

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1638 SCOMM 62 SENATE SPEC. COMM. ON OIL & GAS, 1989-1990

Section 16 - Facility Inspections

Authorizes DEC to inspect oil terminal facilities, exploration and production facilities, tank vessels and barges to ensure compliance and examine structural integrity of these facilities.

Section 17 and 18 - Prevention Language

Includes "prevention" planning in the state's master and regional contingency plans.

Section 19 and 20 - Definitions

Defines an exploration and production facility and tank vessel.

Section 21 - Use of Oil and Hazardous Substance Release Response Fund

Allows DEC to use money from the 470 fund to review industry contingency plans, conduct training, response exercises, inspections and tests in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies.

Section 22 - Limitations on Oil and Hazardous Substance Release Response Fund

Limits use of Oil and Hazardous Substance Release Response Fund. Disallows use of Fund for agency RSA's and grants to municipalities except as specifically authorized by the legislature or in the event of a declared disaster emergency.

Section 23 - Oil and Hazardous Substance Release Response Fund Reporting

Requires detailed reporting of uses of the Oil and Hazardous Substance Release Response Fund expenditures for contracts greater than \$20,000 and purchases greater than \$10,000.

Section 24 - Survey of Small Non-Crude Oil Terminal Facilities

Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for small non-crude oil terminal facilities.

Section 25 - Effective Date

Immediate effective date.

Financial Responsibility Requirements

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	HB 567 (Resources)	HB 567 (Finance)
Crude Oil Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$1 million up to \$50 million @ \$25/bbl. capacity	Same as the Resources version
5 to 10,000 bbl.	None	None	None
Offshore exploration and production facilities			
	\$35 million	\$50 million	\$50 million
Onshore exploration and production facilities			
	None	\$20 million	\$20 million
Crude Oil Tank Vessels and Barges			
	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$66 million per vessel.	\$500 million	\$100+ million @ \$300/bbl. capacity
Non-Crude Oil Tank Vessels and Barges			
	Tank Vessels = \$20 million, Barges = \$1 million	\$1 million up to \$35 million @ \$100/bbl. capacity	Same as the Resources version

Financial
Requirements
under Lease (cont.)

These pages
are from
the attached
Bill Van
Dyke
Affidavit

standards and mitigation objectives into terms and conditions applicable to the activity under consideration. It is not practical in the lease sale notice document to address in the detail necessary for permitting actions all the terms and conditions that would apply to every possible activity at every possible location especially considering all the state, federal and local authorities that govern oil and gas operations. By allowing for the fine tuning of the mitigating measures at the plan of operations stage, vis-a-vis the lease sale stage, the division also acknowledges that circumstances, technologies, and the understanding of the environment can change. Some flexibility is built in to the system to allow for these potential changes and advances.

9. Attached as Exhibit 2 is a partial listing of permitting and oversight authorities and regulations that would apply to a major oil and gas activity in the Sale 50 area. It is included to illustrate the extent to which the state, federal and local government agencies retain broad authority and control over proposed lease activities after a lease has been issued. It should also be noted that the lease is subject, insofar as constitutionally permissible, to all statutes and regulations placed in effect after the effective date of the lease--see paragraph 26 of the lease.

10. In addition to the plan of operations review and approval process, the lessee must also post a performance bond with the division prior to entering on to the lease--see paragraph 23 of the lease and 11 AAC 03.160. The bond amount varies between \$10,000 and \$100,000, depending upon the type of activity. A statewide bond of \$500,000 is also acceptable.

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1 Under the lease, the division can also require a supplemental bond if it
2 believes that the nature of the surface and its uses or the degree of risk
3 involved justifies the increase. The Alaska Oil and Gas Conservation
4 Commission (AOGCC) also requires that the lessee post a separate bond
5 (\$100,000) prior to any drilling activity; and DEC, in conjunction with its
6 Oil Discharge Contingency Plan permitting process, requires proof of
7 financial assurance (\$35 million for any offshore wellsite or production
8 facility). The \$100,000/\$500,000 bond required by the division is not
9 intended to provide full coverage for cleanup and rehabilitation expenses
10 resulting from a catastrophic accident or very large volume oil spill since
11 that cost cannot be determined apriori. Regardless of the required bond
12 amount (and the bond amounts required by other state agencies), the lessee
13 is liable for the cleanup and rehabilitation of the lease area.

14 11. The bond required by the division is used as an indicator that
15 the lessee is solvent and in good corporate standing. The bond monies can
16 be used to provide a general cleanup or rehabilitation of the lease area,
17 but it would not be adequate, in itself, to cover cleanup costs from a
18 catastrophic accident. The probability of a catastrophic accident is very
19 low, and the lessee retains all liability for its and its contractor's
20 actions. Therefore, the risk to the state of irreparable environmental
21 damage is extremely low.

22 12. Upon expiration or termination of the lease, paragraph 21 of
23 the lease requires the lessee to rehabilitate the lease area to the
24 satisfaction of the state. The lessee is granted one year from the date
25 expiration/termination to remove all equipment and improvements from the
26 lease area and deliver up the lease area in good condition. Should the

19 SURRENDER The lessee at any time may file with the state a written surrender of all rights under this lease or any portion of the leased area comprising one or more legal subdivisions or, with the consent of the state, any separate and distinct zone or geological horizon underlying the leased area or one or more legal subdivisions of the leased area. That surrender will be effective as of the date of filing, subject to the continued obligations of the lessee and its surety to make payment of all accrued royalties and to place all wells and surface facilities on the surrendered land or in the surrendered zones or horizons in condition satisfactory to the state for suspension or abandonment. After that, the lessee will be released from all obligations under this lease with respect to the surrendered lands, zones, or horizons.

20 DEFAULT AND TERMINATION; CANCELLATION (a) The failure of the lessee to perform timely its obligations under this lease, or the failure of the lessee otherwise to abide by all express and implied provisions of this lease, is a default of the lessee's obligations under this lease. Whenever the lessee fails to comply with any of the provisions of this lease (other than a provision which, by its terms, provides for automatic termination), and fails within 60 days after written notice of that default to begin and diligently prosecute operations to remedy that default, the state may terminate this lease if at the time of termination there is no well on the leased area capable of producing oil or gas in paying quantities. If there is a well on the leased area capable of producing oil or gas in paying quantities, this lease may be terminated by an appropriate judicial proceeding. In the event of any termination under this subparagraph, the lessee shall have the right to retain under this lease any and all drilling or producing wells for which no default exists, together with a parcel of land surrounding each well or wells and rights-of-way through the leased area that are reasonably necessary to enable the lessee to drill, operate, and transport oil or gas from the retained well or wells.

(b) The state may cancel this lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment), (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (3) the advantages of cancellation outweigh the advantages of continuing this lease in effect. Any cancellation under this subparagraph will not occur unless and until operations under this lease have been under suspension or temporary prohibition by the state, with due extension of the term of this lease, continuously for a period of five years or for a lesser period upon request of the lessee. Any cancellation under this subparagraph will entitle the lessee to receive compensation as the lessee demonstrates to the state is equal to the lesser of (1) the value of the canceled rights as of the date of cancellation, with due consideration being given in both anticipated revenues from this lease and anticipated costs, including costs of compliance with all applicable regulations and stipulations, liability for clean-up costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated under this lease, or (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

21 RIGHTS UPON TERMINATION Upon the expiration or earlier termination of this lease as to all or any portion of the leased area, the lessee will be directed in writing by the state and will have the right at any time within a period of one year after the termination, or any extension of that period as may be granted by the state, to remove from the leased area or portion of the leased area all machinery, equipment, tools, and materials. Upon the expiration of that period or extension of that period and at the option of the state, any machinery, equipment, tools, and materials that the lessee has not removed from the leased area or portion of the leased area become the property of the state or may be removed by the state at the lessee's expense. At the option of the state, all improvements such as roads, pads, and wells must either be abandoned and the sites rehabilitated by the lessee to the satisfaction of the state, or be left intact and the lessee absolved of all further responsibility as to their maintenance, repair, and eventual abandonment and rehabilitation. Subject to the above conditions, the lessee shall deliver up the leased area or those portions of the leased area in good condition.

22 DAMAGES AND INDEMNIFICATION (a) No rights under the AS 3805125 reservation may be exercised by the lessee until the lessee has provided to pay the owner of the land, his lessees and permittees, upon which the AS 3805125 reserved rights are sought to be exercised, full payment for all damage sustained by the owner by reason of entering the land. If the owner for any reason does not settle the damages, the lessee may enter the land after posting a surety bond determined by the state, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner, his lessees and permittees, payment for damages, and may institute legal proceedings in a court of competent jurisdiction where the land is located to determine the damages which the owner of the land may suffer. The lessee agrees to pay for any damages that may become payable under AS 3805130 and to indemnify the state and hold it harmless from and against any claims, demands, liabilities, and expenses arising from or in connection with such damages. The furnishing of a bond in compliance with this paragraph will be regarded by the state as sufficient provision for the payment of all damages that may become payable under AS 3805130 by virtue of this lease.

(b) The lessee shall indemnify the state for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to any person caused by or resulting from any act or omission committed under this lease by or on behalf of the lessee. The lessee is not responsible to the state under this subparagraph for any loss, damage, or injury caused by or resulting from the sole negligence of the state.

(c) The lessee expressly waives any defense to an action for breach of a provision of this lease or for damages resulting from an oil spill or other harm to the environment that is based on an act or omission committed by an independent contractor in the lessee's employ. The lessee expressly agrees to assume responsibility for all actions of its independent contractors.

23 BONDS (a) If required by the state, the lessee shall furnish a bond prior to the issuance of this lease in an amount equal to at least \$5 per acre or fraction of an acre contained in the leased area, but no less than \$10,000, and must maintain that bond as long as required by the state.

(b) The lessee may, in lieu of the bond required under (a) above, furnish and maintain a statewide bond in accordance with applicable regulations.

(c) The state may, after notice to the lessee and a reasonable opportunity to be heard, require a bond in a reasonable amount greater than the amount specified in (a) above where a greater amount is justified by the nature of the surface and its uses and the degree of risk involved in the types of operations being or to be carried out under this lease. A statewide bond will not satisfy any requirement of a bond imposed under this subparagraph, but will be considered by the state in determining the need for and the amount of any additional bond under this subparagraph.

(d) If the leased area is committed in whole or in part to a cooperative or unit agreement approved or prescribed by the state and the unit operator furnishes a statewide bond, the lessee need not maintain any bond with respect to the portion of the leased area committed to the cooperative or unit agreement.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 2, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a Sponsor Substitute for Senate Bill 504, relating to the state's oil contingency plan requirements and financial responsibility requirements for oil terminals and vessels. Senate Bill 504 is part of the package of bills that I introduced on February 21, 1990 in response to the Alaska Oil Spill Commission report. 1990 Senate Jour. 2528. I am introducing this sponsor substitute as a result of recent discussions with representatives of industry, environmental interests, and insurance interests.

The sponsor substitute makes three significant changes from the original Senate Bill 504. First, the sponsor substitute requires an oil discharge contingency plan to provide sufficient planning and equipment to immediately contain a realistic maximum oil discharge and remove that discharge within 72 hours instead of "the shortest possible time." Section 1, proposed AS 46.04.030(f) and (h).

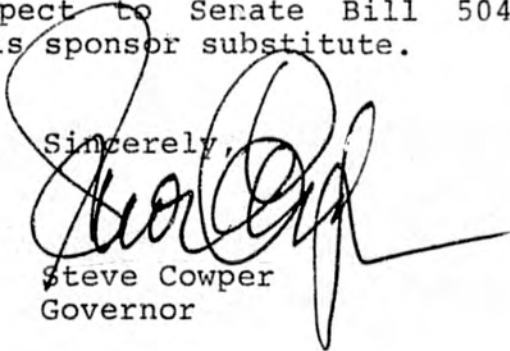
Second, the sponsor substitute proposes to change the financial responsibility requirements for non-crude oil terminals and vessels to make them consistent with available insurance limits and more compatible with the potential risks in each case. For non-crude oil terminals and vessels, the sponsor substitute proposes a graduated scale for financial responsibility requirements, up to maximums of \$10 million for terminals and \$20 million for vessels and barges. Section 2, proposed AS 46.04.040(b) and (d)(2 -- 5).

Third, the sponsor substitute will change the original bill's provisions regarding contingency plans so that non-crude oil terminal facilities with less than 10,000 barrels (instead of only 5,000) of storage capacity will not need contingency plans. Section 3. Instead, a new section is added to require the Department of Environmental

Conservation to conduct a survey of such terminals and report back to the legislature no later than January 31, 1991 on the results of its survey, and the department will then recommend possible legislation to address oil spill prevention and response at such facilities. Section 5 of the sponsor substitute.

I continue to strongly urge your support of this legislation, and I believe that many of the concerns initially raised with respect to Senate Bill 504 are responsibly addressed in this sponsor substitute.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SSSB 504

PUBLISH DATE : 4/2/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to strengthening
the State's contingency plan requirements.
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environ. Conservation
BRU: Environmental Quality
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	289.0	187.0	187.0	187.0	187.0	187.0
TRAVEL	20.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	348.0	332.0	332.0	332.0	332.0	332.0
SUPPLIES	6.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	30.0	20.0	20.0	20.0	20.0	20.0
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	693.0	553.0	553.0	553.0	553.0	553.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	693.0	553.0	553.0	553.0	553.0	553.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	693.0	553.0	553.0	553.0	553.0	553.0

POSITIONS:

FULL-TIME	6.0	4.0	4.0	4.0	4.0	4.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Lynn Kent

Division: Environmental Quality

Phone: 465-2630

Date: 3/30/90

Approved by Commissioner: AD Kyle

Agency: Environmental Conservation

Date: 3/30/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL NUMBER: SB 504/HB 567

PUBLISH DATE: SB 33/HB 76

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the strengthening
of the DEC's oil contingency plan
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environ Conservation
BRU: Environ Quality
Components: Environ Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	489.8	489.8	489.8	489.8	489.8	489.8
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	376.0	376.0	376.0	376.0	376.0	376.0
SUPPLIES	9.5	9.5	9.5	9.5	9.5	9.5
EQUIPMENT	47.5	47.5	47.5	47.5	47.5	47.5
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	952.8	952.8	952.8	952.8	952.8	952.8
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	952.8	952.8	952.8	952.8	952.8	952.8
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	952.8	952.8	952.8	952.8	952.8	952.8

POSITIONS:

FULL-TIME	9.0	9.0	9.0	9.0	9.0	9.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
Impact on FY 90 depends upon effective date.

Prepared by: Dan Easton

Division: Environmental Quality

Approved by Commissioner: [Signature]

Agency: Environmental Conservation

Phone: 465-2640

Date: 2/16/90

Date: 2/19/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

SECTIONAL ANALYSIS

The following is a sectional analysis of a bill that strengthens the Department of Environmental Conservation's ("DEC") oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04.

Section 1 strengthens DEC's authority to require and enforce oil discharge contingency plans. Section 1 requires that contingency plans be properly implemented; clarifies and strengthens DEC's authority to approve, modify, or revoke contingency plans; requires contingency plan applicants to maintain in their areas of operation sufficient resources to contain and remove a realistic maximum oil discharge within the shortest possible time; provides the Department of Fish and Game and the Department of Natural Resources an opportunity to comment on contingency plans; and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented.

Section 2 strengthens the financial responsibility requirements of AS 46.04.040. Section 2 establishes a \$50,000,000 financial responsibility requirement for crude oil terminal facilities; establishes a \$1,000,000 financial responsibility limit for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels; establishes a \$50,000,000 financial responsibility limit for non-crude terminal facilities with a storage capacity of more than 10,000 barrels; establishes a \$50,000,000 financial responsibility requirement for offshore exploration and production facilities; establishes a \$500,000,000 financial responsibility requirement for crude oil tank vessels and barges; establishes a \$20,000,000 financial responsibility requirement for large (greater than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances; establishes a \$1,000,000 financial responsibility requirement for smaller (less than 300 gross tons) tank vessels and barges carrying non-crude oil or other hazardous substances.

Section 3 lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

Section 4 authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels, and oil barges to ensure compliance with AS 46.04 and to examine the structural integrity of tank vessels and oil barges.

Section 5 defines "realistic maximum oil discharge," as used in sec. 1.

Section 6 provides that the Act takes effect immediately.

SB 504

SENATE BILL NO. 504 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

was read the first time and referred to the Senate Special Committee on Oil and Gas, the Resources Committee and the Finance Committee.

Fiscal notes published today from Department of Environmental Conservation and Department of Fish and Game.

Governor's transmittal letter dated February 21:

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious bill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

/s/
Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Fish and Game
Title: An act strengthening DEC's BRU: Habitat Division
contingency plan and inspection requirements
Sponsor: Governor Components: Habitat
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					

CAPITAL	0					
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REVENUE	0					
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FUNDING: (Thousands of Dollars)

GENERAL FUND	156.5					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary) (Explanation Attached)

FY 90 Impact: Personal Services 51.9
(3/24-6/30/90 Travel 2.0
Contractual 4.0
Supplies 1.0
Equipment 7.0
TOTAL 65.9

Prepared by Frank Rue Phone: 465-4105
Division: Habitat Date: 2/14/90

Approved by Commissioner: [Signature] Date: 2/14/90
Agency: ADF&G

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Continuation of fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. The state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

February 15, 1990

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

SENATE BILL 504
QUESTIONS FOR DISCUSSION
2/28/90

1. Section 1. AS 46.04.030 Amendments

CONCERN REGARDING THE TIMELINESS AND RESPONSIVENESS TO
NEW PERMITS AND PERMIT MODIFICATIONS:

a. Will the ADEC recognize when a facility contingency plan has been "properly implemented"?

b. (d) What constitutes exercise of ADEC power in a "timely manner" relative to permit approvals?

c. (e) How much time does Fish & Game and DNR get to review and comment on a plan?

d. (f) What is the projected approach to the definition of "sufficient oil discharge containment...equipment"? and what is the methodology for determining the "realistic maximum oil discharge"?

2. Section 2. AS 46.04.040

CONCERN REGARDING BLANKET INSURANCE REQUIREMENTS WITH
LITTLE OR NO REGARD FOR THE SIZE OF PARTICULAR VESSELS:

a. Why is there a change from the current law requiring proof of financial responsibility for oil terminal facilities? Effect of the revision is to increase the financial responsibility requirements for the in-state refiners to the same level already in existence for the Alyeska terminal.

b. (b) extends \$50,000,000 proof of financial assurance to each non-crude oil terminal with over 10,000 barrels vs. the existing law requirement of \$10/bbl of storage up to \$1,000,000.

What is the reason for extending the same requirements to product terminals as have been extended to crude oil terminals? Do these requirements apply to inland as well as coastal terminals?

c. (d) What is the intent of the sentence: "A person may not operate a tanker vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel... [unless proof of financial responsibility of \$500,000,000.1? Does this mean that a terminal unloading oil purchased and delivered by third party(s) must have \$500,000,000 insurance? Why does this apply indiscriminately to tankers and barges regardless of their size?

This section also illustrates an apparent inconsistency in treatment of crude oil vs. non-crude oil. As already indicated terminals of over 10,000 barrels must have \$50,000,000 whether it is crude or non crude; however in this section a non crude tanker or barge of greater than 300 gross tons would be required to have \$20,000,000 (1/25 of that for crude oil) with smaller vessels required to have \$1,000,000. Why is there no similar accommodations for crude oil tanker deliveries reflecting recognition of the wide range in size of crude oil tanker deliveries in the state?

TO: Bill Lamoureaux

DATE: 02-07-90
TIME: 08:51

CC: ATTORNEY GENERALS OFFICE
Bob Flint
Pat Cyr
Dennis Kelso JUNEAU/ADEC
Mike Mansker SERO/ADEC

SUBJECT: AT RISK--N.EUROPE Vs ALASKA OIL SPILL
PRIORITY:
ATTACHMENTS:

As per your request, this is an outline of:

MAJOR DIFFERENCES BETWEEN NORTHERN EUROPE AND ALASKA:
OIL SPILL PREVENTION AND CLEANUP CAPABILITIES

SCOTLAND - SOLLUM VOE TERMINAL

Total number of T/V visits year: +/- 500 vs. +/- 900 T/V at Alyeska
Storage capacity: +/- 9,000,000 bbls equals Alyeska
Daily throughput: +/- 1,000,000 bbls equals + Alyeska
Storage vs. Throughput compared to Alyeska: 2:1 (twice the storage capacity ratio)
Tidal range: 9.0 feet, 1 knot maximum current

PREVENTION ISSUES

There is a thirty knot wind restriction for tanker movement and loading oil (they don't move oil when the weather is beyond cleanup capability).

Four tugs provide escort, one of which is connected to the T/V with a tow cable to and from their Hinchinbrook Entrance (a fifth tug is on standby).

State of the art vessel traffic system which is manned by licensed Master Mariners with unlimited license to captain tankers, they also are the pilots.

All tankers must stay offshore at least 10 miles.

All tankers must report their course and speed from 200 miles out and in between.

Aerial surveillance by helicopter and fixed wing aircraft check up on all tanker movements.

Government has ability to prevent any tanker from calling in at terminal.

All T/V are boarded and inspected by the Port Authority.

All segregated ballast tested by Port Authority prior to discharge.

CLEANUP PHILOSOPHY

1. Prevention: "NO POLLUTION ALLOWED"
2. Have equipment at terminal for 15,000 bbl spill
3. Additional cleanup equipment located at bases 6, 12, and 24 hours away within Shetland Islands, Scotland. Ornev Island and Great Britian with

cleanup capacity estimated to be over 100,000 bbls/hr.

NORWAY'S TWO LARGES CRUDE TERMINALS:
STURE AND MONGSTAD

Total number of crude tankers per year: +/- 300, 1/3 of Alyeska's
Storage capacity: 4,410,000 bbls and 9,000,000 bbls.
Daily Throughput: 300,000 bbls/day and 600,000 bbls/day
Storage vs. Throughput compared to Alyeska: 1.7:1 and 3:1 more than Alyeska
Tidal Range: 3 feet with maximum current 1.2 knots with 0.4 knots average

PREVENTION

27 knot wind restriction for tanker movement and loading.

Two tugs with onboard skimmers provide escort and docking.

Pilots required until four miles offshore.

Dedicated tanker fleet.

CLEANUP

Pre-positioned booms which provide double booming at terminal

Maximum response time at the terminal required in 15-20 minutes.

Maximum response time to their Hinchinbrook Entrance: two hours.

Must pick up and remove 36,500 bbls within 24 hours for small spills.

Must also be able to respond to a 2,250,000 bbl spill within six hours.

Government owned cleanup equipment capacity is in excess of 84,000 bbls/hr and the industrys capability estimated in excess of 50,000 bbls/hr. Total combined 134,000 bbls/hr.

Norway's total crude oil production on the Norweigian Continental Shelf is 1,500,000 bbls/day or 3/4 of Alaska's. It is also 100 miles offshore.

I have not been able to find a single terminal that ships via tanker 2,000,000 bbls/day from a single facility, although the Rotterdam's combined crude transport is +/- 1,700,000 bbls/day. The United Kingdom's total is approximately 1,700,000 bbls/day. However, a lot of that is via pipeline.

The combined skimming capacity in Northern Europe is well over 500,000 bbls/hr. This equipment is scattered out in a geographic area the size of the State of Alaska and is staged in well over forty locations. There are skimmers that process well over 13,000 bbls/hr.

THEY ARE NOT AT RISK TO THE EXTENT WE ARE

Hope this answers your questions.

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AN INTERIM REVIEW OF OIL SPILL
PREVENTION, AND CLEANUP
CAPABILITIES IN NORTHERN EUROPE
AS COMPARED TO ALASKA

By Daniel J. Lawn, Environmental Engineer
February 3, 1990

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INTRODUCTION

The material I am about to present is an interim report on Oil Spill Prevention and Cleanup Capabilities in Northern Europe as Compared to Alaska.

By this time all the experts and instant experts that appeared after the Exxon Valdez disaster are saying prevention is the answer to the oil spill cleanup problem.

I doubt that there is anyone who would disagree.

However, prevention is a many faceted approach and quite frankly, it will take many months and years to totally define the best approach and implement the changes to prevent future spills. We may run out of oil long before the world accepts a unified approach to prevention, but in the mean time, we must have a very aggressive approach to oil spill cleanup.

To help us develop that approach, we must look around us and see what others have done, are doing, and plan to do. By doing so, perhaps we can eliminate or reduce heading in a direction that is non productive. We are all in this boat together and we need to start rowing in the same direction so that our course is straight and true.

With these thoughts in mind, let me tell you what I've found that may be of value and help Alaska set it's course.

I recently went to Norway and Scotland to observe how their Governments and Oil Industry interact with oil production, transportation, spill prevention and spill cleanup. What I found was presented in a report I prepared for the Commissioner of the Department of Environmental Conservation.

Let me say this about that report and this presentation today, both are dynamic. In other words, the answer to today's prevention question is changing constantly as we continue to gather more information on a daily basis. I know more today, as I continue to learn from our Northern Europe neighbors, than I did at the time I prepared that trip report. As I said earlier, this is an interim report and update on that document.

Let us first start by reviewing the approach to oil spill prevention and cleanup practiced by Norway and Scotland. I plan to do this with the use of visual aids such as overhead projection, the wall maps and video footage as well as the excerpts from the trip report.

In addition, I will discuss the Bonn Agreement which is a treaty between eight Northern Europe Countries where they agree that they will assist each other during time of an oil spill by making available their collective oil spill combat equipment. We will look at some of their equipment and we will also take a brief look at cleanup capabilities in the Western U.S.S.R. and other pertinent information that was presented in the

1989 Oil Spill Conference in San Antonio, Texas last February.

There is a lot of material to cover in this short time, but I hope this overview gives you an idea of what's happening in an area whose geographic size is approximately the size of the State of Alaska.

Looking at oil spill cleanup in Northern Europe you first must realize that they approach an oil spill as if it were war. Within minutes, they are required to respond by sending massive quantities of equipment to the spill site. The first few hours of the spill containment and cleanup decide whether or not you will be successful. To reduce response times, they have put boom and skimmers on tugs that escort or assist tankers to and from the terminals. They also have dredges, that are continually working in the ports and harbors, that have been retrofitted to be high capacity skimmers. In essence, they have taken their vessels of opportunity (which have other reasons to be there) and made them also immediate response crafts. This certainly reduces the standby operating costs while increasing response vessels.

INFORMATION OBTAINED

I. NORWAY

A. Regulatory Authority and Responsibilities

1. The Norwegian Government has a very committed attitude to protect the environment while developing their oil resources. To do this they have (i) central acts and regulations issued through Royal Decrees and (ii) regulations and guidelines issued pursuant to the central laws and regulations.

Figure 1

Norway's main philosophy is "the one doing the activity is responsible for their actions". All industry accepts this. However Norway does not leave it with industry's promise to perform. Norway has developed several ministries and organizations that regulate the oil industry from the oil spill prevention and response perspectives. All of Norway's resources for cleanup response are available to combat an oil spill. Each and every oil spill training exercise includes industry, NPD, SPCA, local authorities and the Navy.

Figure 2

2. To implement their laws on the national level, prevention side, the Norwegian Petroleum Directorate (NPD) is ascribed authority related to the supervision of exploration, research drilling and surveys for natural resources on the Norwegian Continental Shelf. There are also other National Ministries who regulate the oil industry from the spill prevention side.

Figure 3

The NPD was set up in 1973 as the Regulatory Authority for work on the Norwegian Continental Shelf. The NPD's area of influence is 56°N - 88°N. In the early days of the NPD the operators had no requirement to have their facilities in compliance prior to an inspection. Now the operator is required to have an extensive QA/QC Plan (thanks to a 1985 Royal Decree) and their facilities must be in compliance at the time of inspection.

The NPDS also has stockpiles of cleanup equipment that are available to supplement cleanup activities should the spiller need additional equipment.

3. On the national pollution response side, the State Pollution Control Authority is assigned the role of Norway's On-Scene

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Coordinator. In that role they oversee the spiller's cleanup response, provide technical assistance and direct the spiller to take appropriate action if necessary.

Figure 4

Figure 5

They are also charged with protecting Norway's coast. To do this there is an extensive network of people and equipment located at 12 depots along the Norwegian Coast. Total cleanup capacity is 15,000 bbls/hr. At each depot there are 10 people assigned on an "on-call" basis. The state training and inspection center located at Horten has a staff of 15 who oversee the large warehouse of cleanup equipment and provide training for the NPD, industry, local authorities as well as the in-house needs. SPCA's annual oil pollution budget is \$3,000,000 for operation and for new equipment there is an additional \$1,500,000, all of which is funded from Norway's general tax assessments.

The SPCA equipment and personnel are available to supplement any response effort the spiller takes.

4. On the local level is the "Regional Oil Pollution Control Committee", an inter-municipal organization which consists of cooperating communities located within a particular region usually around the perimeter of a port or fjord where there is oil shipping activities.

Figure 6

Each municipality is required to have necessary staff and equipment ready to prevent damage from small oil spills which may occur within its sea area or coastline. Their equipment and personnel are likewise available to the spiller to supplement the spiller's response. Each municipality also has a plan for oil spill protection.

In addition to the mentioned "First Aid" equipment and local staff required for each community, the inter-municipal committee has a common oil spill emergency center in each region, with considerable equipment and also trained staff available on short notice.

Funding for cleanup equipment and setting up each municipal response organization was provided 50% by the Norwegian Parliament with the balance by the local municipalities. All costs of cleanup is reimbursed by the spiller.

5. The Norwegian Navy also has vessels, personnel and cleanup response equipment that participates in spill response as well as training exercises with industry.

B. The Oil Industry's Attitude

1. The oil industry in Norway seems to have a very cooperative attitude. This, in part, may be due to the fact that some oil companies such as Statoil (100%) and Norsk Hydro (49%)

are owned in total or part by the Norwegian government. In addition the pipelines from the offshore fields and the major oil shipping terminals are owned in total or part by Norway. Many of the offshore fields are operated by the Norwegian owned oil companies or partnerships that include them. Those fields that are operated by multi-national oil companies are quick to comply with all requirements.

Another major factor contributing to the oil industry's "cooperative" attitude is strong laws and regulations enforced by **NO NONSENSE STRONG REGULATORS**. They do not bend to the wishes or lobbying efforts of the oil industry.

To this end, the oil companies are ready to comply with all regulatory requirements and to do so in a very open and agreeable way.

C. Offshore Exploration and Production

1. All offshore exploration and production facilities (which by the way are 100 miles off shore, not on their coast as here in Alaska) are required to have state of the art oil spill contingency equipment. Norway's offshore fields have a total combined production of 1,500,000 bbls/day which is less than 3/4 of Alaska's. All of the drilling and production companies, whether they be multi-national oil companies, state owned oil companies or partnerships of different combinations of both, must have adequate cleanup capability.
2. In addition to their own individual oil spill contingency plans in order to accomplish the government mandated requirements, the oil companies have formed a cleanup cooperative called **Norsk Oljevernforening for Operatørselskap** hereafter called **NOFO**. On behalf of, and together with, the operating companies NOFO looks after the authorities' requirements for oil spill contingency. The association handles this task by having prepared a special contingency plan for mobilization and operation of the jointly-owned resources.

Figure 7

NOFO has, in addition, set up depots of equipment and engaged personnel and vessels that are on permanent standby. In the event of an uncontrolled oil spill, any member of NOFO has access to the association's resources as part of its overall contingency scheme. This enables the operating companies to take action at short notice.

3. The thirteen sisters; AMOCO, ESSO, Shell, Norsk Hydro, BP, TOTAL, CONOCO, ELF, SAGA, MOBIL, Statoil, Phillips, and Norsk Agip, each have the requirement to be able to handle

Figure 8
Figure 9

an uncontrolled blowout of 60,000 bbls/day in 3 meter seas with a 1.5 knot current. To accomplish this each platform must have skimming capacity standing by to respond to, contain and pick up a minimum of +/- 600 bbls/hr all within 2 hours while the NOFO equipment is enroute. Also, since there is more than one platform in each field, all equipment from each platform is available.

The NOFO operating plan supplements the oil spill cleanup equipment that is required to be at each offshore facility.

Exploration facilities, are determined to be seven (7) times more likely to have a blowout than a production facility. Exploration facilities share a bigger burden of the operating budget of NOFO and require more equipment.

4. NOFO has five (5) strategically located bases along Norway's West Coast. They are located at Stavanger, Austevoll, Kristiansund, Traena and Hammerfest. At these bases are: 8,750 meters (+/-27,000 ft) of oil booms, 14 Framo NOFO Transrec combined oil recovery and transfer systems (26,500 bbls/hr), 12 sets of dispersant-spraying units, various auxiliary equipment, spare parts, etc.

Figure 10

NOFO has agreements with the operating companies covering 14 oil recovery vessels. That agreement requires that vessels, once notified, be at the NOFO base, load the equipment and be underway to the spill within two (2) hours. For spills off the coast at least 40 miles NOFO must have one response group at the spill site within 24 hours and four (4) additional groups within 48 hours. For spills closer than 40 miles the response must be much faster and with more equipment.

Figure 11

NOFO also has direct contracts covering availability of 20 towing vessels for use during oil spill operations. Most of these response vessels have other jobs within the oil industry and are immediately available on site.

5. NOFO conducts several exercises each year with each oil company participating at least once but, more likely, several times. In addition to the NOFO exercises, each oil company conducts its own oil spill drills. NOFO's operating budget this year is \$7,000.000 (U.S.) dollars. It will be larger next year.

D. Oil and Gas Pipelines, Offshore Loading Buoys, Terminals and Refineries

1. The gas fields in the North Sea on the Norwegian Continental Shelf are linked by several gas pipelines which allow gas from different fields to be directed to other pipelines

Wall Map

which come ashore in England, Scotland, West Germany and Norway. In Norway, two pipelines terminate at a large terminal at Karsto on the west coast of Norway.

2. The oil fields in the North Sea on the Norwegian Continental Shelf are also linked by pipelines which connect with other pipelines which come ashore in England, Scotland (Sullom Voe) and Norway. Norway is connected to the oil fields by the Oseberg pipeline which crosses the Norwegian Trench some 360 meters deep.
3. There are also offshore oil loading facilities in the North Sea on the Norwegian Continental Shelf. One such facility is at the Statfjord oil field where oil is stored in tanks that hold several hundred thousand barrels located on the platforms. The platforms are linked to mooring buoys which are used to load oil onto tankers at three locations.

There are always multi purpose oil recovery vessels on station at all off shore facilities.

4. The Karsto Terminal has a capacity of five billion cubic meters of gas per year with the possibility of expansion to eight billion cubic meters.
5. The Sture Crude Terminal is a new facility which has just come on line at the terminus of the Oseberg pipeline. At present it receives about 300,000 bbls/day; once the pipeline is at full capacity it will receive 600,000 bbls/day (or 1/3 as large as the Valdez Marine Terminal). It has two berths, one of which can take 30,000 - 300,000 dwt crude tankers, the other 50,000 - 150,000 dwt vessels. It has underground storage vaults carved out of bedrock with a total capacity of 700,000 cubic meters (4,410,000 bbls). Only clean, segregated ballast may be discharged into the water. Random samples are taken. Dirty ballast is treated ashore.

Figure 12

This terminal's storage to crude throughput ratio is 1.7 times greater than at Valdez.

The tidal range is about three feet (not 18 - 27 feet as in Alaska) with maximum tidal current of 1.2 knots, but the average is 0.4 knots. Vessels are not allowed to dock in wind speeds in excess of 14 meters/second or 27 knots. During periods of high winds loading is stopped and the loading arms are disconnected (vessels in Valdez can transit the Narrows in winds less than 45 knots and the wind restriction at the terminal has been eliminated. It is not uncommon for tankers to load in 70 knot winds).

Vessels that have a pollution incident are not allowed to leave the berth before a bank guarantee is given to cover the cost of cleanup and fines.

The terminal's cleanup equipment must be able to respond to spills at the terminal within 15-20 minutes. For spills in waters adjacent to the terminal out to the entrance of the Fjords response must be within 2 hours with the capability of picking up 36,500 bbls within 24 hours.

They must also be able to respond to a discharge of the "total contents" of any tanker that uses their facility (+/- 2,250,000 bbls) within 6 hours. They stress prevention!

To keep the oil in the tanker and the tanker off the beach tug escorts are provided to the entrance of the fjord for each laden tanker to or from the terminal, and pilots accompany all tankers to a point 4 miles offshore.

Equipment at the Sture Terminal consists of two tugs; each is equipped with a Norwegian designed 500 bbls/hr Foxtail rope mop skimmer and a boom on a reel. These tugs also provide escort service. There are permanent booms installed in the water and others in houses at the waters edge where they can be immediately deployed by one of the several boom pulling vessels or other cleanup equipment. In addition they have several smaller skimmers

The terminal has agreements with the local Regional Oil Pollution Control Committee which has an assortment of skimmers, booms and response equipment. In addition, the terminal is linked to contingency plan coverage by NOFO.

6. The refinery at Mougstad is a new facility just coming on line. It has two berths that can handle crude carrying tankers up to 300,000 dwt. It has oil storage facilities of about 9,000,000 bbls and is expected to handle about 300 crude tankers per year.

The terminal currently has a crude throughput of 600,000 bbls/day. The storage to crude throughput ratio gives them three times the holdup capacity of Valdez. It is owned and operated by Statoil. Mougstad, like the Sture Terminal, must have cleanup equipment able to respond to spills at the terminal within 15-20 minutes. For spills in waters adjacent to the terminal and out to the entrance of the Fjords response must be within 2 hours with the capability of picking up 36,500 bbls recovered within 24 hours.

There must also be a response to a discharge of the "total contents" of any tanker that uses their facility (+/- 2,250,000 bbls) within 6 hours. Again prevention is

stressed!

Escort tugs are provided to the entrance of the fjord for each laden tanker to or from the refinery and pilots accompany all tankers to a point 4 miles offshore. Equipment at the Mougstad Terminal consists of two tugs; each equipped with a Norwegian designed 500 bbls/hr Foxtail rope mop skimmer and a boom on a reel. These tugs also provide escort service. There are permanent booms, installed in the water and others in houses at the waters edge where they can be immediately deployed by one of the several boom pulling vessels or other cleanup equipment. In addition they have several smaller skimmers.

Mougstad also has agreements with the local Regional Oil Pollution Control Committee which also has an assortment of skimmers, booms and response vessels. In addition, their terminal is linked to contingency plan coverage by NOFO.

7. ESSO (Exxon) owns and operates a refinery at Harstad which accommodates tankers at least as large as 250,000 dwt. This facility, like all refineries/terminals, is required to have extensive stockpiles of cleanup equipment as well as ties to the NOFO Coop and all government cleanup resources. Frequent drills are also required. (At this time I have no additional information on this facility.)
8. Norske Shell (Shell) owns and operates a refinery in Stavanger. This facility, like all refineries/terminals, is required to have extensive stockpiles of cleanup equipment as well as ties to the NOFO Coop and all government cleanup resources. Frequent drills are also required. (At this time I have no additional information on this facility).

E. "Tactical Oil On Water Exercise"

1. Part of the reason for my trip to Norway was to attend the NOFO exercise, they conduct two annually. The reason for this exercise was:
 - to train the Exercise Commander in oil spill operations and in tactical organization of NOFO's resources with oil on water under realistic conditions offshore.
 - to practice team-work between the operating company and the relevant authorities.
 - to test a new adhesion ban skimmer and a two-phase flow-meter.
 - to gain operational experience with new vessels and existing equipment.
2. The operational plan included the discharge of 150 cubic meters (950 bbls) of crude oil which was to be recovered by an armada of recovery vessels.

There were four offshore rig supply vessels each with a skimmer for a total skimming capability of about 8,000 bbls/hr. Each supply vessel was also equipped with about 2,500 feet of boom and accompanied by a boom towing vessel.

In total, there were 14 vessels to deploy and recover the oil and equipment.

The rig supply vessels, called multi-purpose safety service vessels, have speeds of 17.5 knots with all four engines. They are 230 feet long, 50 feet wide, 3,000+ tons. They have bow and stern thrusters, twin rudders, twin screws, bollard pull of 150 tons and cabins for 45 people. Equipped with every piece of navigation and communication equipment desirable, they are designed and constructed to work staying on station in any weather the North Sea can serve up and are classified as +A1-EO-Supply SF-Oil Rec-Rescue. They do it all and are classified to carry oil. In Norway, as in Scotland, there are literally hundreds of these vessels.

In addition to the 14 vessels there to conduct the exercise, there was a 240 foot observer vessel with 47 observers from oil companies, equipment representatives, NOFO officials and State and Federal regulators from Norway, France, Mexico, Canada, California and Alaska's DEC representative.

3. Tuesday, September 19, 1989 at 1900 hours the observer vessel departed Stavanger for the Firgg Gas Field, 100 miles off the West Coast of Norway, in the middle of the North Sea. The weather forecast was encouraging and although there were 20-knot winds and moderate seas, they were predicted to subside by early Wednesday morning.

We arrived on Station early the next morning; the subsiding 20 knot winds had increased to 50 knots and the moderate seas were then 20 - 30 feet (7 - 10 meters). The encouraging forecast continued with predictions to subside by mid day.

At 2300 hours Wednesday, in steady winds of 50 knots with gusts to 70 knots and seas 10 - 13 meters (30 - 40 feet) it was decided to cancel the exercise due to bad weather.

4. After returning from the North Sea, I was invited to go to the Norsk Hydro offices in Bergen. Once there I was shown their extensive Oil Spill Emergency Command Center (floor plan attached) by Bjorn Holst one of their Contingency Planners. The Emergency Center is a group of rooms with individual peripheral offices, conference rooms and telephone switchboard which surround the main operating

Figure 13

room. In it there is a command console where each desk is equipped with telephones, radios, a computer - all of which are interfaced with recorders for information storage. This console overlooks a conference table, blackboards, movable planning boards with each piece of response equipment pre listed and large screen television that also functions with an overhead projector. In addition there are extensive map racks and book-shelves with volumes of supplemental Contingency Plans and equipment lists with contact numbers of contingency equipment located throughout the world. Within 6 months they expect to have direct video link-ups with oil pollution control activities. The whole essence of the room projects the image that control of an oil spill is treated as a major priority. At present, we have no similar facility in Alaska.

Figure 14

On Wednesday 9/27/89 I attended an oil spill drill put on by NOFO as a replacement for the "Tactical Oil on Water" exercise that, due to bad weather, was not conducted. This new exercise was held about 70 kilometers north of Bergen where the Fedjefjorden (Fedje Fjord) meets the North Sea. This entrance is about equal distance from the Sture Terminal, 20 km to the south and the Mongstad refinery 20 km to the east.

Figure 15

We left Flesland Kai approximately 1 hour late due to the delayed arrival of a plane carrying 30 government observers aboard M/V Godoyssund Express, a fast (45 knots) passenger charter boat. As we proceeded to the exercise site, I observed dozens of the multi-purpose service vessels at the many offshore supply bases scattered throughout the area's waterways. About 50 km out of Bergen we passed the Sture Terminal (see I.D.5).

When we arrived at the exercise site, the spill drill was well underway. There was an impressive assemblage of response equipment. I have not yet received a copy of the drill scenario, but it went something like this. The tanker XYZ approaching the Fjord entrance and hit a rock where it spilled mass quantities of crude. Sometime thereafter it caught fire and broke in half. The crew abandoned ship.

The response equipment came from all around the spill area. The Sture Terminal sent their two tugs and other response craft with a combined recovery rate of 1000 bbls/hr. The Mongstad refinery's two tugs with a combined 1000 bbls/hr recovery rate were there also. A NOFO Transrec skimmer whose recovery rate is 2000 bbls/hr was on board a multi-purpose service vessel with attending boom pulling vessel, was present. A Navy vessel with Foxtail 500 bbls/hr skimmer was part of the exercise. There were also two other groups of vessels with skimming ability of 500 -1000 bbls/hr each.

All of these vessels had deployed their boom and skimmers. They were working as groups and appeared to be well organized and efficient. There was a vessel deploying foam which was used as the oil simulant. A small coastal tanker was standing by to lighter recovered oil from all of the recovery vessels. Aerial surveillance was provided by a twin turbine aircraft with SLAR, IR and video equipment. A large Puma helicopter, which doubles as a dispersant application aircraft, was hoisting the "tanker crew from life rafts". This whole activity took place at the entrance to the Fjords, in rolling seas with waves up to 3 meters.

We then moved closer to the mainland where the local Regional Oil Pollution Control Committee was busy operating their skimming equipment which included a few hundred meters of boom, a Foxtail skimmer and a belt skimmer that had the ability to pick up trash.

Figure 16

It was difficult to count all the equipment and vessels participating in the exercise; however, it appeared there was in excess of 7000 bbls/hr skimming capability provided by the 30+ boats involved in the exercise.

The cost of the exercise was about \$570,000 all of which comes out of the NOFO \$7,000,000 operating budget for 1989.

All of the vessels and equipment involved in their respective locations appeared adequate in the seas observed.

This exercise was typical by the standards used in Norway in demonstrations of cleanup response for an area where the crude oil tanker traffic is less than 500,000 bbls/day at any single terminal. The oil industry in Alaska has never put on an exercise this massive and we have tanker traffic with 4 times the volume at a single terminal.

II. Scotland's Shetland Islands

A. Regulatory Authority and Responsibilities

1. The British Parliament enacted legislation in 1974 empowering the Shetland Island Council (SIC) to become the Harbor Authority. The Act called the "Zetland County Council Act of 1974" gave the council the power to regulate the oil industry at Sullom Voe by adopting "By-laws for the Port of Sullom Voe". Other British shipping laws and IMO (International Maritime Organization) Regulations were also incorporated as Laws of the Land.

Figure 17

In addition the Shetland Island Council and Oil Industry worked out 5 separate agreements which became in effect the Law under which the Sullom Voe Terminal is operated.

- i. The Disturbance Agreement of July 11, 1974 set up a tax structure where the SIC received revenue to compensate for disruption of the Island's way of life.
- ii. The Sullom Voe Association Agreement is still a secret but is thought to specify how the SIC and the Oil Companies interact and their relationship.
- iii. The Port & Harbor Agreement of 1978 sets up the conditions under which the terminal's shipment of oil with tankers interacts with the local Port Authority which operates the Port of Sullom Voe. This includes a pollution indemnity clause which assesses unlimited liability to the spiller of any oil. (This agreement is 89 pages).
- iv. Busta House Agreement of 1988 settles various financial disputes and sets forth renewal options for the Port & Harbor Agreement.
- v. The fifth agreement requires the oil companies to issue "voyage instructions" for all tankers calling at Sullom Voe. Their instructions set forth no-go areas, including a 10-mile Exclusion Zone around the Shetland Islands for all tankers, reporting-in requirements, minimum ballast requirements (35% ballast & stores) and prohibited discharge of oily ballast within 200 miles of Shetland's Coast. The instructions are not enforced by state law but by commercial contract between the oil companies and their customers. If a tanker violates the instructions it can be "blacklisted" and refused permission to enter Shetland waters. (See II A.3.)

All these laws set up a very strict set of operating conditions that dictate tanker movements, terminal operation and oil pollution response.

2. The Port of Sullom Voe is a deep water harbor owned and operated by the Shetland Island Council as Harbor Authority.

Figure 18

- a. The Sullom Voe Harbor Authority is in direct control of all tanker movements. That control is exercised and monitored from the Port Administration building's Port Control Room which is located on Sella Ness approximately $\frac{1}{4}$ mile directly across from the terminal's docks. It has a clear view of the port and terminal. The control center is staffed by Port Controllers who each hold an unlimited Masters Certificate to command tankers of any size in any waters

At the Port Control Center they:

- i. operate the radio and vessel traffic system;
 - ii. provide the required tanker pilot service (by pilot boat and helicopter);
 - iii. control all tanker movements with radar tracking in the Sound and vessel position plotting as each vessel reports it's position in and out to 200 mi;
 - iv. dispatch helicopters for surveillance of all tanker movement by air;
 - v. provide and maintain navigational aids;
 - vi. dispatch personnel to inspect all tankers which includes testing of all segregated ballast;
 - vii. levy and collect fees for these and other services.
- b. Other required services in which the Port Authority is involved through joint venture or partnership arrangements include:
- i. operation of the escort tugs which also dock the tankers (4 tugs per tanker - 2 of which are tractor type). The tugs make up to each tanker with hard line connection well out in the Sound, remaining made up till tanker is safely berthed. For outbound tankers the reverse is observed;
 - ii. dock space and warehousing of the terminal's oil spill response equipment is provided;
 - iii. provision of additional SIC owned pollution response equipment.
- c. In addition to the above, the Shetland Island Council owns the jetties (berths) at the terminal. The terminal has an exclusive use contract and has also repaid the SIC for the construction of those facilities.
- d. The SIC also acts as OSC during an oil pollution response and will, when necessary, direct the terminal operator's oil pollution response.

Figure 19

3. A test case has been settled where the Port Authorities spotter plane observed the tanker "Mahalia" dumping dirty ballast off the coast. That tanker was not allowed to enter Shetland's waters and the oil company cancelled it's contract. It is "blacklisted" and will not be allowed to call at the terminal.

B. The Oil Industry's Attitude

In the Shetland Islands there seems to be a more cooperative attitude within the oil industry. It may have been bred in the early days when the industry needed Shetland's Sullom Voe yet the Shetland Islanders did not need or want the oil industry's terminal.

The Islanders demanded protection of their Environmental Resources. Most of their demands seem centered around keeping tankers from running aground and preventing other oil spills. This hard bargaining produced results. The Industry complied and as a result has had very few oil spills.

C. The Terminal at Sullom Voe

The terminal began shipping crude in December, 1978. It is operated by British Petroleum for a consortium of oil companies. It receives crude oil containing gas liquids via two pipelines from the North Sea oil fields some 100 miles to the east. Those pipelines have a total combined capacity of 1.2 million bbls/day, although the terminal for the last few years has transported approximately 1,000,000 bbls/day (1/3 the size of Alyeska). There are sixteen storage tanks of 600,000 bbls each. Their storage to crude throughput ratio gives them twice the holding capacity of the Valdez Marine Terminal.

Oil spill equipment consists of a number of response craft and skimmers of several types. They have decided that they are prepared to respond to a 15,000 bbl spill with the equipment at the facility. For larger spills additional equipment would be required. Major stockpiles of equipment are located within 24 hours response time.

The main philosophy is spill prevention; consequently they have implemented tight control over tanker movement. Their unannounced daily overflights and strict NO POLLUTION ALLOWED policy makes the difference.

III. Comments on Additional Spill Response Equipment

A. Agreements Between Countries

There are several other agreements between neighboring countries where adjoining states help each other. Many countries have committed to responding within two hours with enough cleanup equipment to handle a 15,000 m (95,000 bbls) spill. This they have defined as the most probable spill. Many countries accept the MARPOL definition that a worst case spill may be as big as 30,000 - 40,000 m (190,000 - 250,000 bbls) as described in Regulations 23 through 25 of Annex I, although there is consideration being given to increasing this quantity.

B. The Bonn Agreement

Figure 20

In the Bonn Agreement, Belgium, Denmark, France, West Germany, The Netherlands, Norway, Sweden and the United Kingdom entered into an agreement to, among other things, share each other's clean up equipment.

Figure 21

Figure 22

Figure 23

Figure 24

Figure 24

Figure 25

Their major cleanup equipment is listed in Appendix B1.2 of the Bonn Agreement. I have taken these lists and penned in the manufactures "nameplate" capacity of the skimmers. I have also totaled the pieces and rated bbls/hr combined skimming capacity. As you can see, there is aggregate 121,012 meters of boom (380,060 feet, 7,198 miles). There are in excess of 262 small/medium/large (0 - 2,000 bbls/hr) and 18 very large skimmers (2,000 - 13,000 bbls/hr) whose aggregate capacity is 250,000 bbls/hr, and over 240 other vessels to support the oil spill combat operation.

In addition, in the western USSR there is a combined skimming capacity in excess of 30,000 bbls/hr by some estimates. Finland also has very large capacity skimmers.

IV. Closing Remarks

Figure 24
Figure 25
Figure 26

At this time with the limited information available to me, I have found that in these cooperating countries, within a geographic area the size of Alaska, the government has in excess of 250,000 bbls/hr skimming capability. The most important feature of which is that it is only a few minutes to 48 hours away from any location of a neighboring country. This equipment is stored in over forty strategically placed locations within the region.

Some government representatives have said that in addition to the government owned equipment, the oil industry has a combined skimmer capability in excess of the combined governments capability. Just think of it, over 500,000 bbls/hr!

These estimates are supported by additional information regarding the industry's response ability at specific locations. For example, in Southampton, England, the BP Oil Spill Service Center has enough equipment to respond to two simultaneous spills of 75,000 bbls each. BP soon will upgrade their capability to be able to respond to two spills of 375,000 bbls each.

There is a lot of discussion about how much cleanup equipment is necessary. As you know, skimmers are rated by the manufacturers. Those ratings are usually based on the skimmer's capacity to pump water. Therefore, the nameplate capacity is generally overrated by as much as 80%.

Oil recovery is usually limited by skimmer encounter rate; the "skimmer encounter rate" is, how fast and in what quantity, the oil and the skimmer get together. In Europe, there seems to be a trend towards lots of skimmers and also very large skimmers, which can process a lot of oil and water very fast. Most all agree that if you don't have the oil picked up within 12 to 48 hours, it will come ashore. And as we all know, once ashore, it's there for a longtime.

Figure 27

ARCO is discussing a 40,000 bbl/hr tanker/skimmer (a vessel of opportunity).

Figure 28

Currently, the nameplate capacity of the skimmers that are available in Prince William Sound is approximately 10,000 bbls/hr. That's for a single terminal that ships approximately 2,000,000 bbls/day. This is 40% - 60% more oil per day than the largest single terminal in Northern Europe by some estimates. Incidentally, on October 1989, GAO (General Accounting Office) says the new equipment at the terminal would at best only handle 35% - 45% of the oil spilled from the Exxon Valdez.

Figure 29

As you know, any additional clean up capability that might be available to help in Alaska is days, not hours, away. If we are to have response capabilities on par with Northern Europe, we need in excess of 50 times more clean up skimmer capabilities. Unfortunately, we need more than skimmers to be on par with the terminals that I visited.

Remember, those terminals have more crude storage capacity so that they do not have to ship crude in bad weather. They built all of the storage tanks that were originally planned. Also, as they expand, they build more tanks and add more cleanup equipment.

We need more prevention controls such as more crude oil storage, state of the art vessel traffic systems, continuous vessel tracking even while at sea, daily pollution control aerial surveillance, the establishment of traffic lanes at sea which are 100 or more miles offshore, bigger skimmers, vessels of opportunity equipped with skimmers, escort response vessels in close water, emergency response tugs strategically located along the coast that can reach a disabled tanker before it drifts upon the rocks, double hull tankers, the list goes on. But most of all we need a cooperative attitude by all parties involved so that we can row our boat on a preset course and maintain a true heading.

Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

March 27, 1990

The Honorable Drue Pearce, Chair
Special Committee on Oil & Gas
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

You have requested information concerning the new authority that would be granted the department under Senate Bill 504 regarding structural integrity inspections of tank vessels. Specifically, you have asked us to detail what a structural integrity test would entail. I have outlined below the manner in which we would handle this, should this legislation pass.

1) The first phase would entail a record check by a qualified marine architect with the United States Coast Guard to determine the history of the vessel. The Coast Guard is authorized to begin its vessel oversight program while the vessel is still on the drawing board. A review of existing inspection records and maintenance history would provide some basic structural integrity information, such as type of steel used in construction, use of certified welding procedures, and other similar details.

2) If the record check indicated that an inspection is warranted, we would request that the Coast Guard conduct an inspection. The Coast Guard currently does two types of inspection - an annual inspection that simply looks at the history of the vessel and a biennial inspection that includes actually entering the tanks. In addition, they have the authority to require that the vessel be drydocked two times in a five year period, with no more than 30 months between drydocking. From the initial review, we would target the type of inspection desired and then review the methods and results of the inspection.

3) Should the results from this inspection provide cause for concern, we would contract for an inspection with a qualified marine architectural firm. We would likely be interested in

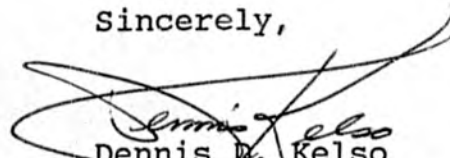
March 27, 1990

examining corrosion, testing power, checking steering mechanisms, props, bearings, piping and valves, as well as tanks and welding. Depending upon the circumstances, we may detail a member of DEC's field staff to participate in the inspection.

4) Decisions to ensure safe operations of inspected tankers will be based on the technical reviews described above. We will confer, as necessary, with our marine architectural consultants and the Coast Guard in reaching these determinations. By coordinating our efforts with those of the Coast Guard we can avoid duplication and ensure efficient safety evaluations.

I hope that this has provided you with the information that you need. Please do not hesitate to contact us if you need more information.

Sincerely,



Dennis D. Kelso
Commissioner

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 26, 1990

SUBJECT: Effect of CSHB 567(Finance)
on Liability under AS 46.03.822

TO: Representative Kay Brown

FROM: Terri Lauterbach *TL*
Legislative Counsel

You have asked whether any provisions amended or added by CSHB 567(Finance) would add new members to the class of persons who would be found liable for releases of oil or a hazardous substance under AS 46.03.822.

It does not appear to me from my review of the bill that CSHB 567(Finance) either enlarges or decreases the class of persons who could be found liable for a release of oil or a hazardous substance under AS 46.03.822. The bill does not amend AS 46.03.822. It does not add any references to AS 46.03.822. If there are transporters of oil who are potentially liable for discharges under AS 46.03.822 before CSHB 567(Finance) passes, they will remain liable after CSHB 567(Finance) passes. Conversely, if there are transporters of oil who are not potentially liable for discharges under AS 46.03.822 as it now exists, CSHB 567(Finance) won't change that; they will still not be liable.

In short, I do not at this time see how CSHB 567(Finance) could be read to add any persons to the class of persons already potentially liable for discharges under AS 46.03.822.

Please let me know if I can be of further assistance.

TL:gc
G14/038

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

TO: Denby Lloyd
Special Staff Assistant
Office of the Governor

DATE: March 7, 1990

FILE NO:

TELEPHONE: 465-2400

FROM: Lennie Gorsuch
Commissioner

SUBJECT: Onshore Oil Spill
Plans

As requested, I am providing information about existing oil spill contingency plan requirements for onshore oil and gas facilities.

Under current law, only offshore drilling and production operations and onshore oil storage terminals are required to have DEC approved oil spill contingency plans. However, federal regulations require onshore operators on state, federal and private land to prepare a Spill Prevention, Control and Countermeasure (SPCC) plan.

Since approximately 1978, the Department of Natural Resources has included an oil and gas lease sale stipulation for state land which requires the lessee to submit a SPCC plan for onshore operations to DEC. The SPCC plan is prepared under federal Environmental Protection Agency (EPA) regulations (copy attached).

Currently, most oil and gas exploration in Alaska is taking place on post 1978 state leases that require submittal of an onshore SPCC plan or an offshore contingency plan to the state. However, most onshore development activity on the North Slope is on pre-1978 state leases that require (under federal regulations) preparation of a SPCC plan but do not require submittal of the plan to the state.

Oil and gas development in the Cook Inlet area is on old state and federal onshore leases, as well as on offshore state leases. As for the North Slope, pre-1978 state onshore leases did not require submittal of SPCC plans to the state. But preparation of SPCC plans was required by federal regulations. Federal and private land in the Cook Inlet area is also covered by federal SPCC plan requirements. But there are no federal requirements that copies of these plans be provided to the state.

A SPCC plan is not as complex or comprehensive as a contingency plan. Contingency plans are more reactive in nature and generally describe after-the-fact actions to mitigate a spill, once it has occurred. SPCC plans are site or facility specific, and address spill prevention and before-the-fact on-site spill containment capability. Plans address the use of structures such as dikes and containment berms, as well as methods for controlling blowouts and locations of spill clean-up equipment. SPCC plans are not required to address the financial responsibility of the operator.

Spill containment measures are much more effective onshore than offshore, and can be designed, built and maintained before a spill takes place. The differences between a SPCC plan and a contingency plan are due, in part, to the differences in risk and potential impact between an onshore and an offshore spill.

I hope this information is helpful. I have enclosed a copy of the EPA regulations concerning SPCC plans, as well as a copy of the latest version of our lease sale SPCC stipulation. A copy of a SPCC plan is being sent to Juneau, and will also be available for your review.

attachments

PROPOSED MITIGATION MEASURES

AS 33.05.035(e) and the departmental delegation of authority provide the director, Division of Oil and Gas, with the authority to impose conditions or limitations, in addition to those imposed by statute, to ensure that a resource disposal is in the state's best interest. Consequently, to mitigate the social and environmental effects of specific lease activities, lease stipulations will be enforced throughout the term of the lease and the measures listed under "Proposed Plan-of-Operations Permit Terms" will be imposed through plans of operations and other permits.

These measures were developed after considering stipulations and terms imposed in other Cook Inlet region oil and gas lease sales; fish and wildlife resource and harvest data submitted by Alaska Department of Fish and Game; environmental data relating to air and water quality, solid and liquid waste disposal, and oil spills submitted by the Alaska Department of Environmental Conservation; and comments submitted by the public, local governments, and other federal, state, and local agencies.

Proposed Lease Stipulations

1. Discovery of historic or archeologic objects: In the event any site, structure, or object of historic or archeologic significance is discovered during operations on the leased area, the lessee must report immediately such findings to the director, Division of Oil and Gas, and make every reasonable effort to preserve and protect such site, structure, or object from damage until the director, Division of Oil and Gas, after consultation with the State Historic Preservation Officer, has given directions as to its preservation.
2. Spill Prevention, Control, and Countermeasure (SPCC) Plan: A Spill Prevention, Control, and Countermeasure Plan must be submitted to the Alaska Department of Environmental Conservation prior to onshore drilling operations and construction of onshore oil and gas storage facilities (with a capacity of greater than 660 gallons), transfer, and transportation facilities. In addition to addressing the prevention, detection, and cleanup of oil, the SPCC plan for drilling operations should include, but not be limited to, methods for controlling blowouts, location of spill cleanup equipment, identification and location of a suitable alternative drilling rig, and the time required to obtain equipment, mobilize, rig-up, and commence drilling of a relief well, if needed.

Proposed Plan-of-Operations Permit Terms

Lessees must submit a detailed plan of operations to the Division of Oil and Gas for approval before conducting any exploratory or development operations provided the state owns all or part of the surface estate, the state reserves a net profit share to the state, or the surface owner so requests (11 AAC 83.158). The plan of operations is the permit by which the Division of Oil and Gas will regulate exploration, development, and production activities conducted on tracts leased in Sale 67A. Plans of operations must identify the specific measures, design criteria, and construction methods and standards that will be employed to meet the restrictions listed below and to address any potential geohazards that may exist at the proposed development site. The lessee also must concurrently submit an informational copy of its plan of operations to the Municipality of Anchorage, the Matanuska-Susitna Borough, and the Kenai Peninsula Borough, as appropriate.

Plans of operations for lease activities and specific permit applications which are subject to approval by the U.S. Corps of Engineers, which require a Certificate of Reasonable Assurance from the Alaska Department of Environmental Conservation, or which require other state agency authorizations must be submitted simultaneously for state agency review and approval at least 60 days prior to conducting the activities.

Review of plans of operations and other required permits will comply with coastal zone consistency review procedures established under 6 AAC 50. All lease-related activities in the coastal zone are subject to the standards of the Alaska Coastal Management Program (ACMP)

(6 AAC 80) and to the provisions of all approved coastal district plans. The Division of Oil and Gas will require, as a condition for consistency approval of lease operations, such modification or stipulations as may be necessary to ensure consistency with the Alaska Coastal Management Program and with sound planning and management of coastal zone resources.

Except as indicated, the restrictions listed below do not apply to geophysical exploration on state lands; geophysical exploration activities are governed by 11 AAC 96.

The following restrictions will be imposed on lands leased in Sale 67A as a condition of the approval of plans of operations:

General:

1. An application for water rights must be submitted to the Alaska Department of Natural Resources prior to diverting, impounding, or withdrawing water from any ground or surface source. A fish habitat permit must also be obtained from the Alaska Department of Fish and Game prior to using, diverting, obstructing, polluting, or changing the natural flow or bed of a designated anadromous waterbody (AS 16.05.870) or obstructing fish passage (AS 16.05.840).
2. An Oil Discharge Contingency Plan will be required for offshore operations as specified under AS 46.04.030 and 18 AAC 75.
3. Onshore exploration activities must be supported by vehicles which do not cause significant damage to vegetation or the ground surface, or by existing road systems and port facilities, or air service. Construction of local roads in the vicinity of exploration sites may be allowed. Unrestricted surface travel may be permitted by the director, Division of Land and Water Management, and the director, Division of Oil and Gas, if an emergency condition exists. Construction of year-round roads will be prohibited during the exploration phase of oil and gas development unless public and agency review show it to be in the state's best interests to have a permanent road constructed. When allowed, permanent roads must be designed, constructed, and maintained to the satisfaction of the director, Division of Oil and Gas.

Facilities and structures:

4. The siting of onshore facilities, other than roads, docks or pipeline crossings, will be prohibited within 500 feet (152 m) of all fishbearing streams and lakes unless it is shown to the satisfaction of the director, Division of Oil and Gas, after consultation with the Alaska Department of Fish and Game, that alternative site locations outside this buffer zone are not feasible or prudent. Additionally, the siting of facilities within one-half mile of the banks of the Susitna, Little Susitna, Drift, Beluga, and Chuitna Rivers and Alexander Creek will be prohibited. Road and pipeline crossings must be aligned perpendicular or near perpendicular to watercourses.
5. Measures will be required to minimize the impact of industrial development on key wetlands. Key wetlands are those wetlands that are hydrologically important to fish, waterfowl, or shorebirds. Specific measures include the requirements that:
 - a. Lessees must identify on a map or aerial photograph the largest surface area within which it is anticipated that a facility is to be sited, or an activity is to occur. The map or photograph must accompany the plan of operations submitted to the Division of Oil and Gas. The Division of Oil and Gas will consult with the Alaska Department of Fish and Game to identify the least environmentally sensitive area(s) within the industry-identified area of interest. The industry-identified surface area must be large enough to contain the facility and to accommodate planned expansion.

- b. Drill pads, roads, pipelines, and other facilities must be sited outside of key wetlands unless the director, Division of Oil and Gas, after consultation with the Alaska Department of Fish and Game, determines that there are no feasible or prudent alternatives.
 - c. Where facilities must be sited within key wetlands, such facilities will be sited, designed, and constructed in a manner that will maintain natural hydrological patterns and prevent oil contamination.
 - d. Draining or dewatering key wetlands is prohibited, unless no feasible or prudent alternative exists.
 - e. Dredging or filling of key wetlands will not be allowed unless the activity will not cause adverse impacts to the wetlands and no feasible or prudent alternative exists.
6. Impermeable lining and diking will be required for sewage ponds and onshore oil storage facilities (with a storage capacity greater than 660 gallons). Buffer zones of not less than 100 feet (30 m) and up to 1,500 feet (457 m) will be required to separate onshore oil storage facilities (with a capacity greater than 660 gallons) and sewage ponds from marine areas and freshwater supplies, streams and lakes, and wetlands that are important to fish, waterfowl, or shorebirds unless the director, Division of Oil and Gas, after consultation with the Alaska Department of Environmental Conservation, determines that such a requirement is not feasible or prudent. Sumps and reserve pits must be impermeable and otherwise fully contained through diking or other means.
7. To the extent feasible and prudent, all lease activities will be conducted and structures will be designed and sited to maintain normal water flow and drainage patterns, natural oceanographic circulation patterns and nearshore water quality, and to allow free movement and safe passage of fish and mammals.
8. Facilities and surface transportation routes will, to the extent feasible and prudent, be sited and consolidated to avoid sensitive fish and wildlife habitat.
9. Exploration facilities, with the exception of drill pads and airstrips, must be temporary and must not be constructed of gravel. However, use of existing abandoned gravel structures may be permitted on an individual basis by the director, Division of Oil and Gas, after consultation with the director of the Division of Land and Water Management and the Alaska Department of Fish and Game. Approval for use of abandoned structures will depend on the extent and method of restoration needed to return these structures to a usable condition.
10. a. Onshore pipelines will, to the extent feasible and prudent, be buried where soil and geophysical conditions allow. Where feasible, above-ground pipelines must be located on the upslope side of roadways and construction pads unless the director, Division of Land and Water Management, determines that an alternative site is environmentally acceptable.
- b. Offshore pipelines must be located to prevent obstruction to marine navigation and fishing operations.
- c. Pipelines must be located so as to facilitate the "containment and cleanup of spilled hydrocarbons. Pipelines, including flow and gathering lines, must be designed and constructed to provide adequate protection from climatic conditions and geologic hazards as determined on a case-by-case basis.
11. Upon abandonment of material sites, drilling sites, roads, buildings, airstrips or other facilities, such facilities must be removed and the site rehabilitated, unless the director, Division of Oil and Gas, after consultation with the Alaska Departments of Fish and Game and Environmental

specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(1) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

138 FR 34165, Dec. 11, 1973, as amended at 41 FR 12658, Mar. 26, 1976

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States, or adjoining shore lines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3 (a), (b) or (c) shall complete a review and evaluation of the

SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of the review.

(c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with § 112.3(d).

§ 112.6 Civil penalties for violation of oil pollution prevention regulations.

Owners or operators of facilities subject to § 112.3 (a), (b) or (c) who violate the requirements of this Part 112 by failing or refusing to comply with any of the provisions of § 112.3, § 112.4 or § 112.5 shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in Part 114 of this Subchapter D.

(Secs. 311(j), 501(a), Pub. L. 92-500, 86 Stat. 868, 885 (33 U.S.C. 1321(j), 1361(a)))

139 FR 31602, Aug. 29, 1974

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;

(ii) Curbing;

(iii) Culverting, gutters or other drainage systems;

(iv) Weirs, booms or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds;

(vii) Sorbent materials.

(2) Offshore facilities:

(i) Curbing, drip pans;

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR Part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e) In addition to the minimal prevention standards listed under § 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applica-

ble guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(1) Facility drainage (onshore): (excluding production facilities). (i) Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

(ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should be inspected as provided in paragraphs (e)(2)(iii) (B), (C) and (D) of this section before drainage.

(iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

(iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.

(v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two "lift" pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility.

(2) Bulk storage tanks (onshore); (excluding production facilities). (i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR Part 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

(iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing.

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

(vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate.

(A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system.

(B) The feasibility of installing an external heating system should also be considered.

(viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

(ix) Plant effluents which are discharged into navigable waters should

have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected.

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

(3) Facility transfer operations, pumping, and in-plant process (onshore); (excluding production facilities). (i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

(ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer point should be capped or blank-flanged, and marked as to origin.

(iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill event.

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

(4) Facility tank car and tank truck loading/unloading rack (onshore). (i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation.

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

(iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(5) Oil production facilities (onshore)—(i) Definition. An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) Oil production facility (onshore) drainage. (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under § 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (e)(2)(iii) (B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and

returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) Oil production facility (onshore) bulk storage tanks. (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in § 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(1) Adequate tank capacity to assure that a tank will not overflow should a bumper/gauger be delayed in making its regular rounds.

(2) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(3) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(4) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) Facility transfer operations, oil production facility (onshore). (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve

glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(6) Oil drilling and workover facilities (onshore). (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(7) Oil drilling, production, or workover facilities (offshore). (i) Definition: "An oil drilling, production or workover facility (offshore)" may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary nontransportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent col-

lection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow.

(iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges.

(v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges.

(vii) Tanks should be equipped with suitable corrosion protection.

(viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan.

(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a

scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations.

(x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator.

(xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any well-head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(xii) Extraordinary well control measures should be provided should emergency conditions, including fire, loss of control and other abnormal conditions, occur. The degree of control system redundancy should vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems have redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow but should be installed as required by applicable State regulations.

(xiii) In order that there will be no misunderstanding of joint and separate duties and obligations to perform work in a safe and pollution free manner, written instructions should be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures should be maintained at the offshore production facility. Under certain circumstances and conditions such contractor activities may require the presence at the facility of an authorized representative of the owner or opera-

for who would intervene when necessary to prevent a spill event.

(xiv) All manifolds (headers) should be equipped with check valves on individual flowlines.

(xv) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over pressuring.

(xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed.

(xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations.

(xviii) Sub-marine pipelines appurtenant to the facility should be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility.

(18) *Inspections and records.* Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years.

(19) *Security (excluding oil production facilities).* (i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended.

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

(iii) The starter control on all oil pumps should be locked in the "off" position or located at a site accessible only to authorized personnel when the

pumps are in a non-operating or non-standby status.

(iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time. This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure.

(v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism.

(10) *Personnel, training and spill prevention procedures.* (i) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations.

(ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management.

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

APPENDIX—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF TRANSPORTATION AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) "Non-transportation-related onshore and offshore facilities" means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in

drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and

terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) "Transportation-related onshore and offshore facilities" means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a non-transportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation-related facility or

terminal facility and which are not intended for use in interstate or intrastate commerce.

PART 113—LIABILITY LIMITS FOR SMALL ONSHORE STORAGE FACILITIES

Subpart A—Oil Storage Facilities

Sec.

113.1 Purpose.

113.2 Applicability.

113.3 Definitions.

113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.

113.5 Exclusions.

113.6 Effect on other laws.

AUTHORITY: Sec. 311(f)(2), 86 Stat. 867, 33 U.S.C. 1251 (1972).

SOURCE: 38 FR 25440, Sept. 13, 1973, unless otherwise noted.

Subpart A—Oil Storage Facilities

§ 113.1 Purpose.

This subpart establishes size classifications and associated liability limits for small onshore oil storage facilities with fixed capacity of 1,000 barrels or less.

§ 113.2 Applicability.

This subpart applies to all onshore oil storage facilities with fixed capacity of 1,000 barrels or less. When a discharge to the waters of the United States occurs from such facilities and when removal of said discharge is performed by the United States Government pursuant to the provisions of subsection 311(c)(1) of the act, the liability of the owner or operator and the facility will be limited to the amounts specified in § 113.4.

§ 113.3 Definitions.

As used in this subpart, the following terms shall have the meanings indicated below:

(a) "Aboveground" storage facility means a tank or other container, the bottom of which is on a plane not more than 6 inches below the surrounding surface.

(b) "Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

(c) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(d) "Belowground" storage facility means a tank or other container located other than as defined as "Aboveground".

(e) "Discharge" includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(f) "Onshore Oil Storage Facility" means any facility (excluding motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States, other than submerged land.

(g) "On-Scene Coordinator" is the single Federal representative designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan and identified in approved Regional Oil and Hazardous Substances Pollution Contingency Plans.

(h) "Oil" means oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(i) "Remove" or "removal" means the removal of the oil from the water and shorelines or the taking of such other actions as the Federal On-Scene Coordinator may determine to be necessary to minimize or mitigate damage to the public health or welfare, including but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Additionally, the terms not otherwise defined herein shall have the meanings assigned them by section 311(a) of the act.

§ 113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.

Unless the United States can show that oil was discharged as a result of willful negligence or willful misconduct within the privity and knowledge of the owner or operator, the following limits of liability are established for fixed onshore facilities in the classes specified:

(a) Aboveground storage.

KEY POINTS OF PREVENTION REGULATION

The Environmental Protection Agency Oil Pollution Prevention Regulation, published in the Federal Register on 11 December 1973, is addressed to non-transportation related facilities and is further identified as Title 40, Code of Federal Regulations, Part 112. The main requirement of facilities subject to the regulation is the preparation and implementation of a plan to prevent any discharge of oil into waters of the United States. The plan is referred to as a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

The following discussion will answer some of the frequently asked questions and summarize key elements of the regulation.

Purpose

To prevent discharges of oil into waters of the United States. The main thrust of the regulation is prevention as opposed to *after-the-fact* or *reactive* measures commonly described in Spill Contingency Plans.

Applies To

Owners or operators of facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, or consuming oil and oil products, providing:

1. The facility is non-transportation related (*see definition page 4*).
2. Aboveground storage capacity of a single container is in excess of 660 gallons, or an aggregate aboveground storage capacity greater than 1,320 gallons, or the total belowground storage capacity is greater than 42,000 gallons.
3. Facilities which, due to their location, could reasonably expect spilled oil to reach waters of the United States.

Main Objective of Regulation:

Requires facilities which are subject to the regulation (*based on above criteria*) to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan prepared in accordance with guidelines outlined in paragraph 112.7 of the regulation.

Who Prepares the SPCC Plan?

- Owners—operating their own facilities, or,
- Operators—of leased facilities, or,
- Persons In Charge—including departments, agencies, and instrumentalities of State or Federal Government

General Requirements of the SPCC Plan

1. The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and have the full approval of management at a level of authority to commit the necessary resources.
2. The complete SPCC Plan shall follow the sequence outlined in paragraph 112.7 of the regulation and include a discussion of the facility's conformance with the appropriate guidelines listed.

Specific Requirements

The plan must be certified by a registered professional engineer (*see paragraph 112.3(d) of the regulation*).

A complete copy of the SPCC Plan shall be maintained at the facility. If the facility is normally attended at least eight hours per day, or at the nearest field office if the facility is not so attended. The plan is only submitted to EPA or State Agencies under circumstances and conditions outlined in paragraph 112.3(f) and paragraph 112.4(a).

The SPCC Plan shall be made available to the EPA Regional Administrator, or to a duly authorized representative for onsite review during normal working hours.

If a discharge occurs in excess of 1,000 gallons in a single event, or two discharges occur in "harmful quantities" within any twelve month period, the owner/operator must then submit copies of the SPCC Plan to the Regional Administrator and to the State Agency in charge of water pollution control activities. Other information must accompany the SPCC Plan as outlined in paragraph 112.4(a).

After review of the SPCC Plan submitted under these circumstances, the Regional Administrator may require an amendment to the Plan as deemed necessary to prevent any future discharges.

Time Limits

For Existing Facilities:

From the effective date of the regulation (11 January 1974):

Six Months to Prepare SPCC Plan (To 11 July 1974)

AND

Twelve Months to Implement SPCC Plan (To 11 January 1975)

For New Facilities:

From time of start-up of the new facility:

Six Months to Prepare SPCC Plan

AND

Twelve Months to Implement

Time Extensions

At this point in time, October 1984, the only provision of the regulation for time extension of SPCC Plans would apply to New Facilities.

As an interpretative comment—it is difficult to anticipate circumstances which would reasonably justify an extension of time for a new facility since the normal time provision begins at the start-up date.

Questions Frequently Asked

Question—What facilities are subject to the 40 CFR 112 Regulation?

Answer—Non-transportation related facilities which have:

1. Aboveground storage capacity in excess of 1,320 gallons or a single container in excess of 660 gallons.
2. Underground storage capacity in excess of 42,000 gallons.
3. Facilities which due to their location and storage capacities in 1 or 2 could reasonably be expected to discharge into waters of the United States if a spill should occur.

Question—What is considered a non-transportation related facility?

Answer—All fixed facilities including support equipment, but *excluding* inter-state pipelines, railroad tank cars in route, transport trucks in route, and terminals associated with the transfer of bulk oil to or from a water transportation vessel.

Question—Who determines if a facility is in need of an SPCC Plan?

Answer—The owner or operator as required by the Regulation.

Question—What determines reasonability of a spill reaching U.S. waters?

Answer—Location of the facility in relation to a stream, ditch, storm sewer, distance, volume of material, drainage patterns, soil conditions, etc.

Question—Who is required to prepare the SPCC Plan?

Answer—The facility owner/operator. The Certifying Engineer may assist, but the owner/operator is responsible.

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Question—Why does the SPCC Plan have to be certified?

Answer—To assure that good engineering practices are followed in preparing the SPCC Plan.

Question—What are the requirements for certification?

Answer—The engineer should be familiar with the provisions of 40 CFR 112 and must have examined the facility, and be registered in at least one state. It is not necessary to be registered in the state in which the facility is located.

Question—What constitutes an SPCC Plan?

Answer—Follow the guidelines suggested in the Regulation—paragraph 112.7. A sketch or drawing of the site will assist in identification of the implementation.

Question—When the SPCC Plan is completed and certified, is it sent to EPA for review?

Answer—No, a certified copy of the Plan is required to be available at the facility for EPA onsite review, if the facility is attended at least eight hours a day. If the facility is not attended, then the Plan shall be kept at the nearest company office.

Question—What is the time frame for plan preparation and implementation for a new facility?

Answer—One year from the date the facility begins operation.

Question—Is an SPCC Plan required when a facility has existing preventive systems in place and no previous history of spills?

Answer—The need for an SPCC Plan is determined by two criteria; the storage capacity and the location, disregarding existing manmade structures.

Question—When a production lease consists of several operations, such as wells, oil/water separators, collection systems, tank batteries, etc., does each operation require a separate SPCC Plan?

Answer—No, one SPCC Plan may include all operations within a single geographical area when each is addressed in the Plan.

Question—Is every loss of oil or oil product subject to a penalty?

Answer—No, a discharge is defined in Section 311(a)(2) of the Federal Water Pollution Control Act (FWPCA) as including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping that enters the waters of the U.S. or on the adjoining shorelines in harmful quantities. If the water is affected, a penalty could be assessed. If a spill occurs and is prevented by some means from entering water, no penalty should be assessed.

Question—What is considered to be a harmful quantity?

Answer—Harmful quantity is defined in the Regulations as a discharge which affects the water quality standards, or causes a film or sheen upon or discoloration of the water or adjoining shorelines.

Question—What is considered navigable waters?

Answer—Section 502(7) of the FWPCA defines navigable waters as the waters of the United States. The Coast Guard interpretation includes not only the traditionally recognized navigable waters, but all streams, creeks, lakes, and ponds connected to the tributary system in a river basin.

Question—Is one spillage of oil into a municipal storm sewer a violation?

Answer—If oil reaches "navigable waters", a violation has occurred and penalties may result. The facility spilling the oil must also have an SPCC Plan implemented. A properly engineered and implemented plan would prevent a spill from occurring.

Question—What penalties are assessed?

Answer—Paragraph 112.6 of 40 CFR 112 authorizes the Regional Administrator to assess a civil penalty of up to \$5,000 per day for each violation.

THE SPCC PLAN

Basic Concepts

There is no rigid format for an SPCC Plan. The guidelines (paragraph 112.7) of the regulation suggesting a format is quoted—*"The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed"*. These guidelines indicate "minimal" requirements and must necessarily provide wide latitude to the many types of facilities to which they apply. A synthesis of these guidelines is presented on the following pages.

Spills can best be controlled by installation of prevention systems, adherence to proper operating procedures, and preventative maintenance, supported by positive containment and removal. If these elements are well thought out and documented, the result will be an adequate SPCC Plan. Therefore, three basic principles should be embodied within an SPCC Plan:

1. The practices devoted to the prevention of oil spills.
2. The plan of containment should a spill occur.
3. The plan for removal and disposal of spilled oil.

Furthermore, the Plan must be maintained and/or revised according to any changes in operation, process, or facilities covered, within six months of the change.

Spill Prevention

Operational errors and equipment failures are the primary causes of spills. Therefore, the plan should contain measures designed to avoid these errors and failures.

Operational Errors can be minimized through:

1. Personnel training.
2. Operator awareness of the imperative nature of spill prevention.
3. Adequate supervision of procedures.

Management must be committed to spill prevention and must develop and enforce techniques for safe and efficient operation.

Equipment Failures can be minimized through:

1. Proper initial selection and construction.
2. Maintenance of structural integrity and function.
3. Frequent inspections.

Industry standards and sound engineering practices dictate the proper course of action in each of these areas.

Containment of Spilled Oil

In this EPA Region we are generally concerned with spills from facilities where positive containment devices and systems are practical and effective. Dikes, retaining walls, curbing, spill diversion ponds, sumps, etc. fall into the category of prevention systems. Only where impracticability* to provide positive containment can be clearly demonstrated does the facility have the option to take the "contingency" plan approach. Contingency plans are considered "reactive" in nature—that is, they generally describe after-the-fact actions and can only be expected to mitigate the effects of a spill after it occurs. Therefore, preventative systems must be given first priority consideration in the initial study and preparation of the SPCC Plan.

*"Impracticability to provide positive containment" alludes mainly to those cases where severe space limitations may preclude installation of structures or equipment to prevent oil from reaching water. Justifying "impracticability" on the basis of financial considerations is difficult because the required commitment of manpower, equipment, and materials to expeditiously control, remove, and disperse spilled oil would not normally offer any significant economic advantage.

Elements of an SPCC Plan

While each SPCC Plan is unique, there are certain elements which may be included almost without exception to make a plan comply with provisions of the regulation and the spirit of oil spill prevention. These elements are discussed or listed as follows:

Name of Facility—This may or may not be the business name.

Type of Facility—This briefly describes the business activity.

Date of Initial Operation—The date that the facility began operation.

Location of Facility—This may be a word description or city address which can be supported by area maps.

Name and Address of Owner—Usually an address remote from the facility location.

Designated Person Responsible for Oil Spill Prevention—Each facility should have some person with overall oil spill responsibility. This person should be thoroughly familiar with the regulation and the facility's SPCC Plan.

Oil Spill History—This section can be either a reactive declaration, or a detailed history of significant spill events which occurred in the twelve month period prior to the publication of the regulation. In the latter case, typical information would include:

1. Type and amount of oil spilled
2. Location, date, and time of spill(s)
3. Watercourse affected
4. Description of physical damage
5. Cost of damage
6. Cost of cleanup
7. Cause of spill
8. Action taken to prevent recurrence

Management Approval—This is a signed statement of a person with the authority to commit management to implementation of the plan.

Certification—This is a statement of plan certification under the seal, signature, State, and registration number of a registered professional engineer. The certifying engineer does not have to be registered in the State in which the facility is located.

Periodic Review—This is a signed and dated statement by the owners and operators that a review and evaluation of the SPCC Plan has been performed. A review of the plan must be completed at least once every three years.

Note: All of the above information may be presented on a single page of an SPCC Plan. As an example, in Appendix A is a sheet entitled Certification Information.

Facility Analysis—A portion of the plan should include a description of the facility operation, which should generally indicate the magnitude of spill potential. For example, the amount and type of storage, normal increments of transfer or patterns of usage, distribution, processes, etc. In this analysis, the direction of flow of spilled oil should be indicated along with any factors which are pertinent or influence spill potential. It is appropriate to support this type of information by charts, tables, plot plans, etc., to aid clarity or promote brevity.

Location of Facility—The geographical location is an integral part of the SPCC Plan. Location and topographic maps can be critical in determining the adverse consequences of an oil spill. Sources for such maps include: (1) U.S. Geological Survey, (2) State Highway Department, (3) County Highway Engineer, (4) Local Land Surveys, and (5) City Engineer.

Facility Inspection—An inspection report covering the facility in terms of equipment, containment, operation, drainage, security, etc., may provide essential information necessary to formulate the SPCC Plan. Therefore, such reports could reasonably be incorporated as part of the plan. This kind of report would best serve in the more complex facilities and is not considered necessarily an element common to all SPCC Plans.

SPCC Examples

Several industrial trade associations have developed suggested SPCC Plan preparation guidelines for use by their members. Generally these guidelines were developed for a particular type of facility and have been very helpful. However, care should be exercised not to rely totally on any stereotyped format. Each plan is unique to the facility and requires individual thought processes and tailoring to specific spill hazards.

The American Petroleum Institute has prepared a bulletin entitled "*Suggested Procedure for Development of Spill Prevention Control and Countermeasure Plans*" (API Bulletin D16). This was designed primarily for oil production facilities.

The National Oil Jobbers Council has prepared a sample SPCC Plan covering a modest sized bulk plant which includes written and graphic details along with a dike design procedure. A modified copy of this is included in Appendix B.

THE REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee was formed in June 1989 following the grounding of the Exxon Valdez. This committee is made up of representatives from all oil spill affected communities. The fifteen members represent municipalities, boroughs, native organizations and fishing groups. The committee is charged with oversight and monitoring of ALYESKA activities. In February 1990 RCAC signed a contract with ALYESKA to provide this citizen monitoring for the life of the Alaska Pipeline operation.

Members of the Committee are:

City of Seldovia	- Tim Robertson
City of Homer	- Marge Tillion
City of Kodiak	- Leslie Smith
City of Whittier	- Georgia Buck
City of Valdez	- Jason Wells and Bill Walker
City of Seward	- Chris Gates
City of Cordova	- Mead Treadwell
Kenai Peninsula Borough	- Jim Butler
Kodiak Island Borough	- Wayne Colman
Kodiak Village Mayors	- Charles Christianson
Chugach Alaska Corp.	- Stacy Pascal
National Wildlife Federation	- Ann Rothe
Prince William Sound Aquaculture Corp.	- John McMullen
Cordova District Fisherman United	- Marilyn Leland

The Regional Citizen's Advisory Committee has taken the following positions on pending State Legislation:

- HB 409 We strongly support this bill which gives increased authority to the Department of Environmental Conservation.
- HB 566 We strongly support House version of this bill. We are OPPOSED to the Senate Oil and Gas Committee Substitute which would give planning and management authority to the Division of Emergency Services. These duties must be left to the Department of Environmental Conservation.
- HB 567 We strongly support the House Resources Committee Substitute version. Contingency plans and financial responsibility statues must be strengthened.
- HB 578 We support the formation of a Statewide Citizens Oversight Council. This is the best tool to fight institutional complacency.
- HB 558 We support this bill which will allow citizens to sue for noncompliance with environmental laws.

For further information contact Ann Rothe, President, at 258-4800

MEMORANDUM

State of Alaska

to Ernst W. Mueller, Commissioner
Department of Environmental
Conservation

DATE: May 13, 1982

FILE NO: J-66-462-82

TELEPHONE NO: 465-3600 x 54

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Financial
Responsibility
and the Insur-
ance Industry
(AS 46.04.040)

By: 
Douglas K. Mertz
Assistant Attorney General

You have asked this office for an opinion on several questions concerning Alaska's oil spill laws, specifically the provisions dealing with proof of financial responsibility, AS 46.40.040 (§ 2, ch 116 SLA 1980). In conversations with representatives of various tank vessel and oil barge owners, it has become apparent that a good deal of confusion exists regarding the effect of AS 46.04.040. This opinion is intended to convey our interpretation of that statute as well as this department's policy regarding enforcement of it.

First, we want to make clear what the statute does not do: It does not create any new or increased liabilities whatsoever. Its role is limited to requiring proof that an owner or operator has the financial ability to compensate damages for which that person is liable under other state statutes. 1/ While those other statutes may expose an owner or operator to varying degrees of liability (see infra), AS 46.04.040 neither increases nor decreases the potential liability derived from those preexisting statutes.

Some concern has been expressed by the insurance industry as to the effect of the "direct action" provision of subsection (e) (. . . An action brought under AS 46.03.-758, 64.03.760(a) or (e), or 46.04.822 may be brought in a state court directly against the insurer . . .). Specifically, their question has been whether this provision may subject insurers to even greater liabilities than their insureds because the insurer could not assert defenses personal to the insured. Of most immediate concern is whether the insurer could take advantage of the federal Limitation of Liability Act of 1851, 46 U.S.C. § 181, et. seq., which

1/ Specifically, AS 46.03.758, 46.03.760(a) and (e), and 46.03.822.

on its face is limited to vessel owners and demise charterers. The law on whether a direct action statute can deprive an insurer of the benefit of such defenses has never been settled ^{2/} Several jurisdictions besides Alaska allow direct actions against insurers in some circumstances. ^{3/}

Of most direct relevance is the Louisiana statute, La. Rev. Stat. 22:655, which is a detailed provision clearly intending to work a fundamental change in the relationship between insurer, insured, and third-party claimant. At present, it appears that under the Louisiana statute an insurer may be successfully prevented from involving the insured's personal defenses. See Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969). In contrast is the federal Clean Water Act provision on financial responsibility, 33 U.S.C. § 1321(p), after which the Alaskan act is in part modeled, which allows direct actions against the insurer, but explicitly permits the insurer to invoke the insured's defenses.

The Alaska statute contains no detailed indicia of intent to deny the insured's defenses, as in the Louisiana statute, nor an explicit provision retaining the insured's defenses, as in the Clean Water Act. The legislative history contains little evidence, except for the testimony on behalf of the Department of Environmental Conservation, as prime sponsor of the bill. William A. Publicover, Deputy Director of Environmental Quality Operations, testified that the bill's intent was

. . . to provide an easy way for an individual Alaskan to collect for damages to his property or for loss of income due to an oil spill. . . We want the injured party to be able to go to state court, even small claims court, file his claim against someone who is

^{2/} See Maryland Casualty Co. v. Cushing, 347 U.S. 409 (1954); Olympic Towing Corp. v. Nebel Towing Co., 419 F.2d 230 (5th Cir. 1969).

^{3/} See, e.g., N.Y. INS. LAW, (McKinney) Section 167; Louisiana Revised Statutes 22:655; California Insurance Code, Section 11580 (West 1977); Shingleton v. Bussey, 223 So.2d 713 (Fla. 19-69); Third Parties (Rights against Insurers) Act 1930 (United Kingdom).

attachable, someone who does business in Alaska, or who has an agent in Alaska, and we seek timely satisfaction of his claim.

Publicover went on to describe the costly and time-consuming process of identifying the responsible party and pursuing an action in a distant forum. The direct access provision, he said, was designed to provide a speedy remedy which as a practical matter could be secured by an Alaskan fisherman, for example, with a minor claim. Publicover did not mention any intent whatsoever to deny the insurer the insured's defenses.

Against this background, we believe the courts would read AS 46.04.040(e) as intended only to provide a local forum in which to proceed against a solvent fund, and would not read into it the much more far-reaching result intended by Louisiana's statute. In short, as we read AS 46.04.040(e), although a claimant may proceed directly against the insurer under this statute, the insurer would "step into the shoes" of the insured by being able to assert any substantive defense available to the insured.

At the same time, the insurer would always retain an absolute limit to its liability, namely the policy limits. Since the insurer's liability is derivative, through the insured's policy, even with "direct access" we believe the courts would not hold the insurer liable for more than the amount contracted for in the policy. (This interpretation is confirmed in the implementing regulations, at 18 AAC 20.065: ". . . the insurer's liability does not exceed the limits of coverage . . .").

In conversation with insurers it has also appeared that there is concern about multiple "certification" requirements, that is, about the insurers having to undertake the bureaucratic burden of supplying Alaska with a separate certificate of insurance, in addition to furnishing the federal government with a Federal Maritime Commission certificate to comply with federal requirements. We would point out, however, that AS 46.04.040 contains no technical "certification" requirement; instead, it and the related regula-

tions (18 AAC 20.005 -- 18 AAC 20.900) are quite flexible as to how a party may demonstrate the existence of requisite financial responsibility. As to insurance, for example, the party need only submit a suitable binder along with a copy of the underlying policy, or a certificate of entry. If financial responsibility is shown through a surety bond or guaranty sample forms are included in the regulations. If self-insurance is used, the regulations merely call for a set of financial statements and affidavits, in place of which a party may substitute forms already prepared for submission to the Securities and Exchange Commission or the Federal Energy Regulatory Commission (see 18 AAC 20.055). Thus, the regulations, far from imposing a rigid and extensive set of bureaucratic requirements, are quite flexible and easy to satisfy once the required financial responsibility is acquired.

Finally, we address the question of whether AS 46.04.040, or its related statutes, could ever result in a windfall recovery for the state (a recovery greater than actual damages) or subject an insurer to liability for a punitive penalty assessed against the insured. To answer the question it is necessary to review the four statutes to which the financial responsibility requirements of AS 46.04.040 apply:

AS 46.03.760(a) is a standard civil penalty provision providing for an assessment to the state of \$500 to \$100,000 for violations of various state pollution statute; the assessment is required to reflect "reasonable compensation in the nature of liquidated damages for any adverse environmental effects . . .," as well as state costs in investigating and correcting the violation. Subsection (b) states: "Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature."

AS 46.03.760(e) provides for recovery by the state, in a civil action, of actual measurable damages caused by unlawful oil discharges, including cleanup and restoration costs. The prohibition in subsection (b) of punitive sanctions also applies to actions under subsection (e). We read subsections (a), (b), and (e) together to provide a scheme of alternative methods for securing compensation from oil spills, through either liquidated damages (subsection (a)) or actual damages (subsection (e)); in neither case could punitive sanctions be applied. Since both subsections have the same

purpose -- to provide full compensation -- we believe that a recovery under either one would be credited toward a recovery under the other, thus eliminating the possibility of a double recovery.

AS 46.03.758 is yet another provision for securing compensation to the state for damages from oil spills. Specifically, amounts assessed under this provision are intended to compensate for those elements of damage which are not able to be measured or valuated directly. Under this method, a formula is used, taking into account the amount spilled, amount recovered, the toxicity, dispersibility, and degradability of the oil, and the sensitivity of the receiving environment, to generate a final figure which would compensate for the actual damage to the environment not directly measurable. The civil penalty is explicitly not to be punitive (AS 46.03.758(a)(3)), and a person may not be subjected to civil penalty assessments under both AS 46.03.758 and AS 46.03.760(a) (see AS 46.03.758(i)).

AS 46.03.822 is the general strict liability statute for damages caused by hazardous substances, including oil; it also provides for a number of defenses. This is the statute upon which private parties may rely to secure damages.

These are the only statutes for which financial responsibility must be shown, and to which AS 46.04.040 applies; we note particularly that it does not require proof of financial responsibility for sanctions under AS 46.03.-790, the parallel criminal penalty provision. From the details of the four provisions to which the financial responsibility requirements apply, we conclude that (1) in no case would an insurer, providing coverage only under the four listed statutes, be liable for a punitive or criminal assessment; and (2) since all four of the listed provisions are basically compensatory in intent, amounts assessed under any one of them which were intended to compensate for a particular set of damages would necessarily be credited toward recoveries for the same damages under any of the other statutes, so there is no possibility of multiple recoveries for the same damages.

This discussion reflects our Department's view of the statutes and regulations in question and is the basis for any enforcement action to be taken under the law. It thus appears to us that the concerns expressed by the industry on these points are without foundation, and we are

Ernst W. Mueller, Commissioner

May 13, 1982
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pleased to be able to give our assurances that the State of Alaska's Department of Law intends to enforce these laws in a manner which should satisfy the industry as to its fairness. !

 Please let me know if you have any other questions.

DKM/jb

April 1990

Department to conduct tests of Lutak Inlet water quality. DEC officials are finishing plans for a water sampling program in Lutak Inlet, near Haines, to attempt to confirm federal test data that indicates the possibility of above average levels of arsenic in the water. The Department will take sediment samples at several sites to check for heavy metal contamination and to determine if it might be stemming from leaks at the old U.S. Army petroleum tank farm, from the Chilkoot Lumber Co. mill or from some other source near the state ferry terminal. The detailed samples, which will be coordinated with other upland inspections, likely will be conducted during May with results possible by mid summer. Contact the Southeast Regional Office at 789-3151.

DEC to hear Hyder residents express water quality concerns. DEC officials will travel to Hyder for a public hearing at 7 p.m. April 5 to discuss concerns that workers at the Westmin Mine in British Columbia may be discharging waste water into Cascade Creek and impacting the nearby Salmon River. The hearing will be conducted by Environment Canada. Contact Bill Fagan at 225-6200.

Sitka air permit comment deadline extended. As a result of Department air dispersion simulations that indicates that the Alaska Pulp Co. mill at Sitka might exceed state ambient air quality standards, the Department extended until March 31 the deadline for the public to comment on a proposed new air quality permit for the Sitka mill. The Department is now hopeful of making a decision on the new permit by mid April. The Department earlier in March did reach agreement with the University of Alaska on the site for placement of an air monitoring station on the ridgeline above the plant -- a station being installed by the Department. Contact Jim Clare at 747-8614.

Department hires contractor to review all oil spill regulations and contingency plans. The Department has entered into a \$677,000 contract with Bennett Environmental Consultants Ltd. of Vancouver, B.C., an international oil consulting group, to review the state's existing regulations involving oil spill contingency planning and to make wide-ranging recommendations for improvements to existing laws, spill cleanup procedures and contingency plans. As part of the process the firm will hold a series of public meetings throughout Alaska later this spring to solicit public information on new contingency plan review criterion and spill prevention. Contact Lynn Kent at 465-2630.

Juneau added to hazardous waste spring cleanup project. Juneau has been added to a list of communities that will participate in the Department's annual small quantity household hazardous waste collection program. The spring cleanup will be held in May and June in the following towns: Fairbanks, Palmer/Wasilla, Homer, Kodiak, Soldotna, Seward, Cordova, Ketchikan, and Juneau. The contractor to actually collect the waste for DEC should be selected by next week, with dates for the program then to be established. Contact Jeff Mach at 465-2671.

TS: Clare
-State Power
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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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VIA FACSIMILE

February 20, 1990

Representative Peter Goll, Co-Chairman
Representative Max Gruenberg, Co-Chairman
Representative Mike Davis, Vice-Chairman
House Judiciary Committee
Room 122, Capitol Building
P.O. Box V
Juneau, AK 99811

Re: HB 409

Dear Representatives Goll, Gruenberg, and Davis:

You have asked two questions concerning HB 409. The first is whether the bill's provision authorizing the Department of Environmental Conservation to enter and inspect the property of a pervasively regulated industry is constitutional. The second is whether the authorization of administrative penalties requires the right to a jury trial. In our view, the inspection access provision of this bill is constitutional as limited to facilities or premises with a history of pervasive regulation and a strong governmental interest in ensuring compliance with environmental laws. We also conclude that the authorization for administrative penalty proceedings does not require a criminal or civil jury trial. We will discuss each question in turn.

I. ACCESS AND INSPECTION AUTHORITY

Section 2 of HB 409 authorizes the Department of Environmental Conservation to enter and inspect at reasonable times the property or premises of a pervasively regulated facility to investigate actual or suspected sources of pollution or to ascertain compliance with state environmental laws and regulations. Section 1 requires the Department to have the consent of the owner or occupier to enter and inspect any property which is not part of a pervasively regulated industry. The distinction between those facilities which are pervasively regulated and those which are not explicitly tracks the caselaw developed under both the U.S. and Alaska Constitutions.

Representatives Goll,
Gruenberg, and Davis

February 20, 1990
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A. U.S. Constitution. In 1987, the United States Supreme Court in New York v. Burger, 107 S. Ct. 2636 (1987), upheld a New York statute providing for warrantless searches of automobile junkyards because junkyards are "pervasively regulated businesses" subject to regular inspection. The Court reasoned that owners or operators of commercial facilities with a long history of governmental oversight had a reduced expectation of privacy in those facilities. That reduced privacy interest, when joined with a strong governmental public health and safety interest in regulating such facilities, rendered a warrantless search permissible under the Fourth Amendment to the U.S. Constitution.

A number of state courts have upheld state environmental warrantless entry and inspection statutes when challenged under the federal Constitution. State v. Bonaccorso, 545 A.2d 853 (N.J. Super. 1988) (water pollution inspection of meat packing house upheld as pervasively regulated industry); State v. Santiago, 527 A.2d 963 (N.J. Super. 1986) (pesticide inspection statute); Middlesex County Health Dept. v. Roehsler, 561 A.2d 1212 (N.J. Super. 1989) (solid waste inspection of solid waste facilities upheld as pervasively regulated); Blosenski Disposal v. Commonwealth, 543 A.2d 159 (Pa. Cmwlth 1988) (solid waste inspection statute); Commonwealth v. Fiore, 516 A.2d 704 (Pa. 1986) (hazardous waste facilities pervasively regulated); United States v. Kaiyo Maru No. 53, 699 F.2d 989 (9th Cir. 1983) (fishing industry pervasively regulated and warrantless administrative search of fishing vessel by Coast Guard upheld); Trustees for Alaska v. EPA, 749 F.2d 549 (9th Cir. 1984) (condition of water discharge permit that facilities subject to search upheld against facial challenge); V-1 Oil Company v. State of Wyoming, Dept. of Env. Quality, 696 F. Supp. 578 (D. Wyo. 1988) (inspection and sampling of leaking underground storage tank contamination at gas station upheld as pervasively regulated).

B. Alaska Constitution. The seminal case for warrantless administrative searches under the Alaska Constitution is Woods & Rohde, Inc. v. State, Dept. of Labor, 565 P.2d 138 (Alaska 1977). The Alaska Supreme Court held that the Alaska Occupational Health and Safety Act's warrantless search provisions were unconstitutional because they extended to facilities and premises without a history of pervasive regulation and covered an enormous number of unrelated and disparate activities, essentially all private enterprise. Id.

The Court, in finding such a broad scope unconstitutional, specifically distinguished warrantless inspection provisions for those commercial facilities which have been subject to a long history of supervision, inspection, and pervasive

Representatives Goll,
Gruenberg, and Davis

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regulation. Business with a history of pervasive regulation held less of an expectation of privacy and, therefore, warrantless administrative inspection would be constitutional under Alaska law in those limited circumstances.

The Alaska Supreme Court subsequently upheld airport screening as constitutional. State v. Salit, 613 P.2d 245 (Alaska 1980). The Court noted that the air travel industry was pervasively regulated and, although the searches involved passengers, the rationale extended to them as well. The Alaska Court of Appeals, in Dye v. State, 650 P.2d 418 (Alaska App. 1982), upheld a warrantless administrative search of a fishing vessel, concluding that fishing is a pervasively regulated industry. The Appellate Court noted that, in reviewing warrantless access provisions, the inquiry should be: (1) whether the industry is so regulated as to diminish its expectation of privacy and; (2) whether the commercial enterprises' subjective expectations of privacy are ones which society would protect. Id. at 421-422.

Section 2 of HB 409 distinguishes on its face those facilities which are pervasively regulated and, thus, have a reduced expectation of privacy. Further, such facilities are pervasively regulated because of the need for assurance that their operation does not jeopardize the public health and safety. Consequently, there are compelling state interests in regular inspections for compliance with state environmental laws and to ensure that there is no pollution at the facility. Inspections further that interest. See New York v. Burger, 107 S.Ct. 2636, 2644 (1987). Since HB 409 adheres to this well developed distinction for pervasively regulated facilities, we believe it to be constitutional under both the U.S. and Alaska Constitutions.

II. ADMINISTRATIVE PENALTIES.

Section 4 of HB 409 authorizes the Department of Environmental Conservation to assess an administrative penalty for a violation of AS 46.03, AS 46.04, AS 46.09 or a regulation promulgated thereunder. The bill sets forth in detail the administrative procedure to be followed in assessing a penalty and the judicial appellate review process for reviewing the administrative decision. Specifically, after the final administrative decision is made, that decision may be reviewed by the superior court as an administrative appeal, not as a de novo review. You have asked whether the administrative penalty provisions require a jury trial as either a criminal or civil proceeding.

Representatives Goll,
Gruenberg, and Davis

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The first issue is whether the administrative penalty provisions are similar to criminal proceedings, thereby creating the right to a jury trial. The Alaska Supreme Court, in Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970), held that individuals subject to criminal prosecutions are entitled to a jury trial and the Court defined criminal prosecutions broadly as "any offense the direct penalty for which may be incarceration in a jail or penal institution . . . includ[ing] offenses which, even if incarceration is not a possible punishment, still connote criminal conduct in the traditional sense of the term." Id. at 402. The Court noted that "[a] heavy enough fine might also indicate criminality because it can be taken as a gauge of the ethical and social judgments of the community." Id. at n. 29.

The Supreme Court specifically excluded from the category of those "criminal" prosecutions requiring jury trials the revocation of licenses pursuant to administrative proceedings because lawful criteria other than criminality are a proper concern in protecting public welfare and safety. The Court's rationale is that the basis of revocation or suspension in such instances is not that one has committed a criminal offense, but that the individual is not fit to be licensed, apart from considerations of only guilt or innocence of crime. The Court further excluded from its holding those "legal measures which can be considered regulatory rather than criminal in thrust, so long as incarceration is not one of the possible modes of punishment." Id.

In determining whether the penalty imposed is akin to a criminal proceeding triggering the right to a jury trial, the court does not necessarily look to the size of the fine or the risk of loss, but rather to whether the penalties under consideration serve to brand the defendant with the same stigma as a misdemeanor conviction. Beran v. State, 705 P.2d 1280, 1284 n. 4 (Alaska App. 1985). For example, in Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106, 1110 (Alaska 1978), the Court held that prosecution for a violation of a city ordinance against "harassment" punishable by a \$500 fine did not constitute a criminal proceeding because the fine alone did not connote criminality in the constitutional sense. Moreover, in State v. O'Neill Investigations, Inc., 609 P.2d 520 (Alaska 1980), the Court held that a \$5,000 civil penalty for each count of unfair methods of competition and unfair trade practices did not constitute criminal penalties. The Court noted that "[t]he use of civil monetary penalties, woven into the fabric of many regulatory statutes as a sanction for non-compliance, has become commonplace." Id. at 526. Analyzing the penalty under the Baker v. City of Fairbanks test, two Supreme Court justices wrote in their concurrence:

Representatives Goll,
Gruenberg, and Davis

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"Furthermore, the argument that a penalty of \$5,000 per violation indicates criminality deserves consideration. However, the reason that the court has used contemporary social values and heaviness of the authorized penalty as measures of criminality is that they are a gauge of the community ethical and social judgment of persons who commit the wrongful act. In turn, the reason for determining the community's judgment of such persons is that the extent and nature of that judgment helps one predict the severity of collateral consequences which may be suffered by the defendant. Baker, 471 P.2d at 395. In discussing potential collateral consequences of conviction under the ordinance in Baker, we noted that "one convicted under this ordinance might suffer severe disabilities in obtaining future employment or in having heaped upon him a certain amount of social opprobrium."

The collateral consequences of finding that a debt collection agency or other business has committed "unfair trade practices in the conduct of trade or commerce" are not of this nature.

Id. at 538.

Consequently, while assessment of civil penalties against an environmental polluter may very well subject that person to community disfavor, this is not the type of collateral consequences envisioned in Baker and its progeny. The administrative penalty provision is civil and regulatory to encourage compliance rather than to punish as in a criminal proceeding. Thus, no right to a jury trial is required.

This interpretation is supported by federal law as well. The United States Supreme Court, in construing the U.S. Constitution, has concluded that civil penalties of up to \$50,000 per offense under the oil spill provisions of the Clean Water Act are not criminal in nature. United States v. Ward, 448 U.S. 240 (1980). Under the federal test, where the legislature "has indicated an intention to establish a civil penalty, [the court] inquires[s] further whether the civil statutory scheme is so punitive either in purpose or effect as to negate that intention." Id. at 248-49. The court noted that the oil discharge prohibition was a strict liability offense and that separate criminal provisions required proof of scienter. The court concluded that the civil penalties were not criminal in nature, and therefore, did not trigger constitutionally mandated criminal proceedings.

Representatives Goll,
Gruenberg, and Davis

February 20, 1990
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Id. at 254. The same is true for the administrative penalty provision of Section 4 of HB 409.

The second issue you posed is whether the fact that the administrative determination to impose an administrative penalty is not reviewable de novo on appeal to the superior court deprives a person of his/her right to a jury trial in a civil suit under the Alaska Constitution. Article I section 16 of the Alaska Constitution provides that "[i]n civil cases where the amount in controversy exceeds two hundred and fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law." This provision is modeled after the guarantee in the Seventh Amendment to the U.S. Constitution. See Shope v. Sims, 658, P.2d 1336 (Alaska 1983).

In Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977), the U.S. Supreme Court held that "when Congress creates new statutory public rights, it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment." Id. at 455. This case involved administratively assessed penalties for violations of OSHA workplace safety regulations.

In an earlier case, NLRB v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937), the U.S. Supreme Court upheld a provision of the National Labor Relations Act empowering the Board to make findings of fact that were conclusive on review and to issue orders concerning challenged labor practices. The Court overruled defendant's Seventh Amendment objections, stating: "the instant case is not a suit at law or in the nature of a suit. The proceeding is one unknown to the common law. It is a statutory proceeding." Id. at 8.

As one commentator has noted, these decisions represent the Court's recognition that the legislature may put certain decisions in the hands of administrative agencies because "in some instances complex problems [are] not easily comprehended by laypeople [and] should be decided by a specialized group of experts; to inject a jury into that process would seriously impair its utility and effectiveness." J. Friedenthal, M. Kane & A. Miller, Civil Procedure 499 (1985).

As a result, since many of the environmental statutes found in Title 46 did not exist at common law, the legislature may constitutionally vest their enforcement in administrative agencies without providing for a jury trial.

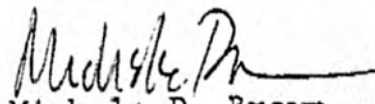
Representatives Goll,
Gruenberg, and Davis

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If you have any further questions, or if we can be of
further assistance, please contact us.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL



Michele D. Brown
Breck C. Tostevin
Assistant Attorneys General

MDB/640.tv
cc: Jeff Bush
John McDonagh

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

*Return
SSSB 504
files*

April 2, 1990

The Honorable Ernest Hollings
United States Senate
125 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hollings:

We want to commend your efforts over the past month to narrow the points of conflict between the House and Senate versions of the Oil Spill Compensation and Liability Act of 1989. It is our understanding that several issues remain. Having just observed the one-year anniversary of the Exxon Valdez oil spill, I would like to take the opportunity to say once again how important this legislation is to Alaska and the nation, and how essential it is that your actions preserve the authority of the states to protect their coastlines.

To this end, I want to point out three areas in the legislation that still concern us: provisions regarding the role of states in the response and cleanup process, the effect of proposed International Protocols on state law, and provisions on requirements for double-hulled tankers.

The Senate version of the Oil Spill Compensation and Liability Act of 1989 establishes a significant role for the states in setting cleanup standards and in participating with the President in the decision on whether a spill has been cleaned up satisfactorily. The House version also acknowledges the applicability of state standards for cleanup, and provides that the costs of removal required to meet those applicable state standards are compensable from the federal fund created by the legislation.

We understand there are those who would take away not only the role of the governors in determining whether their beaches and coastlines are clean, but also their ability to access the federal fund for the costs of cleanup undertaken to meet a state standard once the federal government has determined that work should be ended. We urge you to reaffirm the strong states' rights message sent by both the House and Senate floor votes on oil spill legislation, and to retain the participatory role of the states in determining "how clean is clean."

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It was our experience in Prince William Sound that "clean" soon was downgraded to "environmentally stable," a term later abandoned for the concept "treated." Treated beaches were not clean, and they were not environmentally stable. Had we accepted the decision last fall that cleanup was complete, it is questionable whether Exxon would have been prepared to return to Alaska this spring.

While we agree there needs to be clear and direct federal oversight of oil spill response, and that state response authorities should work under the direction of the federal on-scene coordinator, the decision that the job is complete must be a joint one, made not only by federal officials, but by officials accountable to the people who have to live with the aftermath of a spill. Further, the federal fund should be available to pay for the cost of cleanup, not part of a cleanup, but for cleanup sufficient to meet the applicable standard.

Another area of the legislation that could affect states' rights to protect their coastlines from oil spills is the continuing controversy over whether to include in our domestic legislation provisions enacting an international agreement, the 1984 Protocols to the International Conventions on Civil Liability (International Protocols). The House version of the bill would implement the Protocols; the Senate version would not.

The debate has swirled back and forth over whether the Protocols are stringent enough, whether they could be improved, and whether they require preemption of state law. After listening to both sides, we must ask you to oppose inclusion of the International Protocols in this legislation. We have concluded that implementation of the Protocols so clouds our authority to enact and enforce our own state liability regime over transporters of oil in the waters off Alaska's coasts that we must actively oppose adoption of them.

For example, were the Protocols implemented liability for oil pollution incidents would be determined under a criminal standard of negligence, imposed for a limited dollar amount, on a limited number of parties, and for only actual costs measured for natural resource damages. These are four areas where the Protocol provisions clearly conflict with Alaska law.

Our State law regime imposes strict, joint and several liability, with the amount of liability unlimited. Alaska law sets no limit on the methodology for determining natural resource damages. Although it has been argued the joinder provision included in the

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House bill would allow application of state law in an oil spill claim brought in state court, we find there also is room to argue that the standard to be applied is the one set by the Convention.

The potential for confusion is too great for us to be comfortable with that prospect. We reference, for your further information, excellent analyses on the effect of the Protocols on state law, one a letter from Senator George Mitchell to Secretary of Transportation Skinner, the other prepared by the State of Washington Attorney General's office.

Finally, we are concerned that despite strong Congressional expressions favoring double hulls on oil tankers, recent proposals by House and Senate conferees would dilute that requirement. We have heard proposals ranging from the original House requirement to retrofit with double bottoms and phase in double hulls to leaving the decision on vessel design to administrative rulemaking by the Secretary of Transportation.

We looked long and hard at this issue in Alaska. The State, the Alaska Oil Spill Commission, coastal communities, fishermen's organizations, as well as national environmental groups, all have asked the question and come to the conclusion that double hulls are safer. It is now acknowledged that the Exxon Valdez spill would have been reduced significantly and the Long Beach spill nearly avoided altogether had those vessels been equipped with double hulls. We believe this decision is one that the Congress should make. It is too important to leave to an administrative, regulatory process.

We urge you to require in the oil spill legislation that the tanker fleet carrying oil to U.S. ports comes equipped with double hulls and double bottoms. We believe they are safer, and we are willing to incur lost oil revenues that may result from this requirement. We are willing to accept that price in order to reduce the environmental risk.

On the other hand, the State opposes requirements for vessel construction or fleet composition that focus primarily on large vessels, thereby imposing the bulk of the cost burden on Alaska without removing a proportionate amount of the environmental risk. Regardless of tanker size, we urge the conferees to take steps now to increase vessel safety in Prince William Sound. The increase in tanker traffic precipitated by removing larger tankers first would create navigation safety risks. Second, most smaller tankers are older and the least safe. Finally, since the oil storage compartments in small tankers are generally the

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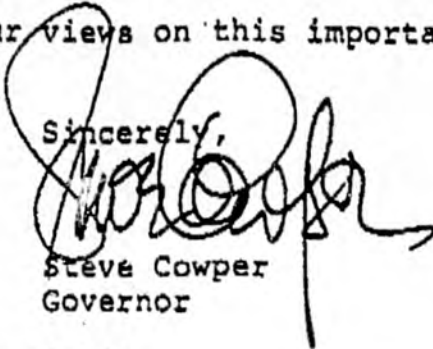
April 2, 1990

same size as those in larger vessels, eliminating large ships does not necessarily preclude major spills.

We appreciate the diligence you and your staff have brought to the oil spill issue. You have made significant progress in addressing the very complicated issues raised by the two versions of the pending legislation. We hope sincerely that you will be able to resolve the remaining issues swiftly, and in a way that preserves to the states their ability to protect their own coasts.

Thank you for considering our views on this important matter.

Sincerely,



Steve Cowper
Governor

cc: National Governors' Association

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX 0, JUNEAU, ALASKA 99811-1800

Telephone:
(907) 465-2600

April 2, 1990

The Honorable Drue Pearce, Chair
Special Committee on Oil & Gas
Alaska State Senate
P.O. Box V
Juneau, AK 99811

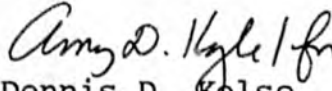
Dear Senator Pearce:

You have requested information regarding the facilities that would be affected by the new requirements in Senate Bill 504 for contingency planning and proof of financial responsibility. As a result of some of the concerns brought up at the first hearings on this bill, the administration re-examined the issues and upon closer scrutiny, proposed several changes to the original bill that addressed the concerns of small operators in Alaska. These are reflected in the Sponsor Substitute for Senate Bill 504.

I have enclosed the information you requested. Also enclosed is a listing of barges.

I hope that this provides you with the information necessary to continue your discussion of Senate Bill 504. Please feel free to contact me if I can provide any further information.

Sincerely,


Dennis D. Kelso
Commissioner

Enclosures

1) Crude Oil Terminals

<u>Terminal</u>	<u>Owner</u>	<u>Location</u>
Tesoro	Tesoro	Nikiski
Chevron	Chevron	Nikiski
Drift River	Cook Inlet Pipeline	W. Cook Inlet
Trading Bay	Consortium	W. Cook Inlet
Granite Point	Consortium	W. Cook Inlet
Alyeska Terminal	Consortium	Valdez
Alyeska Pump Stations	Consortium	Along pipeline
North Slope	Various	Prudhoe

2) Storage Facilities Between 5,000 - 10,000 Barrels

The sponsor substitute no longer requires either contingency plans or proof of financial responsibility for storage facilities less than 10,000 barrels. The new proposal instead requires the department to conduct an inspection survey of the storage facilities in this category and report back to the Legislature with recommendations for further requirements for these facilities. Using the data that we have available to us, we have identified 29 facilities that would fall into this category.

<u>Facility</u>	<u>Amount</u>
(5,000 barrels equals 210,000 gallons)	
Municipal Utilities System (Fairbanks)	252,000 gallons
Point Lay Corporation	250,000
Anaktuvik Pass Corporation	510,000
Wainwright-Olgoonik Corporation	500,000
Nuigsut-Kuukpik Corporation	307,000
Point Hope-Togoha Corporation	500,000
Kaktovik Corporation	270,000
Shismarif	250,000
Selawik	250,000
McGrath Power and Light	225,000
Tetlin	210,000
Emmonak	350,000
Iliamna	315,000
Platinum	317,877
Port Lions	234,000
St. George	330,000
St. Mary's	215,751

Unalakleet	360,000
Alaska Power and Light (Craig)	220,000
Adak Naval Air Station	420,000
Bradley Power Plant (Ketchikan)	
Hoonah Seafoods	
Metlakatla City Light and Power	
U.S. Coast Guard School	
Wrangell	
Greens Creek Mine	
Thorne Bay Island Fuel	
Klawock Fuels (Sitka)	
White Pass (Skagway)	

Additionally, as best we can ascertain, there are 92 Alaska Rural Electric Utilities with storage capacities well below 5,000 barrels.

3) Storage Facilities >10,000 Barrels

<u>Owner/Operator</u>	<u>Fuel Storage Location</u>
Alaska Pulp Corporation	Sitka
Anchorage Fueling & Service Co.	Port of Anchorage
	Anchorage Internat'l Airport
Crowley Maritime Corporation	Captain's Bay Terminal
	Nome Tank Farm
	Kotzebue Tank Farm
Delta Western	Dillingham Bulk Plant
	Juneau Bulk Plant
	Dutch Harbor Bulk Plant
	Wood River Tank Farm
	Naknek Bulk Plant
	Yakutat Bulk Plant
	Captain's Bay (offshore)
Ketchikan Pulp Company	Ward Cove
Mobil Oil Corporation	Ketchikan Terminal
Yutana Barge Lines, Inc.	Fort Yukon Oil Terminal
	Galena Oil Terminal
	St. Michael Fuel Company
Phillips Petroleum Company	Kenai LNG Plant
Reeve Aleutian Airways, Inc.	Cold Bay Airport Terminal
Texaco U.S.A.	Anchorage Sales Terminal
UNOCAL Refining & Marketing	Juneau Bulk Plant
	Ketchikan Terminal
	Sitka Bulk Plant
White Pass & Yukon Corp, Ltd	Skagway (Pacific & Arctic
	Railway & Navigation Co.)
	Haines, Skagway, Sitka,
	Ketchikan, Petersburg,
	Wrangell (Haines Terminal &

Eskimos Inc.	Highway Co.)
	Craig (SE Alaska Oil Co.)
	Block B Tank Farm
	Browerville Tank Farm
Saupe Enterprises, Inc.	Wainwright Storage Facility
	Fairbanks Bulk Plant
Mapco Alaska Petroleum, Inc.	Fairbanks Bulk Lube Oil Plant
	North Pole Refinery
	Fairbanks Bulk Facilities
	Anchorage Bulk Facilities
	Galena Bulk Storage
Naknek Electric Association, Inc.	Naknek Tank Farm
Municipality of Anchorage	George M. Sullivan Power Plant
Harbor Enterprises	Seward
	Dutch Harbor Main Plant
	Dutch Harbor-Ballyhoo
	Nikiski
Nushagak	Dillingham Tank Farm
Trident Seafood Corp.	Sand Point
Kodiak Oil Sales, Inc.	Kodiak Bulk Plant
Nome Joint utility Systems	Nome Tank Farm
Golden Valley Electric Assoc, Inc	North Pole Fuel Storage
	Facility
North Slope Borough	Barrow Tank Farm
	Point Hope Tank Farm
	Wainwright Generator Plant
Peter Pan Seafoods	King Cove
	False Pass
Highland Resources, Inc.	Haines Terminal

4) Tankers and Barges

<u>Vessel Owner/Operator</u>	<u>Vessel Name</u>	<u>Comments</u>
Amerada Hess Corp.	St. Lucia	TAPS only
	Mt. Cabrite	"
	Seal Island	"
ARCO Marine, Inc.	ARCO Alaska	
	ARCO Anchorage	
	ARCO Juneau	
	ARCO Prudhoe Bay	
	ARCO California	
	ARCO Fairbanks	
	ARCO Independence	
	ARCO Sag River	
	ARCO Spirit	
	ARCO Texas	
Bay Tankers	Bay Ridge	TAPS only
America Trading Trans. Co	American Trader	
Chevron Shipping Company	Chevron California	TAPS only

	Chevron Mississippi	
	Chevron Oregon	
	Chevron Washington	
	Chevron Colorado	
	Chevron Louisiana	
	Chevron Arizona	
Exxon Shipping Company	Exxon Benicia	TAPS only
	Exxon New Orleans	"
	Exxon North Slope	"
	Exxon Philadelphia	"
	Exxon San Francisco	"
	Exxon Baton Rouge	"
	Exxon Baltimore	"
	Exxon Baytown	"
	Exxon Galveston	"
	Exxon Jamestown	"
	Exxon Lexington	"
	Exxon Long Beach	"
	Exxon Princeton	"
	Exxon Washington	"
	Exxon Valdez	"
	Exxon Yorktown	"
Interocean Management Corp.	Brooks Range	TAPS only
	Thompson Pass	"
Keystone Shipping Company	Antigun Pass	TAPS only
	Kenai	"
	Keystone Canyon	"
	Tonsina	"
	Chestnut Hill	
	Golden Gate	
	Kittanning	
Marathon Oil Co.	Polar Alaska	LNG
	Arctic Tokyo	LNG
Maritime Overseas Corp	Eastern Lion	TAPS only
	Northern Lion	"
	Southern Lion	"
	Western Lion	"
	Overseas New York	"
	Overseas Washington	"
	Overseas Boston	"
	Overseas Ohio	"
	Overseas Juneau	"
Mobil Oil Corporation	Mobil Arctic	
	Mobil Meridian	
	Syosset	
OMI Corporation	OMI Columbia	TAPS only
Shell Oil Company	B.T. San Diego	
	B.T. Alaska	
Sun Transport, Inc.	Texas Sun	TAPS only
	New York Sun	"
	Philadelphia Sun	"
	Tropic Sun	"

Texaco Marine Service, Inc.	Prince William Sound	"
	Texaco California	
	Texaco Connecticut	
	Texaco Florida	
	Texaco Georgia	
	Texaco Massachusetts	
	Texaco Minnesota	
	Texaco Mississippi	
	Texaco Montana	
	Texaco New York	
	Texaco Rhode Island	
	Texaco Brooklyn	TAPS only
Trinidad Corporation	Admiralty Bay	TAPS only
	Aspen	"
	Glacier Bay	"
West Coast Shipping Co.	Coast Range	
	Sansinena II	
	Sierra Madre	
Flyum's Barge Service, Inc.	Bradley River	Self-propelled barge
Western Hemisphere	Lion of California	
White Pass Trans., Ltd.	Frank H. Brown	Cargo/tanker
Marine Transport Lines, Inc.	Various vessels	U.S.N.S.
BP America	Various vessels	
U.S. Oil and Refining Co.	Cove Leader	

Companies using spot charters

Tesoro Alaska Petroleum Company
 Petro-Diamond, Inc.
 Pacific Resources, Inc.
 Petro-Marine Services
 Mapco-Alaska Petroleum Inc.
 Pacific Fuel Trading Corporation (Japan Air Lines)
 Astra Oil Company, Inc.
 Chinese Petroleum Corporation
 Wickland Oil Company
 Cove Shipping Inc.
 U.S. Oil and Refining Company

Revised: March 22, 1990

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Barges in Alaska Trade

Barges listed have fulfilled Financial Responsibility requirements through June 30, 1990.

BARGE NAME: OFFICIAL #: GRT: CAPACITY:

CROWLEY MARITIME CORP.

B&R 5	284930	247	4,019 bbl
" 80-1	261941	109	1,667
" 80-2	271650	121	1,904
" 80-3	271651	121	1,904
120-1	622202	318	4,128
120-2	627820	318	5,128
548	502911	320	5,300
160-1	517535	530	9,402
160-4	525850	569	8,608
BC 151	507673	629	10,000
BC 152	507674	629	10,000
BC 154	508468	629	10,000
210	524569	1256	6,010
211	524570	1256	6,010
212	524571	1256	6,010
213	524572	1256	6,010
218	524577	1256	6,010
251	518644	2637	33,800
255	520633	2971	49,508
312-3	292360	3157	6,905
ARCTIC CHALLENGER	574046	4717	51,000
PAC 570	503135	5057	57,878
CORDOVA	522842	5051	6,370
NIKISKI	517734	5051	6,370
KETCHIKAN	526660	5051	6,370
PALMER	516339	5051	36,568
KODIAK	229125	5051	10,562
JUNEAU	524833	5145	6,370
101	513536	5498	103,968
102	528789	7970	154,608
450-2	570955	8123	136,882
450-3	571894	5123	148,242
450-4	573167	8123	149,726
450-6	531167	8987	148,502
450-7	633295	8987	148,238
450-8	631688	8123	148,238
450-9	636557	8134	148,238

Revised: March 22, 1990

450-11	647827	8923	148,502
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FOSS MARITIME

FOSS 255	525880	2637	39,114 bbl
FOSS 256	525881	2637	37,505
FOSS 248-P1	625262	2060	33,354
FOSS TONGASS	515337	744	11,394
SEA "76"	519398	830	12,654
TESORO ENERGIZER	646688	4757	75,510
PHOENIX 121	651632	3218	48,000
HANALEA	(AG'S OFFICE)	1840	27,315

YUTANA BARGES LINES, INC.

O.B. 2	650872	207	3,291 bbl
O.B. 3	009449	473	7,150
O.B. 4	002718	473	7,150
O.B. 5	295687	495	7,600
O.B. 6	532598	485	7,600
O.B. STEWART	008755	265	2,000
FRANK TURNER #1	273812	105	1,274
POLARIS #6	175265	62	714
RIVERWAYS #7	274076	129	1,476
RIVERWAYS #8	293716	319	4,376
RIVERWAYS #9	287766	319	4,394
RIVERWAYS #10	176106	454	7,123
RIVERWAYS #11	271235	353	5,000

NORTHLAND SERVICES, INC.

ZPC 401	607224	1739	30,000 bbl
KVICHAK TRADER	538528	2227	39,000

UNITED MARINE TUG AND BARGE, INC.

MLC 281	590980	3365	50,000 bbl
MLC 283	639882	3422	49,700
MLC 330*	645770	4564	70,000
MLC 331	646673	4564	70,000
MLC 340-1	657024	5214	74,100
MLC 344	647179	5214	74,100

ALASKA MARINE CHARTERS, INC.

INVESTIGATOR	638965	1730	16,031 bbl
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