

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

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EXECUTIVE SUMMARY

At the time of passage of the Trans-Alaska Pipeline Act of 1973, the federal government committed itself to improved regulation of large tankers. Among other things, the Coast Guard created a vessel traffic system in Port Valdez and lobbied unsuccessfully for stricter international tanker design standards. Because of the failure of the federal government to do more, Alaska and the State of Washington both passed legislation affecting the design and operation of large tankers within their waters. The petroleum industry challenged both sets of legislation and the courts struck down most of it as preempted by federal law.

Because of these lawsuits, the states are constrained in how they can affect tanker safety and operations. States cannot mandate particular design, construction, equipment or staffing on tankers, and can require tug escorts or pilotage only in some circumstances. States can regulate discharges from vessels and can require vessels and terminal owners to be prepared to contain and clean up spills. States can also require vessel owners to show financial responsibility to respond to spills, and unless Congress passes contrary laws, can impose their own rules of liability of consequences of spills.

Both the U.S. House and Senate passed comprehensive rewrites of federal oil spill laws last fall. The bills are now before a conference committee. Both houses would permit states to retain their own liability laws, even if stricter than federal law. The House bill would require double hulls or bottoms on all tankers in U.S. waters; the Senate bill mandates a study, with double bottoms or hulls required unless the study found that other means would be more effective in protecting against spills. Both bills would increase other protections, such as alcohol checks of crew, tug escorts, and improved vessel traffic systems. The double bottom/hull requirement is receiving the

greatest debate by the industry, and several studies have indicated pros and cons. The Governor's Office is on record in supporting of the requirement.

Research prepared by Margo Waring

September 1989

ALASKA'S TANKER SAFETY ACT

In the early 1970's the State of Alaska worked on ways to require improvements to tanker safety. The goal was to reduce the likelihood of damage caused by unintentional oil spills. The following is a summary of the history of the State's efforts.

Background History

Under the Trans Alaska Pipeline Act of 1973, the Coast Guard was responsible for establishing a vessel traffic control system for tankers entering Port Valdez.

However, the Coast Guard was not specifically required to establish standards for tanker construction or control.

As pipeline construction began, state officials and the public focused on improving the safety of tankers. So great was national concern that in 1974, Secretary of the Interior Rogers C.B. Morton promised Congress that the TAPS tankers would be totally safe. Still, the Coast Guard did carry out this promise. The U.S. attempted to have the International Maritime Consultant Organization (IMCO) (now IMO) implement stricter design standards. These efforts were unsuccessful; the IMO in 1978 rejected double hulls, although approving certain less expensive safety features.

The state's concern for heightened tanker safety intensified when, before the opening of Port Valdez, a simulation test in the Netherlands resulted in tanker collisions and groundings.

The attached materials (A) attest to several years effort by the administration of Governor Hammond to get the Coast Guard to adopt regulations relating to tanker construction and control systems. From 1975 through 1977 when the state's Tanker Safety Act (SB 406, Chapter 266 SLA 76) was implemented, the Hammond administration, by itself and in concert with governors of other west coast states, advocated for double hull or double bottom tankers, gas inerting systems, collision avoidance systems, LORAN C requirements, tug escorts, bow thrusters, redundant power systems, and higher personnel training and licensing standards.

For example, in a paper presented in February, 1976, to the American Association for the Advancement of Science, Commissioner of the Alaska Department of Environmental Conservation (ADEC) Ernst Mueller noted that the great concern expressed by the TAPS EIS and by conservationists was the marine tanker route and "the increased risk of oil pollution resulting from the use of substandard tankers."

The Coast Guard's construction of a vessel traffic control system only partly addressed the issue, according to Commissioner Mueller. The traffic system was to consist of traffic lanes, radio contact from Rocky Point to Port Valdez, radar for that area, a 44 foot motor lifeboat and 65 foot tug.

Commissioner Mueller continues, "Although the Port Valdez traffic control system will reduce the probability of vessel collisions and groundings, that probability still exists, and, of course, the system offers no protection outside the zones of

control. Presently, there are no special requirements placed by the Coast Guard on tankers used in the Trans-Alaska pipeline trade, though there is clear authority for such additional requirements. "

To help address this critical area, the governors of the west coast states, through whose waters the TAPS oil will travel, have formed an informal working group, the Pacific Oil and Ports Group. The governors of these four states have expressed their concern to the U.S. Department of Transportation and the Coast Guard, and support additional requirements for all tank vessels used in the U.S. trade . . . " These requirements included design standards to increase vessel maneuverability and stopping capabilities, LORAN-C installation, redundant radar, collision avoidance systems, changes to minimize risk of cargo explosions, double bottoms or double hulls, and training requirements for crews and pilots. These "necessary and reasonable changes "have met with little positive response" from the Coast Guard, with the exception of requiring LORAN-C and inert gas systems, said Commissioner Mueller.

On August 29, 1977, Governor Jay Hammond wrote to the Coast Guard reiterating the state's position in response to proposed Coast Guard regulations. Governor Hammond notes that " . . . our research has indicated that the fitting of a double bottom along the cargo carrying length of the vessel is the most cost effective means of reducing accidental and operational oil pollution . . . "

While Alaska and other west coast governors continued to urge the Coast Guard to promulgate regulations for enhanced tanker safety, the State of Washington in 1975 passed a law (Chapter 88.16 RCW) against oil pollution from supertankers. The act limited the size of tankers entering Puget Sound and required

tankers between 40,000 and 125,000 DWT to have double bottoms or be escorted by a tug and have a state pilot. This statute was challenged by the Atlantic Richfield Corporation on federal constitutional grounds involving preemption and the commerce clause. In 1976, the federal district court struck down the Washington law.

Alaska's Legislation

Summary

With only a short time until oil shipments through the Trans-Alaska pipeline would begin, the legislature and the Alaska Department of Environmental Conservation designed a set of laws unlike those passed by the federal government or any other state. The laws were introduced by Senator Chancy Croft in 1975 and became law in July, 1976.

While the goal of the proposed legislation was similar to the goal of the state's efforts to amend Coast Guard regulations and amend the Port and Waterways Safety Act, the approach was innovative. The intent of Alaska's law was to give an incentive to owners of tankers engaged in the TAPS (Trans-Alaska Pipeline System) trade to design and operate their vessels with maximum safety, and to penalize the vessels that did not meet the same standards. The legislation (Chapter 226, SLA 1976) created a system of "risk charges" in which tanker vessels were charged an amount based on their equipment and design features, with lesser amounts paid by the vessels having advanced features. The optimal features included both design elements, such as double hulls, and equipment elements, such as LORAN-C navigational receivers. The bill included a requirement of tug escorts for tankers calling at Valdez, the terminus of the

Trans-Alaska pipeline, and a prohibition against discharge of oily ballast water into state waters. The bill permitted the state to regulate certain aspects of vessel traffic, warrantless inspections of tankers to ensure compliance with the new laws. The bill required tanker owners to prove the existence of financial ability to respond to spills and pay damages. Finally, the legislation paid income from the risk charges, with fines and penalties for violations of these laws, went into a Coastal Protection Fund that was available for oil spill response, preventive research, and payment of damages to injured parties.

History of Chapter 266, SLA 76

After introduction, during the 1975 interim, Senator Croft's staff worked to clarify both legal and technical issues involved with this new idea. The Sponsor Substitute, introduced on February 6, 1976, contained a legislative finding that the transportation of petroleum products in the state's coastal waters was a great potential hazard to the natural resources of the state and to the livelihood of those dependent on those resources. The likelihood of long term damage was said to be increased by the nature of the state's coast line. "Thus, it is important that large oil tankers . . . have sufficient capability for rapid maneuvering responses." The likelihood of oil discharges would be decreased if carriers were equipped with safety and maneuvering features and if large vessels without these features used tug escorts in the state's coastal waters.

Sec. 30.20.020 identified the safety and maneuverability features such as LORAN-C and other position location systems, collision avoidance radar systems, other radar. Ships over 20,000 DWT with lateral thrusters, astern horsepower, and

redundant propulsion must use tug escorts. Tankers over 20,000 DWT were required to use gas inerting systems, segregated ballast tanks achieved by fitting, throughout the cargo length, with a double bottom or a double hull. By January 1, 1985 tankers greater than 500 DWT and less than 20,000 DWT were required to meet the same safety and maneuverability standards.

Sec. 30.20.030 gave DEC authority to regulate oil tanker traffic, including maximum and minimum speed, in cooperation with the U.S. Coast Guard. Sec. 30.20.040 provided for enforcement and penalties.

Sec. 2 of the bill added a new Chapter 25 to AS 30, Oil Terminal Facilities; Transfer of Oil Petroleum Products and Their By-products. The first section declared that the highest and best uses of the coast were as a source of public and private recreation and fisheries commerce. "Preservation of these resources has the highest priority. Oil transfer and transportation is hazardous to the marine and terrestrial environment and users of these resources. These hazards frequently have occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state . . . These state interests outweigh any economic burdens imposed by the legislature upon those engaged in transferring oil, petroleum products or their by-products and related activities." Therefore the bill gave certain power to ADEC to deal with spills, to provide for compensation, and to establish a fund for the inspection and supervision of oil carriage.

Carriers of petroleum products were prohibited from operating without a certificate and were to be inspected to assure they had spill containment and removal equipment, personnel and

operational plans. DEC received authority to establish and maintain oil discharge clean-up personnel and equipment. Enforcement and penalties were established.

The bill established the Coastal Protection Insurance Fund consisting of insurance premiums, penalties, damages, and other fees. Five percent of the fund could be used for research and development, including prevention and removal techniques. Third party damages were to be awarded from the fund. Premiums were dependent upon the presence or absence of safety features and previous experience. The bill also established the strict liability of terminals and carriers for spills, without a need to prove negligence.

Some industry representatives responded to the proposed Sponsor Substitute. The Crowley Maritime Corporation saw the proposal as one that created new layers of government through special taxation. They felt that the state would not be able to promulgate oil spill removal regulations because this was a "new science" and put the state into competition with private contractors. Several questions and alternatives were raised about the operation of the Coastal Fund itself.

In a memorandum to the files, Commissioner Ernst Mueller notes that, "The tanker standards themselves being mandated by law present several problems. First among these is the removal of flexibility to meet rapidly changing technology and realization of environmental and safety needs. While I recognize the strength of legislating such standards, this may be outweighed through the loss of flexibility. Further, to my knowledge, no tanker is presently scheduled for the Alaskan trade which has all of these features . . . " The memorandum continues by suggesting wording changes to clarify the safety standards.

Committee staff secured estimates of the cost of fitting tankers with the safety features. Construction of all nine features would add five percent to total cost; to retrofit the features, excluding double hulls, would add eight to ten percent to the cost of the ship. For the thirty tankers in the Valdez-Los Angeles trade, the total cost for the added features would be between \$100-200 million.

Lengthy hearings were held in both the House Resources and House Judiciary committees. A primary concern appears to have been the cost of village insurance and its effect on the cost of refined petroleum products for villagers. There were many technical modifications and exclusions, for example, defining "marina" and "inland waters". The minutes also show that the other topic to receive considerable attention was the upper limit to the Coastal Protection Fund and the allocation of risk charges. In testimony, Senator Croft said that "double bottom tankers have been proven to be a better risk than segregated ballast tankers." A later commentator states that neither has proven to be better and neither should be penalized at this time.

Representatives of SOHIO, Standard Oil of California and Union Oil addressed the committee. Ken Showalter of SOHIO expressed the concerns of his company, saying that "the legislation sets up an increase of risk charges if there is no double bottom or hull. Well-designed ships should be treated equally under the provisions of the bill. A double bottom doesn't protect entirely." (May 5, 1976)

The House Judiciary Committee held hearings and produced the committee substitute that eventually became law. At the hearings, Ken Showalter and Norman Gorsuch of SOHIO again addressed their concern about the incentives for specific

ballast tank design. The committee file shows that they presented an amendment to the committee that would have expanded allowable tanker ballast configurations.

The bill passed the House on June 1, 1976 and Governor Hammond signed it on July 1, 1976. This was the most comprehensive set of laws on oil tanker pollution in the nation's history. Within five years almost all provisions had been declared invalid by the courts.

Litigation

Chevron, USA V. Hammond

The industry's response to the new laws was swift. By September of 1977, nine major oil companies, including Chevron USA, Atlantic Richfield, and Exxon, sued the state in U.S. District Court to invalidate most of the legislation outlined above. The oil companies claimed that the legislation was unconstitutional because it violated the Supremacy Clause of the U.S. Constitution; that it was unconstitutional because it burdened interstate commerce; that it was unconstitutional because it authorized warrantless searches; and that it violated international agreements to which the United States was a party. Several years of complex and expensive litigation followed as the oil companies waged an intense campaign to invalidate Chapter 226. The tide turned heavily against the state within months of the filing of the suit when the U.S. Supreme Court decided another case, Ray v. Atlantic Richfield.

Ray v. Atlantic Richfield

In *Ray v. Atlantic Richfield*, 435 U.S. 151 (1978), the U.S. Supreme Court considered a similar attack against Washington's state statutes regulating tanker traffic in Puget Sound. Washington attempted to limit the size of tankers that could enter the Sound, required certain navigational equipment, and required a tug escort. The Court struck down almost all these requirements as being preempted by federal law, particularly by the federal Ports and Waterways Safety Act (PWSA), the federal law regulating vessel design, construction, and operations. Following *Ray*, the parties to the Chevron litigation stipulated that Alaska's requirement for two marine radar systems, collision avoidance radar, LORAN-C, and other position-locating systems were preempted by the PWSA and therefore were invalid. The parties also stipulated that the requirement of tug escorts for certain vessels calling at Valdez was preempted, as was the prohibition in ADEC regulations against placing ballast water in cargo tanks.

Remainder of the Litigation

Over the next several years Judge James Fitzgerald of the federal District Court, invalidated several more parts of Chapter 116. First he declared that the system of risk charges was an indirect attempt to dictate design and construction standards, a field preempted by the PWSA, and so was invalid. Simultaneously the judge declared that the Coastal Protection Fund dedicated license fees for a special purpose and violated Article IX, Section 7, of the Alaska Constitution's prohibition against dedicated funds. Next the judge decided that the provisions prohibiting tanker vessels from discharging oil ballast water into state waters and requiring shore-based treatment of the ballast were preempted by the PWSA. Finally, the judge decided that the authority for warrantless searches violated the Fourth Amendment to the U.S. Constitution and so

was invalid.

Meanwhile, the legislature had repealed another of the provisions in contention, the requirement that tank vessels receive state certification before operating in Alaska (Chapter 116, SLA 1980). The court therefore dismissed the portion of the complaint on that provision as moot.

The Appeal

The Department of Law decided to appeal only one point on which the state had lost before Judge Fitzgerald: his invalidation of the prohibition against discharge of oily ballast water. The Department based its decision on several factors: the possibility of reversing the decision was almost nil, given the Ray decision; the legislation had been repealed in the interim; the legislation was not really needed for an effective program of oil spill control (such as the warrantless search requirement). About the ballast discharge prohibition, the U.S. Court of Appeals for the Ninth Circuit reversed Judge Fitzgerald and upheld the prohibition in its entirety (Chevron, USA v. Hammond, 726 F.2d 483 9th Cir. 1984). The court found that the legislation did not conflict with federal legislation, but merely went farther than parallel federal legislation, and that there was a clear Congressional intent in the area of water pollution to permit the states to require more stringent standards than the federal government, as long as state enactments did not interfere with or frustrate federal goals. It rejected the idea that federal law "occupied the field" of oil pollution or tanker pollution leaving no room for state regulation, and stated that unlike tanker design and construction, where national uniformity was necessary, there was no necessity for national uniformity in rules governing the discharge of pollutants into state waters.

The oil companies asked for review in the U.S. Supreme Court but the Court declined to hear the case.

What Remains for the Legislature?

The litigation described here has clearly limited the ability of any state legislature to affect pollution from tankers. It is absolutely clear that the state cannot, directly or indirectly, require design, construction, or equipment features on tankers. It cannot affect staffing requirements. It can mandate tug escorts only in circumscribed conditions. It can require pilotage only for some vessels.

On the other hand, the state can regulate direct discharges from vessels and can regulate the state of preparedness of vessel and terminal owners to contain and clean up spills, at least as long as state requirements do not conflict with actual federal requirements. It can require proof of financial responsibility for responding to spills, at least as long as the requirements do not put an unreasonable burden on interstate commerce. At least until Congress decides otherwise, the legislature can regulate the system for determining who is liable for the consequences of oil spills.

Tanker Safety - Current Situation

The U.S. Congress has before it approximately 23 bills related to oil spills. Only a small portion refer to issues involving tanker safety.

Currently, vessel design, construction and operation are regulated by the Ports and Waterways Safety Act, substantially amended by the 1978 Port and Tanker Safety Act and the Act to

Prevent Pollution from Ships. These federal laws require specific designs and equipment, including requirements on maneuverability and stopping, equipment and operations, cargo containment, personnel and manning. Double bottoms are required only on post-1982 tank barges, not tank ships. In 1978, the International Maritime Organization (IMO) mandated development of protective ballast tanks to cover part of tanker bottoms and sides.

Double bottoms and double hulls are different things. Double bottoms provide a double layer on the bottom; double hulls provide a hull that protects both the sides and the bottom.

While there is consensus among the Administration, Congress and the oil industry that comprehensive oil pollution liability and compensation legislation is necessary, it appears that this consensus does not extend to changes in tanker safety standards.

For the first time since 1977 when President Carter introduced double hull legislation, Congress has faced tanker safety legislation this year. Senator Brock Adams of Washington introduced S. 839 April 19 1989. The bill requires "certain new oil tankers to have a double hull on their sides and bottoms throughout their cargo length." Major provisions of the bill would:

- * require tankers operating in U.S. waters to be built with double hulls or double bottoms, unless the secretary of transportation decided that the design would not benefit public health, safety or environmental protection, or that other design features would be more effective.

- * require three people on the bridge, unless a state pilot is on board. In Prince William Sound, a state pilot would be aboard tankers to a point beyond the grounding of the Exxon

Valdez.

- * require alcohol testing of key personnel.
- * require a report identifying ports in need of new or expanded vessel traffic systems.

The Senate Commerce Committee approved Senator Adams' language on August 3, 1989.

Shortly after, the Senate voted in favor of a bill, S.686, that combined bills on compensation and liability with tanker safety provisions from bills such as S. 1461, Senator Hollings' Oil Navigation Safety Act, requiring certain crew sizes, navigation devices, alcohol abuse checks, and so forth. The bill requires a Coast Guard study of double hulls. (See attached CR, August 3, 1989 for main provisions.)

A floor amendment failed by two votes that would have required double hulls. Senator Brock Adams' amendment to this bill would have required new tankers over 20,000 DWT operating in U.S. waters to be built with double hulls, unless the secretary of transportation decided that the design would not benefit public health, safety or environmental protection, or that other design and construction features would be more effective. Senator Adams says that an internal Coast Guard study concluded that from 25 to 60 percent less oil would have spilled if the Exxon Valdez had a double bottom, that half the U.S. tankers built since 1980 have double bottoms and that the Office of Technology Assessment and National Transportation Safety Board have endorsed double hulls or double bottoms.

In his speech before the Senate (see attached CR, August 3, 1989), Senator Adams addresses the history of double hulls and technical information about the safety of double hulls. He contends that besides extra protection in groundings and

collisions, double hulls provide extra response time by slowing the rate of flow from a ruptured hull, and by providing extra structural support in explosions. Senator Adams quotes Admiral Yost, Commandant of the Coast Guard saying "Double bottoms and double sides are the single best thing that can be done to prevent oil spills." Senator Adams placed in the record a fact sheet on double hulls and the Coast Guard's assessment of the "Exxon Valdez" losses had it had a double bottom, and the Office of Technology Assessment's (OTA) study of double hulls and double bottoms. (Attached)

The OTA study addresses the "Safety of Double Bottoms or Hulls," noting the two safety concerns of the accumulation of flammable vapors and lost buoyancy when the outer shell is punctured. Regarding the latter, OTA states that sinking rates are lower with double bottoms and that double bottoms do not interfere with refloating for salvage.

Attached is a copy of a news story in the "Wall Street Journal" of June 26, 1989 about the passage of a tanker safety bill by the Senate Commerce Committee. In this article, the director of the Tanker Advisory Center calls for oil tankers to be built to the protective standards of vessels carrying hazardous chemicals. A senior associate in the Office of Technology Assessment suggests that the degree of protection offered by the second hull depends on the size of the compartment between the two hulls.

A Chevron representative discusses the oil industry's view that tankers with double hulls face greater risk of losing buoyancy than vessels with single hulls after a grounding. The news article also cites "A recent Coast Guard staff report [that] noted double hulls have been 'effective' where they are required, in all vessels carrying hazardous chemicals or

liquified natural gas." The National Academy of Sciences will begin a study of alternate tanker design, including double hulls and double bottoms.

A bill similar to S. 839 was introduced in the House as H.R. 2423 by Representative Jim McDermott of Washington and is waiting for a hearing in the House Merchant Marine and Fisheries Committee. According to the "Oil Spill Intelligence Report" of August 19, 1989, Representative McDermott believes that while double hulls won't prevent all spills, a 1975 Office of Technology Assessment study found that "double sides and double bottoms can distinctly provide protection, given a collision or ground respectively. Moreover, in the more severe cases or collisions and groundings where the inner hull may be ruptured, the double hull or double bottom will provide three valuable characteristics: survivability, containment and time."

On the other hand, the American Petroleum Institute (API) believes that the question of double hulls on tankers needs more study. API points to past studies that have concluded that double bottom construction is a liability in salvaging a vessel and "probably increase the risk of major pollution in large vessel incidents." (Oil Spill Reporter). A July 14, 1989 API Task Force on Oil Spills report says that past studies show the flooding of the empty compartment would cause a grounded vessel to settle more firmly. "A grounded vessel will be subject to wind, waves, current and tides, thereby risking spillage of the remainder of the cargo until the vessel is refloated."

The Oil Spill Reporter also notes that the Coast Guard is already studying double hulls. The report will be ready in the fall. According to Captain Maxham of the USCG Marine Technical and Hazardous Material Division, "We need to look at more

information and statistics on the carriage of oil and spills since the reports of the 1970's, and update the information and see if it still says the same thing, or heads us in another direction." (p. 5, August 10, 1989)

On November 9, 1989 the U.S. House of Representatives approved HR 1465, the oil spill liability, compensation, prevention and clean-up bill. Most notably, this bill reversed the House's long held position by voting in favor of an amendment to prevent federal law from preempting stricter state oil spill liability laws. Title V, Prince William Sound, requires one escort vessel, VTS, prepositioned containment and removal equipment, and response organizations. Title IV requires Coast Guard review of substance abuse in licensing, staffing standards, VTS review by the USCG, and a tanker navigation study that would include crew size, navigation equipment and vessel design and construction. In addition, double hulls would be required on new tankers and retrofitting of others within 15 years. Double bottoms would be required on new self-propelled tank vessels; old ones would be retrofitted within seven years.

On February 7, 1990 the U.S. House approved an instruction to House Conference Committee members that both new and existing vessels be equipped with double bottoms.

The issue of double bottoms is expected to be a focus of the conference committee and maneuvering to weaken the final language seems likely. Based on Coast Guard and Alaska Oil Spill Commission consultant studies, Governor Cowper has taken the position that double hulls and double bottoms enhance the safety of oil tankers. Despite a loss to the state of approximately \$10 million per year in lost revenues, Governor Cowper supports the House bill's original language requiring retrofitting of existing vessels in 15 and 7 years respectively.

The Alaska Oil Spill Commission in its January 1990 Executive

Summary, noting the Coast Guard's study showing that up to 60% less oil would have been spilled from the Exxon Valdez, recommends that "Double hulls and other technological advances in tank vessel design should be required on an accelerated timetable, including prohibition of non qualifying vessels, regardless of flag registry, in all U.S. waters." The Executive Summary also noted that "A study for the Alaska Oil Spill Commission by ECO, Inc. of Annapolis, Maryland, says double hull design provides the highest probability of surviving damage, either from a collision or grounding, with no loss of cargo."

The Oil Spill Commission also makes recommendations regarding levels, mandatory traffic control, training for pilots, tanker tracking, increased state inspection, and other tanker safety issues. Interestingly, the Commission recommends that Congress reexamine marine insurance provisions so that insurance premiums reflect risk and encourage design improvements, just as the State attempted to do in Chapter 266, SLA 76.

INTERVIEW WITH ROGER GALE

Vice President, Operations
BP Oil Shipping Company, USA
September 17, 1989

Mr. Gale graciously offered to stop over in Juneau to discuss his views about tanker safety issues currently under consideration in Congress.

Regarding double bottoms, Mr. Gale stated that there is debate even within the industry. There are pros and cons, but the issue is where the dominant balance lies. There is the same debate that we had in the 1970s and within the International Maritime Organization (IMO). In the 1970s, the IMO chose not to require double bottoms, but it is unclear whether this is a technical decision.

In new construction, a double bottom adds 1 1/2 to 2% extra to the cost of a tanker.

Double bottoms, Mr. Gale stated, are effective, especially in gently shelving beaches and rivers. However, there are questions whether it would have made a difference in a Bligh Reef type situation. He thinks not. If the Exxon Valdez had had a double bottom, and if the outer skin were pierced, the ship might have lost its reserve buoyancy, become open to the sea in such a way to change the center of floatation and, therefore, run more firmly aground. Further, salvage by raising it also would be more difficult. Mr. Gale presented a comprehensive technical discussion of ship construction to illustrate these problems.

BP Shipping has 21 chartered ships, some with double bottoms, segregated ballast and one-third without either. There have been three personnel fatalities since 1977, and all three were in ships with double bottoms. These ships are harder to clean, exposing crew to dangerous vapors.

Responding to a question about Coast Guard simulations of collision's Mr. Gale stated that IMO opted for segregated ballast sections because, statistically, there are more collision-type accidents than groundings.

Responding to questions about double hulls, Mr. Gale replied that double hulls have the pros and cons of double bottoms plus the pros and cons of segregated ballast. Double hulls present a significant reduction of cargo space and, therefore, imply more tanker traffic or frequency of travel in which accidents can happen. Double Hulls are better during collisions, depending on the degree of damage. Yet, even if the double hull is not breached, operation of the vessel may be riskier, due to the difficulty of maneuvering the vessel and dealing with explosion dangers. Mr. Gale discussed BP's experience with their two double hulled vessels, Tonsina and the Kenai, illustrating the need for more knowledge about double hull design. Retrofit of double hulls is not possible.

In grounding situations, double hulled vessels act more like regular tankers and better than double bottoms. In minor collisions and groundings, double bottoms do better. This performance is limited, says Mr. Gale, to soft groundings and minor collisions, for example, with docks and tugs, where they do reduce pollution. But in a collision between two speeding ships, or other severe situations where both hulls are pierced, double bottoms are not an advantage.

Mr. Gale was asked whether there was any innovative design work in the industry. He replied that this was not a building era. Fewer ships will be needed after the Panama crossing ships are no longer needed. Older tankers will be retired; and the percent of tankers with double bottoms or other features will increase, but new tankers will not be needed.

Mr. Gale stated that when you look at accident statistics, the problems are human errors. He feels that certification in the United States has fallen to a disgraceful level, due to budget cuts. In the past, the Coast Guard had a special entry system for masters, with a licensing board. Passing a written exam doesn't mean a good master. It used to be in the U.S., as in Europe, that the exam included an oral exam with an experienced person. The oral exam is no longer required. Written exams are open book, multiple choice, by mail. Mr. Gale stated that "the biggest contribution to traffic safety is to lean on the federal government about the licensing of officers." This would have an immediate benefit. Any change in tanker design would have benefit decades away.

Responding to a question about need for new technology, Mr. Gale replied that ships already have too many gizmos to pay attention to. For fifteen years, new equipment has been the technological fix. The need is for more competent people.

A long discussion followed about the training programs of the different companies in the Alaska trade. Mr. Gale reiterated his strong belief that the issue needs to be addressed on the federal licensing level with more meaningful exams, increased sea time required and decreased length of time between license renewals. Exam quality is the issue: personnel should be required to prove that they have kept up with the field. The certification process needs to be set up and administered by

people with experience. The Coast Guard does not provide its members with this specialized experience.

Regarding having oil spill equipment on board, Mr. Gale feels that in good weather, when problems are small, such equipment would be OK. The problem is that there is a need for safe deployment and launching of boats. This requires design changes for tankers. In collision or grounding situations, the priority has to be securing the ship, preventing the loss of the ship, not in launching equipment boats. Even in good weather, it is a problem to launch a boat into the oil and avoid asphyxiating the crew. During loading, placing booms around the ship for collecting any oil that might leak increases the risk or explosion.

Mr. Gale feels that having an Advisory Commission is a good idea. He feels that industry should be meeting with regulators a couple of times a year to exchange views. This will enhance communication and increase the likelihood of acknowledgement of important items.

Mr. Gale also discussed the issue of crew size. Crew cutting is almost totally confined to Exxon. BP has reduced the average crew by one member since 1977 and this reduction has been in the catering service. The job of the Coast Guard is to ensure proper staffing of ships, but this implies that the Coast Guard has relevant experience for this ship type. The number of crew needed are a function of the design of the ship.

Vessel traffic systems (VTS) are helpful in busy ports. The Puget Sound system needs to be expanded. It is of questionable value in Valdez. VTS for San Francisco should be mandatory instead of the current voluntary system. Federal funding for a traffic system isn't necessary; it could be paid for with user

fees. Most important is the personnel who staff the system should have sea time experience and know the vessels. Currently, the Coast Guard staffs the Valdez operation with novices who receive on the job training and then move on to another area of Coast Guard jurisdiction. Citing the FAA as a model, Mr. Gale noted that vessel traffic system work should be a job with a career ladder. The Coast Guard should be responsible for enforcement and standardization, but the ports or a VTS (similar to the FAA) should hire the personnel.

Better exams and a national VTS system should have a significant impact on reducing environmental damage more than changes in vessel design and new technology, though these should be kept under constant view.

Mr. Gale discussed the use of alcohol aboard ships. The owners' current agreement to prohibit alcohol aboard ships may bring back some problems that used to occur in the 1950s when alcohol was prohibited. Although the new rule may be too rigid and create problems, it is perfectly reasonable to require abstention from alcohol for a specified period before piloting a vessel. The current alcohol testing program is unfair, but shows the industry's good faith in reducing accidents.

Physical fixes, said Mr. Gale, take too long to implement. If he were designing a tanker today, he would design one with double sides (ballast along the sides) and with many smaller compartments but without a double bottom. This would provide a maximum protection for collision situations. The grounding situations would be helped by having fewer compartments and, thereby reducing potential outflow.

Mr. Gale addressed the issue of alleged hull failures in the Alaska fleet. These "hull failures" are not cracks with oil

flowing out, but the Coast Guard definition of structural cracking. While ships in the Valdez trade have more cracking than in other trades, due to the length of time spent in poor weather conditions, risk to the environment isn't greater because inspection programs are conducted regularly. Inspection programs find and fix more small cracks. In other trades, vessel inspections are less frequent and, therefore, statistically, look better.

SCOMM

62:19

FACSIMILE COVER SHEET

TO: Kirsten

OFFICE/PHONE: Senator Drue Pearce's Office ³⁸⁸ FAX 465-499

FROM: LCDR Glenn Sicks

OFFICE/PHONE: CCGD17(m) (907) 586-7689
CCGD17(M) FACSIMILE NUMBER (907) 586-7258

DATE: 4 Apr 90 NUMBER OF PAGES: 2
(INCLUDING COVER)

REMARKS:

This is in response to your conversations with CDR Tiernan and LCDR Sicks concerning U.S. Coast Guard inspection requirements. Drydock examination requirements, except as further noted below, are summarized in the attached tables in 46 CFR 31.10-21(a) and (b). Small passenger vessels, that carry more than 6 passengers and are under 100 gross tons, and freight vessels between 15 and 100 gross tons must be drydocked/hailed out at intervals not to exceed 18 months if operated in salt water a total of more than 9 months in the last 18 month period since it was last drydocked or hauled out. (46 CFR 176.15).

Regards,

LCDR Glenn Sicks

32230 Federal Register / Vol. 53, No. 164 / Wednesday, August 24, 1988 / Rules and Regulations

(f) as paragraphs (c) through (g), by adding a new paragraph (b), by revising the introductory text to redesignated paragraph (e), and by revising redesignated paragraph (f) to read as follows:

§ 31.10-21 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals—TB/ALL.

(a) Except as provided in paragraphs (b) through (g) of this section, each tank vessel must undergo drydock, internal

structural, and cargo tank internal examinations as follows:

(1) Except under paragraph (a)(2) of this section, vessels that operate in salt water must be inspected in accordance with the intervals set forth in Table 31.10-21(a). * * *

TABLE 31.10-21(a).—SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing ¹	Double hull barge with external framing ²	Single hull barge with independent tanks ³	Wood hull ship and barge	Single hull ship and barge Grade D and E cargoes only ⁴	Double hull barge Grade D and E cargoes only ⁵	Single hull asphalt barge ⁶	Double hull asphalt barge ⁷
Drydock	2.5	5.0	5.0	5.0	2.5	2.5	5.0	2.5	5.0
Internal structural	2.5	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	2.5	5.0	10.0	10.0	2.5	5.0	10.0	10.0	15.0

Note:

- ¹ Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
- ² Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface accessible for examination from voids, double bottoms, and other similar spaces.
- ³ Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
- ⁴ Applicable to single hull tank ships and tank barges certificated for the carriage of Grade D and E cargoes only.
- ⁵ Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of Grade D and E cargoes only.
- ⁶ Applicable to single hull tank barges certificated for the carriage of asphalt only.
- ⁷ Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
- ⁸ Or as specified in Part 38 or 151 as applicable.

(2) Vessels that operate in fresh water at least six months in every 12 month period since the last drydock examination must be examined in accordance with the intervals set forth in Table 31.10-21(b). * * *

TABLE 31.10-21(b).—FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Single hull ship and barge	Double hull barge with internal framing ¹	Double hull barge with external framing ²	Single hull barge with independent tanks ³	Wood hull ship and barge	Single hull ship and barge Grade D and E cargoes only ⁴	Double hull barge Grade D and E cargoes only ⁵	Single hull asphalt barge ⁶	Double hull asphalt barge ⁷
Drydock	5.0	10.0	10.0	10.0	2.5	5.0	10.0	5.0	10.0
Internal structural	5.0	5.0	5.0	5.0	5.0	5.0	5.0	10.0	5.0
Cargo tank internal	5.0	5.0	10.0	10.0	2.5	5.0	10.0	10.0	15.0

Note:

- ¹ Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
- ² Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface accessible for examination from voids, double bottoms, and other similar spaces.
- ³ Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
- ⁴ Applicable to single hull tank ships and tank barges certificated for the carriage of Grade D and E cargoes only.
- ⁵ Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of Grade D and E cargoes only.
- ⁶ Applicable to single hull tank barges certificated for the carriage of asphalt only.
- ⁷ Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
- ⁸ Or as specified in Part 38 or 151 as applicable.

(b) During each inspection or reinspection for certification, all wing voids, rakes, cofferdams, and other void spaces on tank barges must be opened and checked from on-deck for the presence of water or cargo indicating hull damage or cargo tank leakage. If water or cargo is not present, these spaces need not be gas freed, ventilated, cleaned, or otherwise prepared for personnel entry. If water or cargo is present, an internal structural examination may be required.

Vessels otherwise qualifying under paragraph (a) of this section, that are 15

years of age or older may be considered for continued participation in the underwater survey program on a case-by-case basis, if—

(f) Each vessel which has not met with the applicable examination schedules in paragraphs (a) through (e) of this section because it is on a voyage, must undergo the required examinations upon completion of the voyage.

4. In § 31.10-24, by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 31.10-24 Integral fuel oil tank examinations—T/ALL.

(a) Each fuel oil tank with at least one side integral to the vessel's hull and located within the hull ("integral fuel oil tank") is subject to inspection as provided in this section. * * *

PART 61—[AMENDED]

5. The authority citation for Part 61 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

March 7, 1990

TO: ALASKA SENATE
OIL & GAS COMMITTEE
JUNEAU, AK

FROM: TIM ROBERTSON
BOX 110
SELDOVIA, AK 99663

RE: SB 504

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 504.

THE FOLLOWING ARE MY COMMENTS:

- 1) PREVENTION I suggest that "Oil Discharge Contingency Plan" be changed to "Oil Discharge Prevention and Contingency Plan" everywhere it occurs in the statutes. It is important that oil explorers, producers, and shippers include a section in their C-plans that indicate what they have in place to PREVENT oil discharges as well as how they plan to clean them up. Alyeska has such a section in their new plan. It should be required in other plans also.
- 2) FORCE OF LAW C-plans need to have the force of law and need to be properly implemented. Mr. Williams of Alyeska mentioned to your committee the new policy of not shipping oil in weather and sea conditions when there is no possible chance of cleaning up a spill. However, Alyeska did not put this into their new C-plan. It is an internal company policy that is subject to change. All C-plans need to state that oil will not be shipped when conditions don't allow for a response and these conditions must be defined. The legislature must then give ADEC the authority and resources to make sure the plan is implemented and being followed.
- 3) WORK TOGETHER lets use all our knowledge and resources to make sure we are doing everything possible to prevent and prepare for oil spills. Section 1 (e) of SB 504 calls for review of C-plans by DEC, ADF&G, and DNR. A review by a CITIZENS ADVISORY COMMITTEE should also be required. I serve on the REGIONAL CITIZENS ADVISORY COMMITTEE created for Prince William Sound and we have met over 200 hours since June of 1989. We have completed an extensive review of the Alyeska Oil Spill Prevention and Response Plan. (I will provide you with a overview of that review shortly). The bill needs to be amended to require this type of review for all C-plans. Citizens Advisory Committees can be a strong preventative measure and can insure a vigilance born of concern for the protection of coastal resources by those for which it is most dear.

- 4) REALISTIC PREPARATION We now know if we can't put a massive containment and skimming effort on any major oil spill immediately the battle is lost. Section 1 (d) calls the oil industry to prepare for a response to a spill "within the shortest possible time". The maximum response should be within 48 hours. There should be a minimum response within 2 hours. In Europe they can bring 134,000 bbl/hr skimming capacity to bear on an oil spill within 48 hrs. Alyeska can bring 10,000 bbl/hr capacity to bear on a spill and has escort vessels that can begin an immediate response. In Lower Cook Inlet where I live there would be no equipment at the sight of a spill for over 12 hours and less than 2,000 bbl/hr in 48 hrs. There must be cleanup equipment and trained response crews close to a potential oil spill.
- 5) NO VELVET CURTAINS Alyeska has put together an impressive C-plan and organization since the EXXON VALDEZ oil spill. Yet, their plan clearly states that they intend to turn the management of the spill over to the shipper, owner, or Coast Guard within three days. Will the new managers follow the same Plan? Will the new managers have the same level of expertise, training, and experience as Alyeska? Will the new managers have the same local knowledge as a team put together by Alyeska. This bill needs to be amended to made sure that the answer to these questions is YES.
- 6) I strongly support the section of the Bill requiring PROOF OF FINANCIAL RESPONSIBILITY. Everyone must realize that a cost of doing business is protection and preserving our environment. Obviously these costs get passed on to the users as they should.
- 7) I strongly support the section of the Bill allowing for ACCESS AND INSPECTION to facilities and vessels. I encourage you to increase DEC's ability to have access to insure our environment is being protected.

Thank You for considering my comments.

MEMORANDUM

DATE: 2/26/90

RE: Commission Report versus Governor's Oil Spill Bills

The following is a list of items from the Oil Spill Commission Report that were not included in any of the Governor's Oil Spill Bills (PG. numbers refer to pages in the Oil Spill Commission's Executive Summary):

- 1) Seven day tank farm capacity (PG. 18)
- 2) Establish a harbor administration office (PG. 28)
- 3) Establish state (PG. 21) and Regional advisory councils (PG.29) and they should represent local governments (PG. 29)
- 4) Licensing of all transportation safety personnel (PG. 24)
- 5) Compensation for persons impacted by oil spill who are not protected by unemployment insurance (PG. 44)
- 6) Regional and State oversight council (PG. 21)
- 7) Government space at Alyeska or other major terminals (PG. 24)
- 8) Task force on the environmental safety of pipeline (PG. 27)
- 9) Interstate compact (PG. 25)
- 10) Provision for citizen lawsuits (PG. 23)
- 11) Quick response (PG. 44)
- 12) Plans to cover worst-case scenarios (PG. 52)

WPfile:hrescomp

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



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SENATE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

TO: Lana Decker, Information Officer
Anchorage Information Office

FROM: Senator Drue Pearce, Chair
Senate Oil and Gas Committee *Drue Pearce*

DATE: September 14, 1989

RE: 1989 Oil Spill Legislation

The following list is a brief synopsis of legislation that the Alaska State Legislature passed due to the Prince William Sound oil spill. The Alaska Senate and House worked together to pass these measures to provide solutions to future litigation and to ensure that as much as possible a disaster like the Prince William Sound oil spill not happen again.

If you need further information on the legislation, please feel free to contact me at 561-2038.

SB 247 "Appropriation: Oil spill clean up expenditures"

Appropriates \$10,000,000 from the general fund and \$10,000,000 from general fund program receipts for the State response to the Exxon Valdez oil spill. Transfers excess funds from the oil and hazardous substance release response fund to the general fund on January 31, 1990.

SB 256 "Reimbursement due to a released hazardous substance"

Requires the attorney general to immediately seek to recover certain money expended to contain and clean up a released hazardous substance. Deletes the requirement that a municipality enter into an agreement regarding its obligations with respect to released hazardous substances before incurring expenses for which reimbursement from the state is sought.

SB 260 "Oil and gas properties production (severance) tax conservation surcharge"

Levies a 5 cent-per-barrel conservation surcharge on crude oil subject to the state severance tax; directs separate accounting of the revenue derived from the surcharge; authorizes appropriation of the revenue generated by the surcharge to the oil and hazardous substance release

response fund; provides a mechanism by which levy and collection of the surcharge may be suspended and reimposed to keep the fund balance at \$50,000,000; incorporates transitional provisions to assist in the initial operation of the legislation.

✓ **SB 261 "Oil and hazardous substance discharge contingency plans"**

Directs the Department of Environmental Conservation to prepare and to annually review and revise a master oil and hazardous substance discharge and prevention contingency plan to clarify the respective responsibilities of various named parties in the event of a catastrophic oil discharge or the significant discharge of a hazardous substance, and sets out procedures applicable to the preparation and annual revision of that master plan; directs the department to prepare comparable master plans for regions of the state in which the department is required, under current law, to review and approve oil discharge contingency plans submitted by persons operating oil terminal facilities, offshore exploration and production facilities, and tank vessels and oil barges; authorizes use of money in the oil and hazardous substance release response fund for preparation, review, and revision of these plans and for their implementation in the event of an oil or hazardous substance release.

✓ **SB 264 "Oil and hazardous substance response office"**

Establishes a special office in the Department of Environmental Conservation with the duty to increase the state's ability to respond promptly to a discharge of oil or a hazardous substance. Directs the office to maintain emergency response depots that are equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary. Requires the office to establish and train volunteers who agree to be available on short notice to assist the office in containment and cleanup.

SB 271 "Civil penalties related to oil discharges"

Increases the civil penalties that can be imposed on a person who discharges more than 18,000 gallons of crude oil. Increases the maximum civil penalty for these crude oil discharges to \$500,000,000 and removes completely the previous maximum of \$100,000,000 with respect to civil penalties for large discharges of other types of petroleum products. Makes a person who fails to respond properly to a discharge of crude oil jointly and severally liable for the civil penalties assessed against the discharger.

SB 277 "Exxon Valdez Oil Spill Commission"

Establishes a seven-member commission appointed by the governor to investigate the Exxon Valdez oil spill disaster and to recommend changes needed to minimize the possibility and effects of similar oil spills.

SB 299 "Oil and gas properties production (severance) tax determination of gross value of oil"

Disallows, as allowable costs in determining the gross value of oil for purposes of levy and collection of the state severance tax, certain incremental costs, losses, damages, and expenses, including tanker damage repair and certain oil spill cleanup costs, incurred after February 28, 1989, by a taxpayer in connection with a catastrophic oil discharge into the marine or inland waters of the state.

HB 68 "Liability for hazardous substance releases"

Clarifies which persons are strictly liable for damages and response costs when oil or another hazardous substance is released into the environment or is in danger of being released into the environment. Allows the state to put a lien on property to help the state recover money it may have spent on responding to a release or threatened release of oil or another hazardous substance. Applies retroactively to releases and threats of releases that occurred before the law was passed.

DP:tej

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

707 A STREET, SUITE 202
ANCHORAGE, AK 99501
PHONE: (907) 258-6545
FAX: (907) 278-4302

Walter B. Parker, Chairman
Esther Wunnicka, Vice Chairman
Margaret J. Hayes
Michael J. Herz
John Sund
Timothy M. Wallis
Edward Wenk, Jr.

March 6, 1990

MEMORANDUM

TO: Chairperson Drue Pearce, Special Committee on Oil & Gas
Committee Members

FROM: Walter B. Parker *WBP*
Chairman

I appreciate the offer to testify at length on the Governor's bills and our recommendations at some future date. After listening to the testimony offered on Monday, March 5, by Alyeska, ARCO and the State, I have the following specific comments:

Ability to Respond to Worse Case Scenarios

Mr. Asplund of ARCO stated a worst case would be 1.8 million barrels for Prince William Sound, exactly the figure I would use. What was not offered by industry was how do we achieve this figure. It can only be done by a regional response plan which brings in the capabilities of all concerned--industry, state, and federal.

The following have been offered:

Alyeska 10K barrels per hour name plate capacity. Allowing for 35% best case recovery in 72 hours	252,000
ARCO, per testimony, with a 24-hour lag to allow for mobilization from West Coast	250,000
Other five Alyeska owners	(unknown)
Barrels	502,000

The above figures are for containment and best case recovery situations, ie. less than six foot sea state and no more than 1 knot currents.

Memo
Senator Pearce
Mar 6, 1990

ARCO's proposed 70,000 ton skimmer could be built to recover 25,000 barrels per hour based on it having half the capacity to pump oil out of the water that is common at the Valdez terminal for pumping oil into tankers. This would have a capacity of 600,000 barrels per day and allowing for a 35% best case recovery rate, it would recover 630,000 barrels in 72 hours. Our total best 72-hour case recovery is now 1,132,000. Thus the remaining question is how to make up the 670,000 barrel difference. Allowing for 20% evaporation of the light ends during this period, or 360,000 barrels, we can see that we are approaching our goal and have 310,000 barrels remaining for which capability must be demonstrated. Here is where the API/PIRO response may come in, also federal response from the Navy, the Corp of Engineers, the Coast Guard, and if necessary further Alyeska response. In any case, by a combination of new technology already being proposed by ARCO and by accumulation of other sources into a regional response plan, we have come close to a creditable "worst case response" capability.

The next question is why must this response be mounted in 72 hours. If you examine the oil spill simulations in our report, you will note that it is after 72 hours that the greatest impact on the beaches occurs. Once the oil is on the beach, the Commission considers the battle lost. Therefore, our strong recommendations are on the immediacy of the response efforts.

As our report shows, Exxon Valdez is only 34th on the list of 65 great oil spills. Thus, the possibility of spills where the entire tanker load is lost, 1,800,000 barrels for Prince William Sound or 500,000 barrels for Cook Inlet, is still a very real worst case situation.

There are presently 94 tankers licensed for operation into Alaskan ports. Only 10 are covered by Alyeska's present plan for a "worst case" loss; 43 are covered by combining the Alyeska and ARCO plans, adding the large skimmer as described covers 70 tankers leaving only 24 uncovered.

What are the costs of achieving this level of protection, remembering we are only achieving worst case protection by mechanical containment and recovery in good weather conditions? The costs included here are estimated by me based on our contractors estimates for similar equipment.

One Time Costs

Alyeska Costs (already committed but
no cost breakdown yet provided, so this
is my estimate

\$60,000,000

Memo
Senator Pearce
March 6, 1990

ARCO Costs (less 4 ERV and 4 other vessels
in Alyeska Costs, note that this system
serves entire West Coast \$ 32,000,000

70,000 Ton Skimmer Costs (\$93 million for
new ship by Commission estimate plus \$20
million for skimmer conversion by ARCO
estimates \$ 113,000,000

1.132.000 barrels in 72 hours recovery \$ 205,000,000

Full Worst Case, another 310,000 barrels 80,000,000

Full Worst Case Recovery System in
good weather \$ 285,000,000

Annual Costs

Alyeska	\$10,000,000
ARCO	5,000,000
70,000 Ton Skimmer	10,000,000
Additional Recovery	<u>5,000,000</u>
TOTAL	\$30,000,000

Operating costs as above should cover 72 hour initial period but
do not cover beach cleanup costs.

Assuming a 10-year depreciation on one time costs, the annual
costs for "worst case" mechanical recovery in Prince William Sound
are \$58,000,000 or the profits on 5 days throughput at the Valdez
terminal.

*\$6 X 9,750,000 barrels

*From Deakins Report

Now the question is, what is the cost of "worst case recovery" in
bad weather. The present options are burning or dispersants.
Future options may include gelling agents as described in our
report. The costs of bad weather treatment are:

Burning, the loss of the ship and cargo	
250,000 T Tankers, new	\$192,000,000
cargo 1.8 million barrels @ \$20	<u>36,000,000</u>
Total	\$218,000,000
70,000 T Tanker, new	\$ 93,000,000
cargo, 500,000 barrels @ \$20	<u>10,000,000</u>
Total	\$103,000,000

Memo
Senator Pearce
March 6, 1990

The costs of the flights and igniting
agents plus recovery of crew \$ 250,000

Dispersants: Following the British
method of aerial application and the
most favorable 1 to 20 crude to dispersant
ratio, we require for the worst case
1,800,000 barrels, some 90,000 barrels
of dispersant or 3,780,000 gallons
@ \$3/gal \$ 11,340,000

Costs of 700 C130 flights of 5 hour
duration or 3,500 flight hours @ \$3500
per hour* \$ 12,250,000

Worst Case by dispersant \$ 23,590,000

Gelling agents: This method is untried, untested, and
wholly hypothetical. The ratio of 40 to 1, agent to oil,
is the best known and the costs are in the ballpark of
what is being paid by the US Navy for gelling agents.

Gelling agents 45,000 barrels, 6,250
tons or 1,890,000 gal @ \$12/gal \$ 22,680,000

Costs of 350 C130 flights of 5 hours
duration @ \$3500 per hour* 6,125,000
Total \$ 28,805,000

* Assumes dispersants or gelling agents are located at Anchorage
or Kenai.

Thus, it is true that the costs of a worst case response are
large, whatever method is used. The alternative of avoiding it is
equally costly in the long run. The size of the worst case
scenario for each region will be governed by how much risks the
industry places on the region. Exxon Valdez has shown us that the
area at risk can be very large if response is not immediate enough
to keep the oil from migrating to near and distance beaches.

Need for State Tanker Inspections

Regarding the need for state inspection on board tankers, our
report details the sorry history of how the Coast Guard backed off
after 1979 when the Alyeska owners' law suit and later legislative
action eliminated the state presence on tankers. The Coast Guard
budget on marine safety, wherein ship inspections lie, was cut 28%
between 1982 and 1989. Allowing for inflation this was a real cut

Memo
Senator Pearce
March 6, 1990

of 40%. The fleet, meanwhile, aged another 7 years, with only two new additions Exxon Valdez and Exxon Long Beach, being added in this period. Thus, inspections dropped as the ships got older. The Coast Guard testified at length about its concerns with increasing hull fatigue before House Resources on January 24. Despite this concern of the Coast Guard, I view the chances of major budget increases in marine safety as small unless the initiatives come Congress.

TESTIMONY TO THE JOINT HEARING

OF THE

ALASKA HOUSE RESOURCES COMMITTEE

ALASKA SENATE RESOURCES COMMITTEE

ALASKA SENATE OIL AND GAS COMMITTEE

BY

WALTER B. PARKER

CHAIRMAN

ALASKA OIL SPILL COMMISSION

JANUARY 24, 1990

The Alaska Legislature charged the Alaska Oil Spill Commission with reporting on the historical record of events leading to the grounding of the Exxon Valdez on March 24, 1989. The Commission began its inquiry with the first planning for moving Prudhoe Bay oil to market in 1968 and concentrated on the period after 1977 when the Valdez terminal opened and began the first shipment of crude oil.

Despite early assurances by the federal government in the period 1968-72, that tanker operations from Valdez would be at the top of the state-of-the-art, including double bottoms, by 1975 it was clear that no special efforts would be made on the Valdez - West coast operations. Replies from the Coast Guard to state inquiries made it clear that the promised improvements would not be mandated.

A task force was formed by Governor Hammond in 1975 to investigate means to insure that Valdez operations would be the best feasible. Two years of concerted effort resulted in agreements that tankers would proceed in designated lanes through Prince William Sound; that they would have tug escorts in the Sound; that a vessel traffic system would monitor tanker traffic in the Sound; that state pilots would be on board while in the Sound; that redundancies in radar and other navigation systems would be on board the tanker; and that ice problems would be handled by slowing to minimum safe maneuvering speed while

remaining in the tanker lanes.

Sea trials were held to check the system in April, 1977 using the Arco Fairbanks. The trials were successful. The key to the system was the tanker lanes which had been designed through the first simulation ever conducted of a North American port. This was done under the auspices of the State of Alaska and was funded by the State under the terms of the TAPS ACT.

Meanwhile, the Alaska Legislature had in 1976 passed SB 406, which established risk charges paid by operators of tank vessels and oil terminals into the Alaska Coastal Protection Fund. The mandates of AS30.20 and AS30.25 established various levels of constructions and operations standards for tankers and terminals, which set up reductions of charges tied to specific improvements. The aim to minimize risk and operations was carried out under this mandate until 1979. The Valdez terminal was operational with a permanent response crew in position and with response vessels and equipment on constant standby.

Tankers with double bottoms were constructed in this period to meet the state's requirements specifically the Bankers Trust Alaska and the Bankers Trust San Diego. The Department of Environmental Conservation set its budget year objectives for FY 1979 to have 10 tankers in the fleet serving Valdez with double bottoms.

But, in 1977 almost as soon as the Valdez terminal opened, the Aleyska owners filed suit against the state to overturn AS30.20 and AS30.25 on the basis that the federal government pre-empted most of the areas the state was attempting to regulate. The suit, Chevron/et.al. vs. Hammond was successful and in 1979, the state's authority was removed. The state appealed parts of the decision but the major elements of the statutes were removed by agreement between the oil companies and the state. Our research indicates that the state took an unnecessarily weak position throughout this case.

After 1979, no new double bottoms were built by the industry. The only new ships, the Exxon Valdez and the Exxon Long Beach, were designed not only with single hulls but with 20% less steel weight than tankers designed in the 1970s for the Valdez trade. These ships were launched in 1986 and after three years operations there are reports of early structural failures.

The Commission wrote to Exxon Shipping asking that they consider refitting the Exxon Valdez with a double bottom while it was in for repairs.. No reply was received to this letter. The costs of repairing the Exxon Valdez are reported to be about \$25 million. Our consultants report a double bottom would have cost from \$5 to \$7 million more. The Exxon Valdez will be returned to service without a double bottom.

As our investigations detail, Coast Guard surveillance and enforcement of tanker operations declined rapidly after 1979. Officers who operated the system before 1979 were shocked at how routinely departures from the tanker lanes was accepted in the 1980s.

We also confirmed the general collapse of the oil spill response system after 1979, largely under Aleyska's initiatives, despite constant complaints from the ADEC office at Valdez to Juneau ADEC headquarters about the weakness of the system.

Partly ADEC's lack of action was due to budget constraints imposed by the Legislature, but the record also reveals a lack of strong resolve and focus on the Valdez terminal operations at the higher levels in the Department.

It is also important to note that there is absolutely no indication that either of the federal agencies responsible for the National Contingency Plan, the EPA and the Coast Guard, took any action in the 1980s to insure that the response system at Valdez was adequate.

It is equally important to note that no other elements of the state government made any strong efforts since 1979 to encourage ADEC to a more vigorous position on oil spill response at Valdez.

At least, we could not identify any such efforts.

We investigated Cook Inlet oil spill response and tanker operations, found them deficient and have made recommendations for improvements.

We also investigated Arctic response capability and have found it to be non-existent except in the immediate Prudhoe Bay area, where it is minimal.

The point was made immediately after the wreck of the Exxon Valdez that 8700 transits of Prince William Sound had been made without a disaster. This is not a good record and would result in an unacceptable level of accidents and fatalities if accepted for any other form of transportation.

Many still state that the Exxon Valdez was an aberration, an accident that was a fluke. Our investigations show that the system has been encouraging a catastrophic accident since 1979 by eliminating every safeguard that was put in the system then. The Exxon Valdez went on the rocks because it departed from the tanker lanes at sea speed rather than slowing down to proceed through the ice at reduced speed. Time pressures were put on all tanker masters, some companies putting on greater pressure than others. Both the Torrey Canyon and the Amoco Cadiz disasters were initiated by masters cutting corners to save time.

We are happy to note that tankers are now operating from Valdez in accordance with the original rules laid down and that response capability has been improved dramatically. However, the present response system will only recover 40% of spilled oil under ideal conditions, so improvements can still be made.

However, the ships operating in the system are an aging somewhat decrepit fleet of which 73% are single bottom hulls. Their power plants are aging along with their safety systems. they are below standard compared to both national and international standards in age. Some say the fleet cannot be replaced because Alaska oil production is declining. We say it must be replaced to ensure that another catastrophe does not destroy another vital segment of our Coast line.

Findings of the Alaska
Oil Spill Commission

Presented to the
National Transportation Research Board
Panel on
Oil Transportation Issues

Walter B. Parker
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January 9, 1990

The seven member Alaska Oil Spill Commission was created by the Alaska Legislature and appointed by the Governor of Alaska to accomplish three major tasks:

To establish a historical record of the events leading to the wreck of the Exxon Valdez.

To recommend ways to prevent future maritime accidents.

To recommend better ways to respond to future oil spills.

At our first meetings we quickly agreed to place our major focus on prevention of maritime accidents and future oil spills. In this we joined the federal administration, the Congress, the American Petroleum Institute and the environmental movement who profess a similar goal on prevention. Therefore, with so much agreement it would seem easy to have our recommendations on prevention adopted. However, the view of prevention from the oil industry may be very different from our view, the view from the federal administration may also be very different.

Our investigation of the events leading to the wreck of the Exxon Valdez revealed one salient theme - that the rules and regulations agreed on between the federal government, the oil industry and the State of Alaska in 1977 when the Valdez terminal was opened were consistently downgraded or ignored after 1979. The event that triggered this decline was the lawsuit launched by the oil industry against the state of Alaska, Chevron, et. al. vs Hammond which challenged the state's rights to be involved in prevention of tanker accidents through maintaining a presence alongside and in cooperation with the Coast Guard. A federal judge found against the state and ruled that the state's actions were pre-empted by the federal government. From then on both the Coast Guard and the oil industry began to weaken the original system more and more. Our historical record is contained in our report by investigator Peter Spivey titled Institutional Influences: The Coast Guard in Valdez. Tankers consistently deviated from the lanes established in 1977 for more and more specious reasons, the main reason being to save time. The same narrow economic views on tanker operations that put the Torrey Canyon on the rocks in 1968, operated again in 1989 to put the Exxon Valdez on Bligh Reef.

Our recommendations for prevention focus on the ships, the crews and the support systems designed to keep ships safe at sea.

We recommend double hulls become the domestic and international standard for oil tank vessels. We also recommend that our aging fleet be replaced on an accelerated basis. The great overbuilding of oil tankers that occurred from 1965 to 1975 is now coming home to roost since so few new tankers have been built in the past decade. We also recommend that strong consideration be given to more redundancy in power plants. Finally, a much closer look should be given to the new standards which lessen steel weight in the newest tankers being built, the Exxon Valdez being an example of a ship built to those standards.

In crews we have found that fatigue is a real factor that promises to become worse as crew size reductions are justified more and more on the basis of greater automation. Not only crew fatigue but system redundancy suffers from these reductions, since when the automated system fails there is often no immediate response available from a crew member to institute manual overrides. Some power plant failures of automated systems in the past two years need much more in depth investigation than has been given them thus far.

We also found that more on going training was necessary and that training varied widely from company to company. Institution of bridge response training on simulators should be pursued and requirements established to ensure that all do it. More stimulator training for engine rooms is also indicated in view of the lengthy start up times that have occurred after some power plant failures.

Our recommendations on support systems focus on much more stringent vessel traffic systems than the present systems. We believe vessel monitoring systems better describe what is necessary for maritime traffic. Ideally through either Loran C retransmits, satellite navigation or other systems, we will provide an electronic display on the bridge and at the vessel traffic centers which will be a display common to both. This will provide greatly expanded and more reliable coverage than radar at lesser cost, while keeping present shipboard and shore based radars in place. The aim again is systems redundancy.

System redundancy in hulls, power plants, navigation systems, manning standards and other areas is one key to prevention. The other is increased training in all assignments to ensure that crews are up to the sophisticated ships that are planned in the future.

Our recommendations on response focus on the use of the federal Incident Command System (ICS) which is used for response to natural disasters and hazard material incidents, for oil spill response. The ICS is a management system which uses the expertise of all federal and state agencies as necessary by using a system of preplanning that assigns roles to appropriate individuals within the agencies and provides them the training for carrying out those roles.

We view this as filling the many organizational gaps that developed in the response to the Exxon Valdez. The National Contingency Plan (NCP) did not operate effectively in this response, indeed in the early stages did not operate at all. Eventually it brought the Navy and other major help into spill clean up.

Generally, our ideal response organization starts with a strong local base in which regional response teams are created through using the ICS structure. These teams will use the resources of private, state and federal organizations in their response area. The spill will be under command of a government official, as designated by the ICS. The Oil Spill Commission strongly urges that there be no future privatization of major spills, a view joined by the Congress and the American Petroleum Institute thus far.

The next level of response is thorough interaction of our recommendations for interstate compacts with the federal regional response organizations. We view a West Coast compact working with the West Coast strike team as providing immediate response as necessary to calls for assistance from the local spill incident commander. Then, if necessary, the federal "czar" that is mandated in present legislation before the Congress and is strongly supported by the industry and the federal administration can be brought into the action to mobilize support nationwide.

Our perception is of an organization mobilizing from a local base outwards while their's is one that mobilizes from the top down. It is an important difference in perception.

We have noted in our record the general lack of federal resources devoted to oil spill response, especially in the areas of research and development. We feel this generally kept the NCP from being an effective instrument and it is imperative that a program to get caught up from a decade of federal passiveness on this issue be launched immediately.

Since we only recover 10% of the oil lost in most spills now, the need for rapid upgrading is clear. This however, in no way should detract from our continued emphasis on prevention, since even the best spill response systems will leave large quantities of oil in the water

CHANGES TO PROPOSED SCS CSHB 567 (05-01-90 version)

Pg. 7, Ln. 16--pg. 8, ln. 29: DELETE ALL LANGUAGE. Replace with:

(k) Except as provided in (m) and (n) of this section, the holder of an approved contingency plan required under this section shall maintain in its region of operation, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and removal equipment, personnel, and resources to accomplish the following response planning standards:

(1) for a discharge from an oil terminal facility, contain and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility the department may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or pipeline, contain and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, contain and clean up an amount equal to the maximum crude oil cargo volume of the tank vessel or oil barge within 72 hours. There must be located in the applicable region of operation all equipment and resources necessary to attain an oil recovery rate, comparable to the manufacturer's rated oil skimming capacity, equal to the maximum crude oil cargo volume of the tank vessel or oil barge covered by the plan divided by 72 hours. The equipment maintained in the applicable region shall include adequate pumping equipment, transfer and lightering equipment, storage capacity, and ancillary equipment adequate to receive, transfer, and store recovered oil so as to not impede the recovery rate. In addition, access to any other equipment located outside the applicable region of operation which is necessary to accomplish containment and cleanup of the maximum crude oil cargo volume within 72 hours must be demonstrated.

(4) for a discharge subject to the provisions of (k)(1)-(k)(3) of this section which enters a receiving environment other than open water, cleanup of the portion of the discharge which enters the receiving environment may, in the department's discretion, extend beyond 72 hours; however, the cleanup must be accomplished within the shortest possible time consistent with minimizing damage to the environment.

(l) Notwithstanding (k) of this section, failure to remove a discharge within the time period set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that the applicant has implemented oil discharge prevention measures, including the use of double hulled vessels, double bottomed vessels, secondary containment systems, hydrostatic testing, and enhanced crew levels, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel or barge for which the plan is being submitted or modified.

Pg. 4, ln. 13--ln. 14: DELETE THE FOLLOWING LANGUAGE:

Except for a tank vessel or oil barge while operating only in response to an oil discharge,

INSERT THE FOLLOWING LANGUAGE:

Except for a tank vessel or oil barge that has received prior department approval to conduct oil discharge response operations in the absence of an oil discharge prevention and contingency plan,

Pg. 4, ln. 28: After the word "issued" INSERT THE FOLLOWING LANGUAGE:

, the effective date of the contingency plan,

Pg. 11, ln. 7--ln. 8: DELETE THE FOLLOWING LANGUAGE:

Except for a tank vessel or oil barge while operating only in response to an oil discharge,

INSERT THE FOLLOWING LANGUAGE:

Except for a tank vessel or oil barge that has received prior department approval to conduct oil discharge response operations in the absence of an oil discharge prevention and contingency plan,

Senate CS for CSHB 567

Amendment Number

Page 8, line 15 insert:

(5) For a discharge onto or into water from a tank vessel or oil barge carrying non-crude petroleum products in bulk as cargo, contain or control fifteen percent (15%) of the maximum capacity of the vessel or barge, or realistic maximum oil discharge, whichever is greater, within forty-eight hours, and to cleanup the discharge within the shortest feasible time to minimize environmental damage.

Page 23, line 14, add subparagraph (c):

(c) By January 31, 1991, the department shall conduct a study and report back to the Legislature with recommendations concerning the following issues related to oil spill prevention and contingency planning for tank vessels and oil barges carrying non-crude petroleum products in bulk as cargo:

1. Areas most likely to experience non-crude product spills, based on historical evidence
2. Appropriate locations for regional response equipment depots, based on the findings in Number 1, particularly for non-crude operations in western and northern Alaska and the Aleutians
3. Appropriate spill response times for non-crude vessels and barges

4. Amounts of equipment and number of standby personnel necessary for non-crude spill response efforts

5. Appropriate roles for industry and state and local governments in the purchase, ownership and positioning of spill response equipment

Rob Shoaf 5/3/90

CHANGES TO PROPOSED SCS CSHB 567 (05-01-90 version)

Pg. 7, Ln. 16--pg. 8, ln. 29: DELETE ALL LANGUAGE. Replace with:

(k) Except as provided in (m), [and] (n) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain in its region of operation, singly or in conjunction with other operators, sufficient oil discharge containment, storage, transfer, and removal equipment, personnel, and resources to accomplish the following response planning standards:

(1) for a discharge from an oil terminal facility, contain, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility the department may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or pipeline, contain and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, contain and clean up an amount equal to the maximum crude oil cargo volume of the tank vessel or oil barge within 72 hours. There must be located in the applicable region of operation all equipment and resources necessary to attain a[n oil] recovery rate, comparable to the manufacturer's rated [oil] skimming

capacity, equal to the maximum crude oil cargo volume of the tank vessel or oil barge covered by the plan divided by 72 hours. The equipment maintained in the applicable region shall include adequate pumping equipment, transfer and lightering equipment, storage capacity, and ancillary equipment adequate to receive, transfer, and store recovered oil so as to not impede the recovery rate. In addition, identify for response [access to any] other equipment located outside the applicable region of operation which is equal to the skimming capacity maintained in the applicable region. [necessary to accomplish containment and cleanup of the maximum crude oil cargo volume within 72 hours must be demonstrated.]

(4) for a discharge subject to the provisions of (k)(1)-(k)(3) of this section which enters a receiving environment other than open water, [cleanup of the portion of the discharge which enters the receiving environment may, in the department's discretion, extend beyond 72 hours; however] within the department's discretion, the entire clean up must be accomplished with the shortest possible time consistent with minimizing damage to the environment.

(5) planning standards for response to a discharge into open water may allow response strategies to include control as an alternative to containment, including boom placement to concentrate oil for skimming or burning and use of exclusion and reflection booms.

(1) Notwithstanding (k) of this section, this provision does not constitute a clean up requirement and failure to [remove] clean

up an oil discharge within the time period set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section and does not subject the plan holder to civil and criminal penalties.

(m) When considering whether to approve or modify a contingency plan, the department may reduce the level of response capability planned for based upon [consider] evidence that the applicant has implemented oil discharge prevention and containment measures, including but not limited to the use of double hulled vessels, double bottomed vessels, vessel escorts, alcohol testing, secondary containment systems, hydrostatic testing, and enhanced crew levels, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the increased potential for containment and the reduced risk of oil discharges from the facility, pipeline, vessel or barge for which the plan is being submitted or modified.

NEW (n) For purposes of section (k), clean up strategies include skimming, pumping, burning and dispersing, consistent with criteria established by the department in regulations.

[(n)] (o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, and personnel to assist the plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum

amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

Page 16, line 26. Insert after barge

...pursuant to existing federal or state standards and..

TO: SCS CS HB 567 (Oil and Gas)

AMENDMENT

page 12, line 3, insert after "of the"

"tank vessel, oil barge,"

page 12, line 4, insert after "of the"

"tank vessel, oil barge,"

page 12, line 5, insert after "with the"

"tank vessel, oil barge,"

page 12, line 6, insert after "similar"

"tank vessels, oil barges,"

page 12, line 7, insert after "mishaps"

"to the tank vessel or oil barge, or"

page 12, line 7, insert after "pipeline or"

"to similar tank vessels or oil barges, or"

PROPOSED CHANGES TO SCS CSHB 567 (5-3-90 VERSION)

Pg. 2, lns. 21-26: DELETE THE EXISTING LANGUAGE. Insert the following language:

(b) The liability limitation under (a) of this section
(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and
(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law [STRICTLY LIABLE UNDER THIS SECTION].

Pg. 25, ln. 13: DELETE THE EXISTING LANGUAGE.

Senate Special Committee On Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 1

Page 2, Lines 21-26: Delete current language and replace with the following:

(b) The liability limitation under (a) of this section

(1) does not apply to a response action contractor who would otherwise be liable for the release or threatened release under state or federal law even if that person had not carried out a response action with respect to the release or threatened release; and

(2) does apply only to releases for which notification to the department was provided and received in the manner prescribed under state law.

Page 25, Line 13: DELETE THE EXISITNG LANGUAGE.

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT #2

Page 9, Lines 3 and 4: DELETE: "extend beyond 72 hours; however, the contingency plan must be designed so that cleanup will"; continue with rest of sentence.

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CSHB 567

Amendment # 3

Page 25, Line 8: DELETE: "January 1, 1991"; REPLACE WITH:
"June 1, 1991"; DELETE: "January 1, 1991"; REPLACE WITH:
"June 1, 1991."

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 4

Page 7, Line 20: after "operation" ADD "or in another region of operation approved by the Department"; continue with rest of sentence.

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 5

Page 9, Lines 13-21: REPLACE entire subsection with the following: "(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels, have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified."

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 6

Page 22, Lines 8-14: Delete Section 27

Senate Special Committee on Oil and Gas
Proposed Changes to 5/3/90 Draft for SCS CS HB 567

Amendment # 7

Page 8, Lines 6-21, replace subsection (3) as follows:

For a discharge of crude oil from a tank vessel or oil barge, contain or control, and clean up a realistic maximum oil discharge, as provided in (a), (b) and (c) of this subsection:

(a) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(b) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(c) in addition to the minimum equipment, personnel and other resources required to be maintained within the region of operation by (a) or (b) of this subsection, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time. The plan holder must demonstrate that the equipment, personnel and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours.

Senate Special Committee on Oil and Gas
Proposed changes to 5/3/90 Draft for SCS CSHB 567

AMENDMENT # 8

Page 2, Line 27: Add the following language:

(e) This section does not affect the liability of a response action contractor that may arise from the response action contractor's failure to comply with the terms and conditions of a response action contract or a remedial action plan if one has been approved by the department or a contingency plan approved by the department where the response action contractor is the plan holder.

Relief for furnishing materials, etc., to another (Good Samaritan)

Add a new subsection at the end of page 6 (after subsect.(1)):

(m) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

add to the definition of "response action contractor" at AS 46.03.823(g)(3)(A):

...carrying out the contract, including but not limited to a cooperative organization formed to maintain and supply response equipment and materials which enters into a response action contract regarding a discharge;

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Oil & Gas)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil, penalties, and
9 inspection authority of the Department of Environ-
10 mental Conservation; relating to the oil and hazard-
11 ous substance release response fund and responses to
12 oil and hazardous substance emergencies; authorizing
13 the Department of Environmental Conservation and
14 municipalities to enter into agreements pertaining to
15 vessel traffic control and monitoring systems; and
16 providing for an effective date."

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

18 * Section 1. AS 29.35.020 is amended by adding a new subsection to
19 read:

20 (d) A municipality may enter into agreements with the United
21 States Coast Guard, the United States Environmental Protection Agency,
22 and other persons relating to development and enforcement of vessel
23 traffic control and monitoring systems for oil barges and tank vessels
24 carrying oil operating in or near the waters of the state.

25 * Sec. 2. AS 46.03.759(c) is amended to read:

26 (c) Subject to the \$500,000,000 maximum set under (a) of this
27 section the court shall assess four times the penalty set out in (a)
28 of this section if the court finds

29 (1) the discharge was caused by the gross negligence or

1 intentional act of the defendant;

2 (2) the defendant did not take reasonable measures to
3 contain and clean up the discharged oil; or

4 (3) the defendant did not act or respond in accordance with
5 an approved oil discharge prevention and contingency plan.

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

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

20 * Sec. 4. AS 46.03.823(b) is amended to read:

21 (b) The liability limitation under (a) of this section

22 (1) does not apply to a response action contractor who
23 would otherwise be liable for the release or threatened release under
24 state or federal law even if that person had not carried out a re-
25 sponse action with respect to the release or threatened release; and

26 (2) does apply only to releases for which notification to
27 the department was provided and received in the manner prescribed
28 under state law [STRICTLY LIABLE UNDER THIS SECTION].

29 * Sec. 5. AS 46.03.823(e) is amended to read:

1 (e) This section does not affect the liability of a response
2 action contractor that may arise from the response action contractor's
3 failure to comply with the terms or conditions of a

4 (1) response action contract or a remedial action plan if
5 one has been approved by the department; or

6 (2) contingency plan approved by the department where the
7 response action contractor is the plan holder.

8 * Sec. 6. AS 46.03.823(g)(2) is amended to read:

9 (2) "response action contract" means a written contract or
10 agreement to provide response action with respect to a release or
11 threatened release of a hazardous substance, entered into by a person
12 with

13 (A) the department; [OR]

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

17 (C) a federal agency with jurisdiction over the re-
18 lease or threatened release; or

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

21 * Sec. 7. AS 46.03.823(g)(3) is amended to read:

22 (3) "response action contractor" means

23 (A) a person who enters into a response action con-
24 tract with respect to a release or threatened release of a haz-
25 ardous substance and who is carrying out the contract, including
26 a cooperative organization formed to maintain and supply response
27 equipment and materials that enters into a response action con-
28 tract relating to a release or threatened release; and

29 (B) a person who is retained or hired by and is under

1 the control of a person described in (A) of this paragraph to
2 provide services related to the response action contract.

3 * Sec. 8. AS 46.04.020(e) is amended to read:

4 (e) The department shall enter into negotiations for memoranda
5 of understanding or cooperative agreements with the United States
6 Coast Guard, the United States Environmental Protection Agency, and
7 other persons in order to

8 (1) facilitate coordinated and effective oil discharge
9 prevention and response in the state, including agreements relating to
10 development and enforcement of vessel traffic control and monitoring
11 systems for tank vessels and oil barges operating in or near the
12 waters of the state;

13 (2) provide for cooperative review of oil discharge preven-
14 tion and contingency plans submitted to the department under AS 46.-
15 04.030;

16 (3) provide for cooperative inspections of oil terminal
17 facilities by the department and the United States Coast Guard or
18 United States Environmental Protection Agency; and

19 (4) provide for cooperative oil discharge notification
20 procedures.

21 * Sec. 9. AS 46.04.030 is amended to read:

22 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

23 (a) A person may not cause or permit the operation of an oil terminal
24 facility in the state unless an oil discharge prevention and contin-
25 gency plan for the facility has been approved by the department and
26 the person is in compliance with the plan [THE DEPARTMENT IS THE
27 ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE
28 CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

29 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit

1 the operation of a pipeline or an [OFFSHORE] exploration or production
2 facility in the state unless an oil discharge prevention and contin-
3 gency plan for the pipeline or facility has been approved by the
4 department and the person is in compliance with the plan.

5 (c) Except as provided in (n) of this section, a [A] person may
6 not operate a tank vessel or an oil barge within the waters of the
7 state, or cause or permit the transfer of oil to or from a tank vessel
8 or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an
9 oil discharge prevention and contingency plan for the tank vessel or
10 oil barge has been approved by the department and the person is in
11 compliance with the plan [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.-
12 790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS
13 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DIS-
14 CHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
15 APPROVED BY THE DEPARTMENT].

16 (d) Upon approval of a contingency plan, the department shall
17 issue to the plan holder a certificate stating that the contingency
18 plan has been approved by the department. The certificate must in-
19 clude the name of the facility, pipeline, tank vessel, or oil barge
20 for which it is issued, the effective date of the contingency plan,
21 and the date by which the contingency plan must be submitted for
22 renewal. A [AN OIL DISCHARGE] contingency plan must be submitted for
23 renewal [RENEWED AT LEAST] every three years.

24 (e) The department may attach reasonable terms and conditions to
25 its approval or modification of a [AN OIL DISCHARGE] contingency plan
26 that the department [WHICH IT] determines are necessary to ensure
27 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan
28 has access to sufficient resources to protect environmentally sensi-
29 tive areas and to contain, clean up, and mitigate potential oil

1 discharges from the facility or vessel as provided in (k) of this sec-
2 tion, and to ensure that the applicant complies with the contingency
3 plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contin-
4 gency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY]
5 by the applicant of the best technology that was available at the time
6 the contingency plan was submitted or renewed. The department may
7 require an applicant or holder of an approved contingency plan to take
8 steps necessary to demonstrate its ability to carry out the contingen-
9 cy plan, including

10 (1) periodic training;
11 (2) response team exercises; and
12 (3) verifying access to inventories of [AVAILABLE] equip-
13 ment, supplies, and personnel identified as available in the approved
14 contingency plan.

15 (f) Upon request of a plan holder or on the department's own
16 initiative, the [THE] department, after notice and opportunity for
17 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
18 plan if the department [IT] determines that a change has occurred in
19 the operation of a facility [, MARINA] or vessel necessitating an
20 amended or supplemented plan, or the operator's discharge experience
21 demonstrates a necessity for modification. The department, after
22 notice and opportunity for hearing, may revoke its approval of a [AN
23 OIL DISCHARGE] contingency plan if the department [IT] determines that

24 (1) approval was obtained by fraud or misrepresentation;
25 (2) the operator does not have access to the quality or
26 quantity of resources identified in the plan; [OR]

27 (3) a term or condition of approval or modification has
28 been violated; or

29 (4) the person is not in compliance with the contingency

1 plan and the deficiency materially affects the plan holder's response
2 capability.

3 (g) Failure of a holder of an approved or modified [OIL DIS-
4 CHARGE] contingency plan to comply with the plan, or to have access to
5 the quality or quantity of resources identified in the plan or [AND,
6 IN THE EVENT OF A SPILL,] to respond with those resources within the
7 shortest possible [FEASIBLE] time in the event of a spill is a vio-
8 lation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
9 46.03.790, and any other applicable law. If the holder of an approved
10 or modified [OIL DISCHARGE] contingency plan fails to respond to and
11 conduct cleanup operations of an unpermitted discharge of crude oil
12 with the quality and quantity of resources identified in the plan and
13 in a manner required under the plan, the holder is strictly liable,
14 jointly and severally, for the civil penalty assessed under AS 46.03.-
15 758, 46.03.759, or 46.03.760 against any other person for that dis-
16 charge.

17 * Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

18 (h) The department is the only state agency that has the power
19 to approve, modify, or revoke a contingency plan for the purposes of
20 this section. The department shall exercise its power under this
21 section in a timely manner. Except for prosecutions under AS 46.03.-
22 790(b) and except as provided in (i) of this section, it is not a
23 defense to an action brought for a violation of (a) - (c) of this
24 section that the person charged believed that a current contingency
25 plan had been approved by the department.

26 (i) It is a defense to an action brought for a violation of
27 (a) - (c) of this section that the person charged relied on a certifi-
28 cate of approval issued by the department under (d) of this section
29 unless the person knew or had reason to know at the time of the

1 alleged violation that approval of the plan had been revoked or that
2 the holder of the plan was not capable of carrying out the plan.

3 (j) Before the department approves or modifies a contingency
4 plan under this section, the department shall provide a copy of the
5 contingency plan to the Department of Fish and Game and to the Depart-
6 ment of Natural Resources for their review. The department shall by
7 regulation establish the procedures and time limits applicable to
8 agency review of contingency plans.

9 (k) Except as provided in (m) and (o) of this section, the
10 holder of an approved contingency plan required under this section
11 shall maintain, or have available under contract, in its region of
12 operation or in another region of operation approved by the depart-
13 ment, singly or in conjunction with other operators, sufficient oil
14 discharge containment, storage, transfer, and cleanup equipment,
15 personnel, and resources to meet the following response planning
16 standards:

17 (1) for a discharge from an oil terminal facility, the plan
18 holder shall plan to be able to contain or control, and clean up a
19 discharge equal to the capacity of the largest oil storage tank at the
20 facility within 72 hours, except that if the department determines
21 that the facility is located in an area of high risk because of natu-
22 ral or man-made conditions outside of the facility, it may increase
23 the volume requirement under this paragraph so that the contingency
24 plan must be designed for a response that is greater in amount than
25 the capacity of the largest oil storage tank at the facility;

26 (2) for a discharge from an exploration or production
27 facility or a pipeline, the plan holder shall plan to be able to
28 contain or control, and clean up the realistic maximum oil discharge
29 within 72 hours;

1 (3) for a discharge of crude oil from a tank vessel or oil
2 barge, the plan holder shall plan to be able to contain or control,
3 and clean up a realistic maximum oil discharge as provided in (A),
4 (B), and (C) of this paragraph:

5 (A) for tank vessels and oil barges having a cargo
6 volume of less than 500,000 barrels, the plan holder shall main-
7 tain at a minimum in the region of operation, equipment, person-
8 nel, and other resources sufficient to contain or control, and
9 clean up a 50,000 barrel discharge within 72 hours;

10 (B) for tank vessels and oil barges having a cargo
11 volume of 500,000 barrels or more, the plan holder shall maintain
12 at a minimum in its region of operation, equipment, personnel,
13 and other resources sufficient to contain or control, and clean
14 up a 300,000 barrel discharge within 72 hours;

15 (C) in addition to the minimum equipment, personnel,
16 and other resources required to be maintained within the region
17 of operation by (A) or (B) of this paragraph, a plan holder shall
18 maintain, either within or outside of the plan holder's region of
19 operation, additional equipment, personnel, and other resources
20 sufficient to contain or control, and clean up a realistic maxi-
21 mum discharge within the shortest possible time; the plan holder
22 must demonstrate that the equipment, personnel, and other re-
23 sources maintained outside the plan holder's region of operation
24 are accessible to the plan holder and will be deployed and op-
25 erating at the discharge site within 72 hours;

26 (4) for a discharge from a tank vessel or oil barge carry-
27 ing noncrude oil in bulk as cargo, the plan holder shall plan to be
28 able to contain or control 15 percent of the maximum capacity of the
29 vessel or barge or the realistic maximum oil discharge, whichever is

1 greater, within 48 hours and clean up the discharge within the short-
2 est possible time consistent with minimizing damage to the environ-
3 ment;

4 (5) for a discharge subject to the provisions of (1) - (3)
5 of this subsection that enters a receiving environment other than open
6 water, the time requirement for clean up of the portion of the dis-
7 charge that enters the receiving environment may, in the department's
8 discretion, be within the shortest possible time consistent with
9 minimizing damage to the environment.

10 (1) The provisions of (k) of this section do not constitute
11 cleanup standards that must be met by the holder of a contingency
12 plan. Notwithstanding (k) of this section, failure to remove a dis-
13 charge within the time periods set out in (k) of this section does not
14 constitute failure to comply with a contingency plan for purposes of
15 (g) of this section or for the purpose of imposing administrative,
16 civil, or criminal penalties under any other law.

17 (m) When considering whether to approve or modify a contingency
18 plan, the department may consider evidence that oil discharge preven-
19 tion measures such as double hulls or double bottoms on vessels or
20 barges, secondary containment systems, hydrostatic testing, enhanced
21 vessel traffic systems, or enhanced crew or staffing levels have been
22 implemented, and, in its discretion, may make exceptions to the re-
23 quirements of (k) of this section to reflect the reduced risk of oil
24 discharges from the facility, pipeline, vessel, or barge for which the
25 plan is submitted or being modified.

26 (n) A tank vessel or oil barge that is conducting, or is avail-
27 able only for conducting, oil discharge response operations is exempt
28 from the requirements of (c) of this section if the tank vessel or oil
29 barge has received prior approval of the department. The department

1 may approve exemptions under this subsection upon application and
2 presentation of information required by the department.

3 (o) A holder of an approved contingency plan does not violate
4 the terms of the contingency plan by furnishing to another plan hold-
5 er, with the approval of the department, equipment, materials, or
6 personnel to assist the other plan holder in a response to an oil
7 discharge. The plan holder shall replace or return the transferred
8 equipment, materials, and personnel as soon as feasible. The depart-
9 ment shall by regulation determine the maximum amount of equipment,
10 materials, or personnel and the maximum amount of time for which it
11 will approve a transfer.

12 (p) In this section,

13 (1) "contingency plan" means an oil discharge prevention
14 and contingency plan required under this section;

15 (2) "in compliance with the plan" means, with respect to a
16 contingency plan, to

17 (A) establish and carry out procedures identified in
18 the plan as being the responsibility of the holder of the plan;

19 (B) have access to and have on hand the quantity and
20 quality of equipment, personnel, and other resources identified
21 as being accessible or on hand in the plan;

22 (C) fulfill the assurances espoused in the plan in the
23 manner described in the plan;

24 (D) comply with terms and conditions attached to the
25 plan by the department under the authority of (e) of this sec-
26 tion; and

27 (E) successfully demonstrate the ability to carry out
28 the plan when required by the department under (e) of this sec-
29 tion;