SB

263

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: SB 263
Abbreviated Title: oil Contingency Plan —

Sponsor: _____ Original Received: _____
Written Request to Schedule Rcv'd: _____ From: _____
Sponser's Statement Rcv'd: _____ From: _____
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____
Fiscal Note (Original)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
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Fiscal Note (C.S.)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Five Day Notice Given: _____ Notice of Hearings Given: May 7-8 Rule Waived -
Committees of Referral: First: _____ Second: _____ Third: 0
LAA Contact: _____ To Senate Secretary: May 14, 1991

COMMITTEE ACTION

DATE:
May 9-91 Heard - out on Do Pass
Adams Rule, Halford Do Pass
Collins No Rec.

PERSONS TO BE NOTIFIED OF HEARING

1. Sponsor
2. Agency
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Senator Rick Halford, Chairman
Senate Judiciary Committee

FROM: Senator Lyman F. Hoffman
Senator Al Adams
Senator Fred Zharoff

DATE: May 8, 1991

RE: SB 263

SB 263 should be in your committee today following Senator Jones' waiver of its Resources Committee referral. We respectfully request that you waive the 5-day rule and hear this bill at the earliest opportunity.

SB 263 was introduced at the request of electric utilities, barge lines and fuel distributors serving rural Alaska. They are faced on June 1, 1991 with meeting new oil spill prevention and cleanup standards that were included in last year's HB 567. Unfortunately, these small companies are having serious problems with meeting those new standards by this deadline. In fact, there is a strong possibility that many noncrude transporters and facility operators will find it necessary to either operate illegally or cease operations in the state after June 1, 1991, which in turn would pose serious problems for residents of bush communities that depend on the delivery and storage of noncrude oil for fuel and electrical generation. A year's delay would give these companies time to meet the new insurance requirements, as well as benefit from the results of two noncrude studies that were mandated in last year's legislation.

Senator Lyman F. Hoffman

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

District M
Akiachak
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Fort Yukon
Galena
Goodnews Bay
Grayling
Holy Cross
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Kwethluk
Kwigillingok
Lake Minchumina
Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
McGrath
Mekoryuk
Minto
Mountain Village
Napakiak
Napaskiak
Newtok
Nightmute
Nikolai
Nulato
Nunapitchuk
Oscarville
Pilot Station
Pitkas Point
Platinum
Quinhagak
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Stony River
Takotna
Tanana
Telida
Teksook Bay
Tuluksak
Tununak
Twin Hills
Venetie
Wiseman

MEMORANDUM

TO: Senator Jay Kerttula, Co-chair
Senator Pat Pourchot, Co-chair
Senate Finance Committee

FROM: Senator Lyman F. Hoffman
Senator Al Adams

DATE: April 30, 1991

RE: Supplemental funding

Last year's HB 567 set new standards and requirements for oil spill cleanup and financial responsibility. As a compromise tc the non-crude oil industry, two studies were mandated [Section 30 (a) and (b), ch. 191, SLA 1990 and Section 31, ch. 191, SLA 1990]. In the rush to pass this major piece of legislation, the legislature did not have the opportunity to discuss the economic impacts of these changes in oil spill contingency planning.

For that reason, we would like to request supplemental funding for the Department of Environmental Conservation for $60.0 from the 470 fund to include an analysis of the probable economic costs and other economic effects that the recommended requirements would impose on all noncrude oil terminal facilities, tankers and barges and on the persons they serve. This report should also include the benefits to the State of Alaska through avoided clean-up costs expected through implementation of this law. The lapse date of this allocation should be July 1, 1992. DEC supports this request.

P.O. Box 763 • Bethel, Alaska 99559 • (907) 543-3543

Crude oil companies on the other hand, have indicated their intention and ability to be in compliance with the June 1, 1991 effective date. These companies expressed concern about the uncertainty created by meeting those requirements by June 1, but not yet having final approval by the Department of Environmental Conservation of their amended contingency plans. DEC does not expect that review period to be lengthy for the major crude oil companies, but there is apparently the possibility that these contingency plans will be required to go through the consistency review process under the Coastal Zone Management Act. A final decision by the Attorney General is currently pending. However, the need for some form of "interim approval" status has been addressed in this legislation.

SB 263, as amended in the Senate Oil and Gas Committee, does the following:

Section 1: legislative findings which explain the problems faced by noncrude operators.

Section 2: maintains the current June 1, 1991 effective date for crude oil.

Section 3: delays the effective for noncrude oil operations until June 1, 1992.

Section 4: gives crude oil companies the authority to operate with "interim approval" if determined to be substantially in compliance with the terms of ch. 191, SLA 1990 (HB 567).

This bill has received a tremendous amount of support from throughout the state, especially from southeast and from Kodiak on north up the coast. It has also gone through extensive review by the Senate Oil and Gas Committee. A companion bill is now in House Resources Committee.

We would appreciate your assistance in seeing that this bill is heard quickly. Thank you.

cc: Judiciary Committee members

Senator Lyman F. Hoffman

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

MEMORANDUM

TO: Members, Senate Oil and Gas Committee

FROM: Senator Lyman F. Hoffman

DATE: April 24, 1991

RE: SB 263

On Monday I introduced SB 263 which would delay the effective date of last session's HB 567 for one year for noncrude carriers and facilities.

I have introduced this legislation at the request of electric utilities and fuel delivery companies serving rural Alaska. The attached background paper explains the history of the issue, the problem, and how SB 263 would address it.

This bill has been sent to the Senate Oil and Gas Committee, where the issue has already been the subject of several hearings. I am hoping to get a speedy hearing on my bill and would appreciate your support for it.

If you have any questions don't hesitate to contact myself or my aide Molly McCammon at 4453. Thank you.

P.O. Box 763 • Bethel, Alaska 99559 • (907) 543-3543

SB 263
BACKGROUND PAPER

History: On March 24, 1989 the Exxon Valdez ran aground on Bligh Reef in Prince William Sound, causing the largest crude oil spill in United States history. As a result, the Alaska Legislature and the United States Congress significantly strengthened oil spill prevention and cleanup standards. One bill - HB 567 - passed late last session made three major changes in state oil spill protection: It established new response planning standards; imposed new financial responsibility requirements for contingency plan holders; and required prevention measures to be incorporated into contingency plans. The new law required that existing contingency plan holders comply with these major changes on and after June 1, 1991.

Problem: Although HB 567 was passed as a result of the Exxon Valdez Oil Spill and was aimed at the crude oil industry, non-crude carriers and facilities are also subject to the changes. The Department of Environmental Conservation was charged with implementing this law. DEC failed to complete the implementing regulations in a timely manner however, and now does not expect them to be in place until December 1991, at the earliest. The larger oil companies have been working to meet these new requirements for this last year, and will be prepared to do so by HB 567's June 1, 1991, effective date. Their contingency plans will also receive the highest priority by DEC for review.

The smaller fuel distributors, barge lines, and electric utilities serving rural Alaska are not as prepared. They are finding it impossible to meet the new financial responsibility requirements. Insurance companies have so far not been willing to provide insurance and for most companies, self-insurance is not a feasible option. Additionally, a study mandated by last year's bill and designed to identify appropriate spill response times, specify personnel levels and equipment requirements, and identify specific locations for oil discharge response equipment depots for noncrude oil tankers and barges will not be completed until at least one month after the June 1, 1991 effective date. This study's findings could have a significant effect on emergency spill response planning by

both transporters and the state. One final uncertainty is that the implementing regulations for contingency planning will not be finalized by DEC until December at the earliest.

Solution: SB 263 would delay the effective date until June 1, 1992, of HB 567 for noncrude operators. This will allow thorough consideration of the results of all of the studies and permit noncrude transporters and operators to explore other options to meet the new financial responsibility requirements. The original bill expanded the scope of the studies already required by HB 567 to include an assessment of the economic costs of the new requirements on noncrude operators, but funding for these studies is now being pursued in the supplemental bill. SB 263 as amended in the Senate Oil and Gas Committee also gives DEC clear authority to grant crude operators interim approval if they find them tc be substantially in compliance with the new requirements by the June 1, 1991, date.

Proposed By Arco — was a — never implemented before —

CS SB 263

Additional Findings for Section 1

New paragraph after #4 -- the Alaska Department of Environmental Conservation has had difficulty in obtaining studies and analyses necessary to support the development of regulations implementing ch. 191, SLA 1990, and has retained new consultants to assist it; the requirements of the new regulations (should) have a substantial effect on the form and content of oil discharge prevention and contingency plans filed after the regulations' promulgation, scheduled for December 1991;

could need could —

New paragraph after #5 -- the federal Oil Pollution Act of 1990 (Public Law 101-380) enacted stringent new federal oil spill requirements ; that act provided for a phase-in of its new oil spill planning and response requirements, allowing 24 months for promulgation of regulations, 6 months for filing of contingency plans, and six months for review of contingency plans; that act further provided for a 24 month administrative extension to allow the executive branch to review the numerous new plans;

New paragraph after #6 -- the public's interests will be protected by authorizing a transition period in which the Alaska Department of Environmental Conservation may approve crude oil discharge prevention and contingency plans which substantially comply with the requirements of ch. 191, SLA 1990; this transition period will allow development of regulations and preparation of plans which fully comply with the requirements of those regulations.

Alaska Coastal Management Program Language

Addition to end of Section 4(a) -- The department's notification of substantial compliance for the interim contingency plan will (~~constitute a valid determination that the interim operation is consistent with the Alaska Coastal Management Program,~~) regardless of whether the department has completed any notice process otherwise required by the Alaska Coastal Management Program for the interim operation.

adopted as changed

will allow the operator to continue to operate

CS SB 263

Additional Findings for Section 1

New paragraph after #4 -- the Alaska Department of Environmental Conservation has had difficulty in obtaining studies and analyses necessary to support the development of regulations implementing ch. 191, SLA 1990, and has retained new consultants to assist it; the requirements of the new regulations should have a substantial effect on the form and content of oil discharge prevention and contingency plans filed after the regulations' promulgation, scheduled for December 1991;

New paragraph after #5 -- the federal Oil Pollution Act of 1990 (Public Law 101-380) enacted stringent new federal oil spill requirements ; that act provided for a phase-in of its new oil spill planning and response requirements, allowing 24 months for promulgation of regulations, 6 months for filing of contingency plans, and six months for review of contingency plans; that act further provided for a 24 month administrative extension to allow the executive branch to review the numerous new plans;

New paragraph after #6 -- the public's interests will be protected by authorizing a transition period in which the Alaska Department of Environmental Conservation may approve crude oil discharge prevention and contingency plans which substantially comply with the requirements of ch. 191, SLA 1990; this transition period will allow development of regulations and preparation of plans which fully comply with the requirements of those regulations.

Requested This change from CS Dept.

Alaska Coastal Management Program Language

Addition to end of Section 4(a) -- The department's notification of substantial compliance for the interim contingency plan will [constitute a valid determination that the interim operation is consistent with the Alaska Coastal Management Program,] regardless of whether the department has completed any notice process otherwise required by the Alaska Coastal Management Program for the interim operation.

allow the operator to continue operation

A M E N D M E N T

S B 2 6 3

Page 2, line 16, after "cargo",

INSERT: ", as well as the benefits to vessel and barge owners and operaters, the persons they serve, and the State of Alaska through avoided clean-up costs expected through implementation of this law.

A M E N D M E N T

S B 2 6 3

Section 30(a), ch. 191, SLA 1990 is amended to read:

(a) By January 31, 1992, the Department of Environmental Conservation shall survey, inspect, and prepare an inventory of noncrude oil terminal facilities in the state with an effective storage capacity of 5,000 [TO 10,000] barrels or more in order to determine for each facility ..... [remainder of section not set out].

Page 1, lines 7 and 8, after "facilities":

DELETE remainder of sentence.

7-LS1243\J
Lauterbach
5/6/91

Norma Swarts Environ lobby
DEC -
BP.
Transport Ron Hillegeist -

CS FOR SENATE BILL NO. 263 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HOFFMAN, Adams, Zharoff

A BILL

FOR AN ACT ENTITLED

"An Act relating to oil discharge prevention and contingency plans and financial responsibility requirements for oil operations; and providing for an effective date."

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

*** Section 1.** FINDINGS. The legislature finds that

(1) whereas crude oil companies have indicated their intention and ability to be in compliance with the June 1, 1991, applicability date of ch. 191, SLA 1990, including the new oil spill response planning standards and new financial responsibility requirements, the entities involved in the transportation and storage of noncrude oil are finding it difficult, if not impossible, to meet those requirements by June 1, 1991, due to unforeseen developments;

(2) these developments include the fact that the London insurance markets, historically the source of pollution liability insurance underwriting, are steadfastly refusing to offer policies that meet the new financial responsibility requirements imposed by ch. 191, SLA 1990; most notably, they have refused to issue certificates of financial responsibility or make themselves available for direct legal action in Alaska courts;

(3) while larger companies involved in the transportation and storage of crude oil have the financial ability to meet the new financial responsibility requirements through self-insurance, surety bonding, or letters of credit, most noncrude transporters and facility operators do not have the financial resources to make use of these avenues to satisfy the requirements;

(4) additionally, a study mandated by ch. 191, SLA 1990, designed to identify appropriate spill response times, specify personnel levels and equipment requirements, and identify specific locations for oil discharge response equipment depots for noncrude oil tankers and barges will not be completed until at least one month after June 1, 1991; this study's findings could have a significant effect on emergency spill response planning by both transporters and the state;

(5) taken together, the uncertainties posed by these developments create a strong possibility that many noncrude transporters and facility operators will find it necessary to either operate illegally or cease operations in the state after June 1, 1991, which would in turn pose serious problems for the residents of communities dependent on delivery and storage of noncrude oil products for fuel and electrical generation;

(6) a one-year delay to June 1, 1992, in the applicability date for compliance with the requirements of ch. 191, SLA 1990, for noncrude transporters and facility operators will allow thorough consideration of the study described in (4) of this section and implementation of its findings into emergency response planning; will permit noncrude transporters and operators to explore other options to meet the statute's financial responsibility requirements, including the possibility of developing an insurance pool to replace the coverage no longer being offered by the traditional insurance markets; and will provide adequate time for the Department of Environmental Conservation to develop its implementing regulations for contingency planning.

* Sec. 2. Section 32, ch. 191, SLA 1990, is amended to read:

Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, do not apply to oil discharge prevention and contingency plans **for crude oil operations** until June 1, 1991. On and after June 1, 1991, a contingency plan **for a crude oil operation** must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec. 9 of this Act.

(b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply to persons required to show proof of financial responsibility **for crude oil operations** until

June 1, 1991. On and after June 1, 1991, proof of financial responsibility for a crude oil operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

* Sec. 3. Section 32, ch. 191, SLA 1990, is amended by adding new subsections to read:

(c) AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, do not apply to oil discharge prevention and contingency plans for noncrude oil operations until June 1, 1992. On and after June 1, 1992, a contingency plan for a noncrude oil operation must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec. 9 of this Act.

(d) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply to persons required to show proof of financial responsibility for noncrude oil operations until June 1, 1992. On and after June 1, 1992, proof of financial responsibility for a noncrude oil operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

* Sec. 4. INTERIM OPERATION. (a) A person with a crude oil discharge prevention and contingency plan that is approved under AS 46.04.030 who submits plan amendments to the department to show compliance with the requirements of ch. 191, SLA 1990, may continue to operate if the department determines and notifies the person in writing that the contingency plan, as amended, substantially complies with the requirements of ch. 191, SLA 1990.

(b) The authority to operate under this section is valid only until the earliest of the following dates:

(1) the date the department takes action on the amended plan under AS 46.04.030 by approving it, disapproving it, or approving it with terms or conditions attached; notwithstanding AS 46.04.030(p), the department's action on the amended plan need not occur within 65 days of submission of the amendments;

(2) the date the department revokes the plan under AS 46.04.030;

(3) the date the plan's previous approval lapses or expires for failure to be renewed; or

(4) February 1, 1992.

(c) In this section, "department" means the Department of Environmental Conservation.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT # 1 to SB 263 (CS marked "J")

p. 3, section 3 (d), line 11, change [11 - 18] to 11 - 13.

Instead of delaying all of the new provisions concerning financial responsibility for one year for noncrude, this amendment would delay only the increased amounts of financial responsibility and allow the other provisions such as the ability to use a letter of credit to go into effect immediately.

MEMORANDUM State of Alaska

TO: Mike Mansker
Program Manager, Financial Responsibility
and Oil Spill Prevention
Department of Environmental Conservation

DATE: February 1, 1991

FILE NO.:

THRU: Glenn Adams
Project Assistant Financial Responsibility
DEC

TELEPHONE NO.: (907) 465-2560

SUBJECT: Summary Memo
Problem Issues

FROM: Ted Lehrbach
Insurance Market Analyst
Division of Insurance
Department of Commerce and
Economic Development

Per your request here is a two issue summary of AS 46.04.040 and the applicable regulations, 18 AAC 20., dealing with financial responsibility (FR) requirements. the following is my insight into what appears to be developing into several complicated and acute problems.

1. **The Unlimited Liability Problem**: During my limited "on loan" time with you, Glenn Adams has informed me about an increasing problem. Apparently, some non-crude tankers and barges are having great difficulty either getting or renewing insurance coverage thru the London market to meet FR requirements. Simply put, the insurance market available to the smaller carriers may be drying up. The result could be that some operators of fuel barges or fuel tankers carrying non crude will be forced into non-compliance with the FR requirements effectively putting them out of business. This, obviously, could result in the disruption of fuel deliveries to small remote villages, communities and fishing fleets.

Last year, as an observer, I attended a meeting between DEC, Dept. of Law and industry representatives Mike Padden an Anchorage Broker and John Gimlet from LLoyds of London. The purpose was to discuss this and other issues. It is my impression that a clear understanding of the "unlimited liability" problem really was not grasped by those in attendance. This problem never went away. It now needs immediate attention.

It seems The London Underwriters and P&I Clubs may not wish to provide the cover fearing they may be held to "unlimited liability" due to the way the DEC FR laws are written. For Example, 46.04.040 (e) contains the following language; *An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility.* The insurers probably feel that this language might be interpreted to mean that they stand in the shoes of the polluter.

Consider the following scenario. Coverage is provided to an insured subject to the language above, a loss occurs with resulting damages above the policy liability limits. The insured declares bankruptcy or insolvency and thus becomes incapable of providing funds for the excess amount of the loss. Since the polluter is held to be responsible on a strict liability basis for all (100%) damages listed in the above statutes, then the insurers could be subject to unlimited liability under a strict

(A) Add language to the proposed regulations stating clearly that 46.04.040(e) is not intended to defeat an insurance policy limit or surety bond cap. You then ask the Department of Law to provide a clear decision on the issue that would hold up in our courts. This may work to deflate the industry's fears.

(B) If a statute fix is required, I would recommend adding language similar to the following to 46.04.040 (e) "*An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility,* **subject to the limits of liability set forth in such insurance policy or evidence of financial responsibility.**

2. **The P&I Club Issue:** Did the legislature intend to allow the use of P&I Clubs for FR purposes on non-crude tankers and barges? According to current opinion from the Dept. of Law, P&I Clubs, who do not wish to be subject to direct state action (as has been the traditional form) may not be used for FR under the current wording of AS 46.040(l). This conclusion is found in the footnote on the last page of Doug Mertz's January 24, 1991 opinion memo.

The remaining portion of the memo speaks to the use of P&I clubs for FR coverage on crude tankers, stating that P&I Clubs may only be used for amounts of required FR in excess of $50 million. The opinion is silent on whether the legislature intended to allow P&I clubs to be used for non-crude carriers, which would benefit more from this exemption than would the larger crude oil tankers which do not seem to have problems meeting FR requirements due to their affiliations to large oil companies. Non-crude carriers are often independents. If they are forced out of the market, competition decreases and the consumer is harmed.

An idea to allow non-crude carriers to provide at least 50% of FR requirements thru P&I coverage was suggested in the DEC opinion request of Nov. 27, 1990. Unfortunately the idea was not discussed at any length in the reply opinion from Dept. of Law.

If non-crude carriers were allowed to use P&I clubs who do not wish to be subject to direct state action for their maximum limit of required FR, $35 million (below the $50 million threshold), then they would not have to seek additional coverage at additional cost. These carriers must have P&I coverage anyway since they are marine vessels. Non-crude presents less of a environmental risk than does crude. If their pollution FR requirements can be met with their P&I club, it would eliminate the burden of obtaining additional coverage, providing they can find it. P&I coverage traditionally covers pollution clean up costs and the like. However, it does not cover all of the damages listed in 04.040(e).

If the legislature did intend, as some were led to believe, that non-crude carriers could benefit, at least partially, by using P&I clubs for FR purposes, the statute, as written, does not allow it for the following reasons:

A. Non-crude carriers are subject to a maximum FR limit of $35 million. see AS 46.04.040(c)(2).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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

Telephone
(907) 465-2600

May 3, 1991

The Honorable Sam Cotten
P.O. Box V
Juneau, Alaska 99811

Dear Senator Cotten:

You have asked me what actions the Department and the Legislature might take regarding the Oil Discharge Prevention and Contingency Plan approvals for crude oil operations including expired plans for British Petroleum and Conoco operations on the North Slope. You have also asked for a list of other expired contingency plans, and a description of the tank facilities located throughout the state.

As of today, the Department has issued interim approvals (until September 1, 1991) for British Petroleum and Conoco's facilities to operate under the contingency plans they had previously submitted. These plans meet the current contingency planning requirements. A condition of this interim approval is that both companies will submit amended plans by June 1 and that these amended contingency plans undergo consistency review under the Alaska Coastal Zone Management (CZM) Plan (we currently have no AG's opinion to the contrary). The CZM reviews will be initiated upon receipt of the amended plans and should conclude in August. If the amended plans receive a favorable consistency determination and meet the new response planning standards, the conditions of the interim approvals of the contingency plans will be removed and the approval dates extended.

Second, the Department occasionally comes across the situation where a contingency plan substantially meets the requirements, but may be missing a small element. In order to allow these contingency plan holders to continue to operate, and be bound to respond to any spills under an approved plan, the Department suggests an amendment (enclosed) to the statutes, which we hope will be included in SB 263. We would be happy to explain the need for this revision further with you, your committee, and your staff.

Third, a list of other currently expired plans is included. This list is continually subject to change. You should be aware that of the 44 expired plans currently identified, we are working with 25 facilities that have submitted new or revised contingency plans for approval. Nineteen other facilities have not contacted the Department regarding their plans (some of these may no longer be operating in the

state). We are sending a letter to the latter group asking them to be in contact with the department within 10 days to obtain a compliance order by consent for developing a plan, or to cease operations. For all expired plan holders we will insist upon a date certain for plan completion.

Fourth, we have included a chart showing the distribution of onshore facility capacities.

If I can provide any additional information, please contact me.

Sincerely,

Mead Treadwell
Deputy Commissioner

enclosures
cc: Senator Drue Pearce
Representative Bill Hudson

#1

[THIS IS AN AMENDMENT TO SB 263]

* Sec. 3. INTERIM APPROVAL STATUS. (a) If a person has submitted an oil discharge prevention and contingency plan to the department for review, the department may grant an interim approval of the oil discharge prevention and contingency plan if the department determines that:

(1) the oil discharge prevention and contingency plan substantially complies with oil discharge prevention and contingency plan requirements and related department regulations or

(2) the oil discharge prevention and contingency plan would substantially comply with oil discharge prevention and contingency plan requirements and related department regulations under conditions specified by the department.

(b) If an interim approval is granted under (a)(2) of this section, the conditions specified by the department are part of the oil discharge prevention and contingency plan during the period of time for which the interim approval is granted.

(c) An interim approval is valid for no more than 180 days.

(d) The department may revoke an interim approval if it determines that the oil discharge prevention and contingency plan is no longer in substantial compliance with oil discharge prevention and contingency plan requirements and related department regulations.

1

(e) Interim approval under (a) of this section constitutes approval for purposes of AS 46.04.030 until the interim approval expires or is revoked.

(f) The time limit for a decision by the department under AS 46.04.030(p) does not apply to plans described under (a) of this section.

(g) In this section, "department" means the Department of Environmental Conservation.

THE FOLLOWING PLANS ARE EXPIRED - PLAN HOLDERS HAVE BEEN NOTIFIED:

Northern Region:	**Expiration Date**
Northland Services [barge]	1/14/89
Pacific Alaska Nome Bulk Plant [terminal]	8/11/89
Yutana Barge Lines [barges]	7/23/89
Barter Island USAF Terminal	4/5/90
Fort Yukon USAF Terminal	3/14/86
Cape Lisburne USAF Terminal	4/13/89
Tin City USAF Terminal	5/14/90
Indian Mountain USAF Terminal	4/13/89
Galena USAF Terminal	5/14/89
St. Michael Fuel Terminal	1/17/88
Tesoro Alaska Airport Terminal	11/15/89
Southcentral Region:	
Defense Fuel Terminal, Whittier	n/a
Aleut Corporation Terminal	1/9/90
Shemya AFB Terminal	n/a
Northland Services [vessel]	3/16/88
Orca Oil Terminal, Cordova	2/20/90
USAF Long-Range Radar Stations (4) [terminal]	n/a
Texaco Marine Services [vessel]	4/21/91
Military Sealift Command [vessel]	n/a

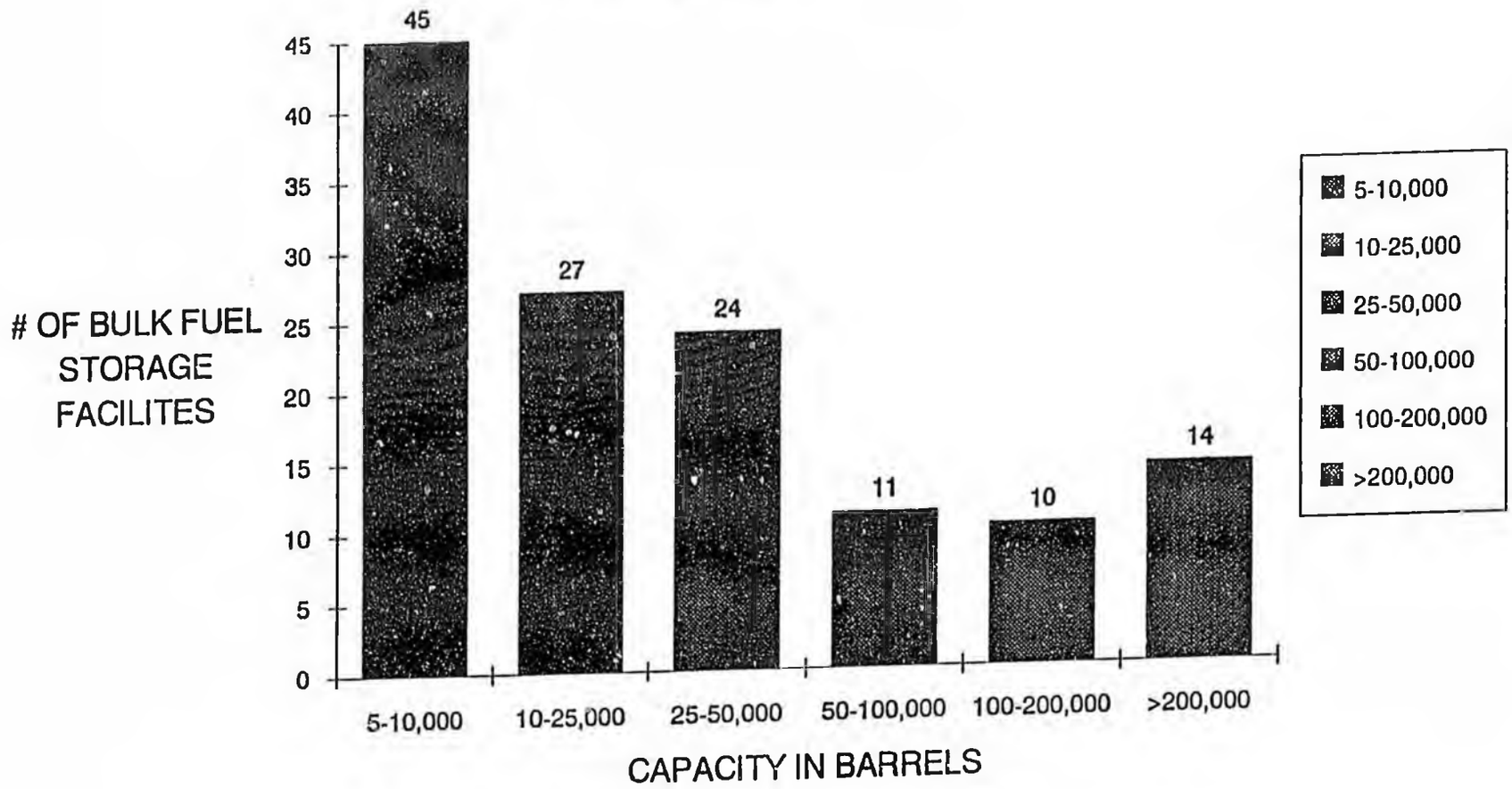
THE FOLLOWING PLANS ARE CURRENTLY EXPIRED, PLANS HAVE BEEN SUBMITTED AND ADDITIONAL INFORMATION HAS BEEN REQUESTED WITH A DEADLINE FOR SUBMITTAL:

Southeast Region:	**Expiration Date**
Delta Western Yakutat Terminal	1/1/89
Delta Western Juneau Terminal	1/1/89
Sitka Fuels Co., Sitka [terminal]	n/a
Boyer Towing, Barge "Kotznahoo" [vessel]	12/5/90
Totem Oil Terminal, Haines	n/a
Northern Region:	
Golden Valley Electric [terminal]	11/12/90
NSB Barrow Oil Terminal	5/25/88
NSB Pt. Hope Fuel Storage [terminal]	5/25/88
NSB Wainwright Fuel Storage [terminal]	7/24/89
NSB Eskimos Inc. [terminal]	3/7/91
Pacific Alaska Kotzebue Bulk Plant [terminal]	7/1/90
Saupe Chevron [terminal]	2/14/88
Fort Wainwright Army Terminal	9/6/89
Eielson Air Force Base Terminal	7/17/89
Mapco North Pole Refinery [terminal]	10/5/90
Ft. Greeley Army Terminal	n/a
Southcentral Region:	
Trident Seafoods, Sand Point Terminal	1/17/91
Terminal Oil Sales, Homer	12/3/90
Delta Western Nikiski Terminal	3/5/91

Amchitka Navy Terminal	4/10/91
North Pacific Fuel Terminal, Kodiak	3/21/91
Pacific Fuel Trading Corp. [vessel]	3/28/91
Petro Marine Services, Unalaska [terminal]	4/11/91
Bering Sea Fisheries [vessel]	10/13/90
Cove Shipping Inc. [tanker]	11/1/90

n/a = has never had an approved plan

BULK FUEL STORAGE FACILITIES IN ALASKA



ALASKA Dept. of Environmental Conservation May 1991

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WALTER J. HICKEL, GOVERNOR

(907) 451-2360

Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

May 3, 1991

Mr. Steve D. Taylor
Environmental & Regulatory Affairs
BP Exploration
P.O. Box 196612
Anchorage, AK 99519-6612

Dear Mr Taylor:

Re: Oil Discharge Prevention and Contingency Plan for the Prudhoe Bay & Endicott Operations

Based on the review of the above referenced plan the Department herein grants approval of your Oil Discharge Prevention and Contingency Plan. Approval of your contingency plan is granted subject to, and requires continuous compliance with, AS 46.04 and 18 AAC 75.305 through 75.395. Recent inspections of your facility have exhibited that your response capability is at a suitable level.

The Department is approving this plan with the condition that the amended plan you are submitting today will go through the Coastal Zone consistency review process and be determined consistent with the Alaska Coastal Management Program.

This approval is effective immediately and will expire on September 1, 1991. The Department may terminate this approval prior to the expiration date if deficiencies are identified that would adversely affect your company's spill prevention, response, and preparedness capabilities.

The Department is currently reviewing the regulations pertaining to Oil Discharge Prevention and Contingency Plans. Any alterations of the present regulations will apply to any currently approved contingency plans.

As a holder of an approved contingency plan, under AS 46.04.030(g), your failure to have access to the resources identified in the plan and, in the event of a spill, to respond with those resources within the time required by law is a violation of Alaska law. Please carefully review AS 46.04.030 so that you fully understand your obligations.

Any person who disagrees with this decision may appeal the decision by requesting an adjudicatory hearing, using the procedures contained in 18 AAC 15.200-310. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 3220 Hospital Drive, P.O. Box O, Juneau, Alaska 99811-1800, within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to appeal is waived and the decision becomes final.

Thank you for coordinating this plan with the Department. If you have any questions please contact either Larry Katkin or myself.

Sincerely,

William D. McGee
Northern Regional Supervisor

lk/wdm/rg
cc: Mead Treadwell, EQ/DC, Juneau
Brad Fristoe, EQ/NSDO, Fairbanks
Larry Katkin, EQ/NSDO, Fairbanks
Cameron Leonard, AGO, Fairbanks
300.17.078

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WALTER J. HICKEL, GOVERNOR

(907) 451-2360

Northern Regional Office
1001 Noble Street
Suite 350
Fairbanks, Alaska 99701

May 3, 1991

Mr. David L. Bowler
Conoco, Inc.
3201 "C" Street, Suite 200
Anchorage, AK 99503

Dear Mr. Bowler:

Re: Oil Discharge Prevention and Contingency Plan for the Milne Point

Based on the review of the above referenced plan the Department herein grants approval of your Oil Discharge Prevention and Contingency Plan. Approval of your contingency plan is granted subject to, and requires continuous compliance with, AS 46.04 and 18 AAC 75.305 through 75.395. Recent inspections of your facility have exhibited that your response capability is at a suitable level.

The Department is approving this plan with the condition that a new plan be submitted by June 1, 1991 that will go through the Coastal Zone consistency review process and be determined consistent with the Alaska Coastal Management Program.

This approval is effective immediately and will expire on September 1, 1991. The Department may terminate this approval prior to the expiration date if deficiencies are identified that would adversely affect your company's spill prevention, response, and preparedness capabilities.

The Department is currently reviewing the regulations pertaining to Oil Discharge Prevention and Contingency Plans. Any alterations of the present regulations will apply to any currently approved contingency plans.

As a holder of an approved contingency plan, under AS 46.04.030(g), your failure to have access to the resources identified in the plan and, in the event of a spill, to respond with those resources within the time required by law is a violation of Alaska law. Please carefully review AS 46.04.030 so that you fully understand your obligations.

Any person who disagrees with this decision may appeal the decision by requesting an adjudicatory hearing, using the procedures contained in 18 AAC 15.200-310. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 3220 Hospital Drive, P.O. Box O, Juneau, Alaska 99811-1800, within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to appeal is waived and the decision becomes final.

Thank you for coordinating this plan with the Department. If you have any questions please contact either Larry Katkin or myself.

Sincerely,

William D. McGee
Northern Regional Supervisor

lk/wdm/rg
cc: Mead Treadwell, EQ/DC, Juneau
Brad Fristoe, EQ/NSDO, Fairbanks
Larry Katkin, EQ/NSDO, Fairbanks
Cameron Leonard, AGO, Fairbanks
300.17.059

SECTIONAL ANALYSIS

PRELIMINARY DRAFT 1/28/91

ARTICLE 4. OIL DISCHARGE PREVENTION AND CONTINGENCY PLAN

18 AAC 75.305 Application for Approval

C-plans must be submitted 65 days prior to operation. This precludes the spot charter of tank vessels to deliver fuel to Dutch Harbor. It may also delay continuous operations when facilities are sold.

Five copies of the draft plan are to be submitted - ADEC may require additional copies. Coastwise marine operators (Crowley/Foss) may be subject to submitting plans to each of the 35 entities within the Alaska Coastal Management Program. Further, the current interpretation is that the operator is to respond to each entity which presents questions or requests additional information.

18 AAC 75.310 Application for Amendment

C-plans must be site specific. Marine operators must address all transfer locations. To deliver fuel to a location or village not described in the approved plan, an update which requires 65 days review is required.

18 AAC 75.320 Contingency Plan Contents

C-plans must follow and be presented in the four section format. All plans must be entirely rewritten, regardless of current value or content.

(1) Section 1 -- Emergency Action Plan

Emergency plan booklets are to be issued to all personnel for field use. The regulations imply that personnel will carry these booklets at all times. Facility and marine operators have not, do not, and will not carry such booklets.

(1) Section 1 (A)

The requirement to identify the name, phone numbers, and address of each person in the operation and government agency who is "by law" involved in the primary response results in booklets that will continuously be outdated and which will require constant updating.

(2) Section 2 (C) (ii)

C-plans often contain service agreements from cleanup contractors which facilitate prompt emergency response. Contractors will not enter binding response agreements whereby they may incur liability from the operators, the public, and the state.

(2) Section 2 (C) (iv)

The requirement that operators must demonstrate sufficient financial resources to support the actions of a contractor is vague. What amount is sufficient?

(2) Section 2 (C) (v)

Equipment inventories of cleanup contractors are continually changing, therefore, to attempt to demonstrate that equipment is "compatible" with rural facility operations is futile and useless.

(2) Section 2 (D) (v)

The requirement to analyze operating risks associated with volcanoes, earthquakes, avalanches, flooding, physical hazards, human error, vandalism, sabotage, etc. is a consultant's dream. Unfortunately, when applied to each rural facility it will be very expensive, contribute little beyond common sense, and be subject to subjective approval.

(2) Section 2 (G)

The requirement to provide a rated capacity of recovery equipment, particularly for refined products, illustrates a basic lack of understanding of spill response in rural Alaska. Recovery rates of pumps and skimmers are dependent on site specific application and circumstances.

(2) Section 2 (H)(I)

The requirements for detailed environmental analysis and commentary about the effectiveness of mechanical response equipment contributes to the volume and cost of contingency plans, but is seldom read. The coastwise marine operator will be required to write an Alaska environmental atlas in its plan.

(3) Section 3 -- Response Procedures

By law, operators are required to cleanup spills to the satisfaction of the designated On-Scene-Coordinator, regardless of duration of the cleanup. Therefore, I question the need and intent of the repeated requirement for operators to estimate length of time to conclude a spill response.

18 AAC 75.340 Spill Volume Preparedness Standards

1990 SLA Ch. 191 establishes that contingency plans must address preparedness standards which are identified for various operations. The standards attempt to quantify response capability, and may be factored up or down by risk exposure and preventative measures. For facilities the basic standard is the capability to cleanup the contents of the largest single tank in 72 hours. If ADEC determines increased risk is present the standard may be increased to the capacity of all potentially affected tanks.

Prior to preparing a plan the operator must establish, and ADEC must approve, an acceptable standard, albeit the standard is very subjective and will be different for each facility. Then, predicated on the standard and proximity of environmental sensitive areas and areas of public concern, the operator writes the plan and purchases response equipment. The plan is then submitted for inter-agency review and Coastal Zone Management comment. To my knowledge, no contingency plan has ever been submitted, reviewed and approved without a lengthy series of comments and revisions.

To satisfy the standard, the operator must maintain in its "area of operation" the required response equipment/capability. There are ten designated "areas of operation" which correspond to the regional planning areas identified in 18 AAC 75.395. The most obvious concern is that whereas rural facilities can generally demonstrate the ability to contain and transfer the volume of the largest tank it is impossible to identify temporary storage, within the area of operation, equal to the largest tank.

Marine operators have the difficult task of identifying in each area of operation the capability to lighter total cargo capacity within 48 hours. Further, the lightering resources must be maintained separately from other spill response resources.

18 AAC 75.345 Containment, Control, and Cleanup Requirements

18 AAC 75.345(a)

This section best illustrates the difficulty of compliance. It states, "For use in water response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10 waves ... Such equipment, to my knowledge, has not been invented.

18 AAC 75.345(b)

Spill trajectory modeling has proved unreliable even in most studied waterways. To require rural facilities to develop spill trajectory and mapping capability is questionable, particularly when it is the government sector that has conducted most of the research in trajectory analysis.

18 AAC 75.345(c)

A facility with potential for discharge into the water must maintain enough boom to contain at least the contents of the single largest tank. It is not unreasonable to assume that at least 5,000 feet of boom could be required to contain the contents of a 10,000 barrel tank. Additional boom is required to be separately stored and maintained to protect sensitive areas and areas of public concern.

18 AAC 75.345(d)

The Alyeska Terminal may maintain a fleet of response vessels, however, in rural Alaska dedicated vessels are not available on a permanent basis.

18 AAC 75.345(e)

Very few plans will be approved if operators must demonstrate they can contain or exclude all potential discharges from reaching sensitive environmental areas or areas of public concern. Further, few facilities are capable of maintaining separate exclusionary resources and personnel (in the area of operation) in addition to the facility response equipment.

18 AAC 75.345(f)

Marine operators cannot comply with current lightering requirements of the single largest tank within 48 hours. It is unrealistic to consider all marine operators can maintain total cargo lightering capability in 48 hours within each of the ten designated areas of operation.

18 AAC 75.345(h)

The issue of realistic skimmer efficiency rates versus manufacturers' nameplate rating is a futile and endless debate. The fact is skimmers are seldom used in the recovery of refined products as direct suction is usually the best means of recovery. Recovery rates of pumps and skimmers are dependent on site specific application and circumstances.

18 AAC 75.345(i)

It is impossible for a facility to demonstrate in a C-plan the onsite ability to discharge recovered wastewater. The permit application required under 18 AAC 70 requires specific site, time, volume and product

data. Further, ADEC states a permit cannot be pre-approved.

18 AAC 75.355 Training

On December 27, 1990 the Alaska Dept. of Labor adopted new training requirements for hazardous waste operations and emergency response (including oil spills). The current interpretation is that standard requires training of 40 hours for facility operators and 64 hours for supervisors, and annual refresher courses. Such training must be conducted by certified instructors and does not include "hands-on" deployment training which is also required.

18 AAC 75.355 Training

An operator will be out of compliance unless he revises his C-plan and notifies ADEC every six months of all name, address, and phone number changes. This includes changes within government agencies which must be identified in the plan.

18 AAC 75.380 & 385 Inspection & Discharge Exercises

ADEC may conduct unannounced inspections and require unannounced discharge exercises.

CRIMINAL PENALTIES -- AS 46.03.790

* Class A Misdemeanor to negligently:
  - -violate AS 46.04,
  - -provide false information,
  - -discharge < 10,000 barrels of oil, or
  - -fail to comply with contingency plan for a spill < 10,000 barrels.

* Class C Felony to negligently:
  - -discharge >= 10,000 barrels, or
  - -fail to comply with contingency plan for a spill >= 10,000 barrels.

* Each day is a separate violation.

* Class A Misdemeanor: $5000 fine; up to one year in jail.

* Class C Felony: $50,000; up to five years in prison.

* Corporation: Fine greater of twice pecuniary savings or damages, or $500,000 for felony or $200,000 for misdemeanor.

ADEC 2-15-91

HB 567 REGULATIONS ISSUES

The following questions address significant issues in contingency planning, prevention and financial responsibility and are included for your consideration. Comments on these and any other issues not listed are welcome.

1) What role, if any, should Citizens' Oversight Councils play in the actual response to a catastrophic oil spill?

2) What should be the mechanism for including public participation in oil spill response activities?

3) What role should oil spill response cooperatives play in a response, and how should they be governed?

4) How should the "realistic maximum oil discharge" (RMOD) be calculated for:
- an oil terminal facility?
- an oil tanker or oil barge?
- an onshore or offshore exploration facility?
- an onshore or offshore production facility?
- a pipeline?

5) What should be the criteria for judging the operational capabilities of oil spill response equipment? How should the effectiveness of equipment be calculated?

6) What are examples of prevention measures that can be taken to reduce the probability of a spill or the size of a spill?

6) What should be the criteria for judging whether a prevention measure should be required, or should be optional and qualify for "credit" (a reduction in planned response capability)?

7) What should be the amount of "credit" given for each prevention measure (by what amount should planned response capability be reduced?)

8) What is the maximum amount of "credit" that should be given for prevention measures?

9) Besides insurance, self-insurance, bonds and guarantees, what other forms of proof should be allowed by the state to ensure that a company can pay for the clean up of a spill?

OIL SPILL PREVENTION, AND FINANCIA

How you can help design

The T/V Exxon Valdez release of 11 million gallons of North Slope crude into Prince William Sound in 1989 was a threshold event that is recasting the system for responding to oil spills in Alaska.

Oil facilities and vessels must meet more exacting contingency planning standards for spill prevention and response, as required by House Bill 567, a key spill bill adopted by the 1990 Alaska Legislature.

The Legislature set these higher standards, but it is now the responsibility of state government, industry and the public to decide precisely how the law will be put into effect. To implement HB 567, the Department of Environmental Conservation (DEC) is writing regulations which will be reviewed through the broadest public participation possible.

To take part, please read on.

Department of Environmental Conservation

Public Participation and Regulations Development Schedule:

MARCH 4
Mail out working draft of regulations for C-plan standards, and workshop schedule

MARCH 15
Distribute working draft of regulations for financial responsibility

MARCH 19
First meeting of HB 567 work group

MAR. 20 - MAY 2
Hold informational workshops at 18 locations

JUNE 1
Incorporate public comments
Amendments to response plans due

JULY 1
Complete draft prevention regulations
Issue public notice for *all* regulations

JULY
Hold public hearings on all regulationss

SEPTEMBER
Incorporate final revisions

OCTOBER
Department of Law review

NOVEMBER
Lt. Governor review

DECEMBER 1
Regulations effective

FEBRUARY 1, 1992
Owners/operators complete amendments to response plans

OIL POLLUTION ACT OF 1990

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.

(a) IN GENERAL.—Subsection (j) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended—

• • •

(6) by adding at the end the following:

"(5) TANK VESSEL AND FACILITY RESPONSE PLANS.—

• • •

"(E) A tank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

"(i) in the case of a tank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (D), the plan has been approved by the President; and

"(ii) the vessel or facility is operating in compliance with the plan.

"(F) Notwithstanding subparagraph (E), the President may authorize a tank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

(b) IMPLEMENTATION.—

• • •

(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

(B) During the period beginning 30 months after the date of the enactment of this paragraph and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.

PROJECT CONSISTENCY WITH THE ALASKA COASTAL MANAGEMENT PROGRAM

6 AAC 80.010. COVERAGE OF CHAPTER.

(b)

In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter.

6 AAC 50.070. CONSISTENCY REVIEW PROCESS.

(k) The coordinating agency shall issue a conclusive consistency determination on or before Day 50, or Day 30 in a 30-day review period, if it has not received a request to elevate the review.

6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review.

TESTIMONY OF SEAPRO MANAGER CONCERNING SB 283

04/30/91

SEAPRO is a cooperative organization made up of companies who transport, store, and use bulk quantities of oil in Southeast Alaska. With the exception of the Unocal terminal in Ketchikan, none of the companies who make up our membership can be considered "big oil". We are predominantly small businesses, the majority of whom are locally owned. Our members include tug and barge companies, medium and small fuel terminals, mining companies, pulp mills, and others. Our members are located in Juneau, Ketchikan, Sitka, Petersburg, Wrangell, and Thorne Bay. Some of our members have operations which service virtually all the smaller communities and habitations in the region, while others simply consume oil in sufficient quantity to fall within the jurisdiction of the new state law.

We are a relatively new entity, having officially started activities last December after several months of planning and organizational work. One of the main purposes of our organization is to provide a mechanism for making better use of the pollution response assets which already exist within our member companies, and to seek improvements in the overall pollution prevention and response system within our region.

SEAPRO has been working with co-op members, ADEC, the Coast Guard, other state and federal resource agencies, local emergency planning committees, and response organizations outside the region to identify region specific needs, conditions, and concerns which directly relate to the pollution prevention and response infrastructure of the region.

Naturally, the requirements of state law and regulation are a portion of the equation which will drive the final design of our region's system, so SEAPRO has been careful to pay close attention to developments in those areas, but especially to the non-crude oil regulations promulgated under HB 567.

Last Thursday and Friday, I participated in a two day meeting in Anchorage of a working group dealing with ADEC's draft financial responsibility and contingency plan regulations for non-crude oil vessels and facilities. I participated in this working group with the express purpose of trying to contribute the views of our region's companies who are very confused as to how they can comply with several specific provisions, and what impacts these regulations will have on their ability to continue in business. Additionally, as a professional in the pollution prevention and response fields, I had hoped to suggest specific technological language and methodologies which could improve the workability of the proposed rules.

While I am not all that knowledgable about insurance matters, it appeared that some progress was made toward resolving several of the insurance industry's objections to the draft financial responsibility rules during the first day of these meetings. Unfortunately, less progress was made in addressing technical details of the planning regulations.

It is my opinion that there are serious technical flaws with the draft planning regulations. Additionally, so far as I can determine, there are still no prevention regulations available for us to work with. It is imperative that these regulations, together with the financial responsibility regulations, be considered as a comprehensive package, especially as they relate to the interdependent system of distribution, storage, and use of distilled or refined products which exists in our region of the state. Failure to adopt these regulations as a system will limit their effectiveness and make compliance that much more difficult to achieve.

During these meetings, it was obvious to me that there is a great gap between what the DEC thinks they are saying to industry with these regulations, and what industry in our region believes is being said. This is not simply a matter of semantics. It is also a matter of our assumption of how these regulations will be applied by the state, and interpreted by the courts. These assumptions, even if incorrect, are exacerbated by an atmosphere of confusion caused by the law having an effective date which precedes the state's ability to complete a normal regulatory process.

Many of our businesses are firmly convinced that they cannot comply with certain provisions of the regulations because the technology to meet the required standards does not exist. There is also the problem of acquiring and putting into place capital assets which may meet some of the requirements, in time to comply with the law. Following this logic then, it should be obvious that these businesses believe they are faced with a quandary. Do they continue in business knowing they cannot comply with technical provisions of the regulations and hope that the government will correct the situation eventually, or should they strictly comply with current law and unadopted regulation and cease doing business?

I believe that progress has been and will continue to be made in constructing practical regulations which can satisfy the intent of the legislature. However, the current situation of HB 567 becoming effective in advance of implementing regulations creates an artificial barrier to progress and an atmosphere of uncertainty for our member businesses.

The work to craft functional regulations implementing HB 567 has at least begun, but there is a long way to go. The DEC, our businesses, and the communities of our region need time to do this work. I believe that SB 263 will give us an opportunity to do this work. More importantly, it will also give our member companies some assurance that while the regulations are being crafted, they can continue in business without the fear that they may be unintentionally breaking the law. I urge the legislature to adopt SB 263.

R. M. Mullen
Manager
Southeast Alaska Petroleum Resource Organization

Glen-Adam
789-5671

GENE BAUSE & COMPANY

ALBERTA LL BUILDING, SUITE 800 • 1200 NORTHWEST FRONT AVENUE • PORTLAND, OREGON 97209
TELEPHONE (503) 223-5895 TELEFAX (503) 224-0037

MARINE INSURANCE
GENERAL INSURANCE

DATE: April 22, 1991

TO: Mr. Ed Bain
COMPANY: E.H. Bain Consultants Limited
FAX NO.: (416) 874-0078

FROM: Ms. Ginny Wade
COMPANY: Gene Bause & Company
FAX NO.: (503) 224-0037

NO. OF PAGES (including this cover): 1

FOR TRANSMISSION PROBLEMS, PLEASE CALL (503) 223-5895.

SUBJECT: Northern Transportation Company, Limited

Dear Mr. Bain:

Thank you for your April 16, fax regarding your clients movement of Oil Barges into the territorial waters of Alaska.

I am afraid that the Alaska Division of Insurance is slightly confused on what we provided to them as evidence of insurance for our various clients. While it is true that our clients are placed with a Ship Owners Mutual Insurance Club, the insurance that was evidenced to the State of Alaska was a separate Pollution Liability Insurance Policy that we obtain from the Lloyd's Marketplace. In order to meet the state's requirements, it was necessary for us to, in essence, purchase double insurance on the Oil Barges moving in the state of Alaska's waters. This was, of course, a financial burden on our clients, but was the only way to be in compliance with their state laws.

Unfortunately, since the passage of the Federal Oil Pollution Act and the pending June 1, implementation of the State of Alaska's new regulations, the London Marketplace has now firmly stated that they will no longer provide any form of insurance that will be direct action as is required by the State of Alaska. When the current policies we have in place expire, we will be in the same situation as you find yourself.

We are working with the State of Alaska in trying to convince them that their requirements are not commercially available. We are also having meetings later this week with one of the mutual Protection and Indemnity Clubs in order to elicit their assistance in defeating the State of Alaska's proposed statutes. If you would like to check back with me in a week or so, I would certainly be glad to update you on any progress we make toward resolution of the State of Alaska's issues.

Best regards,

Ginny Wade

Ginny Wade

GW:wk

Lowndes Lambert Marine Limited
Lowndes Lambert House 53 Eastcheap London EC3P 3HL
Telephone 071-283 2000
Facsimile 071-283 1970 and 071-220 7548
Telex 8814631 Cable Blelgee London EC3

Our Ref: GRL/KR/EP/H

18th March, 1991

Gene Sauce & Company,
Albers Mill Building,
Suite 620,
1200 Northwest Front Avenue,
Portland,
Oregon,
U.S.A.

For the attention of Ginny Wade

Dear Ginny,

POLLUTION

State of Alaska Financial Responsibility

Following our recent correspondence and telephone conversations regarding the current position of our London Underwriters in respect of proof of Financial Responsibility, I am writing to advise as follows:-

We have available to us several markets for the insurance of Pollution here in London. There are specific Lloyds and/or Institute of London Underwriters members plus various agencies here in London who write for and on behalf of the aforementioned. We do also place a Pollution cover specifically for your office. Following the introduction of the United States Oil Pollution Act 1990, these Underwriters reviewed the basis on which they were prepared to offer coverage in respect of this exposure. The outcome of this review was to withdraw all previous forms of cover and offer in its place the "limited" London form. This form does not cover any additional coverage in respect of specific State Regulations. Additionally, they no longer offer nor provide any proof of Financial Responsibility under either the Act or any State Regulation.

I do appreciate this is not what you wanted to hear but must advise that London Underwriters are adamant in their stand in this respect.

Yours sincerely,
LOWNDES LAMBERT MARINE LIMITED

Gerald Backer

LLOYD'S BROKER

INTERNATIONAL GROUP OF P & I CLUBS
78 FENCHURCH STREET, LONDON EC3M 4BT

D.J.L. WATKINS

BY FAX

H.E. Mesirow, Esq,
Robins, Kaplan, Miller & Ciresi
1220 19th St. N.W. Suite 700
Washington D.C. 20036
U.S.A.

5th April 1991

Dear Hal,

Certification: Alaska

Thank you for your letter of 1st April enclosing copy of Foss' letter of 28th March.

Perhaps the simplest answer is to underline that the Clubs in the Group are not prepared to issue certificates of financial responsibility in any of the States. This seems to have been accepted now in Alaska where in practice charterers provide the security required under State law. I regret that there is no flexibility on this issue and hope that Foss will be able to reach a satisfactory conclusion with the State authorities.

Yours sincerely,

pp D.J.L. Watkins

SITKA FUELS INCORPORATED

P.O. Box 1947
Sitka, Alaska 99835
Phone (907) 747-8460

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 4

To Dick Eliason	From Don Brown
Co.	Co.
Dept.	Phone #
Fax # 465-4928	Fax # 747 5382

May 2, 1991

Senator Dick Eliason
President of the Senate
Juneau, Ak.

Dear Senator Eliason:

Thank you for your prompt response to my phone call this morning. I am enclosing copies of the three letters I discussed with you. The problem is the outfall of HB 567, passed last session. The regulations being developed by the DEC are not in place and without a program you cannot tell the players. This is generating much concern amoung players and spectators alike.

At the DEC public hearing in Sitka yesterday evening a large portion of the public expressed a degree of delight that transporters and oilers were getting what they deserved. I did not favor these people with my Economics 101 theme, the consumer pays for all direct and indirect cost in the purchase price. I have been exposed to projected consumer cost per gallon, of the current DEC regulations, of a low of 30¢ per gallon to a high of 57¢ per gallon. Sitka Fuels is going to comply with whatever washes out of this deal and the end user will address all costs except the anxiety factor, and my blood pressure is the same as twenty years ago.

I strongly support the position of SB 263 by Senators Hoffman and Adams, requesting a delay in implementing the effects of HB 567 and bringing some realism to this "Land of Oz".

Thank you for volunteering your staff to distribute to other addressees. I will FAX direct to the Lt. Govenors office. All the real halibut fishermen have left town.

Senator Al Adams
Senator Sam Cotton
Senator Rick Halford
Senator Lloyd Jones
Speaker Ben Grussendorf
Representative Cheri Davis
Representative Jerry Mackie
Representative Robin Taylor
Lt Govenor Jack Coghill

Sincerely,

Don Brown

Don Brown

Enclosures: Samson 5-1-91
Venneberg 5-1-91
Ribelin Lowell and Co. 4-19-91

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Jerome Brown
Sitka Fuels, Inc.
Box 1947
Sitka, AK. 99835

May 1, 1991

Dear Mr. Brown:

This letter is to inform you that effective 1 June 1991, we will be unable to deliver any petroleum products to your facility. Due to Alaska statutes (HB567) that will become effective June 1, 1991, Samson Tug and Barge will be unable to comply with the law, which we consider unworkable. Further operations under our Contingency Plan would constitute an illegal action on our part. Liability spill insurance coverage for the T/B Annahootz is minimal in comparison to the possible liabilities that could be incurred for a spill incident. Therefore because of regulatory action and increasing cost we are forced to discontinue our fuel delivery service.

Presently, there is legislative action to amend HB 567 and extend previous requirements until January 1992. In the event this bill, SB 263, passes, we will continue our fuel operation and will be able to provide you continued service.

We regret this action to a long and valued customer, however we must protect our company and its employees. Thank you for your patronage and your understanding.

Sincerely,

George Baggen

VENNEBERG INSURANCE, INC.

225 Harbor Drive
P.O. Box 199
Sitka, Alaska 99835
(907) 747-8625
FAX (907) 747-5065

May 1, 1991

Jerome Brown
Sitka Fuels, Inc.
P.O. Box 1947
Sitka, AK 99835

Re: Pollution Liability
#L5552/90

Dear Jerome:

The above pollution liability policy for Sitka Fuels, Inc. is due to expire on 6/4/91.

We have been notified by Ribelin Lowell & Co. that the current lead underwriters in London for this program are pulling out. They are in the process of remarketing to new underwriters and believe that they will be able to place the coverage but at a substantially higher premium. Last years cost of $27,000 is likely to increase to something like $40,000 - $50,000.

As you are aware, the problem with marketing this coverage is the requirements that DEC has in the "Alaska Endorsement". We are in the process of getting quotes from two other markets which are able to provide this coverage but without the current wording of the "Alaska Endorsement".

One of these markets, AIG, is a very large writer of environmental impairment liability. They have looked over the current DEC required wording for Alaska and believe that two problems exist. One is that the wording requires the insurer to pay first dollar expense (No Deductible). The other problem exists in changing the coverage from a claims made to an occurrence basis.

The current financial responsibility laws are limiting competition for this coverage to only one source. It is possible for DEC to change the wording requirements and not reduce the coverage that is carried by Sitka Fuels.

If you have any questions on this or need any additional information please let me know.

Sincerely,

Mike

Mike Venneberg

Ribelin Lowell & Company
INSURANCE BROKERS INC.
3111 C STREET, SUITE 300
ANCHORAGE, ALASKA 99503-1111
Phone: (907) 561-1250 Fax: (907) 561-4315

DESTINATION CITY AND COUNTRY: SITKA

FAX NO.: ( ) 747-5065 DATE: 4-19-91

COMPANY: VENNEBERG INSURANCE, INC. ATTN: JAN WILBUR

PAGES: ... (INCLUDE THIS PAGE)

MESSAGE

SUBJECT: SITKA FUELS, INC- 6-4-91 EXPIRATION

JAN-

GLORIA MCMAHON SHOULD HAVE MENTIONED IN HER... 4-9.. LETTER TO ED THAT WE'RE HAVING TO RE-MARKET THIS PROGRAM W/A NEW LEAD UNDERWRITER, WHICH MEANS WE NEED MORE LEAD TIME. SECONDLY, PREMIUMS ARE UP SUBSTANTIALLY. MY GUESS IS SITKA FUEL COULD BE LOOKING AT A $40-$50,000. COST. TO MY KNOWLEDGE, LONDON IS THE ONLY SOURCE FOR MARINE FUEL TERMINALS.

PLEASE ADVISE IF YOU WANT ME TO PURSUE THIS. GLORIA SENT A ONE PG QUESTIONAIRE W/HER LETTER

THANKS,

Mike Paikko

SENDER:

Ribelin Lowell & Company
Insurance Brokers Inc.

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

Senator Dick Eliason
Alaska State Legislature
P.O. Box V
State Capitol Building
Juneau, AK. 99811

May 2, 1991

Dear Senator Eliason:

A marine industry organization from Anchorage advised us on Friday May 26, 1991, of Senate Bill 263, which had been introduced, was in committee, and that testimony was being received on that afternoon. This bill would amend a portion of HB 567 of 1990. It would offer some relief from the regulations that go into effect on 1 June 1991; extending portions of the regs until 1992. We have submitted written comment on this bill to the Oil and Gas Committee. We invite you to review the bill and encourage its passage.

Senate Bill 263 would allow time to study and analyze non-crude operations, including facility operations, transportation of and the economic effects. The operational and engineering standards, established by the state in HB 567, we consider to be unworkable and as a result petroleum transportation operations by our company will be discontinued on June 1, 1991. Operating under the interim approved contingency plan we now have, plus amendments that must be made, we feel cannot be done legally. The opposite of course being illegal, which subjects Samson Tug and Barge to civil penalties, lawsuits, and possible criminal action. We have been advised that other transportation companies are considering this same avenue.

As our State Senator, we would request that you keep us up to date on the outcome of this bill and future bills concerning the transportation of petroleum products.

Sincerely,

Albert M. Snelling

ALBERT M. SNELLING

Albert M. Snelling

ALBERT M. SNELLING
Safety Director

Copy: Congressman Grussendorf
Senator Cotten
Senator Hoffman

Alaska State Legislature

Please enter into the record my testimony to the SENATE Special Comte OIL & GAS
committee name

committee on SB 263 , dated 29 APRIL 1991 .
bill/subject

We are in favor of SB 263. There must be an understanding of the difference between persistent petroleum products (crude and heavy oils that are going to hang around awhile) and non-persistent petroleum products (gasoline, diesel, and aviation fuels that are going to dissipate thru various avenues in short time) by the regulators, to make HB 567 workable. The industry that transports and stores non-persistent petroleum products are forced to comply with regulations that are aimed at the persistent oil transporters. There is a difference in the two. Something must be done to amend the regulations.

The economic ramifications of HB 567 as it stands is going to be far reaching. Continuing along the trackline now set, the number of transporters in business is going to decline very rapidly. Who is willing to mortgage the company to pay the insurance premium so they can transport gas and oil in Alaska? But worse of all, the consumer in the bush and the small coastal communities and the State of Alaska are going to pay the cost.

To make this bill work, when passed, the legislature and the Department of Environmental Conservation (DEC) must be willing to listen and learn from the industry (the non-persistent gas and oil transporters and facility operators) on who, what, where, when and how the industry functions. To date in dealing with DEC and in reviewing "preliminary draft 1/28/91 - oil discharge and contingency plans", it is easily noticeable, the inexperience of personnel involved in the regulatory process.

Put common sense and communication to work in solving this problem, pass SB 263 and let us study the problem together.

Signed: Albert M. Snelling
Testifier

SAMSON TUG & BARGE CO.
Representing (Optional)

P.O. BOX 559, SITKA, AK. 99835
Address

(907) 747-3559
Phone No.

White Pass Alaska

May 6, 1991

Senator Lyman Hoffman
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

VIA FAX 465-4523

Dear Senator Hoffman:

White Pass Alaska strongly supports your Senate Bill 263 delaying the implementation of the effects of House Bill 567 until the Department of Environmental Conservation can develop some realistic regulations.

The proposed regulations by DEC are practically impossible for non crude operators to meet.

White Pass Alaska specifically endorses that portion of your bill that requires an economic analysis by DEC of its actions.

Thank you and please let us know if we can help you.

Sincerely,

Paul Taylor

M. Paul Taylor
Vice President
Alaska Operations

cc: M.P. Taylor
Dave Black
Stan Selmer
George Tipton
Tony Leichty
Warren Pellett
Oscar Jones
Ian Black
Jerry Davis

White Pass Alaska

May 7, 1991

Senator Lyman Hoffman
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

VIA FAX 456-4523

Dear Senator Hoffman:

White Pass Alaska supports your Senate Bill #263 delaying the implementation of the effects of house Bill #567 until the Department of Environmental Conservation can develop more realistic regulations.

As Alaskan Petroleum Operations Manager for White Pass, it is my opinion that the proposed regulations by DEC are practically impossible for non-crude operators to comply with. Further, White Pass Alaska specifically endorses that portion of your bill that requires an economic analysis by DEC of its actions.

As a participant in the Juneau, Sitka and Ketchikan DEC Workshops of 4/30, 5/1 and 5/2, it is evident that more time is required for all parties involved to arrive at a viable solution.

My staff and I are willing to participate in any way we can. Please let us know if we can be of any further help.

Sincerely,

David A. Black
Manager
Alaska Operations

White Pass Alaska

May 7, 1991

Senator Lyman Hoffman
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

VIA FAX 465-4523

Dear Senator Hoffman:

We at the White Pass Alaska Haines fuel facility support your Senate Bill #263 that delays the implementation of the effects of House Bill #567 until the Department of Environmental Conservation has had time to develop more realistic regulations. The proposed regulations by DEC, as they stand, are nearly if not impossible for non crude operators to comply with.

The personnel of the White Pass Alaska fuel facility specifically endorse that portion of your bill that requires an economic analysis by DEC of its actions.

As members of the Petroleum Industry, we would be glad to meet with DEC and assist in developing the needed regulations.

Please let us know if we can be of any additional assistance.

Sincerely,

Ian M. Black
Manager
White Pass Alaska - Haines

White Pass Alaska

May 7, 1991

Senator Lyman Hoffman
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

VIA FAX 465-4523

Dear Senator Hoffman:

I strongly support Senate Bill 263 delaying the June 1, 1991 implementation of HB 567 as the language and regulations are totally unrealistic.

I have talked with Senator Steve Frank and he supports the delay until ADEC can develop some workable regulations.

I do support effective and practical environmental regulations but the current ones must be re-written and put in place prior to making the non-crude operator comply.

I specifically agree with the portion which would require an economic analysis by ADEC of its actions. Since the State subsidizes the rural electrical co-ops, an even greater expense would be burdened by the State, due to the extra capital expenditures to comply. This is just one example of what could happen.

Thank you and please let me know if I can help.

Respectfully,

George H. Tipton

George H. Tipton

Manager-Ketchikan Terminal

A APR 1 1991

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
* * TELECOPIER (907) 842-2799 * *

ALASKA

Telecopy Transmittal Sheet
(Transmitting from Canon FAX-610)

TO: REP GEORGE VALKO

Attn: _____ FAX Number: 465 2997

No. Pages: 9 (incl. this page) DATE: 4-1-91 TIME: _____

FROM: DAVE BAUER

MESSAGE

RE: HB 567 PASSED IN 1990
WE ARE BEGINNING TO FEEL NEGATIVE IMPACT OF THIS LEGISLATION.
I HAVE WRITTEN TO JOHN SANDOR, DEC COMMISSIONER, ON MARCH 21, 1991 AND ON APRIL 1, 1991 CONCERNING THIS MATTER.
COPIES OF LETTERS ENCLOSED.
ENERGY COSTS HAVE ALREADY RISEN AS IS EVIDENCED BY 24% INCREASE IN FINANCIAL RESPONSIBILITY INSURANCE TO $26,000 PER YR.
ACCORDING TO LATEST FIGURES (ENCLOSED) INCREMENTAL COSTS TO RURAL UTILITIES AS RESULT OF NEW HB 567 REQUIREMENTS MAY EXCEED $100,000.
WE NEED SOME RELIEF — CAN YOU HELP?

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL: (907) 842-5251 OR (907) 842-5295

LAW OFFICES
BIRCH, HORTON, BITTNER AND CHEROT A PROFESSIONAL CORPORATION
ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

THOMAS L. ALBERT*†† J. GEOFFREY BENTLEY* RONALD G. BIRCH** WILLIAM H. BITTNER** KATHRYN A. BLACK DOUGLAS BLANKENSHIP PHILIP BLUMSTEIN CORY R. BORGESON STEPHANIE P. BOSTON MARGARET M. BRAUN† WILLIAM BUMPERS* JOHN J. BURNS GERALDINE M. CARR* SUZANNE CHEROT**

JOSEPH M. CHOMSKI** PATRICK B. COLE KIM DUNN ERIC A. EISEN**† RALPH V. ERTZ JOSEPH W. EVANS** PAUL EWERS WILLIAM W. GARNER* JOHN W. GRIGGS** WILLIAM P. HORN† HAL R. HORTON** STEPHEN M. HUTCHINGS MARC W. JUNE MINDY R. KORNBERG**

STANLEY T. LEWIS LESLIE C. LONGENBAUGH MICHAEL J. PARISE TIMOTHY J. PETUMENOS ELIZABETH A. PHILLIPS STEVEN PRADELL MICHAEL V. REUSING ELISABETH H. ROSS** E. BUDD SIMPSON STEPHEN F. SORENSEN SHERIDAN STRICKLAND** JONATHAN R. TILLINGHAST T. HENRY WILSON

OF COUNSEL
JAMES D. NORDALE

*D.C. BAR
**D.C. AND ALASKA BAR
†MARYLAND BAR
†VIRGINIA BAR
ALL OTHERS ALASKA BAR

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELECOPIER (907) 276-2022

KEY BANK BUILDING
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701
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TELECOPIER (907) 456-5055

1155 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20036
(202) 659-5800
TELECOPIER (202) 659-1027

May 6, 1991

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

Re: HB312
Our File No.: 401.590.1

Dear Representative Davidson:

We represent Northern Transportation Company, Ltd. Northern Transportation is an affiliate of Inuvialuit Regional Corporation, a Canadian Native corporation. Northern Transportation intends to ship relatively small quantities of refined products to various North Slope communities this summer.[1] The product will be transported by barge; and, as a result, Northern Transportation must obtain ADEC approval of both an oil spill contingency plan and proof of financial responsibility.

Northern Transportation supports the goals behind HB312. The bill would face up to the hard reality that Alaska's refined petroleum trade may be unable to meet the new demands of HB567, which would otherwise take effect in June. With respect to the state's financial responsibility laws, however, Northern Transportation urges that the scope of the legislation be expanded. Without additional statutory or regulatory relief, international commerce in refined products would remain in peril.

On the other hand, deferring the effective date of last year's changes to AS 46.04.040 (financial responsibility) would deprive industry of one beneficial aspect of that legislation.

---

[1]The communities to be served include Barrow, Wainwright, Point Lay, Point Hope and Barter Island--in addition to a single delivery to Prudhoe Bay.

Let me explain:

A. Financial Responsibility. Under existing law (that is, pre-HB567), Northern Transportation would be required to post approximately $172,000 of financial responsibility.[2] Under HB567, the amount would be increased nearly tenfold--to approximately $1.54 million.[3] In-and-of-itself, this substantial increase in required financial responsibility will pose a substantial hardship on small operators.

More fundamentally, the options for providing financial responsibility are decreasing, rather than increasing. Under current law, Northern Transportation has four alternate means of meeting the state's financial responsibility requirements--self insurance, guarantee, surety or insurance. However, ADEC's regulations allow a party to self insure only if it has sufficient United States assets. And, the same requirement applies to any guarantor that the company might seek to employ. See 18 AAC 20.055 and 18 AAC 20.085. Being a foreign company, Northern Transportation is thus limited to two options--insurance or a surety bond.

However, current law (as well as HB567) requires that any insurer or surety must agree to submit to "direct action" in Alaska state courts. "Direct action" means that the injured party may sue the insurance company (or surety) directly, rather than through the insured (as is customarily the case). There has never been very much direct action insurance available, principally because most Protection and Indemnity (P&I) Clubs have declined to provide it. It is for this reason that HB567 allowed non-direct action insurance to be used for any financial responsibility in excess of $50 million.

Unfortunately, the direct action insurance market now appears to have dried up completely. For example, until recently small amounts of direct action insurance were available through the Portland broker of Gene Sause and Company. However, as the enclosed correspondence indicates, that broker is now no longer able to place any direct action insurance; and, it is our understanding (based on conversations with ADEC) that other potential providers have left the market as well.

---

[2]Under existing law, oil barges are required to post an amount equal to the amount required under the federal Clean Water Act, which was $150/gross ton.

[3]This amount is calculated on the basis of the carrying capacity of the company's largest barge operating in Alaska, multiplied by $100/barrel.

Thus, both current law and HB567 leave Northern Transportation (and, in fact, any international carrier) in an impossible position. They cannot self insure because of ADEC's requirement that the self insured's assets be located in the United States. Conversely, they cannot obtain direct action insurance, because none is available. And, because this problem arises under either current law or HB567, HB312, in its current form, would do nothing to alleviate this barrier to international trade.

We would therefore suggest one of two options:

1. The immediately-effective repeal of the direct action requirement under both current law and HB567. We understand the reasons for the direct action requirement. However, the need for direct action insurance has lessened as the result of other, newly-enacted financial guarantees--including the $1 billion/incident oil spill fund established under the 1990 federal Oil Pollution Act.

More importantly, "direct action" insurance is no longer possible; or

2. Repeal the requirement, in ADEC's regulations, that a self insurer's assets be domestically located. ADEC could implement this cure itself, since the "domestic asset" requirement does not appear in statute. And, we believe that the change may be necessary for both constitutional and practical reasons. States may not unreasonably discriminate against foreign or interstate commerce. And yet the recent evaporation of any "direct action" insurance means that the agency is doing just that. It is preventing a foreign corporation from self insuring, yet at the same time conditioning the most commercially realistic alternative on an impossible standard.

We hope, through the deliberations on HB312, to convince ADEC that recent events warrant the repeal, and even the emergency repeal, of the "domestic asset" rule. Foreign corporations would still be required to submit to the jurisdiction of Alaska courts, and appoint an agent for service of process in Alaska.

Finally, while HB312 fails to address the recent loss of the "direct action" option, it also overlooks at least one favorable provision of HB567 whose effective date ought not to be postponed. Specifically, HB567 expands the list of available methods for financial responsibility to include letters of credit. While a foreign corporation dealing with foreign banks may still find the letter of credit option difficult, allowing a letter of credit option does provide some flexibility in attempting to meet the requirements of even current law.

2. Oil Spill Contingency Plans. We support a one year extension of the effective date for HB567's new oil spill contingency plan

requirements. Oil barge operations like Northern Transportation's often navigate in more remote parts of the state, where cleanup capability is very limited. The debate over HB567 focused on Prince William Sound, where the nature of the trade better allows for rapid, large scale increases in cleanup capability. Outside of Prince William Sound, and perhaps Cook Inlet, oil spill cleanup resources, and the ability to expand those resources, are far more limited.

In summary, Northern Transportation supports HB312, with the following amendments:

1. A repeal of the "direct action" insurance requirement--unless ADEC is willing to change its "domestic asset" rule; and

2. The immediate implementation of the letter of credit option for providing financial responsibility.

Thank you for your consideration of our concerns, and we look forward to working with the committee on this legislation.

Sincerely,

BIRCH, HORTON, BITTNER & CHEROT

Joh K. Tillinghast

JKT/kpb

cc: Senator Al Adams
Members of the House Resources Committee
Janice Adair, ADEC

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

ALASKA

March 21, 1991

John Sandor, Commissioner
Department of Environmental Conservation
PO Box O
Juneau, AK 995811

Dear Commissioner:

Last year the Legislature passed House Bill 567 which addresses financial responsibility for oil terminal operators, as provided in A.S. 46.04.040. Presently, this piece of legislation was introduced as a response to the Exxon Valdez spill.

As so often is the case, hasty legislation makes for bad law, and I believe that such a condition exists here. Unfortunately, this piece of legislation failed to address existing shortcomings in the financial responsibility statute and appears to merely perpetuate a weakness that really isn't in anyone's best interests.

At hearings during consideration of HB-567, I did have the opportunity to comment on this issue. However, I do not believe that I did a very good job on the matter because problems still exist in the statute.

In the meantime, I have prepared a paper on financial responsibility of oil terminal operators which is relevant to these comments. Please note the attached.

If you should be so inclined, I would be happy to discuss this matter further.

Please advise.

Sincerely,

David F. Bouker
General Manager

lwb
Enc.

FINANCIAL RESPONSIBILITY

AS 46.04.040 (a) requires proof of financial responsibility for a non crude oil terminal in the amount of $25 per incident for each barrel of capacity at the terminal or $1,000,000 whichever is greater...

AS 46.04.040 (e) states that financial responsibility may be demonstrated by one of the following:

1. Self Insurance
2. Insurance
3. Surety
4. Guarantee
5. Letter of Credit approved by the dept.
6. Other proof of financial responsibility approved by the dept.

Nushagak Electric Cooperative, Inc. has non crude capacity as follows:

Tank No. 1	520,000 gal.	12380 bbls.
Tank No. 2	520,000 gal.	12380 bbls.
Tank No. 3	24,000 gal.	571 bbls.
	1,064,000 gal.	25333 bbls.

NEC is financially unable to self insure and has purchased liability insurance to meet the financial responsibility requirements from foreign insurers. In 1989 the cost of insurance was $.021 per gallon of capacity; in 1990, the cost increased to $.026 per gallon of capacity. This represented a 23.8% increase or making a total annual cost of $23 per consumer. There is nothing to indicate that increases in cost will not continue.

The following factors are appropriate to the discussion on the requirements of the existing statute:

1. It would seem that exposure to oil spills should be more properly based on thru-put rather than capacity. Two tank farms of identical capacity would have widely varying exposures depending on the amount of fuel pumped in and out. Therefore it would seem reasonable as well as sensible to base the financial responsibility requirements on thru-put and not capacity.

2. Oil Spill Pollution Liability Insurance is not available from domestic insurers; it is available from Lloyds of London only.

3. There is probably great diversity on how terminal operators provide financial responsibility with large operators being generally self insured and smaller operators (those least able to pay) purchasing insurance or letters of credit.

Letters of credit while costing substantially less than insurance provide a false sense of security to the operator and to the state. If a spill does occur, the state immediately forecloses on the letter of credit and the small rural terminal operator may find himself suddenly increasing his debt load by $1,000,000 or more.

The impact of such a situation may well be to bankrupt the operator which is frequently a municipality or a small non profit rural electric cooperative and thus placing themselves in a financially precarious position. Very likely it will be the state legislature that has to bail the terminal operator out thus ultimat ly paying for the damage claim that the state initiated.

4. Purchasing liability insurance including pollution liability insurance never provides coverage for damages incurred on the insured's premises. Generally, terminal spills originate on the insured's premises and depending on magnitude, may spread to others' premises. At that point, the pollution liability insurance would begin to apply.

   This condition could have the undesired impact of the terminal operator having insufficient resources to clean up a spill occurring on his own premises but being able to produce legally acceptable financial responsibility.

5. As of this writing, it would appear that there is little incentive for an oil terminal operator to improve his facility. There seems to be little enforcement of standards of construction applicable to tank farms and related diking facilities. There is no state or federal inspection program in use that can offer even a modicum of oversight or standardization in the operation and development of tank farms.

6. The financial responsibility based on capacity rather than thruput serves as a deterrent to installing additional capacity. Diesel fuel is the single largest component of the cost of electricity in the rural areas. All too frequently, the rural area is served by a single supplier thus creating a monopolistic position (and attendant high prices). In the Dillingham area the installation of additional capacity resulted in a fuel cost to NEC approximating 50% of that of the single source supplier. This resulted in savings of approximately $48,000 per month of which $16,000 resulted in direct savings to the state in reduced need for PCE. The rural community is held hostage to the single source supplier and existing regulations exacerbate this situation.

INSURANCE POOLING

The concept of insurance pooling may meet a substantial need for financial responsibility for all terminal operators in the state. This concept would provide for the establishment of an insurance pool presumably operated as a subsidiary of the Division of Insurance whereby all terminal operators would be obligated to provide support by premiums based on thru-put in their facilities.

Advantages of such a system would include:

1. Each operator would have the same liability or cost based on his own activity.

2. Since it is anticipated that there would be 100% participation, the unit cost of premiums would be much lower than are presently paid to Lloyds.

3. This program would be se supporting; administration costs would be paid from premi Additionally, it is believed such a program could also su t an inspection program which would in turn help to minimiz posures.

4. The accumulation of revenues from the pooling could, at some future date, be sufficient to fund future potential liabilities. This could result in premium moratoriums.

5. Funds paid in the pool would remain in the state rather than fueling our balance of payments deficit.

6. The state would be assured that the goal of environmental protection for all pollution liability exposures was adequately covered thus meeting the purpose and expectations of financial responsibility.

7. Insurance pooling would promote competitive pricing, help to lower fuel costs and establish less reliance on PCE by providing incentives to build adequate capacity; present plan penalizes any additional capacity.

(ljc:reports/finres)

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P.O. BOX 350
DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5251
TELECOPIER (907) 842-2799

ALASKA

April 1, 1991

John A. Sandor, Commissioner
Department of Environmental Conservation
PO Box O
Juneau, Alaska 99811-1800

Dear Commissioner:

On March 21, 1991 I wrote to you concerning the shortcoming of the financial responsibility requirements of HB 567 which was passed in the last session of the legislature.

Subsequent to that date our consultant prepared an analysis of the Oil Spill Contingency Plan Regulations outlined in your letter of March 4, 1991 which were also affected by HB 567.

Total impact of this legislation is yet to be felt but we do not necessarily believe it to be all in the public interest and request your review of it. If, in fact, "the proposed regulations were written primarily to regulate the Alyeska terminal and its tanker trade and the Cook Inlet operators," they have no reason to be applied to small rural Alaskan communities where energy costs are already at astronomical levels that are, in fact, supported by the state subsidized PCE program.

Again referring to my original letter of March 21 and its enclosures on financial responsibility, I believe that mandatory insurance pooling might solve DEC's concerns and the financial viability of the small rural operator.

In the meantime I am also enclosing an excerpt from our consultant, Jim Berry and Associates, on this matter for your review.

Sincerely,

David F. Bouker
General Manager

ljc

JIM BERRY & ASSOCIATES
4540 Timberlux Circle
Anchorage, Alaska 99516
(907) 345-5426

RE: Oil Spill Contingency Plan Regulations

This letter responds to your request for comments regarding ADEC's preliminary draft regulations pertaining to oil discharge prevention and contingency plans (C-plan). The attachment identifies specific sections of the proposed regulations which I think may present concern to rural Alaska operators. My comments are based on experience gained in preparing spill response and prevention plans for approximately 75 fuel terminals and 25 vessels which operate in Alaska.

The C-plan draft regulations were prepared by ADEC to implement 1990 SLA Ch. 191 (HB 567). They were distributed as a proposed draft on March 4 to all C-plan holders. By July 1, and after incorporating public comment, the draft regulations are to be finalized for public review. New regulations are to become effective December 1, and by February 1, 1992 operators are to submit new contingency plans. In the meantime, operators must update their current plans by June 1 to meet the statutory requirements which the proposed regulations are attempting to interpret.

Regardless of the outcome of the regulatory review process, the new statutory requirements will result in considerable expense and will significantly impact all regulated facilities and operators. Compliance with the proposed regulations will be particularly difficult and expensive for rural Alaska facilities and operators.

In my opinion, the proposed regulations were written primarily to regulate the Alyeska Terminal and its tanker trade, and the Cook Inlet operators. Many of the requirements are not practical or achievable for rural facilities.

For example:

- All facilities must maintain in their "area of operation" containment boom, response equipment and temporary storage capacity adequate to recover and store, at minimum, the volume of the largest tank.

- Response equipment and vessels must be designed to operate effectively in 30-knot winds, 1.5-knot currents, and 10-foot waves.

- Operators must maintain, separate from facility response equipment, the necessary personnel and equipment to prevent spilled fuel from reaching all sensitive areas and areas of public concern.

- Marine operators must maintain in each "area of operation" the resources adequate to lighter the entire vessel cargo capacity within 48 hours.

- All facility operators must be trained to OSHA/ADOL hazardous waste standards. Currently, this requires certified training of 40 hours for operators and 64 hours for supervisors, and annual refresher courses.

- All plans must be reviewed and updated at least every six months.

If adopted as drafted, the new regulations will require every operator to rewrite its contingency plan to satisfy new format and content requirements. To obtain plan approval, operators will be required to purchase extensive amounts of new equipment, present voluminous environmental and equipment data/boilerplate, train operators to hazardous waste standards, and make commitments which are unobtainable.

The cost per facility to write new C-plans will likely exceed $50,000. New equipment requirements could easily exceed $100,000 depending on proximity to sensitive areas and areas of public concern. Initial training costs may vary from $600-800 per person. Further, it is estimated that rural fuel costs will increase 30 cents per gallon to allow transporters and distributors to meet new expenses and liabilities.

I question whether the proposed regulations and associated costs are the best investment for spill prevention and response for rural operators. It appears the State is uncertain as well. As part of 1990 SLA Ch. 191 the legislature required ADEC to study:

> "(1) appropriate locations for regional response [equipment] depots, based on an assessment of

historical evidence of where non-crude discharges are most likely to occur and the needs of remote areas of the state such as western and northern Alaska and the Aleutians;

(2) appropriate discharge response times;

(3) requirements for personnel and equipment that should be imposed on [vessel] contingency plan holders; and

(4) appropriate roles for industry and state and local governments in the purchase, ownership, and positioning of discharge response efforts."

The mandated report is due July 1, 1991. Its affect on the proposed C-plan regulations is unknown. I project that if the proposed regulations are adopted there will be little uniformity in ADEC's interpretation, application and enforcement of the statutes. Operators who attempt to comply will bear the time and expense of being party to an inter-agency educational process. Further, due to confusion regarding implementation and content of the regulations, it is likely there will be numerous changes to the program, as well as possible statutory revisions.

I encourage you to discuss the matter with other rural operators and become involved in the review process. Hopefully, the regulations can be amended or modified in a timely manner. If not, a temporary exemption for rural operators may be appropriate. Effective February 1, 1992, operators who are not in compliance will be subject to a $5,000 per day fine.

Regards,

Jim Berry

enclosure

The Honorable Cheri Davis
House of Representatives
Juneau, Alaska 99833

Dear Cheri,

In their Legislative wisdom, the Legislature has seen fit to pass and implement HB 567, over the objections of business people all over the state of Alaska, in another classic cave-in to the Environmental special interest groups.

As we told some of you last year, no existing business, in this or any other region, can comply with the Engineering and operational standards set forth by the State.

Without relief from you, all businesses subject to HB 567 will be in violation of that law as soon as it becomes effective, which is June 1, 1991.

Some modifications are being attempted, but without support of SB 263 and HB 312 by the house to delay implementation of HB 567, it will be impossible to conduct our businesses legally until realistic regulations can be implemented.

I and others that are being impacted, urge you, as our representatives to strongly support, and lead the house in passing HB 312.

In another vein, Thanks for your strong support for the Timber Receipts bill that came out of the House, I am sure your many hours of thought and hard work had a lot to do with the passage, and especially the way it passed. I have sent Senator Jones a letter asking his help and leadership in having the Senate do the same.

Theodore M. Smith

Ted

Alaska Fuel Service
P.O. Box 749
Petersburg, Alaska 99833

May 3, 1991

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

Dear Representative Hudson:

Last year's House Bill 567 goes into effect on June 1, 1991. Taku Oil, which is a small business, will be expected to obtain increased insurance, increased equipment to clean up a spill within 72 hours and will have to pay more for fuel. All of this will be passed on to the public as a higher fuel cost.

HB 567 was passed in reaction to the Exxon/Valdez spill. Some consideration should be given to the reason for passage of that bill versus the impact on small non-crude operators like Taku Oil, Inc.

Accordingly, I would appreciate your support for SB 263, which will extend for a year the effective date of HB 567. This will allow for realistic regulations to be proposed (they are not yet available to the public) and quite frankly, give us a chance to petition for a change in the law to recognize the interests of non-crude operators.

I appreciate your cooperation.

Yours very truly,

C E Jacobsen

C. E. Jacobsen, President
Taku Oil Company

Alaska State Legislature

Please enter into the record my testimony to the Senate Special Committee on Oil & Gas
committee name

committee on SB 263 bill/subject, dated 4-26-91

This a letter in support of SB 263.

Kodiak Oil Sales Inc. is a fuel distributor serving the Kodiak Area. We are a family owned business and have operated as a family business since 1950.

I would like to encourage the passage of SB 263.

The proposed regulations that case out of HB 567 have created many probless for fuel distributors like us.

There are so many unknown factors and unanswered questions. Trying to comply with regulations that don't actually exist is very confusing for both the State DEC and Industry.

Applying the same standards to Alyeska, Exon USA and Kodiak Oil Sales Inc. (or electric utilities in Western Alaska) doesn't make sense to me. What does make sense is separating the issues of Crude and Noncrude, then designing regulations that fit the very different industries involved and the very different risks to the environment.

The passage of SB 263 will allow for a more orderly process, one that makes sense both to government and industry. A more orderly process makes for better Laws and better Regulations, regulations that are much better for both government and industry.

Jim Ramaglia
Vice Pres
Kodiak Oil Sales Inc
486-3245

Signed: Jim Ramaglia

Testifier
Kodiak Oil Sales Inc.

Representing (Optional)
Box 1487 Kodiak

Address
486-3245 486 3205 (Fax)

Phone No.

JIM BERRY & ASSOCIATE
4540 Timberlux Circle
Anchorage, Alaska 99516
(907) 345-5426

March 27, 1991

Brad Reeve
General Manager
Kotzebue Electric Association, Inc.
P.O. Box 44
Kotzebue, Alaska 99752

Dear Mr. Reeve:

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Jim Berry

enclosure

Alaska State Legislature

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Jim Ramaglia
Vice Pres
Kodiak Oil Sales Inc
486-3245

Signed: Jim Ramaglia

Testifier: Kodiak Oil Sales Inc.

Representing (Optional)

Box 1487 Kodiak

Address

486-3245 486 3205 (Fax)

Phone No.

P.O. BOX 1487
KODIAK, ALASKA 99615

Attn: Bob Herron

Senator Lyman Hoffman
Fax 465-4523

April 25, 1991

Dear Senator Hoffman:

This is a letter in support of SB 263.

I'm a fuel distributor in Kodiak, and own a NON CRUDE oil terminal. I believe my views are shared by most other "fuel distributors" and "electric utilities" in the State.

House Bill 567 and the regulations that resulted from them have caused companies like mine a lot of heartburn. HB 567 and the regulations that have resulted were written with "tunnel vision" looking primarily to regulate the Alyeska Terminal and its tanker traffic . Many of the requirements are not practical or achievable for rural Alaska.

Using the same set of rules for both Crude and Noncrude operations, is like trying to put a square peg into a round hole. Refined fuel distributors and the barges that service them are much different than Alyeska and the Exxon Valdez.

I have felt throughout the process that a solution would be to separate the issue of crude oil and non crude oil, for both terminals and vessel traffic. Then formulate the laws and regulations around the potential risks that each present. For example a few thousand gallons of diesel fuel or gasoline is a much different threat to the environment than a similar amount of crude oil.

Senate Bill 263 appears to do separate the issues, but I would like to suggest one change.

Section 1. (b) remove the wording " with storage capacity of less than 10,000 barrels"

Many non crude terminals in the State are greater than 10,000 barrels. The costs that larger facilities are having to undertake should also be considered when looking at the impact of regulations.

Yours truly,

Jim Ramaglia
Vice pres

486-3245 Phone
486-3205 Fax