

HJR

49

**DEPT. OF ENVIRONMENTAL CONSERVATION**

DIVISION OF SPILL PREVENTION AND RESPONSE  
410 Willoughby Avenue, Suite 105  
Juneau, AK 99801-1795

Telephone: (907) 465-5250  
Fax: (907) 465-5262

October 26, 1993

RECEIVED

JAN - 7 1994

Department of Interior  
Minerals Management Service  
381 Elden Street  
Herndon, VA 22070-4817

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
COMMISSIONER'S OFFICE

Attention: Chief, Engineering and Standards Branch

Dear Sir or Madam:

Re: **ANPRM 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities**

The Alaska Department of Environmental Conservation (DEC) has reviewed the Minerals Management Service's (MMS) proposed rule to implement oil spill financial responsibility requirements of the Oil Pollution Act of 1990 (OPA 90).

As presently drafted, DEC believes the proposed rule far exceeds the intent of OPA 90 and the traditional jurisdiction and mission of MMS. We recommend you redirect the scope of your rulemaking effort. Specifically, MMS should:

- 1) **Choose a more appropriate interpretation of the term "navigable waters"**. For the purpose of implementing OPA 90, MMS should limit its role to the Outer Continental Shelf and state submerged lands outside of traditional lines of demarcation. The move to include state wetlands in this rulemaking is particularly objectionable.
- 2) **Rely on State of Alaska financial responsibility requirements in State waters**. State of Alaska financial responsibility requirements are some of the most comprehensive in the world. They take into account varying levels of risk associated with each category of oil operator in the State, and differentiate between crude and noncrude oil - AS 46.04.040 (copy enclosed). Operators storing less than 5,000 barrels of crude oil, or less than 10,000 barrels of noncrude oil, are exempt from financial responsibility requirements - AS 46.04.050 (copy enclosed). Financial responsibility amounts of \$150 million or greater are not applied to any operation in Alaska other than crude oil tankships.

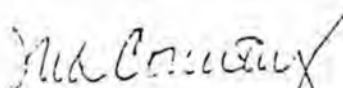
October 26, 1993

Crude oil pipelines and offshore exploration and production facilities, those operations appropriately regulated by MMS under OPA 90, are required to show proof of financial responsibility in the amount of \$50 million in State waters. DEC does not object to MMS regulating these operations, offshore, at the \$150 million level, since those are the specific operations we believe Congress intended to apply that amount to.

3) **Exempt small operators not within MMS's regulatory expertise and traditional jurisdiction.** The proposed rules radically expand MMS's scope of jurisdiction and the type of facilities regulated, and fail to recognize any difference in risk between small and large operators. Since a \$150 million financial responsibility requirement is set in statute, MMS should decide which operations pose a threat of that magnitude and exempt all smaller operators. Clearly, Congress did not intend to impose such a burden on the small operators who would be affected by your proposed rule.

I am disappointed that MMS has not exercised its discretion to interpret and carry out Congressional intent in a more realistic manner. I suggest that MMS reconsider the scope of this rulemaking before going any further.

Sincerely,



Michael A. Conway  
Director

MM\jsg (G:\SPAR\ANPRM.MMS)

Enclosures (2): AS 46.04.040  
AS 46.04.050

cc: John Sandor, Commissioner  
John Katz, Governor's Office, Washington, D.C.  
Dr. Paul Rusanowski, Governor's Office, Division of Governmental Coordination  
Regional Administrators (4)

October 26, 1993

bcc: Mead Treadwell, Deputy Commissioner, DEC  
Michael Mansker, Program Manager, Industry Preparedness Program (IPP),  
DEC  
Glenn Gray, Governor's Office, Division of Governmental Coordination  
Glenn Adams, IPP, DEC

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 3, 1993

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-8100  
FAX: (907) 278-3697
- KEY BANK BUILDING  
100 OUBAKIAN ST., SUITE 100  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2946
- P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 485-3600  
FAX: (907) 483-6296

Tom Fry, Director  
Department of the Interior  
Mineral Management Service  
Mail Stop 4700  
381 Elden Street  
Herndon, Virginia 22070-4817

Re: Rulemaking under the Oil Pollution Act of 1990

Dear Mr. Fry,

I have reviewed the "Special Information for Alaska," attached to the August 25, 1993 news release announcing proposed rulemaking requiring all operators of facilities handling oil and oil products to provide evidence of financial responsibility.

I am pleased to learn that the Department of Interior believes that the term "navigable waters" traditionally has included wetlands, among other water bodies. As the news release states, large areas of Alaska have been classified as wetlands. Therefore, because title to all navigable waters passed to Alaska at statehood, the state holds title to much more submerged land than Alaskans previously realized.

Now that the Department has made this position clear, I expect that the United States will disclaim interest in all Alaska's wetlands when the state formally asserts title to them.

Very truly,



Charles F. Cole  
Attorney General

CKC/JG

cc: Bruce Babbitt  
John D. Lesly

03-03-93

NOV 3 '93 14:37

2792834

TOTAL P.01  
PAGE.001

**KONIAG, INC.**

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

January 19, 1994

907  
L-1013015  
JAN 24 1994

Joseph P. Green, Chairman Committee on Oil & Gas  
Alaska State House of Representatives  
Capitol Building  
Juneau, AK 99801-1182

Dear Representative Green:

Please be advised that Koniag, Inc. fully supports your House Joint Resolution No. 49 regarding the proposed M.M.S. regulations pertaining to the Oil Pollution Act of 1990.

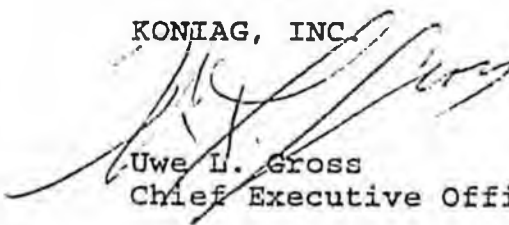
It should be clear to everyone that the proposed requirement of anyone in the oil transport/handling business to "commit and maintain \$150 million to clean up a spill" is ludicrous at best.

That such a regulation would have a devastating effect on Alaska (and other states) is probably a gross understatement.

We wish you the best in getting H.J.R. 49 passed expeditiously.

Sincerely,

KONIAG, INC.

  
Uwe L. Gross  
Chief Executive Officer



# City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

January 20, 1994

Joseph P. Green, Chairman  
Committee on Oil and Gas  
Alaska House of Representatives  
Capitol Building  
Juneau, Alaska 99801-1182  
FAX 465-6790

Re: HJR No. 49

Dear Representative Green,

As Municipal Administrator for the City and Borough of Sitka, Alaska I am writing to inform you of Sitka's support of your sponsored House Joint Resolution No. 49.

We oppose these U.S. Mineral Management Service proposed regulations as those affected within the City and Borough of Sitka would find it impossible to comply and still remain in business.

Your effort to pass HJR No. 49 is greatly appreciated.

Sincerely,

Gary L. Paxton  
Administrator  
City and Borough of Sitka  
FAX 747-7403

JAN 24 1994  
12 16 1994  
15 10



Ahtna, Inc.

GLENNALLEN OFFICE  
PO BOX 649  
GLENNALLEN, AK 99588  
PHONE: (907) 822-3476  
FAX: (907) 822-3495

ANCHORAGE OFFICE  
406 W FIREWEED LANE, NO 101  
ANCHORAGE, AK 99503  
PHONE: (907) 274-7662  
FAX: (907) 274-6614

January 24, 1994

Representative Joe Green, District 10  
718 West 4th Avenue  
Anchorage, Alaska 99501


Re: House Joint Resolution #49 *see bill*

Dear Mr. Green:

Thank you for informing us about the new regulations promulgated by the U.S. Mineral Management Service (MMS). In our review of the proposed MMS regulations, we find it's potential implementation as being "not in the best interest" of Ahtna, Inc. We urge the Alaska State Legislature to oppose the regulations and support House Joint Resolution #49.

Thank you for contacting Ahtna, Inc. If you should have questions or require further assistance, please feel free to call this office.

Sincerely,

  
Roy S. Ewan  
President/CEO



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

January 25, 1994

TO: Representative Bill Williams, Chair  
and Members, House Resource Committee

FROM: Kent E. Swisher, Executive Director

RE: HJR 49 - Federal Regulations Under OPA 90

The Alaska Municipal League supports passage of HJR 49. The League specifically opposes unfunded federal mandates as evidenced by the passage of AML Resolution No. 94-2 at the November 1993 annual meeting (copy attached).

The mandate to require municipalities, businesses, and individuals to obtain \$150 million in liability insurance before they can legally move or store oil products across navigable waters would be devastating. The proposed regulations by the U.S. Minerals Management Service will adversely affect municipalities and cities in Alaska as many of them are surrounded by navigable waters, which includes wetlands.

The Alaska Municipal League supports HJR 49, which urges the clarification of the proposed definition of "offshore facility" in the financial responsibility section so that it will only apply to facilities that are more clearly offshore, as intended by the Congress under the Oil Pollution Act of 1990.

cc: ✓ Rep. Joe Green  
Chair, House Committee on Oil and Gas

LAW OFFICES OF  
KEMPEL, HUFFMAN AND GINDER  
A PROFESSIONAL CORPORATION

ROGER A. KEMPEL  
RICHARD R. HUFFMAN  
PETER C. GINDER  
DONALD C. ELLIS

255 E. FIREWEED LANE, SUITE 200  
ANCHORAGE, ALASKA 99503-2094  
TELEPHONE (907) 277-1604  
TELECOPIER (907) 276-2493

January 25, 1994

ANDREW J. FIERRO  
GEORGE S. HARRINGTON JR.  
BOBBY DEAN SMITH

Representative Joe Green  
Room 114  
State Capitol  
Juneau, Alaska 99801-1182  
Attention: Jeff Logan

VIA FACSIMILE: 465-4316

Re: Committee Substitute for House Joint Resolution No. 49

Dear Mr. Logan:

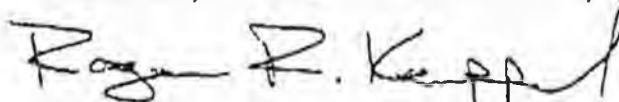
I am writing as general counsel for the Alaska Rural Electric Cooperative Association, Inc. ("ARECA"). ARECA is a non-profit corporation whose members consist of the numerous electric cooperatives located throughout the state of Alaska. Those cooperatives located in rural Alaska for the most part rely upon diesel generation for power production. In turn, bulk fuel storage facilities are located in the villages to provide a ready supply of fuel for the diesel generators. These facilities in numerous instances may be located upon wetlands, and, in any event, most are supplied by a fuel-filled pipeline terminating on lake, river, or bay. Diesel fuel is delivered to these facilities by a barge.

The Mineral Management Services' ("MMS") proposed rules with respect to oil spill financial responsibility in the amount of \$150 million would devastate many of these utilities. ARECA's members can only hope that MMS uses common sense in promulgating these proposed regulations. It is ARECA's position that when OPA 90 was enacted, Congress was thinking of oil platforms when drafting the financial responsibility requirements in the law.

For these reasons, ARECA strongly supports passage of the Committee Substitute for House Joint Resolution No. 49. If you need any additional information concerning this matter, please feel free to give me a call.

Sincerely yours,

KEMPEL, HUFFMAN AND GINDER, P.C.



Roger R. Kempel  
General Counsel for Alaska Rural Electric  
Cooperative, Inc.

RRK:ibf

cc: Dave Hutchens, Executive Director  
Alaska Rural Electric Cooperative, Inc.

# Native Village of Kwigillingok

Kwigillingok I.R.A. Council  
P.O. Box 49  
Kwigillingok, Alaska 99622  
(907) 588-8114/8212

January 27, 1994

Joseph P. Green, Chairman  
Committee on Oil & Gas  
Alaska House of Representatives  
Room 114  
State Capitol Building  
Juneau, Alaska 99801-1182

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FEB 04 1994

Re: HJR 49

Dear Representative Green,

We are strongly in support of the House Joint Resolution 49.

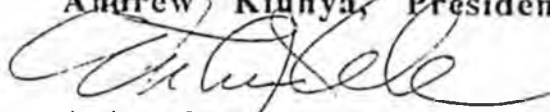
The financial requirements the federal Oil Pollution Act of 1990 will make a nation of criminals because we just simply will not be able to comply with the \$150,000,000 insurance requirement. In a small Alaskan villages, even if we had to pool all of our resources together we still would not be able to meet that requirement. To try to solve this one problem created by oil tankers will only create even a bigger and broader problem.

Again we are in full support of the passage of HJR 49 by the legislature and are in full opposition to the proposed regulations by OPA '90.

Sincerely,

**NATIVE VILLAGE OF KWIGILLINGOK**

Andrew Kiunya, President



Arthur J. Lake  
Tribal Administrator

cc: Senator George Jacko  
Representative Lyman Hoffman  
file

# McGrath Light & Power Company

Box 52  
McGrath, Alaska 99627  
(907) 524-3009

\*\*\*\*\*  
F A X T R A N S M I T T A L M E M O

TO: REP. JOE GREEN

DEPT: \_\_\_\_\_ FAX #: 465-4316

FROM: BILL FRAZIER PHONE: 524-3391

CO: McGrath L&P FAX #: 524-3701

Post-It<sup>®</sup> brand fax transmittal memo 7671

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Date: Jan. 27, 1994

To: Representative Joe Green

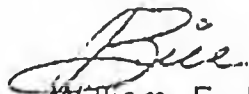
From: William F. Frazier / General Manager  
McGrath Light & Power

Re: HJR 49

Dear Rep. Joe Green

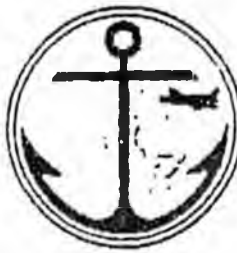
You have my complete support on this most vital resolution for our state's rural utilities. Another example of someone in D.C. writing unmanageable, unenforceable stupid regulations for a state they probably have never seen. This regulation has the possibility of closing down most of the small utilities and fuel distributors in rural Alaska.

Thank you for taking them on.



William F. Frazier

**Municipality  
of  
Anchorage**



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
TELEPHONE: (907) 343-4431  
FAX: (907) 272-1991

*Tom Fink, Mayor*

OFFICE OF THE MAYOR

December 20, 1993

Chief, Engineering & Standards Branch  
Interior Dept., Minerals Management Service  
Mail Stop 4700, 381 Elden Street  
Herndon, Virginia 22070-4827

RE: OIL POLLUTION ACT OF 1990, LIABILITY REQUIREMENTS

Dear Sir:

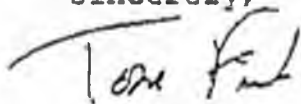
This letter responds to your Advanced Notice of Proposed Rulemaking that would require citizens to post a \$150 million liability bond before transporting oil products across navigable waters.

According to the notice, there is no minimum amount of oil products stored or transported that would be excluded from the liability bond requirement. In addition, aside from peoples' inability to pay for such liability insurance or good reasons for their doing so, we know of no companies willing to provide coverage of such magnitude.

I do not believe Congress intended the liability insurance requirement to cover activities on lakes, rivers, streams and wetlands, but rather intended it for major offshore oil operations. As written, it would place an unacceptable burden on municipal operations and residents alike, particularly because it would include activities in navigable waters deemed "wetlands." It would create an administrative nightmare for the most routine of municipal activities, with no apparent benefits.

We must strongly object when employees, employers and local governments are forced to adhere to regulations that have such far-reaching effects on their freedom and which fail to reflect even the slightest measure of common sense.

Sincerely,

  
Tom Fink

Introduced by: Mayor Selby  
Requested by: Division of  
Governmental Coordination  
Drafted by: Community  
Development Department  
Introduced: 12/02/93  
Adopted: 12/02/93

KODIAK ISLAND BOROUGH  
RESOLUTION NO. 93-40

**A RESOLUTION OPPOSING THE AMOUNT OF FINANCIAL RESPONSIBILITY  
REQUIRED IN PROPOSED RULEMAKING BY THE MINERALS MANAGEMENT SERVICE**

- WHEREAS,** the Department of Interior's Minerals Management Service (MMS) has published a notice of proposed rulemaking advising all operators of facilities handling oil and oil products located in, on, or under navigable waters of the United States that they will need to provide evidence of financial responsibility; and
- WHEREAS,** the Oil Pollution Act of 1990 (OPA 90) mandates the development of new regulations to implement provisions of the law that increase financial responsibility requirements to \$150 million; and
- WHEREAS,** for the first time, all operators in, on, or under navigable waters of the United States and its territories, will face new regulations establishing the identical \$150 million requirement; and
- WHEREAS,** OPA 90 potentially broadens the categories of activities that fit the definition of offshore facilities; and local oil and gasoline storage and distribution centers and boat harbors, for example, could be affected; and
- WHEREAS,** the proposed rulemaking represents an unfunded federal mandate to the State and local governments in Alaska; and
- WHEREAS,** the proposed rulemaking contains no threshold levels, and facilities of any and all sizes are subject to the \$150 million financial responsibility requirement; and
- WHEREAS,** the proposed rulemaking would pose a serious threat to local fuel distributors; and
- WHEREAS,** the proposed rulemaking will hit local governments and small operators especially hard, potentially causing serious financial hardship; and

WHEREAS, It appears that the private insurance market does not have the capacity to provide for the financial responsibility requirement, even if it was financially feasible for those subject to the requirement to obtain it; and

WHEREAS, the proposed rulemaking is vague and difficult to interpret, especially in terms of its application;

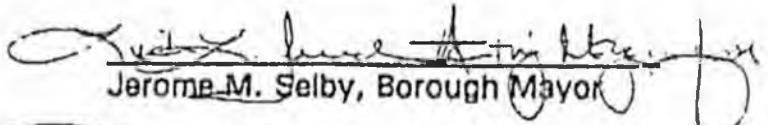
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

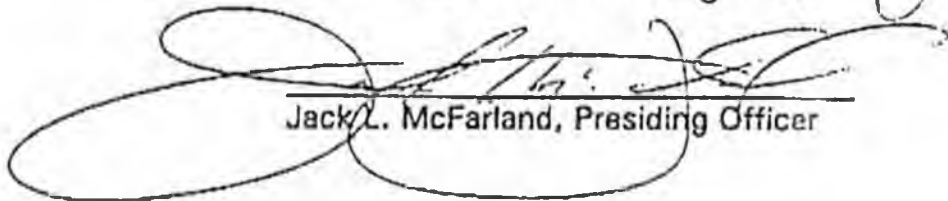
Section 1: The Kodiak Island Borough Assembly is opposed to the amount of financial responsibility required in the proposed rulemaking publicly noticed by the federal Minerals Management Service.

Section 2: The Assembly urges the MMS to prepare workable regulations that are fair and equitable, and truly relate to the potential impact an operator might cause should an oil spill occur.

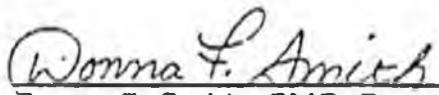
ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
THIS 2ND OF DECEMBER, 1993

KODIAK ISLAND BOROUGH

  
Jerome M. Selby, Borough Mayor

  
Jack L. McFarland, Presiding Officer

ATTEST:

  
Donna F. Smith, CMC, Borough Clerk

## Alaska State Legislature

WHILE IN SESSION:  
CAPITOL BUILDING  
JUNEAU, ALASKA 99801-1102  
(907) 465-4931  
(907) 465-4318 FAX

INTERIM ADDRESS  
718 WEST 4TH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 258-8198  
(907) 258-8171 FAX

DISTRICT 10



CHAIR, OIL & GAS COMMITTEE  
VICE CHAIR, LABOR & COMMERCE  
COMMITTEE  
JUDICIARY COMMITTEE  
RESOURCES COMMITTEE  
INTERNATIONAL TRADE & TOURISM  
COMMITTEE  
ECONOMIC TASK FORCE

Representative Joe Green

### SPONSOR STATEMENT

for House Joint Resolution 49  
Senate Resources Committee  
February 7, 1994

In August 1993 the Minerals Management Service (MMS) of the U.S. Department of the Interior initiated the process of implementing the financial responsibility section of the Oil Pollution Act of 1990 (OPA 90). Currently, the MMS requires a \$35 million liability bond for Outer Continental Shelf (OCS) facilities. OPA '90 increased the financial threshold to \$150 million, and expanded its application to navigable waters.

In the process of drafting regulations to implement OPA '90 the MMS has interpreted the terms "navigable waters", "offshore facility", and "responsible party" in a very broad manner. Tom Fry, Director of the MMS has stated that "These definitions seem to create a financial responsibility requirement for any activity that can spill oil and is located in, on, or under most of the surface waters of the U.S. and adjacent wetlands."

The financial responsibility requirements apply both to commercial and private operations, and make no allowance for quantity. Read literally, if someone were to store or transport 5 gallons of petroleum-based fuel in, on, or under navigable waters - including wetlands - that person would fall under the OPA '90 requirements.

These regulations could apply to marinas, port facilities, utility companies, gasoline filling stations, trucking companies, logging operations, railroads, refineries, airports, farms, fishing boats and tenders, pipelines, and many other Alaskans.

Representative Joe Green  
Sponsor Statement  
CSHJR 49

CS HJR 49 requests the MMS to reinterpret and narrow their definitions. Further, due to the problems caused by this, *and other* sections of OPA '90, this resolution asks the MMS to propose amendments to Congress to address these problems. Alaskans from Ketchikan to Anchorage to Kotzebue have written to support these redefinitions. I would note support on CS HJR 49 OR for action by the MMS from:

Local Governments, including Boro's, Muni's and the Municipal League; Utilities, including two statewide utility organizations; Commissioner Paul Fuhs, DEC, Native Corporations, Fuel Carriers, Statewide Development Organizations, Tug and Barge Companies, and, last but not least, my own majority leader.

The MMS has scheduled a hearing on these regulations for February 16 in Anchorage. I am hopeful that HJR 49 can pass the Senate in a timely manner, so that it can be included as part of the official public record at those hearings.

I would like to add Mr. Chairman, that a similar resolution has been introduced in this body. While this resolution asks the MMS for specific action, SJR 40 asks Congress for specific action, so they are different, and I believe they compliment each other. I would hope that the committee will act on the merits of this resolution, and pass CS HJR 49 today so we can get it on the floor as soon as possible.



This edition sponsored by: Anderson Tug & Barge Petersburg - Wrangell Insurance Center

# Resource Review

December 1993 A monthly publication of the Resource Development Council, Inc.

## OPA liability regulations "unenforceable"

### Alaskans from Kodiak to Kotzebue send clear message to Washington



The financial liability requirements of OPA '90 will also apply to private and public marinas.

Alaskans, rural and urban, from Kodiak to Teller, and from all walks of life, are sending in a wave of critical comments to the U.S. Minerals Management Service (MMS) over the development of new regulations that would require corporations and individuals alike to post \$150 million in liability insurance before they can legally move or store oil or oil products across navigable waters.

In response to a feature article in the October *Resource Review* and a recent RDC "Action Alert," Alaskans are writing MMS in large numbers to tell federal regulators how the financial responsibility requirements of the Oil Pollution Act of 1990 (OPA '90) will affect their businesses and livelihoods.

So far the message MMS is hearing is that the financial responsibility requirements of OPA '90 will adversely affect many segments of the economy and "result in unenforceable regula-

tions," according to Tom Fry, Director of MMS.

In late August, MMS published an "Advanced Notice of Proposed Rulemaking" in the Federal Register aimed at implementing the financial responsibility section of OPA '90. The financial responsibility requirements of the law apply to both commercial and private operations and can be read to literally include any person or persons transporting or storing any oil or oil products on or over navigable waters. The law makes no exceptions for quantity. In theory, if one moves as little as five gallons of oil or diesel on a sled

behind a snowmachine across navigable waters, that person is responsible to the OPA '90 requirements.

State, federal and municipal facilities, as well as schools, airports, boat harbors, electric cooperatives, bulk fuel tank owners, wilderness lodges and many businesses and individuals would fall under the requirements.

In the past, a \$35 million liability bond was required for Outer Continental Shelf operations. OPA '90 has increased financial responsibility to \$150 million and expanded its application to navigable waters. According to

(Continued to page 4)

**"It appears that the private insurance market does not have the capacity to provide for the financial responsibility requirement, even if it was financially feasible for those subject to the requirement to obtain it."**  
- Mayor Jerome Selby, Kodiak Island Borough

# Amendments to statute offer only solution to regulatory dilemma

(Continued from page 1)

Fry, the term "navigable waters" includes most of the surface waters in the United States and adjacent wetlands. Moreover, "offshore facilities" is considered, under the law, any facility located in, on or under any of the navigable waters of the United States.

"These definitions seem to create a financial responsibility requirement for any activity that can spill oil and is located in, on, or under most of the surface waters of the United States and adjacent wetlands," Fry said. "This goes beyond the offshore oil platforms with which the MMS is familiar."

Fry confirmed that OPA '90 applies to state and municipal governments that operate facilities. "This could be significant to states such as Alaska, where many small communities maintain and operate oil fueled electric generating facilities."

Fry said public responses center mostly on the broad scope of the definition "offshore facility" and the probability that \$150 million in liability bonding would not be available or could not be afforded the majority of those potentially affected by the law.

"At \$150 million, we believe that very few companies can self-insure; therefore, insurance, as evidence of oil spill financial responsibility, will probably gain increasing importance when the oil spill financial responsibility requirements of CPA '90 are implemented," Fry said.

The MMS would like to be able to develop approaches to implement OPA '90 in a reasonable and balanced way that preserves the purpose of financial responsibility without creating economic hardships, Fry said. "We are trying to determine what, if any, flexibility is available within the confines of the statute."

So far, however, the federal agency claims the language of the statute leaves it with very little discretion. Fry warned

unless the agency follows the law as literally stated, "our regulations may fail on one or more key issues if challenged in the courts."

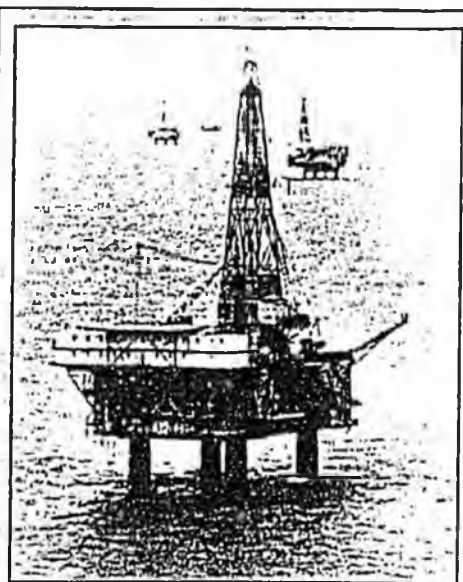
The financial responsibility section of the law is based on broad definitions such as "offshore facility," "navigable waters" and "responsible parties." RDC is urging MMS to seek amendments to the statute to address these definitions and bring regulations in line with the original intent of Congress.

Representative Gail Phillips, Majority Leader of the Alaska House of Representatives, warned Secretary of the Interior Bruce Babbitt that MMS's newly proposed rules will have dire consequences on Alaskans if they go into effect.

"A requirement for \$150 million in liability bonding would affect a major portion of our industries, schools, individuals and transporters of any fuel source to rural Alaska so adversely that it would force them out of business entirely," Phillips warned. "In particular, the lack of any minimum quantity of oil covered under these rules would force individuals storing only a few gallons for generators or other equipment to violate the law or get the \$150 million in liability insurance."

The Kodiak Island Borough passed a resolution opposing the financial responsibility section of OPA '90, noting that the proposed rulemaking "represents an unfunded federal mandate to the State and local governments in Alaska." The resolution warned that the rulemaking will hit local governments and small operators especially hard, potentially causing serious financial hardship. "It appears that the private insurance market does not have the capacity to provide for the financial responsibility requirement, even if it was financially feasible for those subject to the requirement to obtain it," the resolution stated.

MMS is considering holding a public hearing in Anchorage in February.



*By a 7-1 ratio, Alaskans are personally supportive of the oil industry, but those who are unfavorable are nearly twice as likely to express their feelings as those who are favorable, according to a recent survey.*

## Alaskans favor oil industry

By a wide margin, Alaskans believe oil and gas development has been conducted in an environmentally-safe manner, according to a statewide survey.

The survey, conducted by Dittman Research Corporation for the Alaska Oil and Gas Association, also found that nearly 90 percent of Alaskans surveyed expressed the opinion that oil and gas development has been good for Alaska.

"The survey results clearly show that Alaskans recognize the economic benefits oil and gas activities provide to the state and that Alaskans support resource development," said Judy Brady, Executive Director of AOGA.

According to the survey, nearly three out of four Alaskans believe oil and gas development has been conducted in an environmentally-safe manner and nearly 70 percent support oil and gas exploration within the ANWR Coastal Plain. Among long-time residents, support for ANWR exploration was even stronger.

Another significant finding, according to the survey, is that

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# Resource Review

## Proposed liability bond requirement shocks Alaskans

Regulations would require \$150 million in liability insurance for any company or individual transporting or storing oil or oil products in any quantity

Alaska's business community and rural electric cooperatives are reacting with shock and disbelief over the development of new federal regulations that could require individuals, corporations and school districts alike to post \$150 million worth of liability insurance before they can legally move or store oil or oil products across navigable waters in Alaska and elsewhere.

At issue are new regulations the U.S. Minerals Management Service is developing to implement provisions of the Oil Pollution Act of 1990 (OPA). The 1990 law increased the financial responsibility requirements for companies handling oil on the Outer Continental Shelf from \$35 million to \$150 million and expanded the requirement for financial responsibility to all operating in navigable waters.

"The financial responsibility requirement of OPA can be read to literally include any person or persons transporting or storing any oil or oil products on or over navigable waters," said Paul Glavinovich, a mining geologist and Executive Committee member of the Resource Development Council. In Alaska, Glavinovich noted that navigable waters would include not only coastal waters, but many rivers, streams, lakes and wetlands — a dominant portion of the state.

"The law makes no exceptions for quantity," Glavinovich noted. "If one moves as little as five gallons on a sled behind a snowmachine across navigable waters, they are responsible to the OPA requirements, as well as anyone operating a tank farm, fuel transfer business, refueling station or utility."

The OPA also increases the civil penalties for failure to comply from \$10,000 per incident to \$25,000 per incident per day.

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- Tom Hawkins, Bristol Bay Native Corporation

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- Paul Glavinovich, Mining Geologist

"Combined with the ludicrous definition of navigable waters, the liability requirement sets up a situation that is going to be impossible for most businesses in Alaska to comply with."

- Frank Dillon, Alaska Trucking Association

"As a practical matter, rural electric cooperatives cannot afford \$150 million in liability insurance even if it were available. Requiring \$150 million in insurance for these facilities is ridiculous."

- Dave Hutchens, Alaska Rural Electric Cooperative

# Jeopardy

## Alaskans at risk should MMS regulations move forward

(Continued from page 6)

"Utilizing expansive definitions of navigable waters and overreaching interpretations of fuel containers, the Minerals Management Service has proposed a system which would require kids with lawn mowing jobs to secure \$150 million liability policies from an unwilling insurance industry," said Tom Hawkins of the Bristol Bay Native Corporation.

Hawkins said it appears that the proposal was crafted as a new mission for an agency that has lost its will to accomplish the orderly leasing of minerals in the OCS.

"The impact of the rules if promulgated as proposed will merely create a nation of scofflaws," Hawkins said. "School districts, electrical cooperatives and other bulk fuel tank owners will have to run the risk that there will never be enforcement," Hawkins added. "It seems like an extremely inept way to address a problem which had a clear mandate from the public."

In a news release issued earlier this month, MMS confirmed that state, federal, and municipal facilities, including schools, airports, boat harbors and utilities, as well as privately-owned fuel storage facilities or caches, could be subject to the financial responsibility requirements resulting from the rule-making effort. The agency claims the \$150 million liability requirement is a statutory demand and that it is outside the scope of the regulations to provide relief from the higher liability level.

"The \$150 million liability requirement, combined with the ludicrous definition of navigable waters, sets up a situation that is going to be impossible for most businesses in Alaska to comply with," warned Frank Dillon, Executive Director of the Alaska Trucking Association. "The regulations are so

outrageous they don't warrant any real serious consideration."

There are no trucking companies operating in Alaska that will be able to acquire the mandated coverage, Dillon said. "Literally hundreds of people and businesses in Alaska would be in jeopardy should the regulation move forward," Dillon warned.

The Alaska Rural Electric Cooperative Association (ARECA), a non-profit corporation whose members consist of the numerous electrical cooperatives located throughout Alaska, has also voiced strong opposition to OPA's financial responsibility requirements.

"As a practical matter, rural electric cooperatives cannot afford \$150 million worth of insurance even if it were available," said David Hutchens, Executive Director of ARECA. "I can only hope that the Minerals Management Service uses some common sense in promulgating these regulations," Hutchens said. "Requiring \$150 million in insurance for these facilities is ridiculous. I firmly believe that when OPA '90 was enacted, Congress was thinking of oil platforms when drafting the financial responsibility requirements."

Under OPA, Alaska's rural tank farms are in the "unique position of being both offshore facilities and on-shore facilities," Hutchens noted.

Electric cooperatives in rural Alaska for the most part rely upon diesel generation for power production. In turn, bulk fuel storage facilities are located in the villages to provide a ready supply of fuel for the diesel generators. These facilities in numerous instances are located on or near wetlands, and, in any event, most are supplied by a pipeline terminating on a lake, river or bay. Diesel fuel is delivered to these facilities by barge.

OPA '90 already has significantly

impacted these small electric cooperatives. Regulations promulgated by the Environmental Protection Agency and the U.S. Coast Guard require the cooperatives to prepare a response plan to deal with a worst-case scenario fuel spill. EPA regulations require such a plan if the fuel storage capacity is 42,000 gallons or greater and such facility is filled with fuel by a transfer over water. The Coast Guard regulations require a response plan if the storage capacity is 10,500 gallons. In addition, depending upon the volume of the facility, an Oil Discharge Prevention and Contingency Plan is required by the State Department of Environmental Conservation.

The most onerous of all requirements, however, will be MMS's financial responsibility regulations, Hutchens claims. He hopes MMS will bring reason to the process.

MMS initiated the process of developing the new regulations when it published an "Advance Notice of Proposed Rulemaking" in the Federal Register on August 25. The agency has since met with Alaska industry, native and community leaders to solicit information that will help regulators prepare "workable regulations."

"The law contains provisions aimed at strengthening oil spill prevention, response capability and cleanup efforts, as well as ensuring payment of damages resulting from oil spills should they occur," said MMS director Tom Fry. "Since MMS has the responsibility to implement and enforce this law, I want to make sure that those most affected have an opportunity to help us write rules that are as fair and equitable as possible under this statute."

RDC has requested that the MMS hold public meetings in Barrow, Nome, Fairbanks, Anchorage and Ketchikan on the proposed regulations. Comments should be mailed to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 22070-4817; Attention: Chief, Engineering and Standards Branch. All comments must be received by December 24, 1993.

Call RDC at 276-0700 or the Minerals Management Service at 271-6070 for a packet outlining the rulemaking process.

# OPA '90: Alaskans must respond

By Paul Fuhs 1/3/94  
For the Journal of Commerce

If your business, school or home, boat dock, farm, etc. moves or stores oil, you are required to have a bond of \$150 million!

This strange quirk of federal law is getting a lot of attention as the public comment period on the Oil Pollution Act of 1990 (OPA '90) has just been extended. The Department of the Interior's Minerals Management Service has recently issued an "Advanced Notice of Proposed Rulemaking" through which it will write the law's implementation regulations.

OPA '90 was Congress's effort to meet the goal of ensuring that there would be the finances to clean up major oil spills, anytime and anywhere in U.S. waters. The March, 1989, transportation disaster of the Exxon Valdez was clear in the public mind. The feelings of outrage and impotence fanned the flames of national conscience. The battle cry of "do something!" reverberated through the halls of Congress.

What was a well-intentioned legal framework became the equivalent of a "drive-by shooting."

The intended target of large tanker spills may have been hit. The tragedy is that small business in America became the victim. The 91-page federal law, a reaction to the \$2 billion oil cleanup in Prince William Sound, imposed a \$150 million bond on all "offshore facilities."

The idea of "fair penalties" is ignored in Section 1016(c). It states:

"...each responsible party with respect to an offshore facility shall establish and maintain evidence of responsibility of \$150,000,000..."

The legislation has no flexibility and the punishment is totally out of proportion with the crime. If fully implemented and enforced, this law will require the same bonding at the Valdez oil terminal tank farm and the Unalakleet school heating oil storage tank.

The distortion of the legislative intent of this law lies in the interpretation of three key terms:

"Offshore facilities": This goes beyond offshore drilling and production rigs. There is no "minimum size" or potential risk. Inland pipelines, tanker trucks, neighborhood gas stations and marinas, and even residential storage tanks will all be required to have separate bonds, even on the same site and operated by the same owners.

"Navigable waters" is defined in the bill as "waters of the United States," which includes wetlands. The regulatory net has now gone from singular offshore platforms to anything on land which is "wet," or adjacent to wetlands. In Alaska, that means 70 percent of our real estate will be affected (the other 30 percent is statistically vertical or

glacial!).

"Responsible party" is no longer used in the context of Outer Continental Shelf leasing. OPA '90 defines this term as anyone who is involved in the transport of any quantity of oil products over land which is "wet."

To protect Alaska's small businesses from these inappropriate regulations, this section of the law must be changed. We do not have the fleet of small, independent oil producers, on or offshore, that other states have. However, Alaska does have "facilities" in every community, rural hospital, village school, remote airstrip, tourist lodge, cold storage facility, dock, mining camp, and scientific research station.

"Certificates of financial responsibility," as the bonds are known, are cost-prohibitive, if they are available at all, at any price. Small businesses that include their own power generation capacity are about to become the victims of good intentions gone astray. While aiming at the prevention of another Exxon Valdez, the Congress has used the wrong artillery and will certainly "take out" small business across the nation, not just Alaska.

No one will argue with the goal. However, the Department of the Interior and the Congress must be the responsible for the impacts of their stray bullets. The penalty must be proportional to the risk. This law requires that the end user of the petroleum products absorb the costs or do without. In Alaska, "doing without" can be the difference between life and death. It will have a pervasive economic cost, with a good chance of environmental costs as well.

Alaskans must speak with one voice on this subject. The Minerals Management Service will hold a public hearing in Anchorage in February. You can participate in person, or write, by contacting:

Offshore Operations and Safety Management  
Minerals Management Service  
Mail Stop 4700  
381 Elden Street  
Herndon, VA 22070-1575  
Or, fax 703-787-1675

Send this section of OPA '90 back to Congress to change and refocus on the appropriate goal. The bonding requirements must be tailored to the safety record and the worst-case scenario of a site-specific spill. "Offshore" should not get in the definitional trap of "wetlands."

The governor, the Department of Commerce and Economic Development and other executive branches are working to bring sanity to this discussion.

*Paul Fuhs is Commissioner of the State Department of Commerce and Economic Development.*

(COMM. P. FUHS)

1/3/94 ARTICLE: JOURNAL OF COMMERCE

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. Proposed CS HJR 49

Revision Date: \_\_\_\_\_  
Title: Federal Regulations Under OPA of 1990  
Sponsor: Representative Sanders  
Requestor: House Oil & Gas

Department Affected: Environmental Conservation  
BRU: Spill Prevention and Response  
Component: Industry Preparedness Program

COMPONENT SERIAL NO. 1922

Expenditures/Revenues:	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ \_\_\_\_\_

POSITIONS:	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Robert Poe, Director  
Division: Information and Administrative Services  
Approved by Commissioner: Robert Poe, Dir. 245  
Agency: Department of Environmental Conservation

Phone: 465-5010  
Date: 1/25/94  
Date: 1/25/94

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