s 8134 >>

Section 2. Amend Chapter 31, Title 10 of the Delaware Code by striking s 8134 in its entirety.

SYNOPSIS

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

Approved January 31, 1991.

DE LEGIS 5 (1991)
END OF DOCUMENT

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

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

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

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

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

28 **8670.56.6.** (a) (1) Except as provided in subdivisions
 29 (b) and (d), and subject to subdivision (c), no person,
 30 including, but not limited to, an oil spill cooperative, its
 31 agents, subcontractors, or employees, shall be liable
 32 under this chapter or the laws of the state to any person
 33 for costs, damages, or other claims or expenses as a result
 34 of actions taken or omitted in good faith in the course of
 35 rendering care, assistance, or advice in accordance with
 36 the National Contingency Plan, the state oil spill
 37 contingency plan, or at the direction of the administrator,
 38 onsite coordinator, or the Coast Guard in response to a
 39 spill or threatened spill of oil.

40 (2) The qualified immunity under this section shall

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

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

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

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

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

38 (c) The responsible party or parties shall:

39 (1) Notwithstanding subdivision (b) or (h) of Section
 40 8670.56.5, or any other provision of law, be strictly and

1. jointly and severally liable for all damages arising
2. pursuant to subdivision (g) of Section 8670.46 from the
3. response efforts of its agents, employees, subcontractors,
4. or an oil spill cooperative of which it is a member or with
5. which it has a contract or other arrangement for cleanup
6. of its oil spills, unless it would have a defense to the
7. original spill.

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

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

15. (c) This section shall not apply to any action for
16. personal injury or wrongful death.

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

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

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

29. (i) In any situation in which immunity is granted
30. pursuant to subdivision (a) and a responsible party is not
31. liable, is not liable for noneconomic damages caused by
32. another, or is partially or totally insolvent, the fund
33. provided for in Article 7 (commencing with Section
34. 8670.46) shall, in accordance with its terms, reimburse
35. claims of any injured party for which a person who is
36. granted immunity pursuant to this section would
37. otherwise be liable.

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

1. in accordance with the state oil spill contingency plan
2. and this chapter. The administrator shall enter into
3. contract with any cooperative that is qualified and that
4. offer to contract, on mutually acceptable terms, in
5. accordance with the state oil spill contingency plan and
6. this chapter.

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

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

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

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

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

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

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

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

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

39 (3) The administrator shall provide five days' notice of
 40 his or her proposed decision to either extend, or not

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

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

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

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

IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT
SECOND SUBSTITUTE HOUSE BILL NO. 2494

Passed the House February 13, 1990 as amended
Yea 98 Nays 0

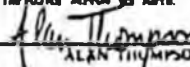
Passed the Senate March 1, 1990 as amended
Yea 47 Nays 1

March 6, 1990: The House concurred in the Senate amendments and passed the bill as amended by the Senate.

Yeas: 96 Nays: 0

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is a ^{350th} ~~second~~ SUBSTITUTE HOUSE BILL NO. 2494 as passed by the House of Representatives and the Senate on the March 6, 1990 as amended.


ALAN THOMPSON, Chief Clerk

1 ((department-at-its-office-in-Olympia,-or-a-regional-office--thereof,
2 of--such--discharge--or--entry)) coast guard and the division of
3 emergency management. The notice to the division of emergency
4 management within the department of community development shall be
5 made to the division's twenty-four hour state-wide toll-free number
6 established for reporting emergencies.

7 NEW SECTION. Sec. 25. (1) The following persons shall not be
8 liable for necessary expenses or property damage caused by an act or
9 omission of that person during the cleanup of oil spilled into the
10 navigable waters of the state, unless the act or omission was
11 performed in bad faith or with gross negligence:

- 12 (a) The state or any unit of local government;
- 13 (b) A person who volunteers to assist in the cleanup of the
14 spilled oil; and

15 (c) A person meeting the standards of section 4 of this act.

16 (2) This section shall not affect the liability of any person
17 responsible for the spilled oil or responsible for the facility or
18 covered vessel from which the oil was spilled.

19 NEW SECTION. Sec. 26. A new section is added to chapter 88.16
20 RCW to read as follows:

21 An oil tanker under escort of a tug or tugs pursuant to the
22 provisions of RCW 88.16.190 shall not exceed the service speed of the
23 tug or tugs that are escorting the oil tanker.

24 Sec. 27. Section 8, chapter 18, Laws of 1935 as last amended by
25 section 2, chapter 264, Laws of 1987 and RCW 88.16.090 are each
26 amended to read as follows:

27 (1) A person may pilot any vessel subject to the provisions of
28 this chapter on waters covered by this chapter only if appointed and
29 licensed to pilot such vessels on said waters under and pursuant to
30 the provisions of this chapter.

31 (2) A person is eligible to be appointed a pilot if the person is
32 a citizen of the United States, over the age of twenty-five years and
33 under the age of seventy years, a resident of the state of Washington
34 at the time of appointment and only if the pilot applicant holds as a
35 minimum, a United States government license as a master of freight

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL STATUTES.

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

1 SECTION 1. Section 342B-7, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) If the director determines that [the] any person has
4 violated an accepted schedule[,] or an order issued under this
5 section, [any rule adopted pursuant to this chapter, any condition
6 of a permit or variance issued pursuant to this chapter, or has
7 continued to violate this chapter,] the director shall impose
8 penalties by sending a notice in writing, either by certified mail
9 or by personal service, to that person, describing such
10 nonadherence or violation with reasonable particularity."

11 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
12 amended by deleting the definition "individual wastewater system".

13 ["Individual wastewater system" means a facility which
14 disposes of treated or untreated domestic wastewater generated
15 from dwelling units or other sources generating domestic
16 wastewater of similar volume and strength such as: (1)
17 developments of a density not greater than one dwelling unit per
18 5,000 square feet of ultimate development; (2) developments with
19 buildings other than dwellings but involving the generation of

1 pollutant or contaminant concerned, taking into
2 consideration the characteristics of such hazardous
3 substance[,] or pollutant or contaminant, in light of
4 all relevant facts and circumstances; and precautions
5 were taken against foreseeable acts or omissions of any
6 such third party and the consequences that could
7 foreseeably result from such acts or omissions; or
8 (4) Any combination of the foregoing paragraphs.

9 [(c)] (d) No person shall be liable under this chapter or
10 otherwise under the laws of the State or any of the counties,
11 including the common law to any government or private parties for
12 costs, damages, or penalties as a result of actions taken or
13 omitted in the course of rendering care, assistance, or advice in
14 accordance with this chapter or at the direction of an on-scene
15 coordinator, with respect to an incident creating a danger to
16 public health or welfare or the environment as a result of any
17 release of a hazardous substance or pollutant or contaminant or
18 the threat thereof. This subsection shall not preclude liability
19 for costs, damages, or penalties as the result of gross
20 negligence or intentional misconduct on the part of such person.

21 (e) No county or local government shall be liable under
22 this chapter for costs or damages as a result of actions taken in
23 response to an emergency created by the release or threatened

ENROLLED

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

CS for CS for SB's 1068 and 22

First Engrossed (ntc)

CH 90-54 Laws of Florida

Fl. Spill Response

1 A bill to be entitled
 2 An act relating to pollution; amending s.
 3 106.9939, F.S., relating to taxes imposed for
 4 coastal protection; providing for certain
 5 offshore oil drilling activity; providing for
 6 catastrophic discharges; creating s. 293.039,
 7 F.S.; requiring commercial vessels to anchor in
 8 designated anchorage areas; amending s.
 9 310.071, F.S.; providing for evaluation of
 10 certificated deputy pilots; amending s.
 11 310.101, F.S.; providing additional grounds for
 12 disciplinary actions by the Board of Pilot
 13 Commissioners; providing certain accountability
 14 in directing foreign vessels; amending s.
 15 310.111, F.S.; providing for report of certain
 16 marine incidents; amending s. 310.141, F.S.;
 17 providing that certain vessels are subject to
 18 pilotage, and reenacting s. 310.161, F.S.,
 19 relating to penalties for piloting without a
 20 license, to incorporate said amendment in a
 21 reference thereto; creating ss. 313.21, 313.22,
 22 313.23, and 313.24, F.S.; authorizing ports to
 23 regulate certain vessel movements and adopt
 24 certain guidelines for bottom clearance, vessel
 25 movements, and traffic communications; amending
 26 s. 376.031, F.S.; providing definitions;
 27 amending s. 376.051, F.S.; providing for
 28 issuance of spill prevention and response
 29 certificates; amending s. 376.06, F.S.;
 30 providing a penalty for operation of a terminal
 31 facility without a required registration

1068,
22

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

1 certificate; increasing the maximum application
 2 fee; amending s. 376.069, F.S.; prohibiting
 3 operation of a terminal facility without a
 4 spill prevention and response certificate;
 5 providing requirements for application and
 6 operation; providing a penalty; amending s.
 7 376.07, F.S.; providing for rules of the
 8 Department of Natural Resources; providing for
 9 spill prevention, abatement, and cleanup and
 10 for wildlife rescue and rehabilitation;
 11 requiring adequate booming in the transfer of
 12 pollutants; providing penalties; prohibiting
 13 use of certain lobster traps after a specified
 14 date; creating s. 376.071, F.S.; requiring
 15 certain vessels to maintain spill prevention
 16 and control contingency plans; providing
 17 requirements; providing penalties; amending s.
 18 376.09, F.S.; providing certain immunity from
 19 liability for described persons; amending s.
 20 376.11, F.S.; providing additional sources and
 21 uses for moneys in the Florida Coastal
 22 Protection Trust Fund; amending s. 376.12,
 23 F.S.; increasing certain maximum liabilities
 24 for pollutant cleanup costs and damages;
 25 specifying conditions for limits on liability;
 26 providing financial security requirements;
 27 providing penalties; providing liability of
 28 cargo owner; specifying conditions for use of
 29 certain defenses; providing an exemption from
 30 certain notification requirements; creating s.
 31 376.121, F.S.; providing liability for damages

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

1 ability of a felony of the second degree, punishable as
 2 provided in s. 775.082, s. 775.083, or s. 775.084, as required
 3 in s. 337.012 or 339.04.

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

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

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

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

25 376.071 Spill contingency plan.--After December 31,
 26 1990, any vessel operating in state waters with a storage
 27 capacity to carry 10,000 gallons or more of pollutants as fuel
 28 and cargo shall maintain an adequate written ship-specific
 29 spill prevention and control contingency plan. Any such
 30 vessel shall have on-board a "spill officer," designated by
 31 the contingency plan, who is responsible for training crew

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

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

25 Section 15. Present subsections (5) and (6) of
 26 section 376.09, Florida Statutes, are renumbered as
 27 subsections (6) and (7), respectively, and a new subsection
 28 (5) is added to said section to read:

29 376.09 Removal of prohibited discharges.--

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

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1068, 22

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

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

8 Section 17. Subsections (3) and (6) and paragraph (c)
 9 of subsection (6) of section 376.11, Florida Statutes, are
 10 amended to read:

11 376.11 Florida Coastal Protection Trust Fund.--

12 (2) The Florida Coastal Protection Trust Fund is
 13 established, to be used by the department as a nonlapsing
 14 revolving fund for carrying out the purposes of ss. 376.011-
 15 376.21. To this fund shall be credited all registration fees,
 16 penalties, judgments, damages recovered pursuant to s.
 17 376.121, other fees and charges related to ss. 376.011-376.21,
 18 and the excise tax revenues levied, collected, and credited
 19 pursuant to ss. 206.9935(1) and 206.9945(1)(a). Charges
 20 against the fund shall be in accordance with this section.

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

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

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

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

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

14 376.12 Liabilities and defenses of terminal facilities
 15 and vessels.--

16 (1) Because it is the intent of ss. 376.011-376.21 to
 17 provide the means for rapid and effective cleanup and to
 18 minimize cleanup costs and damages, any vessel, or its agents
 19 or servants, who permits or suffers a prohibited discharge or
 20 other polluting condition to take place within state
 21 boundaries shall be liable to the fund for all costs of
 22 cleanup or abatement, up to an amount not to exceed \$50 914
 23 million or \$625 9100 per gross registered ton of such vessel,
 24 whichever is the lesser. When the department can show that
 25 such discharge was the result of willful or gross negligence
 26 or willful misconduct within the privity or knowledge of the
 27 owner or operator or agent thereof, such owner or operator
 28 shall be liable to the fund for the full amount of such sums
 29 expended. When a discharge of pollutants occurs from a
 30 terminal facility, recovery of costs of abatement and cleanup
 31 shall be limited to an amount not to exceed \$25 98 million,

transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every thirty-six months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § 9.6-14:11, may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated. (1990, c. 917.)

Editor's note. — Acts 1990, c. 919, cl. 2 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective on July 1, 1992. Clause 3 of this act also stated that the Board should regard certain considerations in adopting such regulations.

§ 62.1-44.34:16. Financial responsibility. — A. (For effective date see Editor's note) The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Underground Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator whose financial responsibility is accepted by the Board under this

subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

D. Acceptance of proof of financial responsibility shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

E. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

F. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or the operator of the tank vessel had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board. (1990, c. 917.)

Editor's note. — Acts 1990, c. 917, c. 4 provides that the Board shall promulgate regulations implementing this section on or before January 1, 1992, and that subsection A of this section shall become effective 90 days after the effective date of such regulations. Clause 4 also provides that in promulgating such regulations, the Board shall provide that, if evidence of financial responsibility provided to the federal government or any other state meets the requirements of subsection C of this section, comments shall be accepted by the Board in full or partial satisfaction requirements of subsection A of this section as appropriate.

§ 62.1-44.34:17. Exemptions. — Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil. (1990, c. 917.)

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge. — A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat

of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;
2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;
3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and
4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection H of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:10 or \$10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection D of this section. (1973, c. 417; 1976, c. 61; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acta 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acta 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:19. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1978, c. 816; 1990, cc. 917, 962.)

Editor's note. — Acta 1990, c. 962 purported to amend § 62.1-44.34:4, which was repealed by Acta 1990, c. 917. The effect of this amendment was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, this amendment has been effectuated in this corresponding new Code section.

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

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

10 SECTION 1. Subtitle C, Title II, Natural Resources Code, is
11 amended by adding Chapter 40 in read as follows:

12 CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

13 SUBCHAPTER A. GENERAL PROVISIONS

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

16 SEC. 40.002. POLICY. (a) The legislature finds and
17 declares that the preservation of the Texas coast is a matter of
18 the highest urgency and priority. It is the policy of this state
19 to keep its coastal waters, rivers, lakes, estuaries, marshes,
20 tidal flats, beaches, and public lands as pristine as possible,
21 taking into account multiple use accommodations necessary to
22 provide the broadest possible protection of public and private
23 interests. Spills, discharges, and escapes of crude oil,
24 petroleum, and other such substances resulting from their handling,

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1 storage, and transportation, particularly by vessel, endanger the
2 coastal environment of the state, public and private property on
3 the coast, and the well-being of those deriving their livelihood
4 from marine-related activity in coastal waters. The hazards posed
5 by the handling, storage, and transportation of these substances in
6 the coastal waters are contrary to the paramount interests of the
7 state. These state interests outweigh the economic burdens imposed
8 under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

1 and Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.) and
 2 designated by the Texas Water Commission.

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

5 (14) "National contingency plan" means the plan
 6 prepared and published, as revised from time to time, under the
 7 Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.)
 8 and the Comprehensive Environmental Response, Compensation, and
 9 Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.).

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

14 (16) "Oil" means oil of any kind or in any form,
 15 including but not limited to crude oil, petroleum, fuel oil,
 16 sludges, oil refuse, and oil mixed with wastes other than dredged
 17 soils, but does not include petroleum, including crude oil or any
 18 fraction thereof, which is specifically listed or designated as a
 19 hazardous substance under Subparagraphs (A) through (F) of Section
 20 101(1) of the Comprehensive Environmental Response, Compensation,
 21 and Liability Act of 1980 (42 U.S.C. Sec. 1601 et seq.) and which
 22 is subject to the provisions of that Act, and which is so
 23 designated by the Texas Water Commission.

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

25 (A) any person owning, operating, or chartering

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

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

12 Sec. 40.10J. ASSISTANCE AND COMPENSATION. (a) Subject to
 13 the commissioner's authority under this chapter, any person or
 14 discharge cleanup organization may assist in abating, containing,
 15 or removing pollution from any unauthorized discharge of oil. This
 16 chapter does not affect any rights not inconsistent with this
 17 chapter that any such person or organization may have against any
 18 third party whose acts or omissions caused or contributed to the
 19 unauthorized discharge.

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

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

4 Sec. 40.10I. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.

5 (a) No action taken by any person or discharge cleanup
 6 organization to abate, contain, or remove pollution from an
 7 unauthorized discharge of oil, whether such action is taken
 8 voluntarily, or pursuant to the national contingency plan or state
 9 coastal discharge contingency plan, or pursuant to a discharge
 10 response plan required under this chapter, or pursuant to the
 11 request of an authorized federal or state official, or pursuant to
 12 the request of the responsible person, shall be construed as an
 13 admission of responsibility or liability for the discharge.

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

25 Sec. 40.10K. EQUIPMENT AND PERSONNEL. The commissioner shall

of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be necessary to contain and clean up such discharge or threat of such discharge, including any actions directed by any on-scene coordinator acting pursuant to the Federal Water Pollution Control Act. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons. The costs of such containment and cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund available for this purpose.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages under this section that are caused by the acts or omissions of such person in rendering such assistance; provided, however, that such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge.

Commonwealth, political or negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section, that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; provided that this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:10 or \$10,000,000, whichever is greater; provided that there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section. (1973, c. 417; 1976, c. 61; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend §§ 62.1-44.34:2 and 62.1-44.34:3, which were repealed by Acts 1990, c. 917. The effect of these amendments was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, these amendments have been effectuated in this corresponding new Code section.

§ 62.1-44.34:10. Reporting of discharge. — Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, or from which there is a discharge of oil which may reasonably be expected to enter state waters shall, immediately upon learning of the discharge, notify the Board and appropriate federal authorities of such discharge. (1976, c. 816; 1990, cc. 917, 962.)

Editor's note. — Acts 1990, c. 962 purported to amend § 62.1-44.34:4, which was repealed by Acts 1990, c. 917. The effect of this amendment was to add lands and storm drain systems in the Commonwealth, along with state waters, as places where the discharging of oil is prohibited. At the direction of the Code Commission, this amendment has been effectuated in this corresponding new Code section.

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subtitle C, Title 26, Natural Resources Code, is amended by adding Chapter 40 in read as follows:

CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

SUBCHAPTER A. GENERAL PROVISIONS

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

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling,

storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

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

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

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

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

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

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

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

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

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

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

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

4 SEC. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS.

5 (a) No action taken by any person or discharge cleanup
 6 organization to abate, contain, or remove pollution from an
 7 unauthorized discharge of oil, whether such action is taken
 8 voluntarily, or pursuant to the national contingency plan or state
 9 coastal discharge contingency plan, or pursuant to a discharge
 10 response plan required under this chapter, or pursuant to the
 11 request of an authorized federal or state official, or pursuant to
 12 the request of the responsible person, shall be construed as an
 13 admission of responsibility or liability for the discharge.

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

25 SEC. 40.105. EQUIPMENT AND PERSONNEL. The commissioner shall

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

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

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

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

25 (b) The commissioner may establish the rebuttable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (14) "National contingency plan" means the plan
 6 prepared and published, as revised from time to time, under the
 7 Federal Water Pollution Control Act (33 U.S.C. Sec. 1311 et seq.)
 8 and the Comprehensive Environmental Response, Compensation, and
 9 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

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

14 (16) "Oil" means oil of any kind or in any form,
 15 including but not limited to crude oil, petroleum, fuel oil,
 16 sludge, oil refuse, and oil mixed with wastes other than dredged
 17 spoil, but does not include petroleum, including crude oil or any
 18 fraction thereof, which is specifically listed or designated as a
 19 hazardous substance under Subparagraphs (A) through (F) of Section
 20 101(1) of the Comprehensive Environmental Response, Compensation,
 21 and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which
 22 is subject to the provisions of that Act, and which is so
 23 designated by the Texas Water Commission.

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

25 (A) any person owning, operating, or chartering

SENATE BILL 179

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

AS PASSE

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

"ARTICLE 7

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

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

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

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

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

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

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

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

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

12-5-501. (a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by any state official with responsibility for oil spill response.

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

(1) To a responsible party;

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

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

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

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

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

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

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 7, 1991

SUBJECT: Response action contractor civil liability - (HB 196)

TO: Representative Bill Hudson

FROM: Michael F. Ford *m f*
Legislative Counsel

The following is a section by section analysis of HB 196:

Section 1 - Findings and Purpose.

Section 2 - Deletes provisions concerning the types of damages for which a person will be strictly liable. These provisions are reinserted in section 3.

Section 3 - Adds a definition of "damages." Provides that damages includes acts or omissions of a response action contractor for which the response action contractor is not liable, under the provisions of AS 46.03.823 or 46.03.825.

Section 4 - Excludes an oil spill response action contractor from the provisions of this section.

Section 5 - Provides that an oil spill response action contractor is not liable for damages resulting from the release or threatened release of oil, unless the liability would exist if the contractor had not responded to the release or threatened release, or the contractor acted with gross negligence or intentional misconduct. Also provides that in the event of a lawsuit to recover for personal injury or death, this section would not apply.

Section 6 - Adds definitions of "response action", "response action contract", and "response action contractor."

Representative Bill Hudson
March 7, 1991
Page 2

Section 7 - Repealer.

Section 8 - Effective date.

MFF:mi
91-047.mai

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800

TELEPHONE
(907) 465-2600

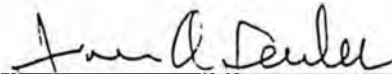
March 11, 1991

POSITION PAPER

HB 196

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

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



John A. Sandor
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 196

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

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

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600
 Division: Commissioner's Office Date: March 11, 1991
 Approved by Commissioner: *Janice Adair*
 Agency: A-123 Date: 3/11/91

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

A M E N D M E N T

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS
TO: HB 196

Page 1, line 3:

Delete "definition"

Insert "definitions"

Page 1, line 3, following "response action":

Insert "and 'response action contractor'"

Page 5, line 11:

Delete "and"

Page 5, line 14, following "contract":

Insert "; and

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

A M E N D M E N T

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS
TO: HB 196

Page 2, lines 21 - 23:

Delete all material and insert:

"(b) It is the purpose of this Act to

(1) define the liability of oil spill response action contractors in light of the crisis atmosphere in which they operate, and the uniquely severe consequences to the state of inadequate locally available oil spill cleanup capability;

(2) remove the existing deterrent to prompt and sufficient oil spill cleanup in this state;

(3) place this state on an equal competitive footing with other states in attracting oil spill cleanup capability to this state; and

(4) place the liability for good faith response action on the person responsible for the spill, rather than the response action contractor."

A M E N D M E N T

OFFERED IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS
TO: HB 196

Page 4, line 10:

Delete "a response plan or"

Insert "an"

Page 4, line 20, following "apply to":

Insert "(1)"

Page 4, line 21, following "death":

Insert "; or

(2) an act or omission contrary to a representation of the response action contractor asserting limited liability under (a) of this section, if

(A) the representation was incorporated into a contingency plan approved under AS 46.04.030 of a person responsible for the release or threatened release under AS 46.03.822; and

(B) the act or omission was the result of gross negligence or intentional misrepresentation"

TELECOPY COVER SHEET

Kennel Peninsula Legislative Information Office

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Fax - (907) 262-1881

TO: LIOUINEAU

ATTN: Margaret FAX: 465 2864 PHONE: 465 4648

FROM: (10 Soldotna PHONE: _____

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

DATE: 4-2 TIME: 6:30
DISCARD ORIGINALS _____ HOLD FOR PICKUP _____

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

TRANSMITTED BY: Janne



UCIDA

UNITED COOK INLET DRIFT ASSOCIATION

P.O. Box 4649 KENAI, ALASKA 99611

(907) 283-3600

FAX (907) 283-3306

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

April 2, 1991

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

Presently

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

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

3. In 1989 legislature stated that:

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

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

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

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

Theo Matthews

Administrative Assistant, UCIDA

**SPILL RESPONSE CONTRACTOR
LIMITED LIABILITY PROPOSAL**

RESPONSE ACTION CONTRACTOR CURRENT LIABILITY EXPOSURE	PROPOSED LEGISLATION EFFECT
--	--

GROSS NEGLIGENCE

INTENTIONAL ACTS

SIMPLE NEGLIGENCE

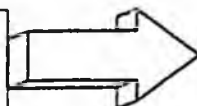
PERSONAL INJURY

DEATH

REMOVES:

SIMPLE NEGLIGENCE

And clarifies
that the spiller
is **STRICTLY LIABLE**
for damages that
are the result of
the limited immunity
granted the
response action
contractor



**STATES WITH ACTION SINCE
1990**

**LIMITING THE SPILL RESPONDER
FROM SIMPLE NEGLIGENCE
LIABILITY**

Delaware:
Senate Bill 6
Enacted 2/91

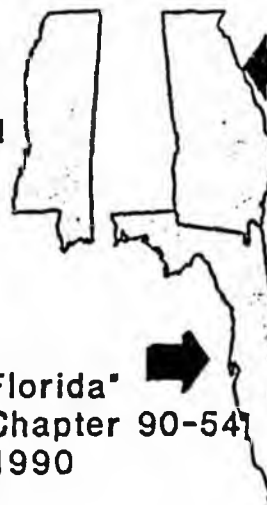


California:
Provides immunity for
first 60, 90 days
after the spill.
"Lempert-Keene Oil Spill
Prevention & Response Act"
of 1990 (Cal. Code 8670.56.6)

Virginia:
Sec.62.1-44.34:18 D.
1990



Mississippi:
Bill passed
Senate 2/91



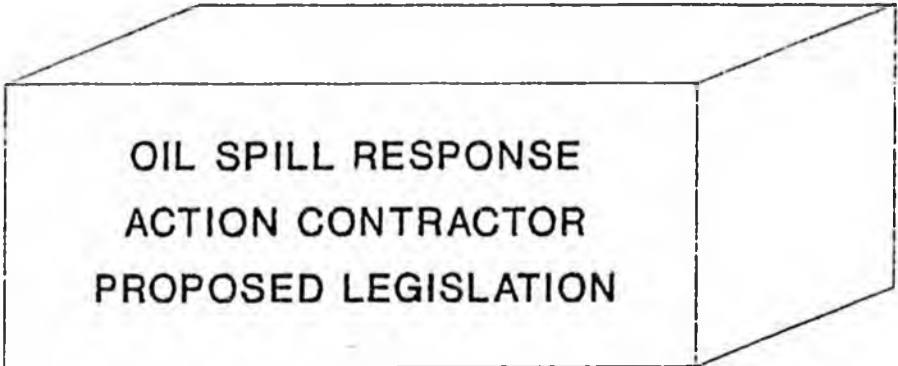
Georgia:
Passed
Senate
61-0
2/91

Hawaii:
Act 298, 1990



Florida:
Chapter 90-54
1990

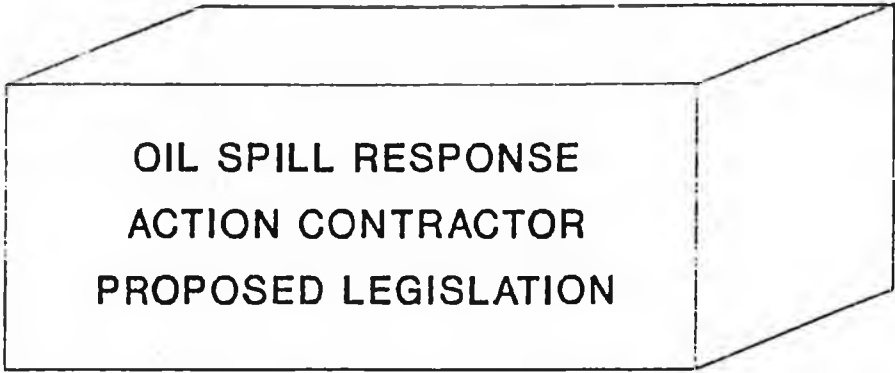




OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION

WHO DOES THE BILL APPLY TO?

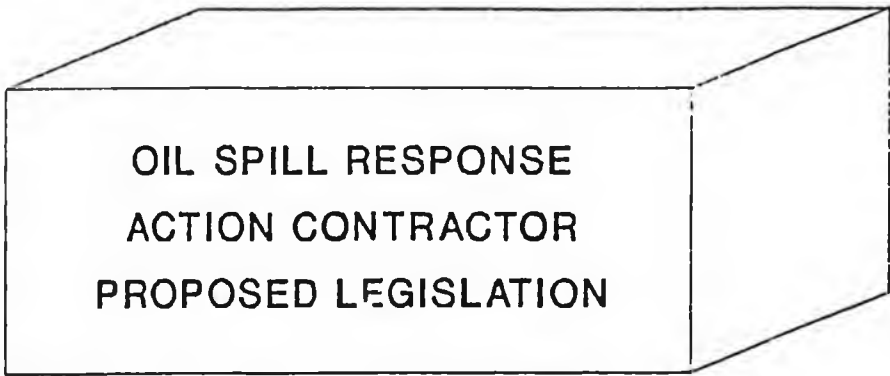
The bill applies only to innocent cleanup contractors --
those who had no involvement in the spill itself.



**OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION**

DOES THE BILL SOMEHOW LESSEN THE SPILLER'S LIABILITY?

No! The bill makes it absolutely clear that the spiller's liability for damages includes any damages caused by the cleanup contractor's action for which liability is limited under the bill.



**OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION**

**DOES THE BILL AFFECT A CONTINGENCY PLAN
HOLDER'S RESPONSIBILITIES TO MAINTAIN
CLEANUP EQUIPMENT?**

No. Alaska law on spill contingency plans is unaffected. The plan holder remains liable for penalties and damages if it does not respond to a spill in accordance with the promises made in that plan.

**SPILL RESPONSE CONTRACTOR
LIMITED LIABILITY PROPOSAL**

RESPONSE ACTION CONTRACTOR CURRENT LIABILITY EXPOSURE	PROPOSED LEGISLATION EFFECT
--	--

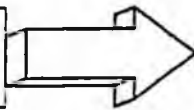
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1990
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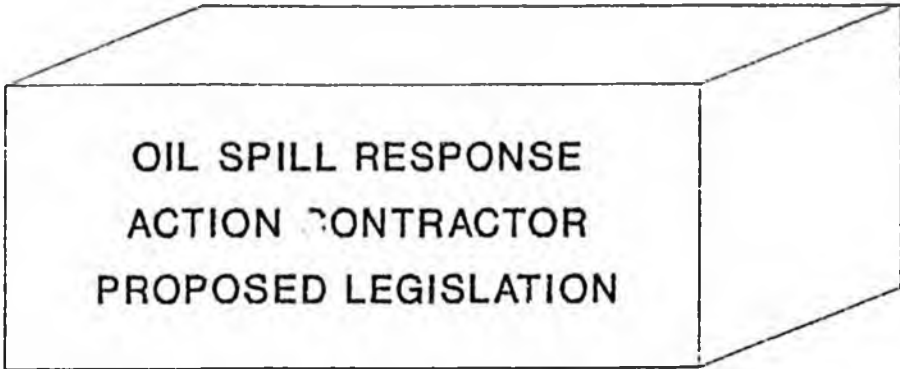
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Act 298, 1990**



**Florida
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1990**

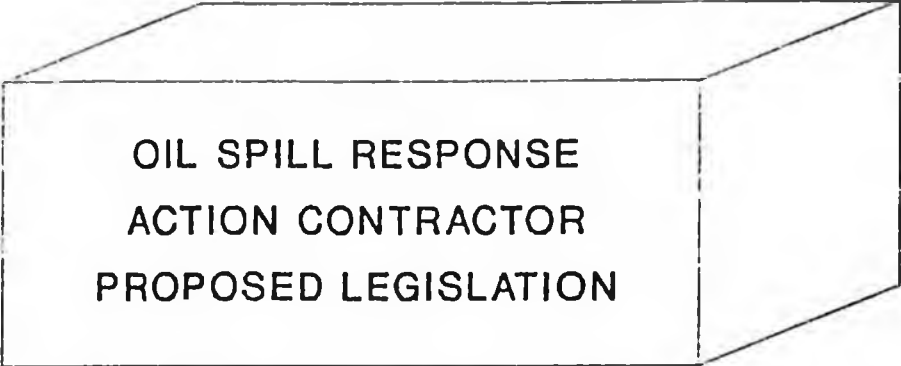




OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION

WHO DOES THE BILL APPLY TO?

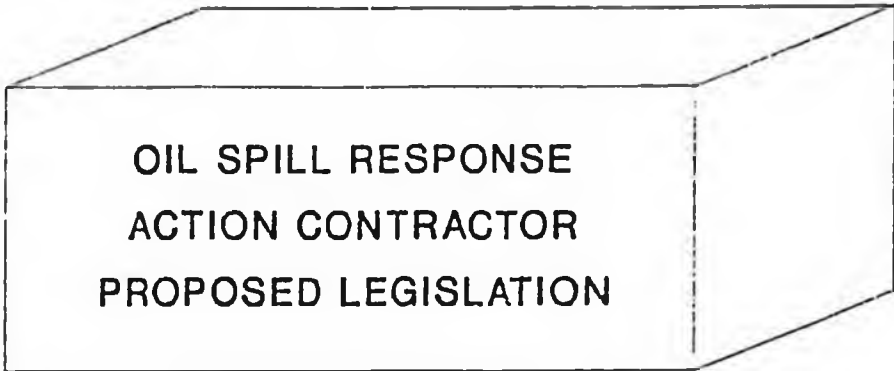
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OIL SPILL RESPONSE
ACTION CONTRACTOR
PROPOSED LEGISLATION

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CLEANUP EQUIPMENT?**

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San Francisco Examiner



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Oil spill groups need legal assist

CONSIDER WHAT might occur if a fire department responding to a blaze could be sued for damages resulting from its firefighting. A lawyer might ride on every truck. And a no-fault contract might have to be negotiated before a hose was unrolled.

Of course this would be silly, not to mention counterproductive. Yet such is the problem being confronted by organizations formed to respond to oil spills. Cleanup consortiums such as Clean Bay in the Bay Area and Clean Seas in Southern California remain under the threat of lawsuits. In Sacramento, legislators now are debating proposals that would add so-called Good Samaritan language to protect oil-cleanup groups from litigation except in situations of overt misconduct or negligence.

This dispute pits the oil industry, and environmental groups such as the International Bird Research and Rescue Center and the Coast Guard, against the California Trial Lawyers Association. There are two major oil spill bills now moving toward passage, AB 2603 authored by Assemblyman Ted Lempert, D-San Mateo, and SB 2040 by State Senator Barry Keene, D-Mendocino. Neither addresses this issue. It is essential that "Good Samaritan" sections be added.

The trial lawyers contend that the distinction between spillers and responders is not as clear as portrayed, since the responding organizations often are nonprofit entities created by the oil shippers. It has

been charged that laxness on the part of Alycaka, an oil company-owned cleanup company, contributed to damage caused by the grounding of the Exxon Valdez in Alaska.

That may sound legally sensible, but it is not a practical argument from the public's point of view. Rapid response is one of the keys to successful response. Tims will cause the spill to worsen. Yet the threat of lawsuits may cause delay by cleanup crews until responsibility is made clear.

But while some are oil company-owned, other groups are not. The Ventura County Commercial Fishermen's Association created FORT — the Fisherman's Oil Response Team — to protect the sensitive Channel Islands and nearby coastal communities. Through FORT, fishermen on their own boats can be called upon by clean-up coordinators during an emergency. And they can be on the scene immediately, not days later. But FORT and its fisherman cannot place themselves in a position to accept unlimited liability.

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





Interoffice Communication

To D. L. Bowler
 From J. S. Haley
 Date February 26, 1991
 Subject Increased Cost to Milne Point Unit due to Alyeska's Oil Spill Response Service Agreement

Pursuant to a request from your office we have attempted to develop the additional costs to Conoco, the Overriding Royalty Interest Owners and the State of Alaska for Milne Point Unit production as a result of Alyeska's Oil Spill Response Agreement. The weighted average additional costs (which reduces the net-back value by an equal amount) are estimated as follows:

	<u>Increased costs/ (Reduced Net Back to Unit)</u>
February 1991	\$3.69/Bbl
March 1991	\$0.39/Bbl
April 1991	\$0.10/Bbl*

*This number is not expected to continue in the future as it reflects a cycle in the markets that may not often be repeated. We expect this number to be higher in May and thereafter even under existing sales arrangements.

The above figures represent the volume weighted increased costs. These numbers represent our best estimate of the increased costs based on current contracts, some of which are tenuous at best, given the circumstances. We have been fortunate in selling our March and April production under terms that closely approximate pre-November 1990 sales. However, if we lost our best surviving market the cost per barrel could increase \$4.00 to \$5.00 per barrel or more over pre-November sales contracts. Our current market is very precarious and may be viewed as only a 30 day arrangement. Thus, it is imperative that we get some relief from the Alaska legislature to have any assurances that net-backs for Milne Point Unit crude are not significantly reduced because of implementation of Alyeska's Oil Spill Response Service Agreement.

The State of Alaska stands to share improved net-backs by the passage of the "Good Samaritan" law for companies shipping oil through Prince William Sound.

J.S. Haley
 JSH:tt

cc: J. R. Svenvold
 D. R. Heinzer

Representative Bill Hudson
January 28, 1991
Page 2

groups in this manner. This may be the kind of distinction that would not survive a court challenge based on the equal protection clause. See Turner Construction Co. v. Scales, 752 P.2d 467 (Alaska 1988).

Please contact me if you have further questions.

MFF:gc
91-039.glc

U.S. Department
of Transportation
United States
Coast Guard



Commander
Eleventh Coast Guard District

Union Bank Bldg.
400 Coscoyale
Long Beach, CA 90812-5308
Staff Symbol: (d)
Ph: (213) 499-5201

5090

AUG 28 1990

The Honorable Willie L. Brown Jr.
Speaker, California State Assembly
State Capitol
Sacramento, California 95814

Dear Mr. Brown:

I am writing to you to express concern about legislation that is important to the interests of the United States Coast Guard and the State of California. The legislation, currently being debated in the Assembly, is Senate Bill 2040.

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

As you know, the Oil Pollution Act of 1990 (P.L. 101-380) was signed by the President on August 18th. That Act provides limited federal immunity for all oil spill responders. The Coast Guard did not object to that provision because we believe that the issue is related to the national interest in promoting quick, effective responses to oil spills and their threats. Effective response requires resources from both the public and private sectors.

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

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

I urge you to give full consideration to limited immunity provisions for all oil spill responders other than liable parties in your deliberations on SB 2040.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. E. Gilbert".

M. E. GILBERT
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

FINANCIAL LOSS - STATE OF ALASKA

MILNE POINT ROYALTY - CURRENT STATUTE

Month	Loss M\$
1	0
2	317
3	37
4	10
5	43
6	422
7	436
8	450
9	424
10	432
11	427
12	450
TOTAL	3,448

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

or

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

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

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

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

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

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

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

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

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

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

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

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

"(B) Subparagraph (A) does not apply—

"(i) to a responsible party;

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

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

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

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

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

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

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

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

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

"(d) NATIONAL CONTINGENCY PLAN.—

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

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

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

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

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

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

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

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

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

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

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

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

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

(c) The defense provided in AS 46.03.822(b)(1)(B) is not available to a potentially liable person with respect to costs or damages caused by an act or omission of a response action contractor.

(d) Except as provided in (c) of this section, this section does not affect the liability under this chapter or under any other state law of a person other than a response action contractor.

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms or conditions of a

(1) response action contract or a remedial action plan if one has been approved by the department; or

(2) contingency plan approved by the department where the response action contractor is the plan holder.

(f) This section does not affect the liability of an employer who is a response action contractor with respect to an employee of the employer under any provision of law, including a law related to workers' compensation.

(g) In this section,

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

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

(A) the department;

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

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

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

(3) "response action contractor" means

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

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to

the response action contract. (§ 3 ch 39 SLA 1989; am §§ 3 — 7 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, in subsection (a), inserted "whose acts or omissions are not contrary to a response plan or order by a state or federal agency having jurisdiction over the release or threatened release" near the middle of the

first sentence; rewrote subsection (b); in subsection (a), inserted the designation for paragraph (1) while adding paragraph (2); and, in subsection (g) added subparagraphs (2)(C) and (2)(D) and all the language of subparagraph (3)(A) beginning with "including."

Sec. 46.03.828. Definitions. In AS 46.03.822 — 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "facility"

(A) includes a

(i) building, structure, installation, equipment, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or pipe or pipeline, including a pipe into a sewer or publicly-owned treatment works;

(ii) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located;

(B) does not include any consumer product in consumer use;

(4) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance into the atmosphere or in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(5) "hazardous substance" means

(A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);

(6) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality;

zed under 43 U.S.C. 1601 —
t Act) that acquired the facil-

y inheritance or bequest; or
l entity and the state acquired
i08 (Alaska Statehood Act).
o reason to know that the haz-
1, or at the facility, as provided
t have undertaken, at the time
s into the previous ownership
th good commercial or custom-
: liability. For purposes of this
unt all relevant facts, including
experience the person has;
e price to the value of the prop-

v ascertainable information about
e or likely presence of contamina-

nation by appropriate inspection.
h the liability of a person who pre-
ty or vessel and who would other-
ed actual knowledge of the release
is substance at the facility or vessel
ership to another without disclosing
le under (a)(2) of this section, and a
ction is not available to the person.
ish the liability of a person who, by
tributed to the release or threatened
that is the subject of the action relat-

harmless, or similar agreement, or
t effective to transfer liability under
perator of a facility or vessel or from a
r a release or substantial threat of a
subsubsection does not bar an agreement
idemnify a party to the agreement for
his subsection does not bar a cause of
or, or other person subject to liability
antor, has or would have, by reason of
ainst another person.
ality is not liable under this section for
of actions taken in response to an emer-
r threatened release of a hazardous sub-
n a facility or vessel owned by another

person unless the actions taken by the state or municipality constitute
gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise
jointly and severally liable under this section is relieved of joint liabil-
ity and is liable severally for damages and costs attributable to that
person if the person proves that

- (1) the harm caused by the release or threatened release is divisi-
ble; and
- (2) there is a reasonable basis for apportionment of costs and dam-
ages to that person.

(j) A person may seek contribution from any other person who is
liable under (a) of this section during or after a civil action under (a) of
this section. Actions under this subsection shall be brought under the
Alaska Rules of Civil Procedure and are governed by state law. In
resolving claims for contribution under this section, the court may
allocate damages and costs among liable parties using equitable fac-
tors determined to be appropriate by the court. This subsection does
not diminish the right of a person to bring an action for contribution
in the absence of a civil action under (a) of this section. (§ 1 ch 122
SLA 1972; am § 13 ch 220 SLA 1976; am § 2 ch 39 SLA 1989)

Cross references. — For applicability of the 1989 amendment of this section to releases or threats of releases that occurred before May 13, 1989, see § 8, ch. 39, SLA 1989 in the Temporary and Special Acts. For limited immunity from liability under this section, see § 4, ch. 96, SLA 1990 in the Temporary and Special Acts.
Effect of amendments. — The 1989 amendment, effective May 13, 1989, re-wrote this section.

Sec. 46.03.823. Hazardous substance response action contrac-
tors. (a) A person who is a response action contractor with respect to
a release or threatened release of a hazardous substance whose acts or
omissions are not contrary to a response plan or order by a state or
federal agency having jurisdiction over the release or threatened re-
lease is not civilly liable for injuries, costs, damages, expenses, or
other liability that results from the release or threatened release un-
less the release or threatened release is caused by an act or omission
of the response action contractor that is negligent or grossly negligent
or constitutes intentional misconduct. To show negligence by a re-
sponse action contractor, a claimant must show that the acts or omis-
sions of the contractor under the response action contract were not in
accordance with generally accepted professional standards and prac-
tices at the time the response action services were performed.
(b) The liability limitation under (a) of this section
(1) does not apply to a response action contractor who would other-
wise be liable for the release or threatened release under state or
federal law even if that person had not carried out a response action
with respect to the release or threatened release; and

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Alaska State Legislature



Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
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February 26, 1991

MEMORANDUM

TO: Representative Bill Hudson

FROM: Glenn T. Gray ^{GTG}
Legislative Analyst

RE: Oil Spill Response Contractor Liability Laws in Other States
Research Request 91.144

You asked about liability laws in other states concerning oil spill response contractors. Specifically, you requested information about states which have limited liability for contractors and their reasons for doing it. You also asked about states that have considered but rejected such legislation.

We contacted staff attorneys, resource agency officials or legislative staff in 16 states to obtain the information for this memorandum. An attempt was made to contact more than one person from each state to confirm information. For some states it was difficult to locate anyone who had a thorough understanding of the implications of response contractor liability statutes. We also contacted staff from several national organizations: the Coastal States Organization, the National Conference of State Legislatures, and the Marine Spill Response Corporation (MSRC).

This memorandum begins with background information about the effort to limit the liability of response action contractors. A brief description of how various states have dealt with contractor liability follows. The memorandum concludes with a summary of national trends regarding liability regimes for oil spill clean up contractors.

Background

Since the federal Oil Pollution Act of 1990 passed in August, many states report that the Marine Spill Response Corporation (formerly the Petroleum Institute Response Organization) and oil spill response contractors have lobbied them to limit the liability of response action contractors. The federal law limits liability for persons who respond to an oil spill in federal waters as long as they act consistently with the National Contingency Plan [33 U.S.C. 1321 (c)(4)]. Responders are still liable, however, for personal injury and wrongful death, and if they are grossly negligent or engage in wilful

misconduct. The act does not preempt states from enacting more stringent liability regimes [33 U.S.C. 1321(o)(2)].¹

Laws which limit liability for persons who respond to spills of oil or hazardous materials are commonly referred to as good samaritan laws. While some states exempt only people who are not compensated, other states have changed their laws to be consistent with federal law. Rather than holding contractors strictly liable, or liable for simple negligence, such states limit contractor liability to gross negligence, wilful misconduct, personal injury or wrongful death. Definitions of these different standards of liability may be found in Attachment A.

The federal Oil Pollution Act of 1990 requires that owners or operators of tank vessels and oil facilities develop response plans. These plans must show that owners or operators have personnel and equipment to "remove to the maximum extent practicable a worst case discharge . . ." [33 USC 321(j)(5)]. For many facilities and tankers, the MSRC provides the only feasible means to comply with this provision. The MSRC is a nonprofit organization funded by the Marine Preservation Association (MPA), a group of oil industry companies. According to David Larkin, director of government affairs for the MSRC, the organization operates independently from the MPA. The MSRC plans to have five regional response centers and 23 pre-staging areas where equipment will be stored. Mr. Larkin says that because an oil spill can spread across the jurisdictions of many states, it is important to have consistent liability standards. Otherwise, in the event of a spill, contractors would have to respond to different rules in each state. Mr. Larkin also says that insurance costs for unlimited liability are prohibitive, and if a state does not have adequate immunity for the responders, the MSRC will have to consider what its role will be in that state.

The MSRC's involvement in Alaska is unclear. According to Mr. Larkin, the MSRC has no plans to locate a pre-staging area in Alaska, and current liability standards do not provide an incentive to consider this option. The MSRC document in Attachment B does, however, refer to a planned pre-staging area in Alaska. Alyeska Pipeline Service Company currently provides spill response assistance for tankers transporting oil from the TransAlaska Pipeline. According to Gene Burden, a vice-president for Tesoro, Alyeska requires Tesoro to obtain one billion dollars of direct action insurance for it to transport oil in Prince William Sound. Such insurance is difficult, if not impossible to obtain (see Attachment C, Legislative Research Memorandum 90.200). Mr. Burden says that coverage through a Protection and Indemnity (P&I) club would

¹After an oil spill, state and federal authorities may bring separate actions against a contractor based on their individual standards.

not provide direct action and would be cost prohibitive for Tesoro.² Mr. Burden believes that insurance requirements would be reduced if Alaska limits the liability for response action contractors. He also says that frivolous litigation would be reduced by changing the current law.

Arkansas

According to Steve Weaver, chief legal council for the Department of Pollution Control and Ecology, Arkansas holds oil spill response contractors responsible for simple negligence. He says that in 1985 legislation was passed that held contractors responsible for gross negligence, but that the oil industry supported a law passed in 1989 making contractors liable for simple negligence. Mr. Weaver said that Arkansas wants to keep response contractors to as high a standard as possible.

California

The California General Assembly passed a bill last year that includes a provision to limit liability for people who respond to oil spills (other than for gross negligence, wilful misconduct, personal injury, or wrongful death). The law limits liability for people who act in good faith and in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the on-site coordinator or the United States Coast Guard. The act restricts the limitation of liability for response action contractors for 60 days after they begin cleanup with a possible extension of 30 days.

According to Dr. Jim Rote, principal consultant for the California General Assembly Office of Research, the provision limiting a response contractor's liability to 60 days resulted from a compromise between lobbying efforts of the California trial lawyers and response contractors. Dr. Rote believes that the limitation of liability for response contractors is justified because they respond to emergencies and may be compared to other emergency responders such as ambulance drivers and fire fighters. The 60-day limit encourages contractors not to become careless.

Connecticut

According to Charles Zieminski, principal emergency response coordinator for the Department of Environmental Protection, Connecticut has no cap on liability for negligence. Other than during a few oil spills in the early 1970s, Connecticut has not had much recent experience with response contractors. Mr.

²Direct action means that a claimant could recover costs directly from the insurer without going through Tesoro.

Zieminski says that he is not aware of efforts to change current liability laws for oil spill clean up contractors.

Delaware

The Delaware General Assembly recently passed legislation consistent with federal law concerning liability of response contractors. The legislation is awaiting the governor's signature. According to Shari Wilson, staff attorney for the Attorney General's Office, contractors may be liable for simple negligence if they significantly increase the damage resulting from an oil spill. Contractors may get around this provision if they subcontract with a party who does not receive compensation for spill clean up, such as the MSRC.

Florida

Legislation passed last year by the Florida legislature limits the liability of persons responding to an oil spill as long as they are not grossly negligent (FS 376.09). This provision appears to include response action contractors, although a separate provision (FS 376.319) provides indemnification for response contractors for simple negligence if they have a written contract with the state. Several state officials with whom we spoke were unable to explain why the state would need to indemnify a contractor for simple negligence if the contractor were only liable for gross negligence and wilful misconduct.

Hawaii

The Hawaii legislature passed legislation during 1990 that apparently limits the liability of response action contractors. The law states that no person shall be liable "as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with this chapter or at the direction of an on-scene coordinator," unless the actions resulted from gross negligence or intentional misconduct. There is a question whether the legislature intended to limit the liability of contractors because the language modifies section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) instead of section 119 of that act (section 119 exempts response action contractors from strict liability for the clean up of hazardous substances).

Louisiana

Louisiana law currently holds response contractors strictly liable for their clean up efforts. MSRC has reportedly said that if Louisiana does not limit liability for response action contractors, the MSRC would reconsider its plans to locate one of its five regional centers in Louisiana.

Maine

Maine's good samaritan law currently limits the liability of people who respond to oil spills as long as they do not receive compensation. Response contractors receiving payment are liable for simple negligence. According to Barbara Foster of the National Conference of State Legislatures, the MSRC said that it would not provide an office in Maine if liability for response action contractors was not limited. The legislature is currently considering a bill to limit liability to gross negligence. Perry Cogburn, an oil and hazardous materials specialist for the Maine Department of Environmental Protection, says that there has not been a problem with response contractors and if the laws are too strict contractors may not respond to spills.

Maryland

Maryland currently does not limit the liability of response action contractors. The legislature is expected to consider a bill this session that has provisions similar to those of the federal government.

Last week during a regional response team drill in Chesapeake Bay, contractors refused to respond to the spill because of Maryland's liability regime.³ The drill proceeded under the assumption that an oil tanker had collided with a container ship carrying hazardous waste. The United States Coast Guard (USCG) took control of the "spill" but could not convince the contractors to respond. The USCG received verbal approval from the Governor of Maryland and written approval from the state's director of the Department of Environment to exempt contractors from liability during the drill. There were, however, concerns about the legality of such an exemption. According to Lt. Commander Shultz, coordinator for the National Response Team, the USCG considered towing the boats into Virginia waters much to the alarm of Virginia authorities. The drill will continue on March 12, with the beginning of the second day of the imaginary spill.

Mississippi

Mr. Charles Chism, director of the Office of Pollution Control, says that Mississippi does not limit the liability for response action contractors. A bill currently being considered by the state legislature would limit contractor liability. Mr Chism says he does not object to such a liability limitation.

³Although there was actually no accident or oil spill, authorities proceeded throughout the drill as if it was real.

Representative Hudson
February 26, 1991
Page 6

New York

Sherry Chrimes, assistant counsel for the Department of Environmental Conservation, says that New York has resisted attempts by the oil industry to limit the liability of response action contractors. The current law holds contractors liable for simple negligence. Ms. Chrimes said that the state often uses response contractors and that the current law is adequate. She says that response contractors should be held to the same standard of liability as other contractors.

North Carolina

Ed Gavin, of the Office of General Council for the Department of Natural Resources and Community Development, says that North Carolina has no limitation for liability for contractors who clean up oil spills. He says that there has not been much effort to change the current law, and that North Carolina has only a few oil terminals, a pipeline and a small oil refinery.

Oregon

Contractors responding to an oil spill currently have unlimited liability. The legislature, however, is considering limiting the liability of response contractors. Bruce Southerland, of the Department of Environmental Quality, said that because Oregon borders the Columbia River with Washington, the states usually try to have compatible oil spill legislation. (Washington currently limits the liability of contractors.)

Pennsylvania

Fred Osman, director of Environmental Emergency Response, says that the Pennsylvania legislature passed an act during November 1990 limiting response action contractor liability to wilful misconduct or gross negligence. He thinks that simple negligence is not a good standard for response action contractors because they respond to emergencies in an effort to prevent damage to the environment and property.

Virginia

David Orms, an environmental program manager for the Department of Environment, says that Virginia has patterned its contractor liability law after the federal Oil Pollution Act of 1990. He does not think that limiting contractor liability to gross negligence poses a problem.

Mr. Orms says that during a regional response team drill he attended last week in Chesapeake Bay, response action contractors refused to respond to the oil

Representative Hudson
February 26, 1991
Page 8

was also cited as a reason for limited liability. The MSRC supports state legislation resembling federal law so that there will be consistency during oil spills that reach the waters of more than one state.

The Federal Oil Pollution Act of 1990, however, permits states to require higher standards. David Slade, general council for the Coastal States Organization, says that while his organization does not recommend how states should respond to the liability question, one option available would be to keep the simple negligence liability standard but to place a cap on the amount of liability. This option would reduce the liability of response action contractors and give them some incentive to operate carefully. The Coastal States Organization expects to release a white paper next month about how states have responded to a number of issues relating to the Federal Oil Pollution Control Act of 1990. A copy of this paper will be forwarded to your office as soon as we receive it.

I hope this information is helpful. Please contact this office if we may be of additional assistance.

Attachments

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 28, 1991

SUBJECT: Response action contractor liability (Work Order 7LS-0552)

TO: Representative Bill Hudson

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked for our opinion on legislation proposed by Tesoro Alaska Petroleum Company, regarding the liability of oil spill response action contractors. The proposed legislation would narrow the potential liability of a response action contractor with respect to a release or threatened release of oil, by eliminating liability for negligence in most instances.

Under AS 46.03.823, the potential liability of a response action contractor is generally limited to negligence, gross negligence and acts of intentional misconduct. This section also establishes a negligence standard that a claimant must show was violated in order to prove liability, and contains several exceptions to the general rule of liability. The exceptions are specific instances in which the legislature has decided that the general rule on liability should not apply.

The proposed legislation would narrow the liability of a response action contractor who responds to a release or threatened release of oil by limiting the liability to (1) gross negligence, (2) intentional misconduct, and (3) acts or omissions that would result in liability, even if the contractor had not carried out a response action. Therefore acts of negligence would not result in liability, unless the act or omission would be negligent even if the contractor had not carried out a response action. Finally, you should note that the proposed new section on oil spill response action contractors does not contain the exceptions to the general rule of liability written into law as AS 46.03.823(b)(2), (c), (d), (e), and (f).

The proposed legislation also raises a constitutional equal protection issue. If the exception for oil spill response contractors was enacted, there would be two different rules of liability, one for oil spill response contractors and one for all other response contractors. While this type of distinction does not always offend the constitutional equal protection clause, there must be a rational reason to distinguish between similar

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Senator Bill Bradbury

EXECUTIVE DIRECTOR

Mary Morgan

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

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

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

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

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

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

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

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

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

ADOPTED JUNE 16, 1990,
IN SITKA, ALASKA