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CLASSES OF RESPONSE ACTION CONTRACTORS

I. Response Group - RAC actually controls the response for some period of time.

A. Alyeska Pipeline Service Company

Alyeska prepared an initial (72 hour) spill response plan and gave it to shippers with which Alyeska contracts for response. The initial response plan was to be incorporated into the shipper's contingency plan as ultimately approved by the state. Alyeska, by contract with the shipper, responds immediately, even without a request by the contingency plan holder. Alyeska remains as the lead responder and controls the response until the spiller takes over or the spill response is federalized. Alyeska only performs this function in Prince William Sound for TAPS traffic to and from the Valdez terminal.

II. Response/Resource Group - Cooperative organizations responding as a resource on behalf of members.

A. Cook Inlet Spill Prevention Response, Inc.

CISPRI is currently a 10-member cooperative providing spill response resources for its members. CISPRI is preparing a technical reference manual for use by its members. The co-op members are contingency plan holders who contract with CISPRI for response services that the spiller or plan holder directs. CISPRI operates in Cook Inlet.

B. Alaska Clean Seas

ACS is a cooperative similar to CISPRI. It currently has 13 members, most of whom are contingency plan holders. ACS developed a manual of services or response strategies that each member could incorporate into a contingency plan, such as procedures for in-situ burning or preparation of an equipment database. ACS provides response services on behalf of its members at the request of a member. ACS works as part of the unified response team which includes ACS employees, independent suppliers' employees, and village response teams. ACS operates in the North Slope.

III. Resource Suppliers - Companies which contract with

primary responder RACs or contingency plan holders to supply equipment and personnel.

- A. VECO
- B. VCRA
- C. Martech

Each of these firms are independent contractors with a RAC or a contingency plan holder to provide additional response resources. Frequently, pre-spill contractual arrangements are made for those supplies and services. For instance, Alyeska and CISPRI contract with VECO for resources. Contracts can also be entered into on the spot during a spill response. These firms neither control the response nor direct contingency plan compliance.

- IV. Pinch Hitters - "Minor" players performing specific tasks during response activities.
 - A. Contractual Services - These are individuals or groups which have a contractual arrangement in advance or on the spot to perform a discrete task as assigned. The contract can be with any of the other types of RACs or with the contingency plan holder or spiller. For example, Alyeska has contractual arrangements with fishing vessels to deploy boom and conduct oil containment activities during a spill response.
 - B. Volunteers - These are individuals or groups who assist on their own initiative or on request by some spill response participant.

SECTIONAL ANALYSIS

PROPOSED RESPONSE ACTION CONTRACTOR LEGISLATION

Section 1. Amends current law establishing strict liability for certain persons (persons who own or control oil or other hazardous substances) for damages to persons or property or natural resources. The amendments (1) clarify that the subsequent sections of the bill (secs. 3 and 4) take precedence over the "notwithstanding" language in current law; and (2) delete the definition of "damage," which definition is revised and reinstated in section 2 of the bill.

Section 2. Adds a new subsection to the strict liability section (above), defining damages. The term is expanded to include damages for which a response action contractor (RAC) is immunized from liability by subsequent sections of the bill. Has the effect of clarifying that if a RAC is immunized from liability for an action by the bill, the liability for that action flows back to the spiller ← or owner of the oil.

Section 3. Amends current law dealing with hazardous substance RAC's to limit the applicability of the section to substances other than oil. Has the effect of retaining simple negligence as the standard for those responding to releases of hazardous substances other than oil. (Note that a RAC responding to a non-oil release may be strictly liable for damages in certain circumstances; for example, if the RAC's acts are "contrary to a response plan or order by a state or federal agency having jurisdiction over the release...")

Section 4. Creates a new section dealing with the liability of RAC's responding to the release of oil. Limits liability to acts of gross negligence or intentional misconduct, with certain exceptions. The exceptions are:

- (1) The RAC is the spiller or owner of the oil;
- (2) The RAC substantially deviated from a contingency plan that that RAC either prepared the C-plan or agreed to comply with the terms

- of it, unless the federal or state on-scene coordinator ordered the deviation;
- (3) The RAC's act or omission caused personal injury or death;
 - (4) The RAC's act or omission caused damage to personal property; or
 - (5) The RAC's act or omission occurred more than 30 days after the release.

States that if an RAC's liability is not limited (that is, if the act or omission falls within one of the exceptions above), the RAC is liable for acts of simple negligence. PROBLEM: This language may have an unintended effect: When the RAC is also the spiller, the language could be interpreted to set the liability standard at simple negligence instead of strict liability.

Defines "response action" to include only actions taken during mitigation and clean-up. Current law, applicable to both oil and other hazardous wastes, includes a broad spectrum of other activities such as planning, mapping and engineering in the definition. The bill would leave this definition unamended for hazardous substances other than oil, but limit the definition for oil.

Sections 5 and 6. Moves the definitions of "response action contract" and "response action contractor" from AS 46.03.823 (dealing, after amendment, only with response actions for hazardous substances other than oil) to the general definition section. Thus, the definitions would apply to both response action contractor sections.

Section 7. Sets up an interim review of response action contractor liability, with a report to the legislature by January 15, 1992. The structure of the review is left open for the committee/legislature to fill in as appropriate.

Section 8. Immediate effective date.

EXAMPLES OF RESPONSE ACTION CONTRACTOR (RAC) LIABILITY
UNDER CURRENT LAW AND PROPOSED BILL
SENATE OIL AND GAS COMMITTEE, APRIL 11, 1991

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Major RAC (Alyeska; CISPRI; Clean Seas) substantially deviates from C-plan by not having proper equipment; hatchery oiled.	Hatchery ruined	Simple negligence (Possibly strict liability).	Simple negligence (RAC not immune if substantially deviates from C-plan).	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
RAC accidentally loses boom in high seas (assume there is some negligence).	Hatchery ruined	Simple negligence	Gross negligence	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil.
RAC, authorized under C-plan to use dispersants in Area A but not B, decides to use in Area B anyway.	Natural resources damage	Simple negligence (Possibly strict liability)	Simple negligence (RAC not immune if substantially deviates from C-plan)	Tanker owner; Owner of oil; RAC	Tanker owner; Owner of oil; RAC
Above facts, but dispersant accidentally blows into Area B.	Natural resources damage	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.
Above facts, on-scene coordinator orders RAC to use dispersant in Area B.	Natural resources damage	Simple negligence (Possibly strict liability)	Gross negligence (immunity not lost if orders of OSC).	Tanker owner; Owner of oil; Possibly RAC	Tanker owner; Owner of oil.

<u>Type of Incident</u>	<u>Example of Damage</u>	<u>Standard for Liability</u>		<u>Who Pays for Damage</u>	
		<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Volunteer mistakenly turns off power in bird drying facility.	Birds die	Simple negligence	Gross negligence	Tanker owner; Owner of oil; Volunteer.	Tanker owner; Owner of oil.
RAC employee rams fishing vessel.	Fishing vessel sinks	Simple negligence	Simple negligence (RAC not immune when property damage not caused by oil.)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.
Skipper of fishing boat (above) goes down with boat.	Skipper killed	Simple negligence	Simple negligence (RAC not immune if personal injury or death)	RAC Spiller/owner if "foreseeable consequence" of spill/response.	RAC Spiller/owner if "foreseeable consequence" of spill/response.

CAVEAT: This table is intended only to give a sense of how the liability provisions of current law and the proposed law would probably work in certain circumstances. Actual litigation in many of the above examples would depend on the particular facts, and might include legal arguments not dealt with here.

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

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/13/91
Referred: Judiciary, Finance

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

A BILL

FOR AN ACT ENTITLED

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

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

6

7

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

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

1 NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs
2 of response, containment, removal, or remedial action incurred by the state or a
3 municipality, resulting from an unpermitted release of a hazardous substance or, with respect
4 to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

5 *Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

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

10 *Sec. 3. AS 46.03.823(a) is amended to read:

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

1 *Sec. 4. AS 46.03 is amended by adding a new section to read:

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

9 (1) the response action contractor would have been liable for the release
10 or threatened release under AS 46.08.822 even if that contractor had not carried out a
11 response action with respect to the release or threatened release;

12 (2) the response action contractor acted with gross negligence or intentional
13 misconduct; or

14 (3) the response action contractor, without approval by the federal or state
15 on-scene coordinator, substantially deviated from an oil spill contingency plan previously
16 approved under AS 46.04.030, and the plan was either prepared by that contractor for a
17 party responsible for the release under AS 46.03.822 or that contractor previously agreed
18 to comply with the terms of that plan in its contract with parties responsible for the release
19 under AS 46.03.822.

20 (b) The limitation on liability of (a) of this section does not apply to

21 (1) an action for personal injury or wrongful death:

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

3 (3) acts or omissions which occur more than 30 days after the release.

4 (c) If an oil spill response action contractor's liability is not limited under (a)-(b)
5 of this section, that contractor is civilly liable for injuries, costs, damages, expenses, or other
6 liability that results from the release or threatened release, or from the response action
7 contractor's act or omission in response to the release or threatened release. if the response
8 action contractor acted with simple or gross negligence, or intentional misconduct.

9 (d) In this section, "response action" means an action taken during mitigation,
10 cleanup or removal of an oil release or threatened oil release.

11 *Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

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

15 (A) the department;

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

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

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

3 (15) "response action contractor" means

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

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

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

14 *Sec. 6. AS 46.03.823(g)(2) and (3) are repealed.

15 *Sec. 7. The department shall review the entire subject of response action contractor
16 liability, and report to the legislature prior to January 15, 1992 as to whether any further
17 ~~limitations on liability~~ *modifications as to rules of* are required, and whether the present laws which require shippers and
18 owners to file contingency plans and to contract with response action contractors to carry
19 out the plans are adequate to protect the public in the event of an oil spill.

20 *Sec. 8. This Act takes effect immediately under AS 01.10.070(c).



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: ALYESKA Fax: 265-8983

Attn: MICHAEL WILLIAMS Phone: 265-8544

Transmitted by: ROD MOURANT Date: _____

Re: RESPONSE CONTRACTOR LIABILITY

Comments: THIS WILL BE CONSIDERED FOR
INTRODUCTION AT THE APRIL 11TH

046 MEETING.

SEC. 7. STUDY - COTTAN WOULD PREFER
STUDY BY LEGISLATURE NOT DEC.

Number of Pages: 7 Including Cover Sheet.



GUEST AT THE PLAZA
ROOM 15-148



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: LOEWS LENFANT PLAZA Fax: (202) 646-4456

Attn: SENATOR DRUE PEARCE Phone: _____

Transmitted by: ROD Date: 4-8-91

Re: RESPONSE CONTRACTOR LIABILITY (DRAFT)

Comments: THIS IS CURRENT DRAFT. ONLY

CONCERN SEEMS TO REGARD SEC 7 POTTING

STUDY AT DEC. COTTEN'S OFFICE WOULD

PREFER LEGISLATIVE STUDY BUT DON'T KNOW

HOW TO PULL IT OFF.

REINHARDT SAYS TESORO IS HAPPY WITH THIS

VERSION. IT VARIES GREATLY FROM EARLY

DRAFT. HE CREDITS SAM PERSONALLY WITH

THIS VERSION.

Number of Pages: 7 Including Cover Sheet.





Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

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

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

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

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

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

February 27, 1991

Drue -

Met with Al Hastings of Conoco today to discuss tanker liability. Has concern over Alyeska's billion dollar bond requirement, its affect on Alaska's tax revenue, affect on Tesoro processing plant and affect on transport tanker competition.

Attached is proposed legislation that Hudson evidently will introduce as H O&G bill. Is meeting with Cotten tomorrow on same topic. Would like your assistance.

I knew this was coming.

Rod

Gene Burden taking lead.

I will support - but keep quiet -
Sam needs to be out front
if they can get him there.

Hudson will have FR1 AFTERNOON



Interoffice Communication

To D. L. Bowler

From J. S. Haley

Date February 26, 1991

Subject Increased Cost to Milne Point Unit due to Alyeska's Oil Spill Response Service Agreement

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

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

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

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

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

J.S. Haley
JSH:ft

cc: J. R. Svervold
D. R. Heinzer

FACT SHEET ON OIL SPILL

CLEANUP CONTRACTOR LIABILITY LEGISLATION

1. What the legislation does.

When a cleanup contractor responds to an oil spill emergency, it must make snap judgments in a crisis atmosphere. Under current Alaska law, the contractor is held to a much higher standard than responders under the federal Oil Pollution Act of 1990 and the laws of other large coastal states. The result is that the Alaska responder is an easy target for lawsuits, which makes some cleanup organizations reluctant to enter Alaska. Moreover, this liability exposure causes even existing cleanup contractors to spend inordinate time and resources in obtaining legal advice and clearances from state and federal authorities before responding to a spill.

This bill would partially limit the liability of innocent oil spill cleanup contractors. Cleanup contractors would continue to be liable for gross negligence, willful misconduct, personal injuries and death; however, they would be excused from the prospect of strict liability and simple negligence claims, as long as the contractor acts in good faith.

2. Who does this bill apply to?

The bill applies only to innocent spill response contractors -- that is, those who had no involvement in the spill itself.

3. Is this concept something new or untried?

This bill merely conforms Alaska law to federal law, and the laws of a growing number of coastal states (such as Washington, Virginia, Florida, Hawaii and California). The concept of limiting liability is not new in Alaska law, as evidenced by similar statutory limits on the liability of people responding to other kinds of emergencies and disasters in the state.

4. Does the bill somehow lessen the spiller's liability?

No. To the contrary, the bill makes it absolutely clear that the spiller's liability for damages includes those damages caused by those cleanup contractor's actions for which liability is limited under the bill.

5. Does the bill somehow affect a contingency plan holder's responsibility to maintain cleanup equipment?

Absolutely not. Alaska law is very tough in its requirements for oil spill contingency plan approval, and the plan holder is liable for penalties and damages if it does not respond to a spill in accordance with the promises made in that plan. This bill does nothing to change that.

6. Doesn't Alaska law already provide some protection for cleanup contractors?

Unfortunately, Alaska law actually encourages litigation against the cleanup contractor. Not only does it provide no limitation for negligence suits, it provides that, in many circumstances, a cleanup contractor will be strictly liable -- that is, without any fault on its part whatsoever -- for any damage that results from its cleanup actions. Imagine how firemen would react if they were liable for any damage caused by their firefighting, even if they did nothing wrong?

7. Isn't this a complicated problem that needs more study?

No. The question, in fact, is very simple:

WHO SHOULD PAY FOR SPILL DAMAGES:

THE SPILLER. OR THE CLEANUP CONTRACTOR?

THIS BILL
MAKES IT CLEAR THAT THE SPILLER IS RESPONSIBLE FOR ANY LIABILITY
EXCUSED FROM THE CLEANUP CONTRACTOR.

Moreover, this bill does nothing that hasn't already been done, in the same way, by Congress and other coastal states.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for actions of a response action contractor; and
2 providing for an effective date."

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

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

5 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
6 set out in (b) of this section and the exception set out in (i) of this section, the following persons
7 are strictly liable, jointly and severally, for damages [TO PERSONS OR PROPERTY,
8 WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL
9 RESOURCES OF THE STATE OR A MUNICIPALITY,] and for the costs of response,
10 containment, removal, or remedial action incurred by the state or a municipality, resulting from
11 an unpermitted release of a hazardous substance or, with respect to response costs, the substantial
12 threat of an unpermitted release of a hazardous substance:

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

1 in consumer use;

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

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

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

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

19 * Sec. 2. AS 46.03.822 is amended by adding a new subsection to read:

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

24 * Sec. 3. AS 46.03.823(a) is amended to read:

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

1 claimant must show that the acts or omissions of the contractor under the response action contract
2 were not in accordance with generally accepted professional standards and practices at the time
3 the response action services were performed.

4 * Sec. 4. AS 46.03 is amended by adding a new section to read:

5 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who
6 is a response action contractor with respect to a release or threatened release of oil whose acts
7 or omissions are not contrary to a response plan or order by a state or federal agency having
8 jurisdiction over the release or threatened release of oil is not civilly liable for injuries, costs,
9 damages, expenses, or other liability that results from the release or threatened release, or from
10 the response action contractor's acts or omissions in response to the release or threatened release,
11 unless the person bringing a claim against the response action contractor proves by a
12 preponderance of the evidence that

13 (1) the response action contractor would have been liable for the release or
14 threatened release under state or federal law even if that contractor had not carried out a response
15 action with respect to the release or threatened release; or

16 (2) the response action contractor acted with gross negligence or intentional
17 misconduct.

18 (b) The limitation on liability contained in (a) of this section does not apply to an action
19 for personal injury or death.

20 * Sec. 5. AS 46.03.826 is amended by adding new paragraphs to read:

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

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

28 (A) the department;

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

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

1 release; or

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

4 (16) "response action contractor" means

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

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

13 * Sec. 6. AS 46.03.823(g) is repealed.

14 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

FEB 22 1991



Rod

W. Gene Burden
Vice President
Administration & Government Relations

February 22, 1991

Members of the Senate Oil & Gas Committee
Senators:
Sam Cotten, Chair
Drue Pearce, Vice-Chairman
Bettye M. Fahrenkamp
Lyman Hoffman
Dick Shultz

Dear Senators:

The enclosed draft legislation concerning the liability of innocent oil spill clean up contractors is Tesoro Alaska's principal legislative priority this year. Tesoro Alaska respectfully requests that the legislation be introduced as a Senate Oil and Gas Committee bill, and considered by the committee at its very earliest convenience. Enactment of this legislation is critical for two reasons:

1. Alaska's current liability laws threaten to embroil oil spill cleanup contractors in litigation arising from an oil spill, even though that contractor had no involvement in the spill itself. This creates a strong disincentive for businesses to enter the oil spill cleanup business. Compounding Alaska's problem in attracting new cleanup capability is the fact that the United States Congress and the legislatures of numerous coastal states, have already enacted legislation curing this liability problem; and

2. Alaska's unreasonable liability laws have caused Tesoro and others particular problems arising from the difficulties in obtaining standby oil spill cleanup services under terms that Tesoro and others can meet. Unless this legislation is enacted this session, the liability issue may affect Tesoro's ability to obtain ANS crude oil from Prince William Sound, and interrupt its ability to provide supply of refined products to Alaska.

The threat of becoming embroiled in prolonged and costly litigation is a major concern and impediment to marshalling all the organizations we would like to see available to assist in response to a major spill. This is true whether the organization is large (like the Marine Spill Response Corporation), small (co-ops, subcontractors and suppliers) or new (i.e., the recently-formed Cook Inlet Spill Prevention and Response, Inc. ("CISPRI")). Existing Alaska cleanup organizations presently face the prospect

of delays in response time caused by the inordinate time and resources lost in obtaining legal advice and clearances from state and federal authorities before responding to even minor spills.

The proposed legislation is similar to that now found in Florida, Virginia, Hawaii, and in the federal Oil Pollution Act of 1990. California's 1990 legislation is similar, providing a limitation of liability for 60, and in some cases 90 days after a spill. In the past week, the State of Delaware enacted similar legislation, and the Senates of Georgia and Mississippi unanimously passed similar bills. Under these laws, the responder is not liable for damages arising from their cleanup actions unless they act with gross negligence or willful misconduct, or cause personal injury or death. The proposed Alaska legislation expressly confers liability to the responsible parties for any damages resulting from the oil spill cleanup efforts that are not subject to liability to the response action contractor. And like these other laws, limited liability would attach only to contractors that had no involvement in the spill itself.

The public policy reasons for granting such limited immunity are similar to those that prompted other good samaritan immunity for organizations like fire and police departments, medical personnel, and others. There is a need to insure that highly trained personnel remain willing to respond without hesitation despite adverse, or even dangerous circumstances and that they promptly make the difficult decisions such a response demands.

The importance of this legislation also directly relates to Tesoro's ability to maintain response action contractor services in Prince William Sound and uninterrupted manufacturing operations at our Kenai refinery. Tesoro manufactures a full range of petroleum products and relies almost exclusively on ANS as a feed stock (approximately 85-90% of our crude oil is ANS). There are no known viable crude oil supply options available to Tesoro at this time should we no longer be able to transport ANS to our refinery.

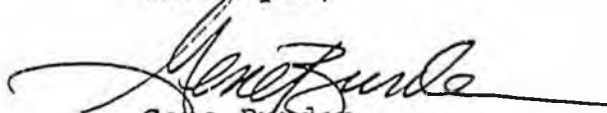
Alyeska is the only entity with the spill response capabilities necessary for our tanker to maintain the required contingency plan for operation in Prince William Sound. However, because of Alyeska's potential liability for a spill from an unrelated Tesoro-chartered tanker, Alyeska proposes to make cleanup services available only under terms that Tesoro cannot meet. Alyeska is requiring \$1 billion in "direct action" financial responsibility as a condition for a term agreement that provides these services. The direct action requirement means that the financial responsibility provided must be of a nature that would enable Alyeska to seek reimbursement directly from the source of the financial responsibility without having to initiate a claim, or action against Tesoro.

Tesoro has a net worth of approximately \$200 million. Although we have put together \$1 billion of insurance in coordination with our vessel's operator, the insurance is comprised of Protection & Indemnity Club (P & I Club) insurance that does not extend direct action to a potential claimant. There is no such "direct action" insurance to be found at these levels, and we are unable to otherwise meet Alyeska's condition. We have obtained an agreement good until June 30, 1991 with Alyeska for response services and are seeking a means to resolve this problem before that date.

If the proposed legislation is enacted, we believe we will be able to achieve a negotiated arrangement for spill response services that Alyeska and Tesoro can accept. If we do not obtain such an agreement, or if we fail to obtain legislative action on this matter, we face, at best, long and expensive litigation with Alyeska over their requirements with uncertain results, and at worst an interruption of our ability to operate the Kenai Refinery.

Tesoro appreciates your review of the proposed bill and encourages you to introduce the legislation as a Senate Oil and Gas Committee bill. We will make personnel and counsel available at your convenience to discuss any issues or questions.

Thank you,



Gene Burden

Vice President - Administration
& Government Affairs

Enclosures

IN THE HOUSE

BY

HOUSE BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to civil liability for the good faith response actions of a response action contractor for oil spills that were not caused by that contractor, and providing an effective date."

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

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

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS SUBSTANCES. (a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality[,] : damage caused by a response action contractor for which the response action contractor is not liable under AS 46.03.823 or AS 46.03.825; and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

* Section 2. AS 46.03.823(a) is amended to read:

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

*** Sec. 3. AS 46.03 is amended by adding a new section to read:**

Sec. AS 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who is a response action contractor with respect to a release or threatened release of oil is not liable for injuries, costs, damages, expenses or other liability that results from the release or threatened release, or from the response action contractor's acts or omissions in response to the release or threatened release, unless the person bringing a claim against the response action contractor proves by a preponderance of the evidence that:

(1) the response action contractor would have been liable for the release or threatened release under state or federal law even if that contractor had not carried out a response action with respect to the release or threatened release; or

(2) the response action contractor acted with gross negligence or intentional misconduct.

(b) The liability limitation of (a) of this section does not apply to an action for personal injury or death.

(c) As used in this section:

(1) "response action contract" has the same meaning as in AS 46.03.823(g)(2);
and

(2) "response action contractor" has the same meaning as in AS 46.03.823(g)(3).

*** Sec. 3. This Act taken effect immediately in accordance with AS 01.10.070(a).**

fixed

Rod
Drew said to give
to you



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: VCPA / Petro Star Fax: 563-1381 / 349-5496
Attn: Rex Huntkin / Walt Schlofeldt Phone: 562-3700 / 488-9057
VCPA ASRC PS FAX

Transmitted by: Senator Drue Pearce Date: 4.11.91

Re: Response Action Contractor Liability

Comments: This bill is being considered for introduction
by Senate Oil & Gas Committee. It will limit response
action liability in oil spills. Senator Pearce suggest
your organization get involved in the process because
it will directly impact your organization.
She is also wondering if you have fully considered
your liability.

* cc: CONRAD BAGNE / ASRC

Number of Pages: 13 Including Cover Sheet.





Oil Reform Alliance

ORA/UFA JOINT POSITION PAPER

ON HB196

by Riki Ott

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

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

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

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

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

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

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

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

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

Alaska's strict liability standard was watered down in 1989 by the legislature so RACs would be liable for injuries caused by their own response actions only if they were negligent or engaged in intentional misconduct. Under existing law, to show negligence by a RAC, a claimant must show that the acts or omissions of the contractor under the response action contract was not in accordance with generally accepted professional standard and practices at the time their response action services were performed (AS 46.03.823(a)).

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



UNITED FISHERMEN OF ALASKA

Greg Seider
Executive Director

211 4th Street, Suite 112
Juneau, AK 99801

(907) 586-2620
Within Alaska 1-800-478-FISH
Fax# (907) 463-2545

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 8, 1991

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair

Attached is a draft bill on the subject of response action contractor liability that the committee will be reviewing on Thursday morning. The draft was put together by the proponents of the legislation (specifically, Tesoro and Conoco) with input from the Regional Citizen's Advisory Council.

The last section of the bill sets up a procedure for interim review of the issue, with a report to the legislature at the beginning of the next session. The structure of this review is left open, for the legislature to set up.

Introduced by: Brown

R015

KENAI PENINSULA CAUCUS

RESOLUTION NO. 91-5

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

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

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

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

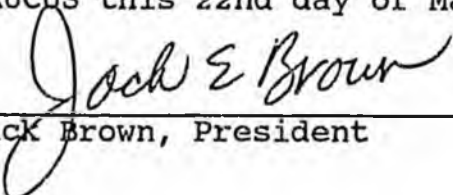
NOW, THEREFORE BE IT RESOLVED by the Kenai Peninsula Caucus that the spill response contractors, including fishermen, subcontractors and part-time professionals and specialists, who perform in response to an oil spill to be best of their abilities and following the directions of recognized state and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

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

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

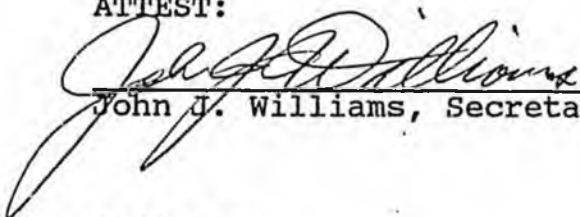
COPIES of this Resolution shall be transmitted to the Honorable Walter Hickel, Governor of the State of Alaska; and members of the Alaska House and Senate Resource Committees and Special Committees on Oil and Gas.

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



Jack Brown, President

ATTEST:

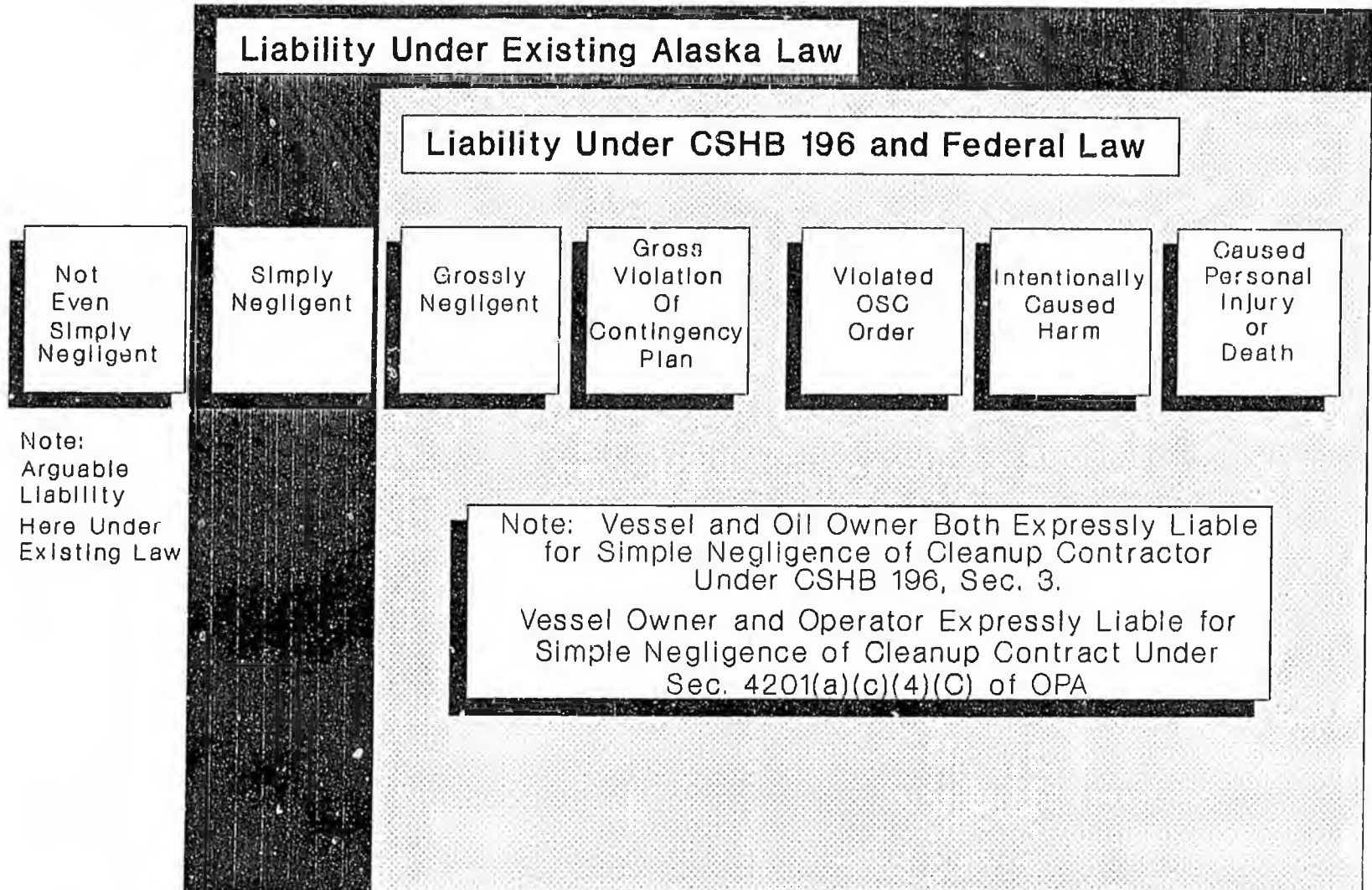


John J. Williams, Secretary

(3/8/91)

CLEANUP CONTRACTOR LIABILITY FOR DAMAGES CAUSED BY CLEANUP OPERATIONS

CSHB 196 and Federal Law vs. Existing Alaska Law



Simple Negligence:

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

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

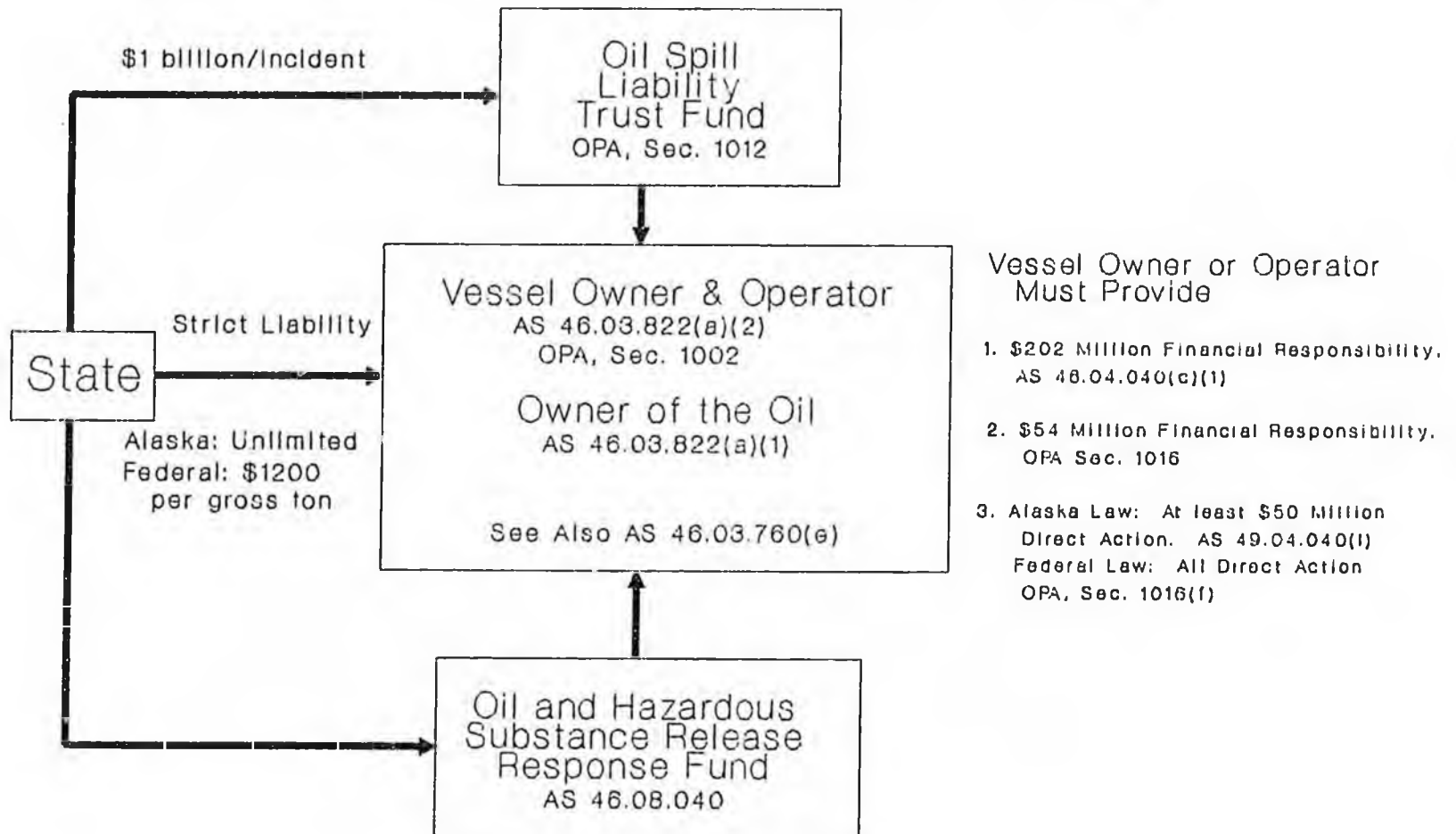
Gross Negligence:

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

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

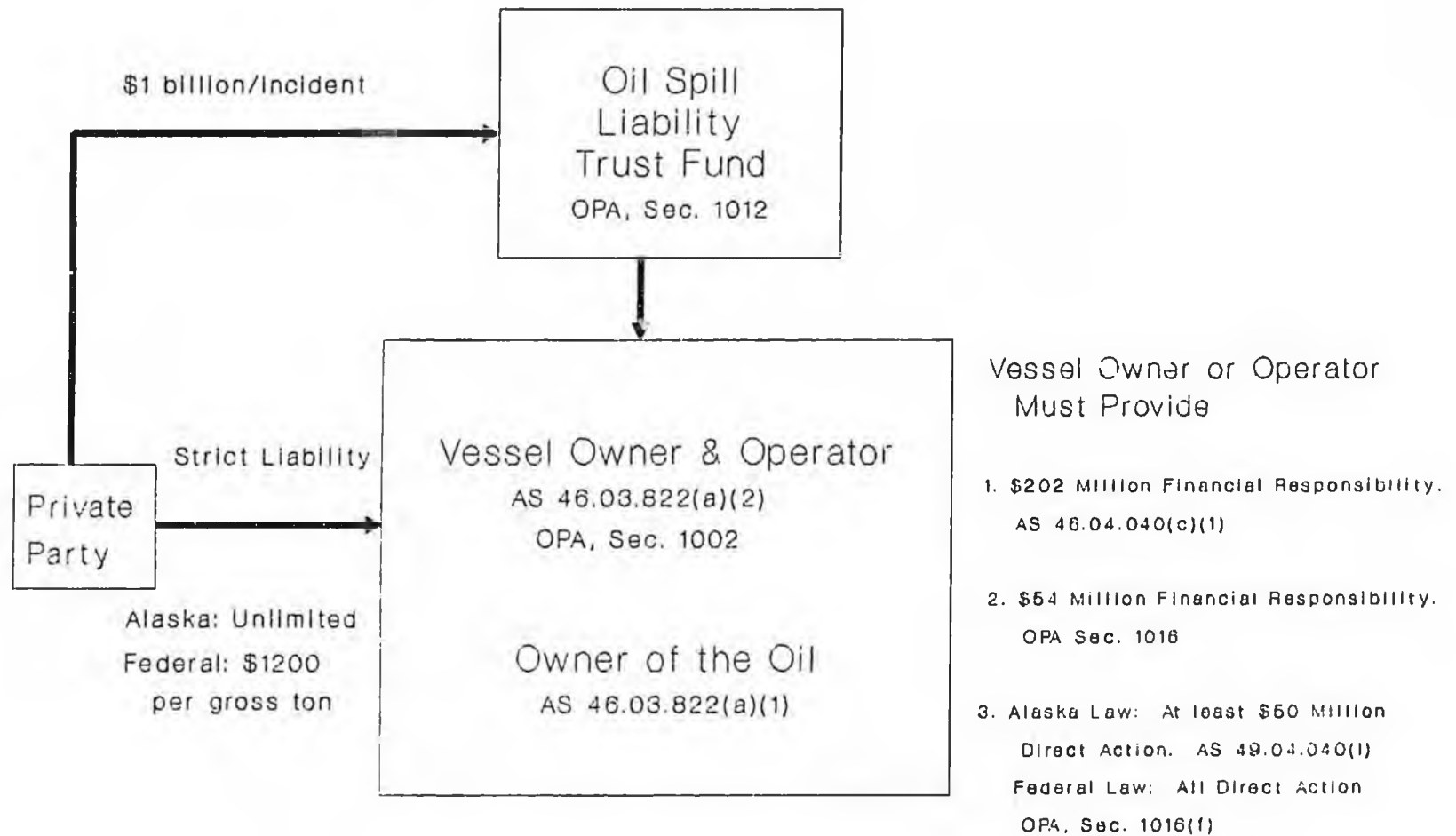
RECOVERY OF CLEANUP COSTS CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



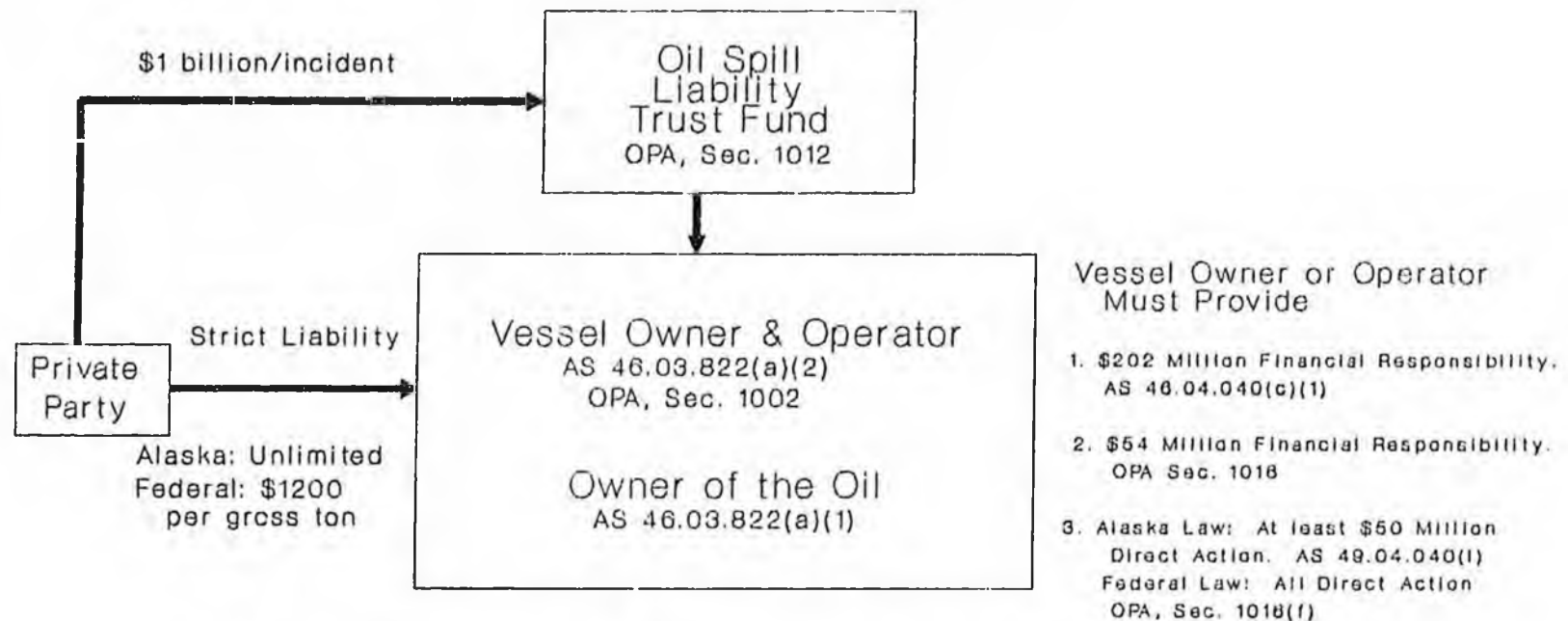
DAMAGE RECOVERY CRUDE SPILL FROM 90,000 DWT OIL TANKER

Under Both Existing Law and CSHB 196



DAMAGE RECOVERY FOR CLEANUP CONTRACTOR'S SIMPLE NEGLIGENCE*

Under CSHB 196



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

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

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

ENDORSEMENTS OF CLEANUP CONTRACTOR LIMITED LIABILITY

Be it further resolved, that the Pacific Fisheries Legislative Task Force supports and encourages state and federal legislation which grants any person who responds to an oil spill, caused by another, immunity from liability from all costs and damages except in cases where the responder acts with gross negligence or willful misconduct, or causes personal injury or wrongful death.

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

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

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

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

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

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

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

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

MORE ENDORSEMENTS OF CLEANUP CONTRACTORS LIMITED LIABILITY

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

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

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

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

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

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

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

IF SHE'S NOT A GOOD SAMARITAN, JUST WHO IS?

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

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

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

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

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

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



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

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

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

CALL US.

We will send a FREE magnet in your name to your State Assembly member.

CALL TOLL FREE.

1-800-325-6000.

Ask for Operator 9752.

This is not for Western Union Service.

WRITE US.

Fill out this coupon and send it to us:

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

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Return to: International Bird Rescue Research Center
1223 9th Street, Suite 200
Sacramento, CA 95814

OR, TELL 'EM YOURSELF.

Please Mr. Speaker:

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

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

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

SPONSORED BY

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

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

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

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

May 4, 1990

Dear Governor Deukmejian,

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

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

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

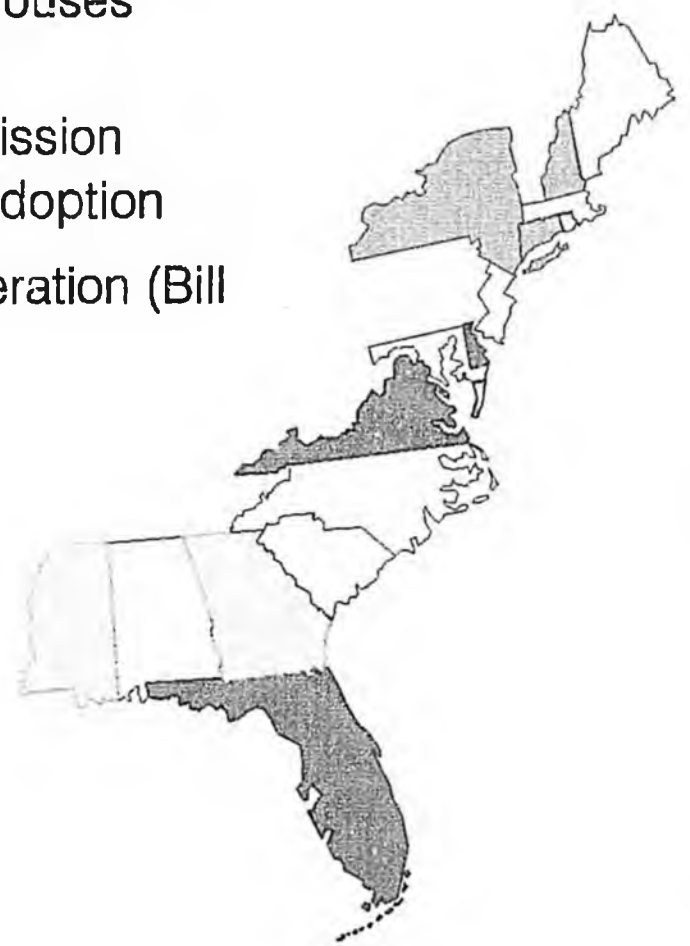
Because of the sensitive Channel Islands and nearby coastal region our association supports FORT's defensive capabilities towards oil spill recovery. I shudder at the thought of a "VALOEZ" type spill encircling the islands while bureaucrats negotiate indemnity clauses.

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

Sincerely,

Brian Janison

GROSS NEGLIGENCE STANDARD FOR CLEANUP CONTRACTORS



- Enacted



- Passed Both Houses

- Special Commission
Recommends Adoption



- Active Consideration (Bill
Introduced)



- No Activity