HB

197

HOUSE COMMITTEE REPC T

(9)
Date Referred to Committee: March 16, 2005 **FURTHER REFERRALS:**

Date of Committee Action: 3/23/05

The RESOURCES Committee considered: **HB 197**

HOUSE BILL NO. 197 **OIL SPILL EXEMPTIONS FOR GAS WELLS**

"An Act exempting certain natural gas exploration and production facilities from oil discharge prevention and contingency plans and proof of financial responsibility, and amending the powers and duties of the Alaska Oil and Gas Conservation Commission with respect to those plans; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB 197 (RES)
*For Senate Bills with new title: [ ] Technical Title / [ ] New Title: HCR*_____ [~~✓~~] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DEC				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	OLSON			✓	
Mary Kapsner	KAPSNER			✓	
	Gatto			~~✓~~	X
	ELKINS	✓			
Paul K Seaton	SEATON	✓			
	LeDoux			✓	
Chair:	SAMUELS				X
Chair:					

Alaska State Legislature

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Rep. Jim Elkins
Rep. Carl Gatto
Rep. Mary Kapsner
Rep. Gabrielle LeDoux
Rep. Kurt Olson
Rep. Paul Seaton

State Capitol, Room 124
Juneau, AK 99801-1182
Co-Chairs
Rep. Ralph Samuels
(907) 465-2095 fax: 465-3810
Rep. Jay Ramras
(907) 465-3004 fax: 465-2070

House Resources Committee
FAX

Please deliver the following pages to: Legis. Legal

Fm: Staff, Resources Committee

Fax #: 2029 **Total number of pages including cover:**

Date: 3/23/05 2:29 PM

Re: HB 197 24-LS0664\G

Please amend the above referenced resolution and return in final as the RES CS.

Page 3, lines 13-14

Delete "or refined petroleum products"

Page 4, Line 7-8

Delete "or refined petroleum products"

Page 4, Line 1

Insert "to" to read ...oil **to** the ground surface.

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 373-1842
Fax (907) 373-4729

Session:
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2186
Fax (907) 465-3818

REPRESENTATIVE VIC KOHRING
DISTRICT 14

House Bill 197
Sponsor statement

House Bill 197 clarifies the Department of Environmental Conservation's (DEC) authority to exempt gas exploration wells and production facilities from *oil discharge prevention and contingency plans* ("C-Plans"). The legislation also removes the industry's burden of financial responsibility required of wells that do not pose an oil spill threat.

HB 197 fixes the unintended consequences of last year's HB 531. That legislation, in part, limited previous exemptions for gas exploration and production facilities for all shallow natural gas facilities to a narrow exemption for "non conventional gas wells." The problem HB 197 seeks to correct relates to the new definition of "non conventional gas," which HB 531 defined as "coal bed methane, gas contained in shales or gas hydrates."

Benefits of HB 197 include permitting DEC to focus its resources on the review of C-Plans and proof of financial responsibility for those gas exploration facilities that could potentially incur an oil spill. It also gives DEC authority to conduct inspections the Legislature directed when it changed the *contingency plan review renewal requirement* from three to five years. In addition, the bill relieves industry from unnecessary financial costs associated with preparing and implementing oil spill contingency plans for gas exploration facilities where no threat of an oil release spill exists. Lastly, HB 197 relieves industry from the costs involving demonstrating proof of financial responsibility in response to oil spills at gas exploration facilities, where no threat of spills exist.

E-Mail: Representative_Vic_Kohring@legis.state.ak.us • *Toll Free During Session/Year Round* (800) 468-3180
Website: www.akrepublicans.org/kohring/

HB 197 - Sectional Analysis

HB 197 clarifies DEC's authority to exempt natural gas exploration wells that do not pose a threat of an oil spill from the contingency plan and proof of financial responsibility requirements. HB 197 corrects an unintended consequence of HB 531, adopted in May 2004, that narrowed of one of the exemptions for natural gas exploration and production facilities from a broad exemption for all shallow natural gas facilities to a narrow exemption for nonconventional gas wells. The 2004 legislation defined "nonconventional gas" as only "coal bed methane, gas contained in shales or gas hydrates."

HB 197 repeals the "nonconventional gas" provisions in AS 46.04.030(b) and AS 46.04.040(b)(3)(A) and replaces them with a broader exemption in AS 46.04.050(c). The new exemption would be for all natural gas exploration wells that the Alaska Oil and Gas Conservation Commission (AOGCC) determines that "evidence demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

Section 1. Creates a new authorization in AS 31.05.030(l) for the AOGCC to evaluate the likelihood that a well at a natural gas exploration facility may penetrate a formation capable of flowing oil to the ground surface. If the commission determines that evidence demonstrates with reasonable certainty that a well at a natural gas exploration facility will not penetrate a formation capable of flowing oil to the ground surface, it shall report its determination to DEC. Section 6 repeals the 2004 language authorizing AOGCC to make exception determinations for nonconventional gas wells since that authority is replaced by the new authority in section 1 (AS 31.05.030(l)).

Section 2. Repeals the existing c-plan exemption for nonconventional gas wells and replaces it with a broader exemption in section 5 by creating a new subsection (c) in AS 46.04.050 (exemptions).

Section 3. Repeals the $25,000 financial responsibility requirement for nonconventional gas onshore exploration facilities. Natural gas facilities would only be required to have financial responsibility under AS 46.04.040 if the wells could penetrate a formation capable of flowing oil to the surface. At which point, they would be required to have $1 million in financial responsibility as an onshore oil exploration facility.

Section 4. Clarifies the existing exemption for "natural gas production facilities" and "natural gas terminal facilities." Makes clear that the exemption is not lost unless the facility produces, stores or transports natural gas in combination with crude oil or the facility would qualify as

an oil terminal facility with storage capacity above 5,000 barrels of crude oil or 10,000 barrels of noncrude oil.

Section 5. A new subsection to the c-plan and financial responsibility exemptions would exempt a natural gas exploration facility if the AOGCC determines under AS 31.05.030(l) that evidence obtained through evaluation demonstrates with reasonable certainty that all of the exploration wells at the facility will not penetrate a formation capable of flowing oil to the ground surface. If the AOGCC cannot make that determination for all of the wells at the exploration facility, the facility would not be exempted. Similarly, if the drilling of a well does penetrate such a formation a c-plan and financial responsibility would be required.

A new subsection (c) is added to define the term "natural gas exploration facility" with similar exceptions to the exemption if the facility explores, produces, stores or transports natural gas in combination with crude oil or if it qualifies as a regulated oil terminal facility.

Section 6. Repeals the AOGCC nonconventional gas finding provision that is replaced by new AS 31.05.030(l) and removes the definition of nonconventional gas from AS 46.04.900 since it is no longer used in Chapter 4 of Title 46.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 197
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Environmental Conservation

Title: Related to oil discharge prevention and contingency plans for certain natural gas exploration facilities
RDU: Spill Prevention and Response
Component: Industry Preparedness and Pipeline Operations
Component No. 1922

Sponsor: House Oil & Gas Committee
Requester: House Oil & Gas Committee

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type–Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

This bill will not have a financial impact on the department. It clarifies DEC's authority to exempt natural gas exploration wells (that do not pose a threat of an oil spill) from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB531 passed in May, 2004, which, in part, narrowed the scope of that exemption from the pre-existing broad exemption for all shallow natural gas facilities, to a narrower exemption for "nonconventional gas" wells, defined as strictly "coal bed" methane, gas contained in shales or gas hydrates". This bill repeals the "nonconventional gas" definition in applicable DEC contingency plan statutes AS 46.04.030(b) and 040(b)(3)(A) and replaces it with broader exemption language restated in AS 46.04.050(c) "for those natural gas exploration wells the AOGCC determines will not penetrate a formation capable of flowing oil to the ground surface."

Prepared by: Larry Dietrick, Director — Phone 465-5250
Division: Spill Prevention and Response — Date/Time 3/14/05 3:41 PM
Approved by: Kurt Fredriksson, Acting Commissioner — Date
Agency: Department of Environmental Conservation

(Revised 9/23/2004 OMB)

FISCAL

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 3, 2005 **FURTHER REFERRALS: Resources**

Date of Committee Action: March 15, 2005

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS considered: **HB 197**

HOUSE BILL NO. 197 **OIL SPILL EXEMPTIONS FOR GAS WELLS**

"An Act exempting certain natural gas exploration and production facilities from oil discharge prevention and contingency plans and proof of financial responsibility, and amending the powers and duties of the Alaska Oil and Gas Conservation Commission with respect to those plans; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
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REV
DOT
UA

***NEW* FISCAL NOTES** *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DEC		6		✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	SAMUELS	X			
Berta Gardner	Gardner	X			
				✓	
		X			
	Rokeberg	X			
Chair: Kohring	Kohring	X			
Chair:					

O&G COMM. REPORT

OVERVIEW DOCUMENT
Natural Gas Facility Exemption from DEC Contingency Plan Requirements

This bill clarifies DEC's authority to exempt natural gas exploration wells – that do not pose a threat of an oil spill – from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB 531, which passed the Legislature in May, 2004. That bill, in part, narrowed the scope of an exemption (for natural gas exploration and production facilities) from the preexisting broad exemption for all shallow natural gas facilities, to a narrow exemption for 'nonconventional gas' wells. The problem stems from the HB 531 definition of 'nonconventional gas' as strictly, "coal bed methane, gas contained in shales or gas hydrates."

Benefits of the Legislation.

- Allows DEC to focus its resources on the review of c-plans and proof of financial responsibility for those natural gas exploration facilities that could potentially threaten the environment with oil spills; and

- Ensures that DEC can conduct the additional inspections and drills that the Legislature envisioned would be performed when it changed the contingency plan review renewal requirement from three to five years;

- Relieves industry from the unnecessary financial costs and schedule impacts of preparing and implementing oil spill contingency plans for natural gas exploration facilities where there is not a threat of an oil release from the well; and

- Relieves industry from the unnecessary cost of demonstrating proof of financial responsibility (i.e. insurance, bonds or letters of credit) to respond to oil spills at natural gas exploration facilities where there is not a threat of an oil release from the well.

The "fix" proposed through this bill repeals the "nonconventional gas" provisions in applicable DEC contingency plan and financial responsibility statutes -- AS 46.04.030(b) and .040(b)(3)(A) -- and replaces them with broader exemption language restated in AS 46.04.050(c) for those natural gas exploration wells that the AOGCC determines the evidence "demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

DEC has used its existing authority in AS 46.04.050(b) for natural gas *production* wells to exempt natural gas *exploration* wells where there is sufficient geological information to determine that the wells will not penetrate a formation capable of flowing oil to the surface. In consultation with AOGCC, DEC has determined such wells to be natural gas production facilities under .050(b) even if sufficient information is unavailable to quantify their commercial potential as development wells. This bill would clarify DEC's existing exemption authority in AS 46.04.050(b) by exempting all natural gas exploration wells that are not capable of causing an oil spill from the c-plan and financial responsibility requirements. Sec 5.

BACKGROUND

U.S. Environmental Protection Agency

Underground Injection Control Program

Deep Wells (Class I)

- EPA has completed and submitted to Congress a study of Class I wells that describes the current Class I UIC Program, documents past compliance incidents involving Class I wells, and summarizes studies of human health risks associated with Class I injection conducted for past regulatory efforts and policy documentation. Read Class I Underground Injection Control Program: Study of the Risks Associated with Class I Underground Injection Wells [PDF file] (EPA 816-R-01-007 / March 2001).

- Class I injection well facilities dispose of industrial hazardous, industrial nonhazardous and municipal (non-hazardous) waste.

- There are 272 active Class I injection facilities nationwide. Of these, 51 are hazardous and 221 are non-hazardous. These 272 facilities maintain approximately 529 Class I injection wells that are scattered throughout the US in 19 states. The greatest concentration are located in the Gulf Coast, Great Lakes, and the Floridian peninsular geographical regions.

- Class I wells are mainly used in the following industries:
  - Petroleum Refining,
  - Metal Production,
  - Chemical Production,
  - Pharmaceutical Production,
  - Commercial Disposal,
  - Municipal Disposal and
  - Food Production.

- Class I injection wells are sited such that they inject below the lowermost USDW and a confining zone above an injection zone. Injection zone reservoirs typically range in depth from 1,700 to over 10,000 feet below the surface.

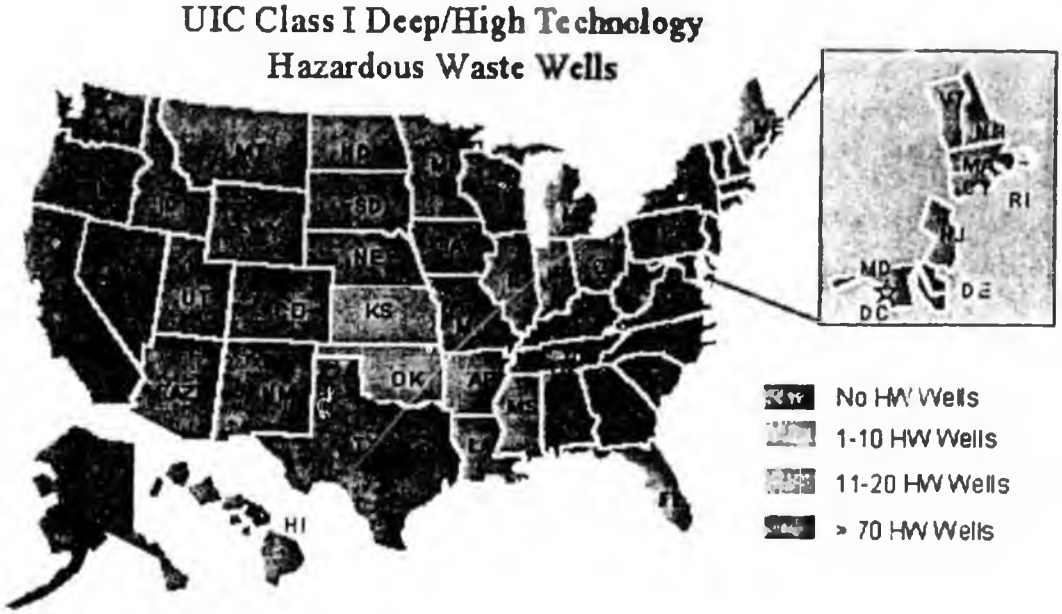
Hazardous Waste Injection Wells

Injection of hazardous waste into deep wells began in the United States in the 1960s. At that time, the chemical industry was looking for a safe, relatively inexpensive method for disposing of high volumes of waste that could be considered toxic. Technology was borrowed from the oil and gas industry to develop this new form of disposal.

- There are 163 Class I hazardous waste injection wells located at 51 facilities. Most are found in Texas (78) and Louisiana (18). Eleven of the facilities are commercial hazardous waste injection facilities. These are the only facilities that can accept hazardous waste generated offsite for injection. Ten of them are located in the Gulf Coast region while one is locatec in the Great Lakes region.

- Hazardous and Solid Waste Amendments to RCRA made UIC regulations (1988) more stringent for Class I hazardous wells. This resulted in strict no-migration standards and a petition approval process for continued operation of the wells. Of the 51 Class I hazardous waste facilities, 47 have approved no-migration petitions that cover 123 wells. To receive a no-migration petition the facility must be able to

demonstrate that injected waste will not impact the biosphere (ground water or surface water) for 10,000 years.



Non-Hazardous Waste Injection Wells
Non-hazardous deep injection wells have to meet all the technical requirements of hazardous waste wells. These wells inject industrial, low radiation and municipal wastes. Some States include some mining wells in this group and require the operators of these wells ot meet all the requirements of other deep wells.

- There are 366 Class I non-hazardous injection wells nationwide. While these wells are scattered through 19 states, most of them are found in the states of Florida (112) and Texas (110).
- Florida is the only state with Class I municipal waste disposal wells (104).

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Last updated on Monday, February 14th, 2005
URL: http://www.epa.gov/safewater/uic/classi.html

What is the UIC program?

Critical Initiatives

Classes of Injection Wells
- Class I
- Class II
- Class III
- Class IV
- Class V

State UIC Programs

Regulations & Guidance

Oil and Gas Injection Wells (Class II)

The oil and gas production industry accounts for a large proportion of the fluids injected ir the subsurface. Typically, when oil and gas are extracted, large amounts of salt water (bri are also brought to the surface. This salt water can be very damaging if it is discharged in surface water. Instead, all states require that this brine be injected into formations similar those from which it was extracted. Over 2 billion gallons of brine are injected daily into injection wells in the US.

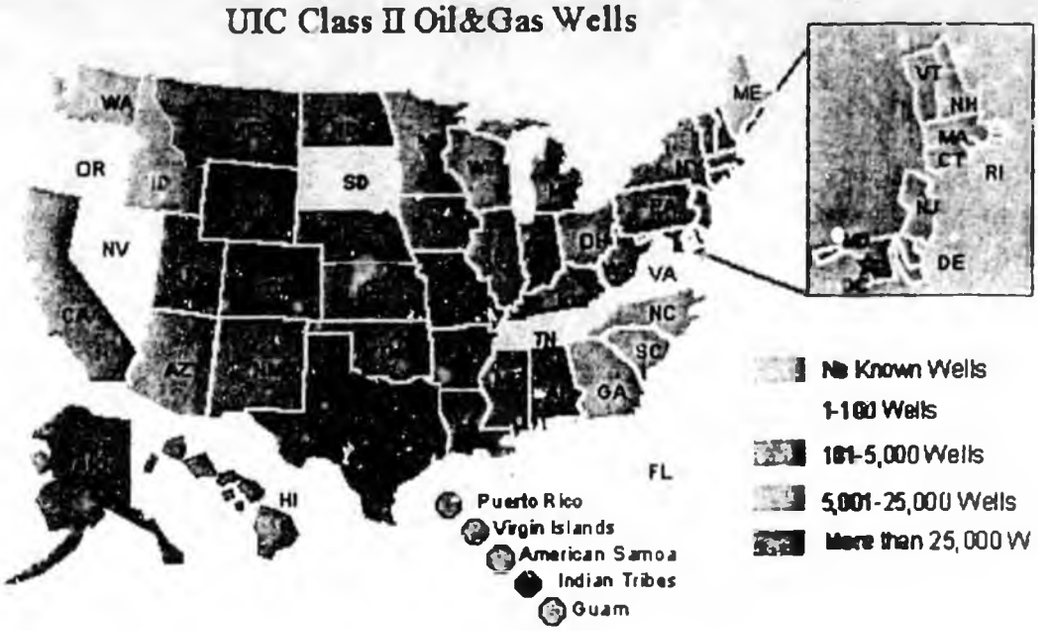
The largest proportion of these brines are injected into formations that contain trace portic of extractable oil and gas. Injection of the brine can have the effect of enhancing product of oil and gas from the formations, thus secondary recovery of oil and gas depends heavi on injection. Furthermore, when States started to implement rules that prevented the disp of brine to surface water bodies and soils, injection of this waste fluid became the prevale form of disposal.

Class II wells exist wherever there is production of oil and gas. There are approximately 167,000 oil and gas injection wells in the US, most of which are used for the secondary recovery of oil. In this process water is pumped into the formation that contains some residual hydrocarbons. A portion of the hydorcarbons are recovered, along with the injec water, by extraction or production wells. In a common configuration, one injection well is surrounded by 4 or more extraction wells. The recovered fluid is treated to remove most the hydrocarbons in a device called a separator. The other type of oil and gas injection w a disposal well. In this type of well, excess fluids from production and some other activitie directly related to the production process are injected solely for the purpose of disposal.

Class II wells have to follow strict construction and conversion standards except when historical practices in the State and geology allow for different standards. A Class II well t follows EPA federal standards is built very much the same as a deep or Class I well. In 1 Congress added Section 1425 to the Safe Drinking Water Act, that controls underground injection, relieving Class II well programs in the States from having to meet the technical requirements in the UIC regulations. Instead, they can make a demonstration that the Sta has an *"... effective program (including adequate record-keeping and reporting) to preven underground injection which endangers drinking water sources."*

Most of the oil and gas injection wells are located in the Southwest, with Texas having the largest number (53,000) and California, Oklahoma and Kansas following some distance behind with 25,000, 22,000 and 15,000 wells respectively.

UIC Class II Oil&Gas Wells



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Last updated on Monday, February 14th, 2005
URL: http://www.epa.gov/safewater/uic/classii.html

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

333 W. 7th AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3539
PHONE (907) 279-1433
FAX (907) 276-7542

March 14, 2005

The Honorable Victor Kohring
Chair, House Special Committee on Oil and Gas
State Capitol
Juneau, Alaska 99801

Re: Letter of Support Concerning House Bill No. 197

Dear Representative Kohring:

The Alaska Oil and Gas Conservation Commission ("Commission") supports House Bill No. 197 ("HB 197"), which amends the laws regarding oil discharge prevention and contingency plans and proof of financial responsibility ("C-plans") to allow better use of geologic information and understanding in determining the need for such plans.

Under current law, a C-plan is required for wells drilled to explore for or produce oil. On the other hand, a C-plan is not required for wells drilled to produce only gas. The treatment of wells drilled to *explore* for gas has a complicated history. Previously, wells drilled for shallow gas were exempted from the C-plan requirement. In 2004, however, HB 531 changed the language from "shallow" gas to "nonconventional" gas. In practical terms, this means that wells drilled to explore for coalbed methane qualify for exemption, but wells drilled to explore for other shallow gas are generally not entitled to exemption. In the Commission's view, there is a mismatch between the current scope of the C-plan exemption and the facts of Alaska's geology.

What the Commission has learned over the years is that drilling in many areas of the state poses essentially no risk of an oil spill. These areas have thick geologic sections containing both conventional and nonconventional gas reservoirs, but have very little potential for the existence of zones capable of flowing liquid hydrocarbons. Requiring a C-plan for wells drilled in these circumstances adds cost and delay to gas exploration without providing increased protection to the environment..

HB 197 corrects the inadequacies in current law by providing for a case-by-case geological evaluation of wells drilled to explore for gas – whether shallow or deep, nonconventional or conventional. Under this bill, a well drilled to explore for gas would qualify for a C-plan exemption if, but only if, the Commission determines that evidence demonstrates with reasonable certainty that the well will not penetrate a formation capable of flowing oil to the ground surface. The approach of HB 197 is to base C-plan exemption decisions on application of the Commission's geologic expertise to the specific facts of a proposed exploration project. The Commission believes this is exactly the right approach.

Thank you for your attention.

Sincerely,

Daniel T. Seamount, Jr.
Commissioner

SUPPORT

Unocal Alaska
Union Oil Company of California
909 West 9th Avenue, P.O. Box 196247
Anchorage, Alaska 99519-6247
Telephone (907) 276-7600
Fax (907) 263-7698

UNOCAL 76

Kevin A. Tabler, Manager
Land/Government Affairs

March 11, 2003

Representative Vic Kohring
State of Alaska Legislature
Room 24, State Capitol
Juneau, Alaska 99801-1182

Re: Support for HB197

Representative Kohring:

Union Oil Company of California was delighted to see the introduction of HB 197 to clean up the effect of HB531 (2003 legislation) which created the unintended consequence of elimination of the exemption for oil spill contingency plans for exploration and production facilities used solely to explore, develop or produce shallow natural gas. Our review of the proposed legislation concludes that HB 197 clears up the unintentional change caused by implementation of HB 531 and supports your efforts.

Thank you for taking the initiative to fix this problem.

Sincerely,

Kevin A. Tabler

Sec. 46.04.900. Definitions.

Statute text

In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "natural gas"

(A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;

(B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state; (emphasis added)

(10) "nonconventional gas" has the meaning given in AS 38.05.965.

(11) "nonpersistent product" has the meaning given to "non-persistent or Group I oil" in 33 C.F.R. 155.1020;

(12) "nontank vessel" means a self-propelled watercraft of more than 400 gross registered tons; in this paragraph, "watercraft" includes commercial fishing vessels, commercial fish processor vessels, passenger vessels, and cargo vessels, but does not include a tank vessel, oil barge, or public vessel;

(13) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity; (emphasis added)

(14) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(15) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility, or marina, located in, on, or under the surface of the land or waters of the state, including tide and

submerged land, that is used for the purpose of transferring, processing, refining, or storing oil; a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;
(16) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;
(17) "persistent product" has the meaning given to "persistent oil" in 33 C.F.R. 155.1020;
(18) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;
(19) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;
(20) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;
(21) "public vessel" means a vessel that is operated by and is either owned or bareboat chartered by the United States, a state or a political subdivision of that state, or a foreign nation, except when the vessel is engaged in commerce;
(22) "railroad tank car" means rolling stock used to transport oil in bulk as cargo by rail;
(23) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal;
(24) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;
(25) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;
(26) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;
(27) "train" means connected rolling stock operated as a single moving vehicle on rails; for purposes of this paragraph, "connected rolling stock" includes railroad tank cars.
(28) "vessel" includes tank vessels, oil barges, and nontank vessels;
(29) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that
(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and
(B) has
(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or
(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b);
(30) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.
History
(§ 2 ch 116 SLA 1980; am §§ 25 - 27 ch 191 SLA 1990; am §§ 13, 14 ch 83 SLA 1991; am § 2 ch 39 SLA 1992; am § 14 ch 83 SLA 1992; am § 69 ch 58 SLA 1999; am §§ 2 - 4 ch 128 SLA 2000; am § 8 ch 45 SLA 2003; am §§ 54, 58 ch 49 SLA 2004)
Annotations
Revisor's notes. Formerly AS 46.04.120. Renumbered in 1989. Reorganized in 1990, 1991, 1992, 2000, 2003, and 2004 to maintain the defined terms in alphabetical order.
In 2004, "commissioner of community and economic development" was changed to "commissioner of commerce, community, and economic development" and "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with § 3, ch. 47, SLA 2004.
Administrative Code. - For financial responsibility for oil discharges, see 18 AAC 75, art. 2. For oil discharge prevention and contingency plans and nontank vessel plans, see 18 AAC 75, art. 4.
Effect of amendments. The 1999 amendment, effective July 1, 1999, in present (29)(B)(iii) substituted "economic development" for "regional affairs" in two places and made a section reference substitution.
The 2000 amendment, effective September 1, 2000, in paragraphs (14) [now (15) and (27) [now (28),] inserted references to nontank vessels and added what are now paragraphs (11), (12), (17), (21), (22), and (27).
The 2003 amendment, effective June 7, 2003, added a definition of "shallow natural gas" that appeared in former paragraph (25).
The 2004 amendment, effective June 5, 2004, repealed paragraph (25), which defined "shallow natural gas"; and added paragraph (31), renumbered as paragraph (10).

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW

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March 22, 2005

Representative Ralph Samuels
House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: HB 197

Dear Co-Chairman Samuels:

You asked that the Attorney General's Office provide a response to a question raised by Representative Seaton in the March 21, 2005, House Resources Committee Hearing on HB 197. Representative Seaton asked a question concerning the definitions of "oil", "crude oil" and "natural gas" in sections 4 and 5 of the bill. Because the legislative teleconference system went offline, I was unable to respond to the Representative Seaton's question. I appreciate this opportunity to explain these provisions of the bill.

The existing provisions in AS 46.04.050 provide two exemptions to the oil discharge prevention and contingency plan (C plan) (AS 46.04.030) and financial responsibility (AS 46.04.040) requirements. The first exemption is for "oil terminal facilities" with an oil storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil. The second exemption is for natural gas production and terminal facilities. In addition, there is a C-plan exemption for natural gas exploration and production facilities in AS 46.04.030(a) that, prior to HB 531 applied to shallow natural gas facilities, and now, applies to "nonconventional gas" which is defined as "coal bed methane, gas contained in shales or gas hydrates." AS 38.05.965.

Representative Seaton's question involves the exemptions in AS 46.04.050 which provides as follows:

> Sec. 46.04.050. Exemptions.
>
> (a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

Subsection (b) exempts natural gas production and terminal facilities. Subsection (b) defines those facilities as "a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas" but as not including a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil. AS 46.04.050(b)(2) (emphasis added).

Sections 4 and 5 of HB 197 make two clarifications to the exemption. First, section 5 moves the natural gas exploration and production facility exemption in AS 46.04.030(b) to a new subsection (c) in AS 46.04.050. Second, sections 4 and 5 clarify what is meant by the "exclusion" to the exemption for facilities that handle natural gas "in combination with oil." AS 46.04.050(b)(2). It is important to note that oil is defined very broadly in AS 46.04.900(13): as "oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity."

Sections 4 and 5 attempt to resolve any ambiguity in these provisions by defining "in combination with oil" as a facility that stores, produces, explores for, or transports natural gas in combination with crude oil and that crude oil does not include natural gas. New subparagraph (ii) addresses a natural gas exploration or production facility that stores refined petroleum products by providing that it would only need a C-plan or financial responsibility if it stores refined petroleum products in volumes exceeding those in AS 46.04.050(a) (10,000 barrels of noncrude oil). This reflects the Department of Environmental Conservation's interpretation of those provisions since the exemption in AS 46.04.050 was amended in 1992 to address natural gas facilities.

In sum, the definitions in sections 4 and 5 are attempts to clarify the current application of these requirements in light of the existing statutory definitions in AS 46.04.900. As a result, it is not necessary to amend sections 4 and 5 of the bill.

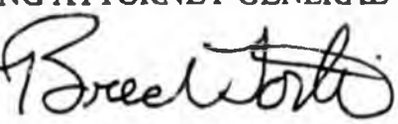
Norman
AOGCC

It is also worth noting that – like any other facility in the state – a facility exempted from the C-plan requirements must still immediately contain and cleanup oil spills as required by AS 46.04.020 and is strictly liable for the costs and damages from a spill under AS 46.03.822.

I hope that this responds to the question raised by Representative Seaton. If I can provide additional assistance, please let me know.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By: 

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