

SJR

40

OFFICE OF THE GOVERNOR
OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

SOUTHCENTRAL REGIONAL OFFICE
3601 "C" STREET, SUITE 370
ANCHORAGE, ALASKA 99503-5930
PH: (907) 561-6131/FAX: (907) 561-6134

CENTRAL OFFICE
P.O. BOX 110030
JUNEAU, ALASKA 99811-0300
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501-2343
PH: (907) 278-8594/FAX: (907) 272-0690

January 21, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator:

Enclosed with this letter is the most recent draft of the State's response regarding the financial responsibility requirements proposed by the Minerals Management Service (MMS). This draft is being reviewed by the Department of Law and I expect it will be finalized sometime next week.

As you have noted on lines 10-12 of the second page of SJR 40, the financial responsibility requirements for an offshore facility should reflect the relative risk the facility poses. It may be useful to add another whereas clause to the resolution. This clause could explain that the Oil Pollution Act of 1990 (OPA 90) requires \$150 million proof of financial responsibility for all offshore facilities regardless of the risk to the environment from a potential oil spill. It is interesting to note OPA 90 provides a sliding scale for proof of financial responsibility for vessels. As noted in the draft State response, transportation-related spills account for most of the oil entering marine waters.

I appreciate your interest concerning the financial responsibility rulemaking proposed by MMS. Please contact me if you have any comments on the draft State response.

Sincerely,



Paul C. Rusanowski, Ph.D.
Director

**Consolidated State Comments to the Minerals Management Service
Regarding OPA 90 Proof of Financial Responsibility Requirements**

1/21/94 Draft

U.S. Department of the Interior
Minerals Management Service
Mail Stop 4700
381 Elden Street
Herndon, VA 22070-4817

Attention: Chief, Engineering and Standards Branch

The State of Alaska appreciates the opportunity to comment on the *Advance Notice of Proposed Rulemaking for OPA 90 Oil Spill Financial Responsibility Requirements for Offshore Facilities (Advance Notice)* published in the *Federal Register* on August 25, 1993. The efforts of Minerals Management Service (MMS) personnel who traveled to Alaska to discuss this issue last fall are also appreciated. We look forward to the February 1994 meeting which MMS will hold in Anchorage on this topic.

This response includes the concerns of State agencies as well as local coastal management districts in Alaska. Individual agencies and the coastal districts may also submit their comments on the *Advance Notice* directly to MMS.

The State of Alaska believes the proposed rulemaking far surpasses Congressional intent as expressed by OPA 90. By taking the broadest interpretation of legislative intent, the MMS intends to require any facility which uses oil or oil products in a wetland to provide proof of financial responsibility of \$150 million. Enforcement of the proposed rulemaking would have a profound negative effect on the economy of Alaska and other states. Almost half of Alaska is considered wetlands by virtue of previous administrative rulemaking by the Army Corps of Engineers and other federal agencies. As a consequence of the broad expansion federal regulation of these wetlands, the financial requirements of the proposed rulemaking would force private businesses and local and State government agencies to cease certain essential operations. Adoption of the proposed regulations result in a chain-reaction of fiscal impacts which would upset the entire Alaska economy as well as the national economy.

In addition to economic impacts, the proposed rulemaking would inflict significant social impacts upon the people of Alaska. It would diminish the standard of living currently enjoyed by residents of rural areas, Native villages and urban areas. The availability of oil and refined products would decrease, thereby limiting transportation, electrical generation, and heating opportunities.

While this response focuses on Alaska's concerns, the proposed rulemaking would have serious and far-reaching national ramifications as well. Considering the relative abundance

of real and regulatory-created wetlands in Alaska, the proposed rulemaking would disproportionately affect Alaska's rural and urban communities both social and economically. The effects of implementation of the proposed rulemaking would be devastating in every community, creating havoc in such basic benefits as residential heating, electric power, and all forms of transportation beyond dog sleds.

The remainder of this letter provides specific comments on the proposed regulations. These comments address recommendations for further action by MMS and discuss Alaska's view on Congressional intent in the passage of OPA 90. The comments also address an alternative risk-based approach, discuss the likely inability to obtain coverage, summarize potential economic effects, suggest the use of Alaska's financial responsibility requirements, and address uncertainty about the scope of the proposed regulations.

RECOMMENDED ACTION ON PROPOSED RULEMAKING

The proposed rulemaking would require proof of financial responsibility which would be impossible to obtain in most instances. Unless an entity is large enough to self insure, it would have to use another means to prove financial responsibility. Most small businesses would be treated equally with the largest corporations and could not afford to provide \$150 million proof of financial responsibility. Organizations and companies which provide insurance, reinsurance, and other forms of coverage simply do not have the capacity to cover the number of entities which would be required to have coverage under the proposed rulemaking.

The State of Alaska seriously doubts that it was the intent of Congress to place such a burden on both government agencies and small businesses. Because of the wide-ranging negative ramifications of the proposed rulemaking, the State of Alaska respectfully requests that MMS narrowly construe its authorities in implementing OPA 90 until the issues outlined in this letter are resolved.

We urge MMS to reevaluate its interpretation of OPA 90 definitions as those definitions pertain to both MMS's authority and the scope of operations and facilities to be covered by its rulemaking. The State recommends MMS reconsider its overly broad interpretation of the terms "navigable waters" and "offshore facilities". In addition, since the OPA 90 financial responsibility section (Section 1016) applies only to responsible parties, the definition of "responsible party" should be carefully considered. This definition clearly limits the scope of facilities affected by Section 1016. The State believes Congress intended to require only deepwater ports and facilities located offshore to provide proof of financial responsibility on the scale contemplated by MMS's rulemaking. Absent clear and convincing evidence that Congress intended such a result, MMS should construe its authority narrowly so as to minimize economic dislocation and hardship to the public. If MMS determines that legislative amendments are necessary to clarify its responsibilities, the State recommends the following changes be considered when seeking any legislative solution.

- **Limit Coverage to Offshore Facilities:** The \$150 million proof of financial responsibility requirement should be limited to those offshore oil exploration and production facilities traditionally regulated by MMS.
- **Use State Financial Responsibility Requirements:** The language in Section 1019 of OPA 90 should be changed to allow substitution of State financial responsibility requirements for federal requirements in State waters. The State of Alaska's financial responsibility requirements are some of the most comprehensive in the world.
- **Exempt Small Operations:** The proposed financial responsibility requirements do not discriminate among operations which pose different levels of spill risks. Some provisions should be made for *de minimis* exceptions. A logical threshold should be established to exempt responsible parties who pose minimal risk. In other words, the liability should be commensurate with the risk.
- **Develop a Risk-Based Approach:** The words "up to" should be inserted before "\$150 million" in all appropriate sections of the legislation. This change would allow MMS to assign liability levels for offshore facilities using a risk-based approach which considers the type and amount of crude oil or refined product which is produced, stored or transported by the facility.

In the event OPA 90 is to be amended, the State of Alaska would appreciate the opportunity to comment further on specific language changes.

CONGRESSIONAL INTENT

Breadth of Coverage

It is inconceivable that Congress intended to expand MMS's jurisdiction to the extent proposed by the *Advance Notice*. Regarding OPA 90 proof of financial responsibility provisions, a common-sense interpretation of Congressional intent would better serve the country than the very broad interpretation advanced by MMS.

Like similar legislation in Alaska, OPA 90 was enacted in the aftermath of the *Exxon Valdez* accident. The State believes Congress intended the new financial responsibility requirements to apply to facilities traditionally considered offshore facilities and deepwater ports. Because the OPA 90 definition of "offshore facilities" specifically mentions territorial waters, it appears Congress did not intend to include onshore areas. If Congress had intended to include onshore areas in the definition of offshore facilities, it would not have created a separate definition for "onshore facilities". Instead, Congress would have chosen a term other than "offshore facilities" if it meant to include "onshore facilities" in the definition.

Notwithstanding the issue of Congressional intent in defining "onshore facilities" or "navigable waters", the definition of "responsible party" narrows the type of facilities covered by the financial responsibility requirements. The definition of "responsible party" differentiates between vessels, onshore facilities and offshore facilities. The part of the definition which addresses offshore facilities limits responsible parties to the

lessee and permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) . . . (emphasis added)

This definition appears to exclude motor vehicles, aircraft, and facilities which do not require leases or permits. In addition, the State believes Congress intended "applicable State law" to include only laws which address offshore oil and gas lease sales, exploration and production. A thorough discussion of the limits imposed by the term "responsible party" is not included in the *Advance Notice*.

If Congress had intended to require small businesses, State agencies and local governments to provide proof of financial responsibility, it seems logical that it would have required a sliding scale of financial responsibility commensurate with the risk associated with a potential oil spill. Did Congress knowingly intend to require a small fuel distributor or local governments in rural Alaska to provide proof of financial responsibility for \$150 million when the financial risk of a potential spill would be far less?

We simply cannot believe Congress intended to place such a heavy burden on coastal communities and State agencies. Coastal communities often have multiple fuel storage sites, each of which would potentially trigger the \$150 million proof of financial responsibility requirement proposed in MMS's rulemaking. It is difficult to believe that Congress intended such absurd results. At \$150 million per site, communities, the small businesses within them, and regional school districts would be subject to obligations which they simply could not meet. Moreover, because of their limited risk, these types of facilities should never be categorized the same as offshore production platforms.

Environmental Protection

Assuming one of the basic purposes of OPA 90 is to protect the environment from oil spills, the limitations of financial responsibility requirements to meet this end should be recognized. While a Certificate of Financial Responsibility (COFR) may show that an operation has the capital to respond to an oil spill, it does not prevent an oil spill from occurring. The State of Alaska has placed priority on oil spill prevention. For example, the Alaska Department of Community and Regional Affairs and the Alaska Department of Environmental Conservation are working to assure that rural tank farms will not leak oil. Rather than focussing on financial responsibility requirements, the environment might be better protected if more federal funds were available to assure that oil spills will not occur.

RISK-BASED APPROACH

The \$150 million OPA 90 requirement for proof of financial responsibility does not differentiate between serious and negligible risks. Considering only oil and gas exploration and development activities, specific kinds of oil-related activities pose significantly different risks. For example, vessels transporting oil contribute to almost half the oil discharged into marine waters. Excluding atmospheric, natural, municipal and runoff sources of oil, transportation-related spills account for 97 percent of oil entering marine waters. On the other hand, facilities associated with offshore production cause less than three percent of the oil input into marine waters¹.

A reasonable financial responsibility assessment should base its requirements on risks related to a possible oil spill. It should reflect the location of the facility, the amount of oil or refined product, and the type of product associated with the facility.

INABILITY TO OBTAIN COVERAGE

Two questions should be answered before implementing the proposed financial responsibility requirements. First, will those affected be able to obtain coverage? Second, for those who could conceivably obtain coverage, would it be affordable? The State of Alaska believes that the answer to these questions is no for anyone other than a Fortune 500 company.

Obtaining \$150 million in financial responsibility will be costly to even those companies in the upper Fortune 500 category. Because of their financial strength, such companies would be able to purchase what is known as excess layers of coverage once they have provided approximately \$100 million in self insurance. It is likely that these companies would have to obtain the additional \$50 million of coverage from several different sources. Companies would pass these costs to the public.

Companies outside of the Fortune 500 category would not likely be able to meet the proposed proof of financial responsibility requirements. The availability of coverage is directly linked to the health and solvency of insurers and their capacity to provide coverage. Capacity, in this sense, means the legal and financial ability to provide coverage. Market availability of coverage is also dependent on the willingness of the insurance industry to accept certain risks. Many insurers are disinclined to write this form of pollution liability coverage.

Alaska, like all states, limits the amount of risk an insurer can undertake (AS 21.12.010). This risk limitation is based on the amount of a company's capital and surplus. An insurer who is licensed to sell insurance for risks in Alaska can only issue a policy with less risk

¹The figures were calculated using information from a publication by Dr. Michael Kennish entitled *Ecology of Estuaries: Anthropogenic Effects*.

exposure than ten percent of its capital and surplus. As used here, capital and surplus refers to the amount of money available for the payment of claims and other obligations. In other words, before a company can cover one policy for \$150 million, it must have at least \$1.5 billion in capital and surplus. There are few property and casualty insurers licensed in the United States which have the necessary surplus to legally write the required coverage proposed by the MMS.

When one considers the State-imposed risk limitation along with the willingness of insurers to provide pollution coverage, the options to obtain coverage decrease significantly. The State of Alaska knows of only three insurance conglomerates that are willing to write this form of pollution liability coverage. Two of these groups do not have the required surplus to issue a policy for the full liability limits of \$150 million as required by the proposed rulemaking.

In some circumstances where it is difficult to obtain insurance, states allow unlicensed companies to provide insurance. It is possible companies could obtain pieces of coverage through these unlicensed companies which would combine to provide the required \$150 million proof. These sources are not subject to much of State regulatory oversight, and as such, are not subject to the same financial oversight as licensed companies.

The reinsurance market is another alternative to provide the proposed financial responsibility coverage. Financial difficulties currently experienced by London-based reinsurance enterprises, however, make them unable to absorb additional risks of this magnitude.

Some oil-related companies which operate vessels obtain liability coverage from Protection and Indemnity Clubs (P&I Clubs) for their marine-related risks. These organizations provide coverage through a complex system. Usually, members must cover some of the costs of an oil spill, the group as a whole covers some of the costs, and reinsurance covers the remaining costs. It is unlikely, however, that P&I Clubs would have the ability or desire to cover onshore facilities affected by the proposed rulemaking.

Again, for even those companies which could obtain the proposed level of financial responsibility, there will be additional problems. Costs of providing this proof would likely be passed on to the consumer possibly placing commodities and services out of reach to most Alaskans and small businesses.

It should be noted that other means exist to assure adequate funding for oil spill clean up. For instance, the Oil Liability Trust Fund (26 U.S.C. 9509) is available for oil spill expenses authorized by Section 1012 of OPA 90. As well, many states have similar funds. Alaska's fund is known as the Oil and Hazardous Substance Release Response Fund (AS 46.08.010).

POTENTIAL ECONOMIC EFFECT

The potential economic consequences of the proposed rulemaking are overwhelming. Taken to an extreme, which appears to be the case in the *Advance Notice*, the proposed regulations would have wide-ranging effects. Activities in Alaska's wetlands, which comprise virtually half of the State, would require coverage of \$150 million of financial responsibility. The result would be a decline in general commerce, a decrease in essential government services, increased hardships in rural areas including Native villages, and a swift blow to Alaska's vital oil and gas industry. Each of these topics is discussed in more detail below.

General Effect on Commerce

The proposed rulemaking would likely have a crippling effect on Alaska's economy sending it into a tailspin which could result in a severe depression. Because of its unique abundance and geographic distribution of its populated communities, most of Alaska's commerce occurs in wetlands. While some of these areas may not appear to be wetlands at first glance, they have been defined by regulation to be so. Consequently, the proposed regulations potentially affect distribution of home heating oil, bulk storage of fuel, gas stations, outfitter-guide operations, eco-tourism operators, floatplane companies, and the trucking industry.

If only applied to fuel distributors, the proposed regulations would have a mind-boggling effect. Most rural Alaska communities use diesel fuel to generate electric power. Even assuming it would be possible to obtain a \$150 million proof of financial responsibility for distributions serving those communities, fuel prices would rise to an unreasonable level. Businesses which could afford to provide the required proof of financial responsibility would have to pass the costs to the consumer. Such a requirement would likely force rural fuel distributors and owners of storage facilities to cease operations.

The effect on the fishing industry would also be devastating. Vessels could no longer be legally fueled at refueling docks because the small companies operating these facilities would not be able to meet the financial responsibility requirements. As a result, the Alaska fishing industry would be forced to violate these regulations in order to remain in business.

Tourism, another important industry in Alaska, would decline because tourism-related companies which handle fuel would no longer be in business. It should be noted that most wilderness adventure businesses transport fuel for use in vehicles, boats, lanterns and camp stoves. Bush pilots also transport tourists and hunters along with fuel provisions to remote locations. Tour operators which store fuel for busses could also be forced out of business.

Also, the mining and timber industries would be adversely affected. Resource development companies must use fuel to carry out activities in wetland areas. Few of these companies could obtain proof of financial responsibility for \$150 million.

Effect on Government Operations

Many local and State government agencies would be affected by the proposed rulemaking. The State Department of Transportation stores fuel in locations across the State for highway maintenance operations. Rural village governments store diesel fuel to generate power and provide heat. In addition, field personnel must carry fuel with them during extended trips to field locations. Virtually every one of these operations would be covered by the proposed rulemaking.

Effect on Rural Villages

The proposed rulemaking could close rural schools, compel rural communities to abandon electric power generation facilities, and force rural residents into further poverty. There are no practical alternatives to diesel-powered electrical generation to most Alaska villages due to the limited extent of electrical interties. Besides the economic effect, social implications would be significant. Reduced availability of fuel would substantially curtail subsistence activities.

Consider just the effect the rulemaking would have on the operators of the 325 tank farms located in rural Alaska. The total capacity of all of these tank farms is approximately 1.5 times the amount of oil spilled by *Exxon Valdez*, yet rural Alaska would be burdened with the task of providing nearly \$48 billion of financial responsibility.

As an example of the effects the proposed rulemaking would have on rural Alaska, consider the Native village of Chevak, located in the Yukon-Kuskokwim delta. The population base of approximately 600 people is not enough to support the costs of obtaining proof of financial responsibility for facilities which handle or store oil or oil products. Consequently, the village's eight tank farms would have to close. Individual tank farms are operated by the village school, the local government, the electric utility, a Native corporation, and a private entity. The proposed rulemaking would limit or shut down operations at the school. The electric utility would no longer be able to generate power from diesel fuel. The airport would have to close, thereby limiting residents' contact with the rest of Alaska. Fuel would not be available to power vehicles. Residents would have to scavenge a limited supply of driftwood to fuel wood stoves. Subsistence activities would be curtailed because the villagers would no longer be able to obtain fuel to power outboard motors or snow machines.

The description of the effects of the proposed rulemaking on the residents of Chevak appears to be absurd, however, this scenario is a plausible result of implementing the rulemaking as MMS currently proposes. Effectively, the residents of this and other rural Alaska communities would be forced to accept a much reduced standard of living because of a senseless government standard. Implementing the proposed rulemaking would increase rural poverty, encourage depopulation of villages, and decrease health conditions and life expectancy.

Effect on the Oil Industry

Requiring proof of financial responsibility of \$150 million for responsible parties in the oil industry also will have negative effects, not only on Alaska but on the nation as well. While large oil companies may be able to meet this requirement, the smaller companies can not. The proposed regulations would force smaller companies to abandon operations in Alaska and throughout the lower 48 states. This result is entirely inconsistent with the Administration's stated goals of reducing imports, stimulating domestic production, reducing our balance of trade and general stimulating the domestic economy.

For example, none of the companies providing drilling services on the North Slope are likely to be able to obtain \$150 million of proof of financial responsibility. Similarly, geophysical survey companies which must store and transport fuel would be adversely affected. These companies transport fuel for use in completing remote seismic surveys. Likewise, the proposed rulemaking could lead to the shut down of other oil field support contractors who work on the North Slope and in Alaska's Cook Inlet region. Without the support provided by these small companies, lessees would have to provide these services, the cost of which would affect decisions regarding abandonment and production of marginal oil fields.

The proposed rulemaking would provide yet another disincentive for offshore oil and gas exploration in an area already characterized by high costs and low returns. Alaska is experiencing a decline in offshore exploration activities. Generally, implementation of this rulemaking would simply hasten the exodus of domestic explorationists. A reduction in domestic oil exploration and production would result in a tremendous loss of employment, add a greater burden on government to provide social services to unemployed workers, lead to greater dependence on foreign oil, and compromise national security.

Implementation of the proposed rulemaking would result in a further loss of federal and State oil and gas revenues. A decrease in production would result in decrease royalties. Considering remaining oil production, wellhead prices could rise due to increased costs to producers to provide the necessary proof of financial responsibility.

USE OF ALASKA FINANCIAL RESPONSIBILITY REQUIREMENTS

Section 1019 of OPA 90 provides for state enforcement of financial responsibility requirements in State navigable waters. We encourage the substitution of current State of Alaska financial responsibility requirements for those operations located in or under State navigable waters.

The financial responsibility requirements in Alaska are some of the most comprehensive in the world. They take into account varying levels of risk associated with each category of operator and differentiate between crude and noncrude oil. In addition, 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. Only tankships would be required by State law to

provide \$150 million or greater proof of financial responsibility. Alaska law requires crude oil pipelines and offshore exploration and production facilities to provide proof of financial responsibility of \$50 million.

It may also be appropriate to consider implementation approved methods of providing proof of financial responsibility in Alaska waters as outlined in statute (AS 46.04.040) and in the Alaska Administrative Code (18 AAC 75.205 et. seq.). When developing its approved means of providing proof of financial responsibility, the State of Alaska worked with the oil and insurance industries and other interested parties to assure these provisions were reasonable, practical and effective.

UNCERTAINTY RELATING TO THE PROPOSED RULEMAKING

Uncertainty regarding who is covered by the proposed regulations is exemplified in MMS documents concerning the proposed rulemaking. For example, the undated news release from the Alaska OCS Region which accompanied the August 25, 1993 MMS news release states that the financial responsibility requirements could affect facilities which handle oil or oil products including federal, state, municipal and private facilities. During our meeting with MMS personnel from Washington D.C., we were informed that federal facilities would not be affected by the proposed rulemaking. When addressing who will be affected, both the *Advanced Notice* and comments made by MMS personnel suggest certain groups "may" be affected. It is difficult to provide meaningful comments on proposed regulations when it is uncertain who these regulations are intended to affect.

It appears that MMS is also uncertain regarding Congressional intent. When addressing intent, MMS personnel referenced the OPA 90 Conference Report, but it is unclear what other sources have been investigated to determine Congressional intent. It also appears that limitations imposed by the definition of "responsible party" have not been carefully considered. Because this proposed rulemaking could potentially cripple commerce within Alaska and other states, we urge MMS to adopt a more practical approach and reevaluate its preliminary determination on the jurisdictional requirements of OPA 90.

CONCLUSION

In summary, MMS's interpretation of OPA 90 financial responsibility requirements would profoundly affect Alaska and other states. The proposed rulemaking would be an unwarranted impediment to commerce and government operations. Additionally, implementation of the proposed rulemaking would not provide reasonable protection of the environment. Failure to provide exemptions, exclusions or modifications to the application of the proposed regulations would force many government agencies and private businesses into non-compliance.

Since a large part of Alaska is considered navigable waters (i.e., wetlands), under the proposed regulations small businesses and local governments would be required to provide \$150 million proof of financial responsibility. Most facility operators, however, would not be able to obtain this level of financial responsibility. Noncompliance would subject them to astronomical fines and possible civil and criminal charges. Since most of these entities could not afford to pay the fines, the proposed financial responsibility requirements would force facility owners and government agencies to cease many vital services.

The State of Alaska respectfully requests MMS to restrict its rulemaking for the proof of financial responsibility portion of OPA 90 to those operations and activities traditionally within MMS's jurisdiction. We appreciate the opportunity afforded by MMS to comment and we look forward to the upcoming workshop in Anchorage.

Sincerely,

Paul C. Rusanowski
Director

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce:

I endorse the resolution you recently introduced to the Legislature opposing federal proof of financial responsibility requirements. Senate Joint Resolution 40 responds to a poorly written federal mandate which has been interpreted in such a way as to be devastating to Alaska and its people.

The Oil Pollution Act of 1990 requires parties responsible for offshore facilities to prove coverage of \$150,000,000 to respond to a potential oil spill. While Congress may have intended this provision to apply only to offshore oil and gas facilities, the ambiguous language of the act has been interpreted by the Minerals Management Service to apply to almost all facilities in Alaska. Rulemaking by this federal agency could apply to all facilities handling any quantity of oil both offshore or onshore, including wetlands.

As you know, much of Alaska is considered wetlands. The coverage required by Congress could not be obtained by anyone other than the largest companies. Implementation of the proposed Minerals Management Service regulations would have a profound negative affect on growth and development in Alaska. The regulations would force individuals, private businesses, and government agencies to choose between noncompliance or going out of business.

Again, I applaud your efforts to stop this senseless and unnecessary regulation by the federal government. You have my full support.

With best regards.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

REVISED
TESTIMONY BEFORE THE SUBCOMMITTEE ON
COAST GUARD NAVIGATION AND
SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND
THE OUTER CONTINENTAL SHELF,
COMMITTEE ON MERCHANT MARINE AND FISHERIES

BY

TIMOTHY M. HEBERT
DEPUTY OIL SPILL COORDINATOR
OFFICE OF THE GOVERNOR
STATE OF LOUISIANA
P. O. BOX 94095
BATON ROUGE, LA 70804
PH (504) 922-3230

OCTOBER 26, 1993

Good afternoon Mr. Chairman and distinguished subcommittee members. The State of Louisiana appreciates the opportunity to present to you our recommendations and concerns regarding Certificates of Financial Responsibility (COFRs) for all facilities handling oil and oil products operating on the Outer Continental Shelf, as provided for in the Oil Pollution Act of 1990 (OPA '90).

INTRODUCTION

A lot of people associate offshore production with oil spills -- they specifically cite the 1989 spill in Prince William Sound, near Valdez, Alaska. However, the important point to remember about the Valdez incident is that it was caused by oil spilled from a tanker -- it was not caused by offshore production or production on or near a waterbody.

And while virtually all imported oil must be brought into this country by tanker, 95% of offshore oil, and most oil and gas produced on or near a waterbody, is brought ashore by pipeline.

Tankers and imported oil are where the environmental concerns should primarily lie. Tankers are responsible for about 45% of the oil discharged into the world's oceans, while world wide drilling operations are the source of only 1.5% of oil discharges. The contribution to global marine oil pollution from U.S. offshore production is less than one-tenth of one percent.

In the Gulf of Mexico, particularly in Louisiana state waters, the spill record from production facilities is equally superior. The risk of a spill caused by offshore production is continually being reduced by the invention of innovative spill prevention devices and the onslaught of spill prevention regulations promulgated in recent years. Just recently, a major oil company operating in Louisiana waters advised the MMS that its worst case discharge from an offshore production facility was 23,000 barrels of oil. Compared to the Jahre Viking, a tanker capable of carrying 4.5 million barrels of oil and which calls in the Gulf of Mexico, both the threat of a production related spill and the potential damages associated therewith are relatively minimal.

MMS' Preliminary Interpretation of the Extent of the Geographic Jurisdiction to which the ANPRM applies is exceedingly broad and is inconsistent with the legislative intent of OPA '90.

OPA '90 Section 1016(c) provides, in pertinent part, as follows: "... each responsible party with respect to an offshore facility shall establish and maintain evidence responsibility of \$150,000,000 ..."

The proposed regulations would be surprisingly broad in that they would apply to far more facilities than what is commonly considered "offshore" or OCS facilities. MMS has initially interpreted OPA '90 as requiring proof of financial responsibility for all offshore facilities in, on, or under U.S. navigable waters. As the Federal Register notice states, OPA '90:

defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the states of the U.S., the District of Columbia, the Commonwealth of Puerto Rico Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas and any other territory or possession of the U.S.

This broad definition of "offshore facility" would seem to make every marina and fuel dock in the country, every pipeline that crosses inland navigable waters, and facilities and pipelines located in wetlands subject to these financial requirements. As an example of this broad-reaching scope of "offshore facilities" the notice offers that:

"a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the \$150 million financial responsibility provisions of these rules as would the operator of an oil well in the Great Lakes."

Clearly, there is absolutely no manifestation of legislative intent whatsoever in OPA '90 that Congress intended to burden these type of "inland/onshore" operations with \$150 million of financial responsibility. In fact, the consistent understanding of all congressional committees engaged in OPA's development was that requirements applicable to offshore facilities were limited to the context of oil production operations on the Outer Continental Shelf. Anyone involved in OPA's development understood that it represented a consolidation of four separate federal oil spill titles -- The Clean Water Act, The Trans-Alaska Pipeline Authorization Act, The Deepwater Port Act, and, relevant here, The Outer Continental Shelf Land Act (OCSLA), which is the historic genesis for the liability and insurance requirements for offshore facilities in OPA. Thus, in enacting OPA, Congress repealed title III of OCSLA, and replaced those requirements for liability and insurance for "offshore facilities" with those in OPA for "offshore

facilities". There is no evidence of any congressional intent to extend these historic OCSLA requirements to onshore facilities.

Without delving into a detailed, intricate legal analysis, the State of Louisiana respectfully asserts that MMS' expansive, initial legal interpretation of OPA Section 1016(c) is erroneous. First, this interpretation places an inordinate emphasis on the generic statutory definitions for "offshore facility", "facility" and "navigable waters" while ignoring the specific and controlling definition of a "responsible party for an offshore facility" (OPA Section 1001(32)(C)) which is obviously narrowed to the context of facilities engaged in OCS oil leasing activity, referring as it does, to only three potential types of entities: "lessee", "permittee", or "the holder of a right of use and easement granted under applicable state law or the Outer Continent Lands Act." Additionally, MMS' interpretation incorrectly ignores OPA's distinction between an "onshore facility" and an "offshore facility." However, OPA's legislative history contains the following clarifying statement concerning "onshore facilities":

"To the extent that docks, piping, wharves, piers, and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land based terminal are deemed to the part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference Substitute, (emphasis added). H. Conf. Rep. No. 653, 101st Cong., 2nd Sess., 102 (1990)."

Thus, MMS incorrectly includes "onshore facilities" such as pipelines crossing inland rivers, storage tanks, marinas, and the like within the purview of "offshore facilities." Moreover, the Report of the Senate Committee on the Environment and Public Works, at page 16, states, in pertinent part, as follows: "There is no requirement for showing evidence of financial responsibility for onshore facilities."¹

While the foregoing analysis is not intended to be definitive nor exhaustive, it is at least an indication that something is awry in the initial interpretation given to OPA Section 1016(c) by the MMS. At a minimum, the State of Louisiana respectfully urges the MMS to confine the application of its financial responsibility requirements to those "offshore facilities" which are engaged in the exploration and production of oil on the Outer Continental Shelf (OCS), at the previous \$35 million financial responsibility level.

Finally, needlessly expanding Section 1016(c) to include all facilities, whether onshore or offshore, does absolutely nothing to enhance environmental protection or help prevent an oil spill from occurring.

¹S. Rep. No. 94, 101st Cong., 1st Sess. 16 (July 28, 1989).

The need for increasing the amount of COFRs for offshore facilities as well as the necessity of COFRs for offshore facilities needs to be re-analyzed. Factors which need to be taken into account include: spill risk, micro-economics of oil production and the existence of various industry oil spill contingency funds.

The establishment of a virtually limitless source of non-federal response funds, the Oil Spill Liability Trust Fund, completely addresses the concerns raised in this section concerning facilities. The Natural Gas and Oil industry is paying for this fund from dedicated fees and the federal fund has approximately a billion dollars in cash on hand.

The top 15 facility spills in history combined (even in '92 dollars) total only a mere fraction of response costs and damages in the Valdez spill. As you can see, the federal trust fund more than meets the needs for facility related incidents and will be replenished whenever needed. Most of these top 15 facility spills also occurred before the current operating equipment and procedures were in place. Further, operations today pose a declining risk of accidents.

Assuming that MMS' interpretation of OPA Section 1016(c) is upheld and a Final Rule is promulgated, the U.S., the State of Louisiana and its oil and gas industry will be financially and economically devastated.

Louisiana is the second most important energy producing state in this country. We have been in the natural gas and oil business for over one hundred years. In 1981, the State of Louisiana's oil and gas royalty and severance tax revenues amounted to \$1.1 billion dollars. By 1992, that figure had declined to \$640 million. Since the "oil bust" in the mid 1980's, Louisiana has lost over 70,000 of its 130,000 oil and gas related jobs. By comparison, employment in the domestic oil and gas industry has fallen by half, with over 450,000 jobs lost. In 1993, the Louisiana oil and gas industry only employs 60,000 residents. Accordingly, the \$150 million financial responsibility must be reduced to a level of assurance that is commensurate with the level of risk associated with the activity.

According to Dr. Robert Baumann at the LSU Center for Energy Studies, the economic impact from the proposed rule would literally shut down the oil and gas industry in Louisiana. There are approximately 2,000 oil and gas operators presently in our state. Assume that an operator is realizing a net operating profit of \$3 per barrel and that the preliminary cost estimates for surety bonds (which we doubt can be obtained) to satisfy COFR requirements under Section 1016(c) are as follows:

	<u>Large Major</u>	<u>Mid-size Major Large Independent</u>	<u>Small Independent</u>
Base Cost (A) (per \$1000 of coverage per year)	\$5	\$10	\$20-100

Based upon current production rates in Louisiana and the state of the oil and gas industry in Louisiana, if Louisiana operators could obtain a \$5 base cost per \$1000 of coverage per year for a surety bond to satisfy the \$150 million COFR, only 122 operators would be able to afford the coverage.² If the available price for that same coverage is \$10, then only seventy operators could afford that coverage. Finally, if the available price for that coverage is \$20 only thirty-seven operators in Louisiana could afford that coverage! Simply put, the COFR requirements as contemplated by MMS would devastate Louisiana's economy and state government! In particular, Louisiana's twelve coastal parishes which harbor 6700 wells and produce 1.1 billion cubic feet of natural gas and 140 million barrels of oil per year could cease to exist as financially viable political subdivisions and cultural centers. In addition, the Caddo-Pine Island field, a field in north Louisiana which has been in production since 1910, would completely shut down. Since no major oil companies operate in that field, every well in that field would cease operations.

²These estimates are based on an assumed profit margin and rate of production per operator.

This one, small section of this Act could totally destroy our state and industry as we know it. Extremely significant resources will be abandoned in the ground, much of it permanently lost, if this rule is promulgated. Thousands of jobs will be lost in the industry and untold more with its collapse. And again, all this for a provision that is unrealistic and unimplementable.

The United States, by direct past action in law and regulations, has placed its critically important domestic production needs largely in the hands of independent producers. Our entire economy is based on dependable access to domestic production. This unneeded overkill of financial guarantees will destroy the very segment of the industry we have turned to and in doing so, threatens our national security.

Also, this issue is equally destructive to manufacturers, public and private utility companies, all transportation industries, and just about every parish and county in every State in the country. No local governments are exempt. Every train line, trucking company, port authority, and most bridges would be shut down.

The cessation of production is tantamount to a loss in royalties and taxes. Thus, the State of Louisiana will suffer substantial damages from this federal takings in lost royalties and taxes. Is it the intention of the federal government to remedy this? That will be a tall order considering all states and territories will be as severely impacted.

It is no exaggeration to state that the full promulgation of this proposed rule will send this country, and send Louisiana, too, into a depression that will make the thirties look like a mild recession. This Section is so needlessly far reaching that it is impossible to see how it can be regulated and enforced. It is quite apparent that Section 1016(c) does not take into account the fact that all facilities are not identical, either in size, location or capacity to prevent or contain oil spills and minimize the amount of oil that may reach the environment.

The availability of legitimate options for demonstrating financial responsibility is severely restricted.

After an informal survey of numerous oil and gas operators in Louisiana, the reality is that no commercial entity, has come forth to date willing to accept the potential application of direct action under financial responsibility regulations. For example, surety companies strongly object and will not submit to any direct action requirements in these MMS regulations. The banking community vis a vis letters of credit share this concern. A medium sized major company recently received a priced quotation of a \$5.4 million per year for a \$150 million insurance policy with a \$20 million deductible. Additionally, it is estimated that only one third of the 300 largest U.S. publicly traded oil and gas producing companies have adequate financial resources to self-insure. It is quite obvious that the potential ways for demonstrating financial responsibility under Section 1016(c) are not yet commercial realities to the very people required by law to obtain them. This,

too, is a frightening thought. It is incumbent upon MMS to utilize whatever administrative flexibility it possesses to seek commercially viable solutions which redress the difficulty, and in some instances - impossibility, of obtaining COFR's under the present regulatory scheme. If such flexibility will not take place or cannot take place, for whatever reason, then the regulatory scheme itself must be changed.

CONCLUSION

The State of Louisiana is also concerned that most other states are unaware that they are all negatively impacted by this provision. The fact that MMS is handling this issue and that hearings are only scheduled in Louisiana, Texas, California and possibly in Alaska and Pennsylvania in 1994, has led most states to believe this is strictly an offshore or oil and gas issue, which it definitely is not.

We respectfully urge these subcommittees to fully inform the appropriate federal agencies of the potential negative impacts of this ANPRM and solicit their comments as well.

Now is not the time to point fingers or attempt to lay blame as to why we are in this dilemma. Nor is it the time for parties to begin strategizing how to take back his or her pound of flesh lost somewhere in the OPA '90 process, if and when, OPA '90 is

revisited to resolve the problems encountered with the implementation of Section 1016(c). On the contrary, now is the time for all concerned to come together for the common good of ensuring our nation's economic stability and protecting the environment through cooperative dialogue with sound judgment and realistic facts dominating the process. This was made clear in the OPA conference report on Section 1016 which urged regulators to issue policy defenses necessary. "...to foster a continued market for providers of financial responsibility". This evidences Congress' intent that the financial responsibility regulations be consistent with commercial realities.

The State of Louisiana welcomes this opportunity to provide testimony before these subcommittees. We are eager to work with the MMS and the subcommittees' staff to develop specific administrative and legislative solutions to the problems outlined above and those which we may encounter in the future. I will be pleased to answer any questions.

OPENING STATEMENT
BY
THE HONORABLE BILLY TAUZIN
CHAIRMAN
COAST GUARD AND NAVIGATION SUBCOMMITTEE
OCTOBER 25, 1993

GOOD AFTERNOON LADIES AND GENTLEMEN. TODAY, THE COAST GUARD AND NAVIGATION SUBCOMMITTEE AND THE OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF SUBCOMMITTEE ARE HERE TO CONDUCT AN OVERSIGHT HEARING ON THE OIL POLLUTION ACT REQUIREMENTS FOR CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES. I WANT TO TAKE THIS TIME TO THANK CONGRESSMAN ORTIZ, CHAIRMAN OF THE OCEANOGRAPHY SUBCOMMITTEE FOR HIS PARTICIPATION AND ASSISTANCE IN THIS HEARING. I WOULD ALSO LIKE TO THANK THE STAFF WHO HAVE HELPED IN PREPARING FOR THIS HEARING.

ON AUGUST 25, 1993, THE MINERALS MANAGEMENT SERVICE PUBLISHED AN ADVANCED NOTICE OF PROPOSED RULEMAKING ANNOUNCING THE PROCESS OF DEVELOPING NEW REGULATIONS TO IMPLEMENT THE OIL SPILL FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OFFSHORE FACILITIES. CURRENTLY, MMS IS RECEIVING COMMENTS ON THIS ISSUE UNTIL DECEMBER 24, 1993.

IT IS APPARENT FROM THE CONCERNS I HAVE ALREADY HEARD THAT THIS RULEMAKING IS FAR-REACHING AND WILL HAVE DRASTIC IMPACTS ON BUSINESSES, INSURERS, AND COMMUNITIES THROUGHOUT THE UNITED STATES. THE ACT REQUIRES THAT CERTIFICATES OF \$150 MILLION WORTH OF COVERAGE ARE NEEDED FOR OFFSHORE FACILITIES IN ORDER TO COMPLY. BECAUSE OF THE DEFINITIONS OF OFFSHORE FACILITIES AND NAVIGABLE WATERS, MMS HAS HAD TO DEVELOP A VERY BROAD RULEMAKING.

YOU WILL HEAR TODAY, THAT THESE RULES WILL BE APPLICABLE TO MARINAS, OIL STORAGE FACILITIES, TRUCKS CARRYING OIL PRODUCTS, AND INLAND PIPELINES. THE UNDERLYING REASON WHY THESE RULES ARE BEING PROPOSED FOR SUCH BROAD APPLICATION IS THE DEFINITION OF THE TERM "NAVIGABLE WATERS" AS USED IN THE CLEAN WATER ACT. I WANT TO REMIND MEMBERS THAT THIS DEFINITION HAS CAUSED THE CURRENT CONTROVERSY OVER EXTENDING THE DEFINITION OF WETLANDS TO AREAS THAT WE OFTEN THINK OF AS DRY. THE OIL POLLUTION ACT ADOPTS THE IDENTICAL DEFINITION OF "NAVIGABLE" WATERS AS THE FEDERAL WATER POLLUTION CONTROL ACT. THE CONGRESS REDEFINED THE TERM "NAVIGABLE" WATERS TO MEAN "WATERS OF THE UNITED STATES". THIS TERM INCLUDES WETLANDS. ONE WOULD THINK THAT "NAVIGABLE" MEANS THE ABILITY TO NAVIGATE A VESSEL OF SOME SORT ON THE WATERS, OR AT A MINIMUM THE ABILITY TO WADE IN THE WATERS. HOWEVER, "NAVIGABLE" MEANS MERELY DAMP LAND. THIS HAS BEEN THE ROOT CAUSE OF THE WETLANDS CONTROVERSY AND TODAY'S HEARING WILL DEMONSTRATE THAT THE FAILURE TO ADOPT A CLEAR AND BROADLY UNDERSTOOD AND ACCEPTED DEFINITION OF "NAVIGABLE WATERS" CAN RESULT IN SEVERE UNINTENDED CONSEQUENCES.

OUR FOCUS TODAY WILL BE ON GATHERING INFORMATION ON THE POTENTIAL IMPACT THIS RULEMAKING WILL HAVE; THE FLEXIBILITY, IF ANY, MMS MAY HAVE IN DEVELOPING THESE REGULATIONS THAT WOULD BE ACCEPTABLE; AND THE POSSIBLE SOLUTIONS.

THE COAST GUARD HAS BEEN STRUGGLING FOR TWO YEARS TO PROPOSE RULES REQUIRING CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR VESSELS CARRYING OIL INTO U.S. WATERS. THE COAST GUARD SUBCOMMITTEE HELD A HEARING ON THAT ISSUE IN NOVEMBER OF 1991 AND WE ARE STILL AT AN IMPASSE. THE INSURANCE COMPANIES ARE SAYING THEY WILL NOT PROVIDE INSURANCE TO VESSELS BECAUSE OF THE RISKS INVOLVED AND I SEE THE SAME THING HAPPENING FOR OFFSHORE FACILITIES.

BEFORE WE HEAR FROM OUR WITNESSES, I WOULD LIKE TO RECOGNIZE OTHER MEMBERS FOR THEIR OPENING STATEMENTS. FIRST, I WOULD LIKE TO RECOGNIZE THE DISTINGUISHED RANKING MINORITY MEMBER OF THE COAST GUARD AND NAVIGATION SUBCOMMITTEE CONGRESSMAN HOWARD COBLE.



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Resource Review

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

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 schools 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.

(Continued to page 6)

"The impact of the rules if promulgated as proposed will merely create a nation of scofflaws."

- Tom Hawkins, Bristol Bay Native Corporation

"The law makes no exception for quantity. 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."

- 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 onshore 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.

Alaska State Legislature

During Interim:
3111 C Street, Suite 150
Anchorage, AK 99503 3925
(907) 561-2038
Fax (907) 561-4194



During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce
District F

SPONSOR STATEMENT FOR SJR 40
Senate Resources Committee
24 January 1994

Urge Congress to Amend Oil Pollution Law

SJR 40 sends a message to Congress to act immediately in amending the Oil Pollution Act of 1990 so that the financial responsibility section would reflect the relative risks of oil operators.

As it stands now in statute the Mineral Management Service (MMS) intends to require any facility which uses oil or oil products in a wetland to provide proof of financial responsibility of \$150 million. The current interpretation allows only the biggest companies to demonstrate this liquidity and, in essence, self insure.

Thus, the Alaska State Legislature should request that congress act now before the financial responsibility section of OPA 90 has negative effects on Alaskan businesses, and citizens thereby becoming detrimental to the economy of Alaska and other states.

8-LS1532E
Lauterbach
1/24/94

CS FOR SENATE JOINT RESOLUTION NO. 40(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS PEARCE, Leman

A RESOLUTION

1 Urging the Congress to amend the Oil Pollution Act of 1990 with respect to the
2 financial responsibility requirements for offshore exploration and production
3 facilities.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 WHEREAS the Congress enacted the Oil Pollution Act of 1990 in order to prevent
6 shipping accidents and to ensure that there would be adequate money immediately available
7 to respond to oil pollution discharges, especially those discharges occurring in the ocean; and

8 WHEREAS the Act increased from \$36,000,000 to \$150,000,000 the amount of
9 financial responsibility that must be demonstrated by offshore exploration and production
10 facilities; and

11 WHEREAS the definition of "offshore" in the Act covers facilities in, on, or under
12 navigable waters of the United States; and

13 WHEREAS the Alaska State Legislature is concerned that this definition may be
14 interpreted to apply to all marinas, port authorities, utility companies, gas stations, trucking
15 companies, railroads, pipelines, farms, and airports in almost every area of Alaska; and

16 WHEREAS the potential effect on the Alaska economy could be severe because it is

1 unlikely that any but the largest companies will be able to demonstrate the \$150,000,000 of
2 financial responsibility required under the Act; and

3 **WHEREAS** the broad coverage of the Act is well beyond the historical purview of
4 the Minerals Management Service, United States Department of the Interior, which enforces
5 the Act; and

6 **WHEREAS** the Act provides a sliding scale for proof of financial responsibility for
7 vessels but requires \$150,000,000 of proof of financial responsibility for all offshore facilities,
8 regardless of risk to the environment from a potential spill; and

9 **WHEREAS** the Alaska State Legislature agrees with the requirements of the Act to
10 the extent that they relate to large companies conducting offshore activities on the outer
11 continental shelf, but does not agree that the same financial responsibility requirements should
12 apply to small companies that are only indirectly related to offshore activities;

13 **BE IT RESOLVED** that the Alaska State Legislature urges the Congress to amend
14 the Oil Pollution Act of 1990 so that the financial responsibility requirements of persons
15 involved in oil operations more closely reflect the relative risks of those operations; and be
16 it

17 **FURTHER RESOLVED** that, in particular, facilities on the outer continental shelf
18 should be the only facilities subject to the kind of high financial responsibility requirements
19 now contained in a

20 **COPIES** of this resolution shall be sent to the Honorable Al Gore, Vice-President of
21 the United States and President of the U.S. Senate; the Honorable Robert C. Byrd, President
22 Pro Tempore of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S. House
23 of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski,
24 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
25 delegation in Congress.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSJR 40 (Res)

Revision Date: 1/28/94 Dept. Affected: None
 Title: Urge Congress to Amend Oil Pollution Law BRU: n/a
 Component: n/a
 Sponsor: Senate Resources Committee
 Requestor: Senate Resources Committee COMPONENT SERIAL NO. ---

(Thousands of Dollars)

Expenditures/Revenues	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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-

(Thousands of Dollars)

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 Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senator Mike Miller, Chairman Phone: 465-4907
 Division: Senate Resources Committee Date: 1/28/94
 Approved by: Michael W. Hall, Chair Date: 28 Jan 94
 Agency: Senate Resources Committee

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